

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY COURT OF COMMON PLEAS

Charles B. Simmons, Jr., Special Referee

Case No. 2008-CP-39-56
Appellant Case No. 2013-002154

Palmetto State Enterprises,
LLC,

Respondent,

v.

Clegg Lamar Greene a/k/a Lamar
Greene, Juleene Greene, a/k/a Julie
Greene, J&P Enterprises of the
Carolinas, Inc. and Gaston Engineering,
Inc.,

RECEIVED

JUN 20 2014

SC Court of Appeals

Of Which

Defendants,

J & P Enterprises of the Carolinas, Inc.,
is the

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities	<i>ii</i>
Statement of Issues on Appeal.	<i>1</i>
Statement of the Case.	<i>2</i>
Arguments	
Standard of Review	<i>4</i>
Discussion	<i>4</i>
A. The Evidence Reasonably Supports the Trial Court’s Finding that the \$154,772.65 Conveyed by Lamar Greene from Palmetto State to or on behalf of J&P was in addition to the Funds that Lamar Greene Paid to Himself for Authorized Salary, Bonus or Other Compensation from Palmetto State. . . .	<i>10</i>
B. The Evidence Reasonably Supports the Trial Court’s Finding that the \$154,772.65 Conveyed by Lamar Greene from Palmetto State to or on behalf of J&P was in addition to the Funds that Lamar Greene Paid to Himself for Authorized Salary, Bonus or Other Compensation from Palmetto State. . . .	<i>12</i>
Conclusion.	<i>15</i>

TABLE OF AUTHORITIES

CASES

<u>Allen v. Pinnacle Healthcare Sys., LLC</u> , 394 S.C. 268, 715 S.E.2d 362 (Ct. App. 2011)	4
<u>Blackwell v. Blackwell</u> , 289 S.C. 470, 346 S.E.2d 731 (Ct. App. 1986)	4, 15
<u>Brannon v. Palmetto Bank</u> , 371 S.C. 357, 638 S.E.2d 105 (Ct.App.2006)	11
<u>Green v. Waidner</u> , 284, S.C. 35, 37 324 S.E.2d 331, 333 (Ct.App.1984)	14
<u>Hennes v. Shaw</u> , 397 S.C. 391, 725 S.E.2d 501 (Ct.App.2012)	11
<u>Hiott v. Guar. Nat. Ins. Co.</u> , 329 S.C. 522, 529, 496 S.E.2d 417, 421 (Ct. App. 1997)	4
<u>Regions Bank v. Schumauch</u> , 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct.App.2003)	11
<u>Richardson’s Restaurants, Inc. v. Nat’l Bank of S.C.</u> , 304 S.C. 289, 403 S.E.2d 669 (Ct.App.1991)	11

STATUTES

<u>S.C. Code Ann. § 33-44-301</u>	13
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OTHER AUTHORITIES

Rule 8, <i>South Carolina Rules of Civil Procedure</i>	15
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STATEMENT OF ISSUES ON APPEAL

- A. Is the judgment against J&P Enterprises of the Carolinas, Inc., supported by a preponderance of the evidence, given that Lamar Greene could not have converted funds to which he was legally entitled?

- B. Is the judgment against J&P Enterprises of the Carolinas, Inc., supported by a preponderance of the evidence, given that J&P could not have converted funds which Palmetto State legally loaned to J&P and did not demand to be returned to Palmetto State?

STATEMENT OF THE CASE

This case stems from the conversion of funds from Respondent, Palmetto State Enterprises, LLC (“Palmetto State”), by one of its members, Lamar Greene throughout 2005, 2006, and 2007. This matter was filed in the Court of Common Pleas for Pickens County on January 10, 2008, against Clegg Lamar Greene, a/k/a Lamar Greene, J&P Enterprises of the Carolinas, Inc. (“J&P”), Gaston Engineering, Inc., and Morgan and Bartos Builders, LLC on January 10, 2008. The claim against Morgan and Bartos was subsequently dismissed. Among other things, Palmetto State alleged causes of action against Lamar Greene and J&P for conversion. Palmetto State’s Amended Complaint was filed on January 10, 2012, adding Juleene Greene a/k/a Julie Greene as a defendant to a cause of action for conversion (*See R. pp. 37-45*). This matter was referred to the Honorable Charles B. Simmons, JR. by Order of Reference filed September 21, 2012 (*See R. pp. 2-4*).

A bench trial was held on May 9 and 10, 2013, attended by attended by Michael L. Brown (“Mike Brown”), an authorized representative of Respondent; Respondent’s attorneys David R. Price, Jr. and Raymond T. Wooten; defendant Juleene Greene (“Julie Greene”); Jeffrey Greene (“Jeff Greene”), an authorized representative of Appellant; Scott F. Talley, attorney for Appellant and Julie; and Daniel E. Hunt, as Personal Representative of the Estate of Clegg Lamar Greene a/k/a Lamar Greene (*See R. pp. 50-156*). Mike Brown, Jeff Greene, and Julie Greene testified at trial. Although Lamar Greene died in late 2009, during the course of this litigation, a discovery deposition of Lamar Greene was taken on May 12, 2008 and on

November 14, 2008, and submitted as evidence at trial (*See R. pp. 434-609*). The trial court also received testimony from another member of the Respondent LLC, Ron West, via *de bene esse* deposition taken March 19, 2012 (*See R. pp., 612-667*), and from Brenda Pressley, CPA, accountant for Lamar Greene and J&P Enterprises, via deposition taken June 29, 2010 (*See R. pp. 418-433*).

The evidence submitted at trial by Palmetto State was that Lamar Greene, J&P and Julie Greene had converted \$1,164,148.58 of Palmetto State funds to their own use from various Palmetto State accounts (*See R. p. 400; R. pp. 157-266; R. pp. 267-315; R. pp. 316-320; R. pp. 321-348; R. pp. 349-371; R. pp. 372-383; R. pp., 384-399*). After the trial, the trial court issued its Order of Judgment Against Clegg Lamar Greene, Juleene Greene, and J&P Enterprises of the Carolinas, Inc., filed August 30, 2013, which granted judgment for conversion in favor of Respondent against J&P and/or Lamar Greene, jointly and severally, in the amount of \$154,772.65; another judgment for conversion against Julie Greene and/or Lamar Greene, jointly and severally, in the amount of \$1,285.97; and an additional judgment for conversion against Lamar Greene solely, in the amount of \$684,040.16 (*See R. pp. 11-13, ¶¶ 12, 15, 18, and 19*). Appellant J&P appeals the judgment for conversion against J&P and Lamar Greene, jointly and severally, in the amount of \$154,772.65.

ARGUMENTS

STANDARD OF REVIEW

An action for damages for conversion is an action at law. Blackwell v. Blackwell, 289 S.C. 470, 471, 346 S.E.2d 731, 732 (Ct. App. 1986) (internal citation omitted). In an action at law where the appeal is based on alleged errors of fact, if there is any evidence which reasonably supports the findings of fact of the trial court, this Court must affirm the judgment. *Id.*

When reviewing an action at law, referred to a master or special referee for final judgment with direct appeal to the supreme court or the court of appeals, the appellate court's jurisdiction is limited to correcting errors of law, and the appellate court will not disturb the master or special referee's findings of fact as long as they are reasonably supported by the evidence. Allen v. Pinnacle Healthcare Sys., LLC, 394 S.C. 268, 272, 715 S.E.2d 362, 364 (Ct. App. 2011) (internal citation omitted).

A non-jury trial court's findings of fact have the same force and effect as a jury verdict unless it committed some error of law leading to an erroneous conclusion or unless the evidence is reasonably susceptible of the opposite conclusion only. The appellate courts must affirm the trial court if there is any evidence that reasonably supports its decision. In reviewing the findings, the appellate courts must view the evidence and all its reasonable inferences in the light least favorable to the losing party. Hiott v. Guar. Nat. Ins. Co., 329 S.C. 522, 529, 496 S.E.2d 417, 421 (Ct. App. 1997) (internal citation omitted).

DISCUSSION

J&P appeals the judgment against it in the amount of \$154,772.65 in damages on the following issues:

A. Is the judgment against J&P Enterprises of the Carolinas, Inc., supported by a preponderance of the evidence, given that Lamar Greene could not have converted funds to which he was legally entitled?

B. Is the judgment against J&P Enterprises of the Carolinas, Inc., supported by a preponderance of the evidence, given that Lamar Greene could not have converted funds to which Palmetto State legally loaned to J&P and did not demand to be returned to Palmetto State?

(See Appellant's Brief, p. 2)

Both grounds for appeal appear to ask the appellate court to reconsider the trial court's findings of fact regarding the nature of the payments from Palmetto State funds made by Lamar Greene to J&P. Respondent respectfully submits that the appellate court's jurisdiction to consider a trial court's findings of fact is limited to the scope of review set forth above. Respondent would therefore submit the following items of evidence supporting the trial court's conclusions that the payments from Palmetto State funds to J&P were not legitimate payments by Lamar Greene of his own salary, nor were they legitimate, authorized, or recognized loans from Palmetto State to J&P:

1. Palmetto State Enterprises, LLC, was an LLC that was formed in 2004 with the mission to develop high end luxury condos near university campuses and football stadiums. **(R. p. 53, Trans. p. 13, lines 20-22).**

2. J&P Enterprises of the Carolinas, Inc., manufactures and sells parts in the textile industry and also machines for other industries **(R. p. 96, Trans. p. 184, lines 11-13)**. In the course of J&P's business, it regularly purchased parts from China. **(R. p. 117, Trans. p. 263, lines 5-8).**

3. The members of Palmetto State were Rich Rodriguez, who owned 33%; Ron West, who owned 33%; Lamar Greene, who was managing member and owned 16 ½%; and Jeff Greene, who owned 16 ½%. **(R. p. 54, Trans. p. 14, line 22-Trans. p. 15, line 24).**

4. J&P is owned by Lamar Greene, who owns 51%; Jeff Greene, who owns 24 ½%; and Paula Greene, who owns 24 ½%. **(R. p. 96, Trans. p. 185, lines 1-17).** When he was alive, Lamar Greene served as President **(R. p. 97, Trans. p. 189, lines 1-2)**, and Jeff Greene served as “second in command” **(R. p. 100, Trans. p. 201, lines 17-18)**. None of the other members of Palmetto State worked at or had any interest in J&P.

5. In his testimony, Jeff Greene conceded that, from 2005-2007, Lamar Greene paid at least \$154,772.65 to or on behalf of J&P out of various Palmetto State accounts **(R. p. 100, Trans. p. 200, line 20-Trans. p. 201, line 4)**. The sources of these funds are summarized on Exhibit H to Order of Judgment filed August 30, 2013: They include \$120,449.00 in checks drawn from Palmetto State’s First Citizens account **(R. p. 16-19; R. p. 157-266)**; \$11,984.65 drawn from Palmetto State’s Regions account **(R. p. 20-22; R. p. 267-315)**; \$6,300 drawn from Palmetto State’s Greenville First account **(R. p. 23; R. p. 316-320)**; and an additional \$16,039.00 wired from the First Citizens account to a law firm in North Carolina to pay the retainer fee for J&P’s 2006 bankruptcy filing. **(R. p. 26; R. p. 372-383; R. p. 100, Trans. p. 199, line 13-Trans. p. 200, line 14; R. p. 119, Trans. p. 270, line 6-R. p. 120, Trans. p. 272, line 16).**

6. According to Jeff Greene, Palmetto State monies paid to J&P were used by J&P to purchase goods that were necessary to conduct J&P business—such as parts from China—in times where J&P did not have sufficient money in its own account to cover these expenses (**R. p. 101, Trans. p. 204, line 23- Trans. p. 205, line 12**).

7. Multiple witnesses testified that there was no reason why payments to J&P would have been a legitimate company expense of Palmetto State (**R. p. 58, Trans. p. 32, lines 10-18; R. p. 646, Depo. p. 35, lines 7-20**).

8. Jeff Greene was the only witness who suggested the payments to J&P were intended to constitute “salary” to Lamar Greene. He testified that he believed the payments from Palmetto State to J&P were partial payment of Lamar Greene’s salary from Palmetto State, in compensation for the full salary that Lamar Greene continued to draw from J&P despite his increased time away from J&P pursuing Palmetto State business (**R. p. 101-R. p. 102, Trans. p. 205, Line 24-Trans. p. 206, line 12; R. p. 102, Trans. p. 209, lines 13-22; R. p. 141, Trans. p. 359, lines 1-21**).

9. The testimony regarding the amount of Palmetto State salary/compensation that Lamar Greene was entitled to receive varied from Mike Brown’s testimony that Lamar Greene was entitled to receive \$270,000.00, consisting payments totaling \$10,000.00 per month over twenty-seven (27) months (**R. p. 63, Trans. p. 50, line 20-R. p. 63, Trans. p. 51, line 13**), to Ron West’s testimony that he was entitled to receive \$330,000.00, constituting \$270,000.00 in salary, \$50,000.00 in bonus, and \$10,000.00 return of initial capital contribution (**R. p. 645,**

lines 14-16). In issuing its ruling, the trial court also noted Lamar Greene testified that he was entitled to receive \$435,000.00 (**R. p. 152, Trans. p. 402, lines 4-7).**

10. Respondent submitted evidence that Lamar Greene overpaid himself \$76,881.00 above his agreed-upon salary of \$270,000.00, evidenced by checks made payable to “cash” or to Lamar Green for “salary.” (**R. p. 349–371; R. p. 63, Trans. p. 50, line 1-Trans. p. 51, line 18).** Respondent also submitted other evidence that Lamar Greene paid himself another \$754,130.93 more in expenditures for personal, non-Palmetto State-related expenditures (**R. p. 400; R. p. 157–266; R. p. 267-315; R. p. 316–320; R. p. 321-348; R. p. 372-383**), in addition to the monies paid to or on behalf of J&P (**R. p. 157-266; R. p. 267-315; R. p. 316-320, R. p. 372 -383**). Respondent also submitted evidence that Lamar Greene received additional Palmetto State funds totaling \$187,500.00, which were paid to a non-existent corporation created by Lamar Greene known as “Gaston Engineering” (**R. p. 384- 399**).

11. The trial court carefully considered Respondent’s evidence before determining that certain charges presented by Respondent on Plaintiff’s Trial Exhibit 5 as payments of salary should be excluded, including a \$30,000.00 payment that Lamar Greene made to himself as a bonus authorized by the other members, and that Lamar Greene was entitled to an additional \$40,000.00 payment from Palmetto State to reimburse him for a down payment for property purchased by Palmetto State (**R. p. 155, Trans. p. 412, lines 9-17**). Nevertheless, the trial court determined that all but \$7,119.00 of the compensation to which Lamar Greene was entitled was reflected on Plaintiff’s Trial Exhibit 5 (**R. p. 25**), and that even after factoring in the payments of salary, bonus, and loan reimbursement to which Lamar Greene was legitimately

entitled, Mr. Greene had still personally converted \$648,762.48 more in Palmetto State funds, in addition to the \$154,772.65 paid to or on behalf of J&P (**R. p. 28**).

12. In determining whether, and in what amounts, these payments were rightful payments to Lamar Greene for “salary,” the court noted that Mr. Greene reported no income from Palmetto State on his tax returns for 2005, 2006, or 2007, even though he should have reported these payments as income (**R. p. 151, Trans. p. 399, lines 6-22; R. p. 421, Depo. p. 13, line 21-Depo. p. 14, line 4; R. p. 421, Depo. p. 15, lines 18-22; and R. p. 422, Trans. p. 17, line 21-Depo. p. 18, line 20**). The trial court found this evidence to be “significant” (**R. p. 153, Trans. p. 406, lines 20-24**).

13. As to the issue of whether the payments to or on behalf of J&P were “loans” from Palmetto State to J&P, the trial court received testimony from multiple witnesses, including both Jeff Greene and Lamar Greene, who were members/principals of both Respondent and Appellant, who testified that there was no legitimate business reason why Palmetto State would loan funds to J&P. (**R. p. 102, Trans. p. 206, line 25-Depo. p. 207, line 3; R. p. 481, line 25-R. p. 482, line 4; R. p. 482, line 23-R. p. 483, line. 1; R. p. 634, lines 14-18, R. p. 635, lines 9-13**).

14. Ron West testified that the payments to J&P were made without the other members’ knowledge (**R. p. 633, lines 10-15**).

15. As the trial court further noted, Lamar Greene admitted that the loans to J&P were not authorized by the other members of Palmetto State (**R. p. 152, Trans. p. 402, lines 14-17; R. p. 482, Depo. p. 49, lines 5-8**).

16. Jeff Greene testified that he was never aware of any loans from Palmetto State to J&P Enterprises listed on the books for J&P (**R. p. 101, Trans. p. 203, lines 14-Trans. p. 204, line 11**).

17. Jeff Greene further testified that, when J&P filed Chapter 13 bankruptcy in February 2003, it did not identify Palmetto State as a creditor nor provide Palmetto State notice of the bankruptcy (**R. p. 101, Trans. p. 204, lines 12-24; p. 146, Trans. p. 376, lines 13-21**).

18. To the extent the payments from Palmetto State to J&P are listed on J&P's books, they are listed as loans from "owner" or "officer", not as loans from Palmetto State (**R. p. 146, Trans. p. 376, lines 5-12; R. p. 141, Trans. p. 357, line 21-Trans. p. 358, line 6**).

19. There was no evidence that the alleged loans to J&P had ever been paid back (**R. p. 67, Trans. p. 69, lines 17-19**). Additionally, Jeff Greene testified that there is no documentation as to the terms of how the alleged loans should be paid back (**R. p. 141, Trans. 358, lines 7-9**). The trial court also noted that J&P's accountant Brenda Pressley was provided no documentation regarding the alleged loans from Palmetto State to J&P (**R. p. 151, Trans. p. 399, lines 18-22**).

A. The Evidence Reasonably Supports the Trial Court's Finding that the \$154,772.65 Conveyed by Lamar Greene from Palmetto State to or on behalf of J&P was in addition to the Funds that Lamar Greene Paid to Himself for Authorized Salary, Bonus or Other Compensation from Palmetto State.

In light of the testimony and evidence outlined above, Respondent respectfully submits that there was ample evidence presented at trial that reasonably supports the trial court's conclusion that the \$154,772.65 paid to or on behalf of J&P

out of Palmetto State funds constituted conversion and not Lamar Greene's "salary" or a "loan" from Palmetto State to J&P. The tort of conversion is defined as follows:

Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights. To establish the tort of conversion, the plaintiff must establish either title to or right to the possession of property. Hennes v. Shaw, 397 S.C. 391, 403, 725 S.E.2d 501, 508 (Ct.App.2012), *quoting* Regions Bank v. Schumauch, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct.App.2003).

Appellant argues that J&P could not have converted the funds because Lamar Greene was legally entitled to them since he was "owed" these funds from Palmetto State, and "thus had the legal right to transfer the funds to a J&P account" (*See Appellant Brief, p. 7-8*). In making this argument, Appellant cites multiple cases that stand for the legal proposition that a bank cannot convert funds in an account held by a bank, since the bank has the legal right to possess the funds in its account. (*See Richardson's Restaurants, Inc. v. Nat'l Bank of S.C.*, 304 S.C. 289, 403 S.E.2d 669 (Ct.App.1991). *See also* Brannon v. Palmetto Bank, 371 S.C. 357, 638 S.E.2d 105 (Ct.App.2006)). These cases differ from the case at hand because J&P had no existing right to possession of the funds, and the trial court concluded that the evidence demonstrated that Lamar Greene was not entitled to these funds as salary.

Appellant's argument requires the court to ignore the uncontroverted evidence that Lamar Greene converted more than \$804,821.10 of funds over and above the \$340,000.00 that the trial court found that Lamar Greene was rightfully entitled to as salary, bonus, or reimbursement for a down payment made by Lamar Greene personally to acquire property to be owned by Palmetto State (**R. p. 25; R. p. 155, Trans. p. 412, lines 9-17; R. p. 28**). It is not reasonable for Appellant to assert that

“the amounts Mr. Greene deposited into a J&P account as his salary (totaling \$112,303.00) are less than the amount Respondent actually owed Mr. Greene as salary (at least \$270,000.00 and potentially as much as \$435,000.00 in salary from Palmetto State)” (**Appellant Brief, p. 7**), because such an argument requires the court to ignore the payments in excess of \$300,000.00 that Lamar Greene also made to himself for “salary” as reflected on Exhibit E to the Order and on Plaintiff’s Trial Exhibit 5. Quite simply, the evidence clearly supports the trial court’s findings that the \$154,772.65 paid to or on behalf of J&P Enterprises was in addition to the monies that Lamar Greene paid to himself as authorized salary, bonus, or other compensation.

B. The Evidence Reasonably Supports the Trial Court’s Finding that the \$154,772.65 Conveyed by Lamar Greene from Palmetto State to or on behalf of J&P was in addition to the Funds that Lamar Greene Paid to Himself for Authorized Salary, Bonus or Other Compensation from Palmetto State.

Respondent further submits that there was no evidence offered that would reasonably support any finding by the court that the monies paid by Lamar Greene from Palmetto State accounts to or on behalf of J&P Enterprises constituted “loans” from Palmetto State to J&P that could not be the subject of an action for conversion. There is no documentation of any loans or terms of repayment (**R. p. 141, Trans. p. 358, lines 7-9; R. p. 151, Trans. p. 399, lines 18-22**), and there is no evidence that any portion of any loan was ever repaid (**R. p. 67, Trans. p. 69, lines 17-19**). Furthermore, J&P’s books did not note these payments as loans from Palmetto State (**R. p. 146, Trans. p. 376, lines 5-12; R. p. 141, Trans. p. 357, line 21–Trans. p. 358, line 6**), nor did J&P recognize Palmetto State as one of its creditors when it filed

bankruptcy in 2006 (**R. p. 101, Trans. p. 204, lines 12-22; R. p. 146, Trans. p. 376, lines 13-21**).

Even more importantly, there is no evidence that the alleged “loans” were authorized by the other members of the Respondent LLC (**R. p. 152, Trans. p. 402, lines 14-17; R. p. 482, lines 5-8**), or that they were even made with the other members’ knowledge (**R. p. 633, lines 10-15**). Jeff Greene and Lamar Greene, who were members/principals of both Respondent and Appellant, both testified that there was no legitimate business reason why Palmetto State would loan funds to J&P. (**R. p. 102, Trans, p. 206, line 25 –Trans. p. 207, line 3; R. p. 481, line 25-R. p. 482, line 4; R. p. 482, line 23- R. p. 483, line 1**). In light of the evidence, Appellant’s reliance on the provisions of S.C. Code § 33-44-301 and S.C. Code § 33-44-404 is absolutely misplaced.

S.C. Code § 33-44-301(a) states as follows:

(1) [A]n act of a member . . . for apparently carrying on in the ordinary course of the company’s business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

(2) An act of a member which is not apparently for carrying on in the ordinary course of the company’s business or business of the kind carried on by the company binds the company only if the act was authorized by the other members.

Under the provisions of S.C. Code § 33-44-301(a), the evidence still supports the trial court’s finding that Appellant is liable for conversion for the following reasons: (i) Loans from Palmetto State to J&P would not have been in the ordinary course of business of Palmetto State, whose mission was to develop high end luxury condos

near university campuses and football stadiums (**R. p. 53, Trans. p. 13, lines 20-22**); (ii) Lamar Greene had no authority to make the loans from Palmetto State to J&P (**R. p. 152, Trans. p. 402, lines 14-17; R. p. 482, lines 5-8**); and (iii) Lamar Greene, the President (**R. p. 97, Trans. p. 189, lines 1-2**) and 51% shareholder of J&P (**R. p. 96, Trans. p. 185, lines 1-17**), knew that that he lacked the authority to make the loans (**R. p. 482, lines 5-8**), and that the loans to J&P were not in the ordinary course of business of Palmetto State (**R. p. 481, line 25; R. p. 482, line 4; R. p. 482, line 23; R. p. 483, line 1**). J&P; for all intents and purposes, was Lamar Greene at the time the funds were converted. To hold that Appellant was not aware that the loans were not authorized and not part of Palmetto State's ordinary course of business, when Lamar Greene admits that he knew they were not authorized or related to company business would create an absurd result.

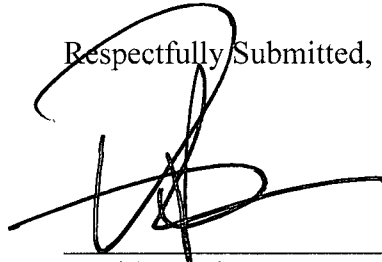
The evidence presented does not reasonably support an inference that Lamar Greene intended the monies paid to J&P to be loan rather than a surreptitious conversion of Palmetto State funds. Even if he had intended to repay Respondent, the fact that the funds remain unpaid more than eight (8) years after the initial conversion is sufficient to support an action for conversion. There is no *mens rea* requirement that a converter deliberately convert the funds. See Green v. Waidner, 284, S.C. 35, 37 324 S.E.2d 331, 333 (Ct.App.1984) (discussing the measure of damages for an “innocent conversion’ where the property is converted by mistake or under a bona fide belief or right”). Nor is there a procedural requirement for a formal “demand letter” as a necessary element before a cause of action for conversion of funds may lie. There can be no legitimate question that Palmetto State is entitled to a return of

the funds from J&P, J&P simply seeks a technical avoidance through which it can avoid a judgment for the monies that should have been returned long ago. To the extent the failure to make a demand constitutes an affirmative defense or avoidance resulting from some failure outside the elemental requirements of conversion, such a defense is barred at this stage as it was not plead as an affirmative defense in J&P's Answer pursuant to Rule 8, *SCRCP*.

CONCLUSION

An action for damages for conversion is an action at law. Blackwell v. Blackwell, 289 S.C. 470, 471, 346 S.E.2d 731, 732 (Ct. App. 1986) (internal citation omitted). In an action at law where the appeal is based on alleged errors of fact, if there is any evidence which reasonably supports the findings of fact of the trial court, this Court must affirm the judgment. *Id.* There was ample evidence presented at trial that reasonably supports the trial court's conclusion that the \$154,772.65 paid to or on behalf of J&P out of Palmetto State funds constituted conversion and not Lamar Greene's "salary" or a "loan" from Palmetto State to J&P. The trial court's decision must therefore be affirmed.

Respectfully Submitted,



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Appellant.

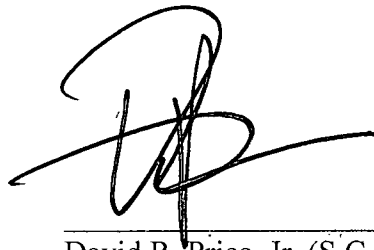
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with
Rule 211(b), SCACR.

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JUN 20 2014

SC Court of Appeals



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