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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2018-CP-40-01434

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SC Court of Appeals

Southeast Payphone Group, Inc., a
South Carolina Corporation

Appellant,

v.

Water Flow Business Brokers, LLC, a
South Carolina Limited Liability Company,
And Ryan Cannon,

Defendants,

Of Whom Ryan Cannon is the

Respondent.

RECORD ON APPEAL

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INDEX

Order Granting Motion to Dismiss September 20, 2018 1

Complaint 5

Answer and Counterclaim..... 25

Reply to Counterclaim 33

Notice of Motion and Motion to Dismiss 38

Transcript of Motion Hearing 40

Certificate of Appellant 50

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 SOUTHEAST PAYPHONE GROUP,)
 INC., a South Carolina Corporation,)
)
 Plaintiff,)
)
)
)
 WATER FLOW BUSINESS BROKERS,)
 LLC, a South Carolina Limited Liability)
 Company, and RYAN CANNON,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 CASE NUMBER: 2018-CP-40-01434
 ORDER GRANTING THE
 DEFENDANT CANNON'S MOTION
 TO DISMISS

THIS MATTER came before this court on the 11th day of April, 2018 pursuant to a Notice of Motion and Motion to Dismiss filed by the Defendant Ryan Cannon per Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Present at the hearing were Dennis N. Cannon, Jr., on behalf of Defendant Ryan Cannon, and Jeffrey A. Long, representing the Plaintiff Southeast Payphone Group, Inc. This court has reviewed the court file and considered the arguments of counsel.

It appears that the Plaintiff and the Defendant Water Flow Business Brokers, LLC, a South Carolina Limited Liability Company, entered into an Asset Purchase Agreement on March 17, 2016 wherein the Plaintiff agreed to buy and the Defendant Water Flow Business Brokers, LLC agreed to sell the Plaintiff certain ATM assets. It appears further that the Defendant Ryan Cannon is an agent and officer of the Defendant Water Flow Business Brokers, LLC and acted on behalf of the Defendant Water Flow Business Brokers, LLC insofar as transacting business with the Plaintiff.

At some point in time the relationship between the parties deteriorated and the Plaintiff commenced this lawsuit against the Defendant Water Flow Business Brokers, LLC essentially alleging breach of contract as well as other causes of action. The Defendant Ryan Cannon was also sued in his individual capacity. The Plaintiff, by its counsel, asserts that the Defendant Cannon as a corporate officer and agent of the Defendant Water Flow Business Brokers, LLC is liable for his own tortious acts. Defendant Cannon denies engaging in any tortious acts. The Defendant Cannon, by his counsel maintains that all his dealings with the Plaintiff were done in his capacity as a agent for the Defendant Water Flow Business Brokers, LLC and in furtherance of its interest and that he is therefore, not personally liable for any damages that the Plaintiff alleges resulted from the breach of the contract and other cause of action.

In Paragraph 37 of its complaint the Plaintiff asserts that [t] he actions of Cannon are also imputed to Water Flow under the doctrine of *Respondent Superior*. It is undisputed that and the Plaintiff concedes by its pleadings that the Defendant Ryan Cannon was acting in his representative capacity as an officer and agent for the Defendant Water Flow Business Brokers, LLC.

Where an agent enters into a contract for a known principal, while acting within his authority as agent, he is not personally liable on the result of the contract. The liability, if any, for a breach of contract is that of the principal alone. Green v. Indus. Life & Health Ins. Co., 199 SC 262, 18 S.E.2d 873.

S.C. Code Ann. § 33-44-303 of the Uniform Liability Company Act of 1996 provides as follows:

(a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

(b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(1) a provision to the effect is contained in the articles of organization; and

(2) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

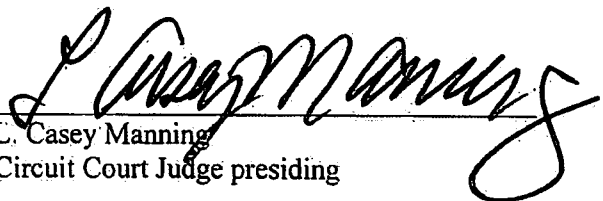
Section 33-44-303 shields the defendant Cannon from personal liability for any acts he took as agent of the Defendant Water Flow Business Brokers, LLC. In such a situation, only the LLC may be found liable. See, Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC, 406 S.C. 596, 753 S.E.2d 840 (2012) (where LLC's manager acted within the scope of his authority in taking actions that interfered with the contract, manager was not subject to personal liability for tortious interference with contract); S.C. Code Ann. § 33-44-302 ("A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act

or omission, or other actionable conduct, of a member or manager acting in the ordinary course of business of the company or with authority of the company.”)

Based on the foregoing authority, Defendant Cannon, acting as agent for Defendant Water Flow as recognized by Plaintiff is not personally liable for damages as claimed by Plaintiff arising from the alleged breach of the agreement at issue here, and, therefore, should be dismissed as a party Defendant.

THEREFORE, IT IS ORDERED, that Defendant Cannon’s Motion to Dismiss is hereby granted.

This the 20 Sept. day of Sept., 2018.


L. Casey Manning
Circuit Court Judge presiding

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

SOUTHEAST PAYPHONE GROUP, INC., a
South Carolina corporation,

Plaintiff,

v.

WATER FLOW BUSINESS BROKERS,
LLC, a South Carolina limited liability
Company, and RYAN CANNON,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

2017-CP-26-_____

COMPLAINT
[Jury Trial Demanded]

Plaintiff Southeast Payphone Group, LLC, by and through undersigned counsel, alleges and says as follows:

PARTIES, JURISDICTION and VENUE

1. Plaintiff Southeast Payphone Group, Inc., (“Plaintiff” or “SEPG”) is a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business located in Horry County, South Carolina.

2. Upon information and belief, Defendant Water Flow Business Brokers, LLC, (“Water Flow”) is a limited liability company organized and existing under the laws of the State of South Carolina, and maintains its principal place of business in Richland County, South Carolina.

3. Upon information and belief, Defendant Ryan Cannon (“Cannon”) is an adult citizen and resident of Richland County, South Carolina.

4. Venue is proper in Horry County.

5. This Court has jurisdiction over the parties and the subject matter hereto.

6. The amount in controversy exceeds \$25,000.00.

FACTUAL BACKGROUND

7. SEPG is primarily in the business of owning and servicing machines (such as ATMs) leased to merchant locations, such as convenience stores, pursuant to exclusive location agreements.

8. Upon information and belief, Water Flow was in the same industry as Plaintiff – i.e. owning and providing ATMs to convenience stores and other retail locations.

9. Plaintiff is informed, believes, and therefore alleges that Cannon was at all times relevant to the facts alleged herein an officer and/or member manager of Water Flow.

10. On or about March 17, 2016, SEPG and Water Flow entered into an Asset Purchase Agreement (“APA”). A true and accurate copy of the APA is attached hereto as **Exhibit A** and is incorporated by reference as if fully set forth herein.

11. Under the terms of the APA, Water Flow and Cannon warranted and promised that it, Water Flow, was the lawful, legitimate owner of certain assets, including without limitation: (a) equipment such as ATMs, and (b) contracts with vendor locations whereby Water Flow had exclusive rights to provide and service ATMs throughout South Carolina.

12. In exchange for transferring assets to Plaintiff per the APA, Water Flow agreed to accept Ninety Five Thousand and No/100 Dollars (\$95,000.00) in consideration from Plaintiff, which was paid to Water Flow by Plaintiff.

13. After execution of the APA and Plaintiff’s payments to Water Flow, Plaintiff first learned that Water Flow did not have “good and marketable title” to the assets conveyed to Plaintiff.

14. More specifically, Water Flow did not own the ATMs it purported to transfer to Plaintiff nor did Water Flow have exclusive location contracts to provide ATMs to locations throughout South Carolina. In sum, Water Flow did not own what it purported to sell and convey to Plaintiff.

15. As a result of Water Flow's duplicity, Plaintiff has been denied the benefit of its bargain.

16. Furthermore, Plaintiff is informed, believes, and therefore alleges that Water Flow knew it did not own the ATMs, or have valid exclusive location agreements. Nevertheless, Water Flow (and Cannon) accepted payment from Plaintiff for such exclusive location agreements.

17. Additionally, Water Flow has violated the APA; specifically, the covenant not to compete with Plaintiff as required by the APA. Under the terms of the APA, Water Flow, its officers, shareholders, and key employees covenanted and agreed not to "directly or indirectly...own, manage, operate, or participate in the ownership, management, operation of ATM units of equipment at the current business addresses where the twenty two (22) ATM machines are being purchased by Purchaser..." (APA, § 13(c) Seller Noncompetition)

18. Plaintiff is informed, believes, and therefore alleges that Water Flow and Cannon – as an officer, shareholder, or "key employee" – violated the "Seller Noncompetition" provisions of the APA by improperly accepting employment with Carolina ATM Services, LLC ("CATM") and, without CATM's knowledge of the noncompete obligations imposed by the APA, directly and indirectly competed with Plaintiff in direct violation to the APA.

FIRST CAUSE OF ACTION
(Breach of Contract)

19. The preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

20. The APA is a contract entered into between Plaintiff and Water Flow for good and valuable consideration.

21. Plaintiff has satisfied its obligations per the APA.

22. Water Flow has failed to honor its commitments under the APA, including without limitation:

- a. Failing to convey property free and clear of any and all claims, pledges, security interest or rights of others (§ 5(c) of the APA);
- b. Directly and indirectly competing with Plaintiff in contravention to the covenant not to compete (§ 13(c) of the APA).

23. Water Flow's conduct as described above is a breach of the APA.

24. As a result of Water Flow's breach of the APA, Plaintiff has been damaged in an amount to be proven at trial, but believed to be at least \$25,000.00.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

25. The preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

26. Plaintiff provided to Water Flow substantial payments for certain assets.

27. The substantial payments were made to Water Flow in satisfaction of any debt then or now due and owing.

28. Water Flow has been unjustly enriched by the payments it received from Plaintiff.

29. Award Plaintiff damages in an amount to be proven at trial, but believed to be at least \$25,000.00 to prevent Water Flow's unjust enrichment.

THIRD CAUSE OF ACTION
(Fraud/Intentional Misrepresentation – Water Flow and Cannon)

30. The preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

31. Cannon, individually and on behalf of Water Flow, made certain fraudulent misrepresentations to Plaintiff, to wit, Cannon stated that Water Flow was the record owner of the property to be conveyed to Plaintiff per the APA.

32. Cannon made such misrepresentations with actual knowledge of their falsity.

33. Cannon's misrepresentations were of facts material to the parties' transaction.

34. Further, Cannon made such misrepresentations with the intent to deceive Plaintiff, and such fraudulent statement did in fact deceive Plaintiff, which had no knowledge of the statement's falsity.

35. Plaintiff rightfully relied on Cannon's misrepresentations of fact.

36. As a result of Cannon's misrepresentation, Plaintiff has been damaged in an amount to be proven at trial, but believed to be at least \$25,000.00.

37. The actions of Cannon are also imputed to Water Flow under the doctrine of *respondeat superior*.

38. The acts alleged herein by Cannon were done willfully, intentionally, wantonly, and maliciously.

39. Plaintiff is also entitled to recover punitive damages against Defendants Cannon and Water Flow.

PRAYER FOR RELIEF

WHEREFORE Plaintiff Southeast Payphone Group, Inc., alleges and says as follows:

1. Award Plaintiff damages for Water Flow Business Broker, LLC's breach of contract in an amount to be proven at trial, but believed to be at least \$25,000.00;
2. Award Plaintiff damages to prevent Defendant Water Flow Business Broker, LLC's unjust enrichment in an amount to be proven at trial, but believed to be at least \$25,000.00;
3. Award Plaintiff damages for Cannon's fraud/intentional misrepresentations in an amount to be proven at trial, but believed to be at least \$25,000.00;
4. Award Plaintiff damages for Cannon's fraud/intentional misrepresentations, which are imputed to Water Flow Business Brokers, LLC, in an amount to be proven at trial, but believed to be at least \$25,000.00;
5. Award Plaintiff punitive damages against Cannon and Water Flow Business Brokers, LLC, for the wanton, willful, malicious and intentional conduct alleged herein.
6. Tax all costs of this action against Defendants;
7. Any and all other relief the Court deems just and proper; and
8. A **trial by jury** on all issues so triable per Rule 38 of the South Carolina Rules of Civil Procedure.

This the 13th day of December, 2017.

BRAY & LONG, PLLC

/s/ Jeffrey A. Long
Jeffrey A. Long (S. C. Bar No. 71073)
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(704) 523-7780 Facsimile
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Attorneys for Plaintiff

Exhibit A

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT made this 17th day of March in the year 2016 and entered into by and between Southeast Payphone Group, Inc., a South Carolina S corporation with offices located 2309 Acie Avenue, Conway, South Carolina 29527 ("Purchaser") and Water Flow Business Brokers LLC with principal address of 1201 Main Street, Suite 1980, Columbia, SC 29201 ("Seller"). Each the Purchaser and the Seller are individually referred to herein as a Party or collectively as the Parties.

BACKGROUND

Seller is engaged in the business of operating publicly accessible ATM machines in retail and other public locations (the "Business"). The shareholders of Seller have decided that it is in the best interests of Seller and such shareholders to sell the certain assets of (the "Business") to Purchaser. Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser (i) the assets of Seller exclusively related to or used only in the Business and (ii) an interest in certain other intangible assets used in the Business, primarily ATM location contracts. Purchaser also desires to assume liabilities of Seller provided such liabilities have solely the ATM machines as collateral, but only liabilities to the extent specifically set forth in Section 4 of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and intending to be legally bound, the parties hereto hereby agree as follows:

1. **Sale and Purchase of Assets.**

Seller hereby agrees (i) to sell, transfer, assign and convey to Purchaser, and Purchaser hereby agrees to buy, free and clear of any liabilities, security interests, liens, encumbrances and other restrictions, except for those liabilities specifically assumed pursuant to Section 4 hereof, some of the assets owned by Seller, whether real, personal or mixed, and whether tangible or intangible, and used by Seller either exclusively in or substantially only for the conduct of the Business, and (ii) to sell, transfer, assign and convey to Purchaser, free and clear of any liabilities, security interests, liens, encumbrances and other restrictions, except for those liabilities specifically assumed pursuant to Section 4 hereof, other intangible assets, including trade secrets such as customer lists, customer contracts, owned by Seller and used in or useful for the conduct of the Business.

DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT: (A) SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND VALIDITY OF PATENT RIGHTS OR CLAIMS, ISSUED OR PENDING; (B) THE ASSETS AND BUSINESS BEING TRANSFERRED TO PURCHASER AT CLOSING ARE TO BE CONVEYED "AS IS, WHERE IS" ON THE CLOSING DATE, AND IN THEIR PRESENT CONDITION, AND PURCHASER SHALL RELY UPON ITS OWN EXAMINATION THEREOF; AND (C) SELLER MAKES NO GUARANTY OF QUALITY WITH RESPECT TO ANY OF THE ASSETS BEING SO TRANSFERRED, OR AS TO THE CONDITION OR WORKMANSHIP THEREOF OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR OBVIOUS. SEE ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER IN SECTION 5 AND OTHERWISE HERBIN.

Without in any way limiting the generality of the foregoing, the Assets shall include all rights, title and interest owned or held by Seller in the following:

(a) Contracts. All twenty four (24) contracts, agreements, licenses, and other commitments and arrangements, oral or written, with any person or entity relating exclusively or substantially only to the Business ("Contracts"). As of the date hereof, the Contracts consist of the items listed on Schedule 1(a) as they relate to the ATM route.

(b) Equipment. All hardware or equipment owned by the Seller and used exclusively or substantially in the Business, including serial numbers for each ATM Machine but not limited to, parts and accessories, a list of which is set forth in Group 1 Locations on Schedule 1(a).

The purchase and sale shall occur on the closing date (the "Closing Date") as set forth in Section 3 of this Agreement. The Assets do not include; vehicles, vault cash, cash in bank or accounts receivable.

2. Purchase Price and Payment

(a) As full consideration for the Assets, Purchaser agrees to pay Seller a purchase price of Ninety Five Thousand Dollars (\$95,000) accepted by Seller. The Seller represents there are twenty two (24) ATM Machines with free and clear title, except those identified in Section 4 with liabilities, available for Purchase and has provided a one (1) year summary of revenues generated from these twenty one (21) of the twenty four (24) ATM customer locations attached in Exhibit 1(c).

(b) The aggregate Purchase Price for the Assets shall be payable by Purchaser in cash in the amount of sixty thousand dollars (\$60,000) on the Closing Date by company check or by wire transfer of Federal funds US funds to Seller's bank account.

i. Purchaser shall release fifteen thousand dollars (\$15,000) of the Escrow Amount to Seller once Purchaser has successfully transitioned purchased ATMs and locations to Purchaser's ATM processing company.

ii. Purchaser shall release the remaining twenty thousand (\$20,000) balance of the Escrow Amount once Purchaser has successfully executed service contracts with at least nineteen (19) of the twenty four (24) total customer locations.

(c) The Purchase Price shall be allocated among the Assets in the manner set forth in Schedule 2(a). The allocation shall be binding on the parties hereto for all purposes, including federal income tax purposes, and the parties agree not to take any contrary position in respect of the price of any of the Assets in any tax return, tax proceeding, tax audit, or any documents filed by any of said parties with federal, state or local authorities.

3. Closing

The closing (the "Closing") will be held at the offices of Seller commencing at 2:00 pm on the date hereof, and shall be deemed effective as of March 17, 2016 (the "Closing Date") At the Closing:

(a) Seller will deliver to Purchaser a bill of sale in the form of Exhibit 3(a) attached hereto (the "Bill of Sale") for the Assets:

(b) Seller and Purchaser will enter into an Intellectual Property Agreement in the form of Exhibit 3(b) hereto ("Intellectual Property Agreement") for the transfer and assignment of

the Proprietary Rights and Contract rights being assigned to Purchaser and the obligations being assumed, under Section 4 hereof, by Purchaser.

(c) Seller and Buyer shall agree on an orderly replacement of the "Vault Cash" defined as the cash in each machine available to customers for withdraw. Such Vault Cash is not being sold by Seller and shall remain the property of the Seller at all times.

~~This Agreement, the Bill of Sale, and the Intellectual Property Agreement, and all schedules and exhibits to each of the foregoing are collectively referred to as the "Transaction Agreements".~~

4. Assumption of Certain Liabilities: No Assumption of Other Liabilities of Seller: Employee Matters.

(a) Purchaser does not and will not assume or become obligated to pay or perform any liabilities or obligations of Seller whatsoever, including without limitation, any liabilities for accounts payables, taxes, and any obligations of Seller in respect of pension arrangements or employee benefit arrangements with respect to Seller's employees, officers or others involved with Seller in any manner up to the date hereof, any governmental obligations (including without limitation those arising with respect to the Occupational Safety and Health Act of 1970, as amended ("OSHA")), hazardous substances and product liability, except for: (i) all obligations of Seller accruing subsequent to the Closing Date under the Contracts; *provided* that the rights thereunder have been duly and effectively assigned to Purchaser; *provided further*, that Purchaser shall not assume or discharge any obligation relating to a breach of the terms of a Contract caused by the assignment thereof to Purchaser at the Closing; and (ii) all salaries and wages with respect to employees set forth on Schedule 4 hereto that are hired by Purchaser from and after the Closing Date.

(b) Liabilities Assumed: There will be no liabilities assumed.

5. Representations, Warranties and Covenants of Seller.

Seller represents, warrants and covenants as follows:

(a) Organization and Standing of Seller. Seller is a South Carolina limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and is qualified to do business in the state of South Carolina and is in all aspects in good standing with the ability to enter into the Transaction Agreements, consummate the transactions contemplated thereby and herein, or to operate the Business as it is presently operated. Seller is entitled to carry on the Business as now conducted and to enter into the Transaction Agreements and the other documents executed in connection therewith and to consummate the transactions contemplated thereby.

(b) Corporate Authorization. Each of the Transaction Agreements has been duly authorized, executed and delivered by Seller and is a legal, valid and binding obligation of Seller, enforceable in accordance with its respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general equitable principles.

(c) Title to Properties. Seller has good and marketable title to all the Assets, free and clear of all liens, claims, pledges, security interests, rights of others or any other charge or encumbrance of any nature whatsoever, except for minor imperfections of title, if any, that do not materially detract from the value or impair the use of the Assets subject thereto. Except as listed on a schedule to be furnished by Seller to Purchaser at least three (3) days prior to the Closing Date, all of the

Assets as represented in writing on the Closing Date.

(d) Contracts and Commitments. All of the Contracts have been entered into in the normal course of business, and true and complete copies thereof have been delivered to Purchaser. Seller has complied, and to Seller's knowledge all other parties to such agreements have complied, with the provisions of the Contracts in all material respects; Seller is not, and to Seller's knowledge such other parties are not, in material default under any provision thereof; and no event has occurred which with the passage of time or the giving of notice or both would constitute a material default under such Contracts with respect to Seller or, to Seller's knowledge, with respect to such other parties.

(e) Proprietary Rights. Seller presently owns, possesses, or lawfully uses in connection with the Business all software, including source and object code and documentation related thereto, patents, patent applications, trademarks, service marks, trademark and service mark applications, trade names, copyrights, mask works, trade secrets, franchises, or licenses and similar intangible rights used or usable in the Business (the "Proprietary Rights"). All such Proprietary Rights will not be adversely affected by the transactions contemplated by any of the Transaction Agreements. Seller has not received any written notice that it is, in the conduct of the Business, infringing on or otherwise acting adversely to the rights of any person under or in respect of any Proprietary Rights, nor does Seller have any knowledge of any reasonable basis for such claim. Seller does not have actual knowledge of any obligation or liability to make any payments by way of royalties, fees, or otherwise to any owner or licensee of or other claimant to any patent, trademark, trade name, copyright, or other intangible asset on account of Seller's conduct of the Business.

(f) Pending Litigation, Proceedings or Investigations. There is no suit, action, claim, arbitration, litigation, administrative or legal or other proceeding, or investigation pending, or, to Seller's knowledge, threatened against Seller which could prohibit or impede the consummation of the transactions contemplated hereby or which is likely to have a material adverse effect on the value of the Business or any of the Assets, whether or not fully covered by insurance.

(g) Validity of Contemplated Transactions; Government Approvals. The execution and delivery of the Transaction Agreements and the performance of the terms thereof by Seller, and the consummation of the transactions contemplated thereby will not violate any law, regulation, order, decree or judgment to which Seller is subject; and will not conflict with, or result in the breach of any of the terms or provisions of, or constitute (or with the passage of time or the giving of notice or both might not constitute) a default under or result in the creation of any lien or other encumbrance upon any of the Assets by reason of or pursuant to any term or provision of Seller's Certificate of Incorporation, By-laws or any Contract. No consent, approval, authorization, filing, registration or qualification with any federal, state or local authority, or any other person or entity, is required for the execution, delivery or performance of the Transaction Agreements by Seller, or in connection with the consummation of the transactions contemplated thereby, except such consents, approvals, authorizations, filings, registrations or qualifications, the failure of which to obtain or make would not have a material adverse effect on the Business.

(h) Commission. Seller is not obligated to pay any revenue share to location owners for transactions from the Assets that occur subsequent to the transition date. Purchaser will, in compliance with the customer contracts herein being conveyed, be solely responsible for contractual revenue share payments to location owners for all transactions that occur subsequent to the transition date.

6. Representations and Warranties of Purchaser.

Purchaser represents and warrants that on the Closing Date:

(a) Organization and Standing of Purchaser. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and is qualified to do business as a foreign corporation and is in good standing in such states where the failure to be so qualified and in good standing would affect the ability of Purchaser to enter into the Transaction Agreements and consummate the transactions contemplated thereby. Purchaser has the corporate power to enter into the Transaction Agreements and the other documents executed in connection therewith and to consummate the transactions contemplated thereby.

(b) Corporate Authorization. Each of the Transaction Agreements has been duly authorized, executed and delivered by Purchaser and is a legal, valid and binding obligation of Purchaser, enforceable in accordance with its respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general equitable principles.

(c) Commission. Purchaser has not made any agreement with any Broker, Owner of the Seller, Finder or Anyone nor has taken any action which may cause anyone to become entitled to a commission as a result of the sale contemplated by this Agreement.

(d) ATM Equipment Deficiencies. Purchaser and Seller mutually agree that ATM equipment currently in place for the eleven (11) locations in Exhibit 1(c) known as "Group 2 locations" will soon require new replacement ATM equipment devices. Purchaser acknowledges that Purchaser will need replace the equipment in those Group 2 locations at Purchaser's sole cost and expense.

7. Access Information and Documents.

Pending the Closing, Seller will give Purchaser and Purchaser's counsel, accountants and other representatives full access, at reasonable times and upon prior request, to all Seller's properties, books, contracts, agreements and records relating to the twenty four (24) ATM units and the Assets and will furnish to Purchaser all such documents and copies of documents (certified by an officer of Seller if requested) and all information with respect to the Business and the Assets as Purchaser may reasonably request. Pending the Closing, Seller shall also permit Purchaser at reasonable times and upon prior request to interview the personnel of Seller with knowledge of the Business and the Assets.

8. Conduct of Business Pending Closing.

Pending the Closing, Seller will continue to operate the Business in the ordinary course of business as usual.

9. Seller's Compliance with Law.

Pending the Closing, Seller will duly comply in all material respects with all applicable laws for the transactions contemplated in this Agreement to be valid and such other laws as might, on the failure of compliance therewith, impose any liability on Purchaser for debts or obligations of Seller.

10. Taxes.

All sales or use taxes or any other transfer taxes applicable to the sale of the Assets will be paid by Seller.

11. Conditions Precedent to Purchaser's Obligations.

The obligations of Purchaser under this Agreement are subject to the fulfillment, prior to or on the Closing Date, of the following conditions (any of which may be waived by Purchaser):

(a) The representations and warranties contained in Section 5 shall be true and correct as of the Closing Date in all material respects; and

(b) Seller shall have executed all instruments, performed all agreements and complied with all conditions required by this Agreement to be executed, performed or complied with by it prior to or at the Closing Date.

12. Conditions Precedent to Seller's Obligations.

The obligations of Seller under this Agreement are subject to the fulfillment, prior to or on the Closing Date, of the following conditions (any one of which may be waived by Seller):

(a) The representations and warranties contained in Section 6 shall be true and correct at and as of the Closing Date in all material respects; and

(b) Purchaser shall have executed all instruments, performed all agreements and complied with all conditions required by this Agreement to be executed, performed or complied with by it prior to or at the Closing Date.

13. Further Assurances and Assistance; Records and Inspection; Non-competition.

(a) After the Closing Date, Seller shall execute and deliver such further instruments of conveyance and transfer and take such other actions as Purchaser may reasonably request, at each party's respective cost, to convey and transfer effectively to Purchaser the Assets in accordance with the intent of the parties and the terms of this Agreement.

(b) After the Closing Date for a period of one year, (i) Seller will make available to Purchaser, its counsel, accountants, and other representatives of Purchaser reasonable access at a mutually convenient time to Seller's accounting, tax and other records for any reasonable purpose relating to the twenty four (24) ATM units, and (ii) Purchaser will make available to Seller, its counsel, accountants, and other representatives of Seller reasonable access at a mutually convenient time to Purchaser's accounting, tax and other records for any reasonable purpose relating to Seller's businesses Assets acquired.

(c) Seller Noncompetition. From the Closing Date and to the end of the 3rd year following the Closing Date, Seller will not, and will cause its officers, shareholders and its key employees not to, directly or indirectly, unless acting in accordance with Purchaser's written consent, own, manage, operate, or participate in the ownership, management, operation of ATM units of equipment at the current business addresses where the twenty two (22) ATM machines are being purchased by Purchaser, unless Seller, any of its owners, principals or officers accept employment with Purchaser whereby such employment is conditional upon acceptance of non-competition covenant then such non-competition covenant executed pursuant to such employment agreement shall become the prevailing covenant. Seller acknowledges that the provisions of this Section are reasonable and necessary to protect the interests of Purchaser, that any violation of this Section will result in an irreparable injury to Purchaser and that damages at law would not be reasonable or adequate compensation to Purchaser for violation of this Section and that, in addition to any other available remedies, Purchaser shall be entitled to have the provisions of this Section specifically enforced by preliminary and permanent injunctive relief without the necessity of proving actual damages or posting a

bond or other security and to an equitable accounting of all earnings, profits and other benefits arising out of any violation of this Section. In the event that the provisions of this Section shall ever be deemed to exceed the time, geographic, product or other limitations permitted by applicable law, then the provisions shall be deemed reformed to the maximum extent permitted by applicable law.

14. Indemnification.

(a) Seller will indemnify, defend and hold harmless Purchaser from and against any damage, deficiency or loss resulting from any actions, judgments, costs and expenses (including reasonable attorneys' fees and expenses in enforcing this Section 14(a), defending any claim or action, or otherwise) suffered or incurred by Purchaser and resulting from or arising out of (i) any misrepresentation, breach of warranty, or nonfulfillment of any representation, covenant or obligation (including without limitation, the indemnification obligations of Seller hereunder) of Seller contained in any of the Transaction Agreements, and (ii) any liability or obligation of any nature of Seller, whether due or to become due, absolute, contingent or otherwise, known or unknown to Seller, including liabilities for taxes (or any interest or penalties relating thereto), except those liabilities specifically assumed by Purchaser pursuant to the Transaction Agreements.

(b) Purchaser will indemnify, defend and hold harmless Seller against any damage, deficiency or loss resulting from any actions, judgments, costs and expenses (including reasonable attorneys' fees and expenses in enforcing this Section 14(b), defending any claims or actions, or otherwise) suffered or incurred by Seller and resulting from or arising out of any (i) misrepresentation, breach of warranty, or nonfulfillment of any representation, covenant or obligation (including without limitation, the indemnification obligations of Purchaser hereunder) of Purchaser contained in any of the Transaction Agreements and (ii) any failure by Purchaser to discharge and perform any of the liabilities specifically assumed by it pursuant to the Transaction Agreements.

(c) Promptly after receipt by Purchaser or Seller, as the case may be, of notice of (i) any claim, or (ii) the commencement of any suit, action, investigation or proceeding, Purchaser or Seller, as the case may be (the "Indemnified Party"), will, if a claim with respect thereto is to be made against Seller or Purchaser, as the case may be, due to its obligation to provide indemnification hereunder (the "Indemnifying Party"), give the Indemnifying Party written notice of such claim or the commencement of such suit, action, investigation or proceeding but the failure to provide such notice shall not relieve the Indemnifying Party of any of its obligations hereunder, except to the extent that the Indemnifying Party is materially prejudiced by such failure. Promptly after receiving such notice, the Indemnifying Party will defend, contest or otherwise protect against any such suit, action, investigation, claim or proceeding at its cost and expense. The Indemnified Party shall have the right to participate in any such defense, contest or other action at its own cost and expense so long as the Indemnifying Party has assumed and continued the defense thereof. The Indemnifying Party shall have the right to control the defense of any such proceeding unless it is relieved of its liability hereunder with respect to such defense by the Indemnified Party. The Indemnified Party retains the right to relieve the Indemnifying Party of its obligation hereunder for indemnification in respect of any suit, action, investigation, claim or proceeding at any time, including upon notification of the Indemnifying Party's intent to settle, but in no event shall the Indemnified Party be responsible for any costs, expenses or liabilities incurred by the Indemnifying Party. The Indemnifying Party shall have the right, at its option, unless so relieved, to compromise or defend, at its own expense by its own counsel, any such matter involving the asserted liability of the Indemnified Party. In the event that the Indemnifying Party shall undertake to compromise or defend any such asserted liability, it shall promptly notify the Indemnified Party of its intention to do so. The Indemnified Party shall, at the cost and expense of the Indemnifying Party for Indemnified Party's out-of-pocket expenses, cooperate fully with the Indemnifying Party and its counsel in the compromise of, or defense against, any such asserted liability. In the event the Indemnifying Party fails after notification by the Indemnified Party to timely defend, contest, or otherwise protect against the same, the Indemnified Party may undertake the same and make any compromise or

settlement thereof and, subject to subsection (d) below, recover the entire costs thereof from the indemnifying Party, including reasonable attorneys' fees, disbursements and all amounts paid as a result of such suit, action, investigation, claim or proceeding or the compromise or settlement thereof.

(d) Seller and Purchaser shall have no obligation to indemnify the other party, as the case may be, upon any breach by Seller or Purchaser of any representation or warranty as to which Seller or Purchaser, as the case may be, has not received notice of a claim for indemnification within one year after the Closing Date. Seller and Purchaser shall have no indemnification obligation to the other party for breaches of the representations and warranties of Seller or Purchaser, as the case may be, unless and until the total amount of all damages, deficiencies and losses from breaches of representations, warranties, covenants and agreements shall exceed Ten Thousand Dollars (\$10,000), and then only to the extent of the amount of such excess. The aggregate indemnification liability of Seller for misrepresentations and breaches of warranty shall not exceed the Purchase Price. Except as set forth in Section 13(c) hereof, each of the party's indemnification obligations under this Article 14 shall be the other party's sole and exclusive remedy with respect to any claim for damages, deficiencies or losses arising from any breach of the Transaction Agreements.

15. Expenses.

Subject to Section 14 hereof, Seller and Purchaser will each pay the costs and expenses (including attorneys' fees) incurred with respect to their own respective preparation, execution and delivery of the Transaction Agreements, the Closing of the transactions contemplated thereby and the completion of any related transactions.

16. Nature and Survival of Representations.

All statements contained in any certificate, schedule, or other instrument conveyed by or on behalf of Seller by Seller's directors, officers, or controller pursuant to this Agreement or in connection with the transactions contemplated hereby shall be deemed representations and warranties by Seller hereunder. Except as otherwise set forth herein, all representations, warranties, covenants and agreements made by Seller or Purchaser shall survive the Closing hereunder for a period of one year.

17. Governing Law; Parties in Interest; Assignment.

This Agreement will be governed by the laws of the State of South Carolina, without regard to conflict of laws rules, and will bind and inure to the benefit of the successors and assigns of Seller and Purchaser. No party to this Agreement may assign all or any portion of the Agreement to any other person or entity without the prior written consent of the other parties hereto.

18. Notices.

All notices and other communications hereunder shall be in writing and shall be deemed to have been duly made if delivered in person, deposited with a same day or overnight courier, or mailed, U.S. first class or registered mail, postage prepaid,

a.) If to Seller, to:

Water Flow Business Brokers LLC
1201 Main Street, Suite 1980
Columbia, SC 29201
Attention: Ryan Cannon

b.) if to Purchaser, to:

Southeast Payphone Group, Inc
2309 Acie Avenue
Conway, SC 29528
Attention: Larry Scott

or to such other address as to which notice is duly given.

19. Headings.

The article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement.

20. Entire Agreement.

This Agreement, and the Exhibits attached hereto which are incorporated and made a part hereof, represents the entire understanding of the parties with respect to the subject matter hereof, and supersedes all other agreements, whether oral or in writing, and any other documents. This Agreement may not be modified except pursuant to a writing signed by the duly authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

PURCHASER - Southeast Payphone Group, LLC

By: _____
Name: Larry Scott
Title: President

SELLER - Water Flow Business Brokers LLC

By: _____
Name: Ryan Cameron
Title: Owner / President

Schedules and Exhibits

- 1(a) **Contracts**
- 1(b) **Equipment**
- 1(c) **Other Assets**

- 2(b) **Allocation of Purchase Price**

- 3(a) **Bill of Sale**
- 3(b) **Intellectual Property Agreement**

Schedule 1(b) to the Asset Purchase Agreement

TBD -- included parts, repair equipment, accessories and other Business Assets

Schedule 1(c) to the Asset Purchase Agreement

ATM		Transaction Summary							12/2015 4:15:23 PM	
		January 01, 2015 - December 31, 2015 (Business Date)								
Terminal ID	Location Name	Discharge Account	Approved W/Ds	Chargable W/Ds	Other Approved	Declined	Rejected	Total Transactions	Discharge Amount	Charge Collected
G000610	The Keg	\$2.00	434	434	332	437	4	2,279	\$194,370.00	\$3,077.00
G000611	Brookwood #82 #82	\$3.00	2,218	2,218	654	1,013	1	4,895	\$184,580.00	\$1,694.00
G000612	Chess	\$2.00	717	717	28	16	0	852	\$83,840.00	\$1,736.00
G000613	Wob Market	\$1.00	3,907	3,907	965	1,273	21	6,164	\$213,640.00	\$11,721.00
G000614	Old Setp	\$3.00	788	788	21	171	0	959	\$83,340.00	\$3,230.00
G000615	Faction	\$7.00	139	169	6	59	0	254	\$15,720.00	\$1,552.00
G000616	Quick Party 19	\$2.00	335	335	169	54	0	558	\$27,580.00	\$1,100.00
G000617	One Low Party Shop	\$2.00	653	653	122	107	0	954	\$11,380.00	\$1,837.00
G000618	M.L.S.L.	\$3.00	77	77	5	53	0	135	\$6,850.00	\$638.00
G000619	Brookwood Market	\$3.00	300	100	21	24	0	445	\$6,850.00	\$300.00
Grand Totals: 19 Terminals			11,611	11,611	2,159	3,469	26	19,250	\$722,458.00	\$42,923.00

Terminal Activity Summary

From 01/01/2016 to 12/31/2016

Terminal ID	Terminal Name	Last Settled Transaction	Dispense d	S/C Fees	Acc. W/Ds	S/C W/Ds	Denied	Reversed	Transfers	Inquiries	Total
P204377	COUSINS MINI MART	Mar 7 2016 11:40AM	\$35,85	\$1828.03	89	89	222	0	0	25	633
P204384	HOLIDAY INN TWO NOTCH	Mar 7 2016 5:48AM	\$62,000	\$2,590.00	738	733	75	11	8	34	835
P204383	ORANGE PARTY SHOP	Mar 7 2016 1:37AM	\$37,05	\$2,221.35	753	753	247	8	5	53	1079
P204386	PARTY TOWN 83 - 15	Mar 7 2016 9:23AM	\$59,770	\$6,041.55	909	909	215	22	3	101	2070
P204402	SHERATON COLUMBIA	Mar 7 2016 7:58AM	\$12,120	\$4,821.00	512	507	148	7	4	51	99
P230571	KNOTTY HEADZ #1	Mar 5 2016 4:04PM	\$21,040	\$2,060.50	588	588	58	0	1	37	684
Grand Totals:			\$768,760	\$43,831.58	3,511	3,405	2,330	41	70	3,57	9,177

Schedule 2(a) to Asset Purchase Agreement

WATER FLOW BUSINESS BROKERS LLC ALLOCATION OF PURCHASE PRICE

Equipment	\$ 55,000
Contracts	\$ 40,000
Total	\$ 95,000

Schedule 3(a) to Asset Purchase Agreement - BILL OF SALE

Water Flow Business Brokers LLC, a South Carolina limited liability company with a principal place of business at 1201 Main Street, Suite 1980, Columbia, SC 29201 ("**Seller**"), for good and valuable consideration, the receipt of which is hereby acknowledged, by these presents, does hereby grant, bargain, sell, assign, alien, remise, release, convey, transfer, deliver and confirm to Southeast Payphone Group, Inc., a South Carolina corporation with a principal place of business at 2309 Acie Avenue, Conway, South Carolina 29527 ("**Purchaser**"), all right, title and interest of Seller to the assets identified as the "**Assets**" in that certain Asset Purchase Agreement dated March 17, 2016, by and between Seller and Purchaser (the "**Purchase Agreement**"), including to tangible, intangible, personal and other assets and rights pertaining to or used primarily in connection with the Seller's Business (the "**Business**").

This Bill of Sale shall be binding upon Seller and inure to the benefit of Purchaser and its successors and assigns. Nothing contained herein, express or implied, is intended to confer on any person or entity other than the parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Bill of Sale.

This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Georgia.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale, intending to be legally bound hereby.

SELLER:

Water Flow Business Brokers LLC

By: *Ryan Carson* (SEAL)

Name: *Ryan Carson*

Title: *Owner / President*

ACCEPTED AND AGREED:

PURCHASER:

Southeast Payphone Group, Inc.

By: *[Signature]* (SEAL)

Name: *Logan Smith*

Title: *Asst. Mgr.*

Date: *3/17/16*, ~~2015~~

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
)	
SOUTHEAST PAYPHONE GROUP	)	DOCKET NO. 2017-CP-26-08242
INC., a South Carolina Corporation,)	
PLAINTIFF,)	
)	
vs.	)	ANSWER AND COUNTERCLAIM
)	
WATER FLOW BUSINESS BROKERS,)	
LLC, a South Carolina Limited Liability)	
Company, and RYAN CANNON,)	
DEFENDANTS.)	

The Defendants, without waiving their rights to challenge venue and the Defendant Ryan Cannon as a party to this action, would respectfully state and allege as follows:

1. That the Defendants do not have sufficient knowledge to admit or deny these allegations and demands strict proof thereof.
2. That the Defendants admit the allegations in Paragraphs 2 and 3.
3. That the Defendants deny the allegation in Paragraph 4 and that pursuant to Section 15-7-30, subsection (E)(1), of the South Carolina Code of Laws, 1976 as Amended, Waterflow Business Brokers, LLC, a South Carolina Limited Liability Company, whose principal place of business is located in Richland County.
4. That pursuant to Section 15-7-30, subsection (C)(1), of the South Carolina Code of Laws, 1976 as Amended, the Defendant Ryan Cannon, is a citizen of the

County of Richland, state of South Carolina, and therefore is entitled to be sued in the County where he resides.

5. That the Defendant admits the allegations of Paragraph 5.
6. That the Defendants deny the allegations of Paragraph 6 and demands strict proof thereof.
7. That based upon information and belief the Defendants admit the allegations of Paragraph 7.
8. That the Defendant's admit the allegations of Paragraph 8 and 9.
9. That as to the allegations set forth in Paragraph 10 the Defendant Water Flow executed an Asset Purchase Agreement dated March 17, 2016 by and through its duly authorized representative Ryan Cannon. That as to the Defendant Ryan Cannon, he denies that he executed the above-referenced Asset Purchase Agreement in his individual capacity or any other capacity other than in a representative capacity for the Defendant Water Flow.
10. That as to the allegations in Paragraph 11 the Defendant Ryan Cannon denies so much of these allegations which implied that Cannon in his individual capacity promised that he was the lawful, legitimate owner of certain assets, including without limitation: (a) equipment such as ATMs, and (b) contracts with vendor locations whereby Water Flow had exclusive rights to provide and service ATMs throughout South Carolina. As to the Defendant Water Flow, it admits that it

entered into a contract with the Plaintiff by and through its duly authorized representative, the Defendant Ryan Cannon, and warranted it and promised that it owned certain assets: (a) equipment such as ATMs, and (b) contracts with vendor locations whereby Water Flow had exclusive rights to provide and service ATMs throughout South Carolina.

11. That the Defendant Water Flow denies so much of Paragraph 12 which asserts that the Plaintiff paid (\$95,000.00) to the Defendant Water Flow in exchange for transferring assets to the Plaintiff.
12. That the Defendant Water Flow denies so much of the allegations of Paragraph 13 which asserts that the Plaintiff first learned that the Defendant Water Flow did not have “good and marketable” title to the assets conveyed to the Plaintiff.
13. That as to the allegations set forth in Paragraph 14 the Defendant Water Flow asserts that before executing the above-referenced Assets Purchase Agreement it informed the Plaintiff as to those assets it owned and those it did not own and provided the Plaintiff with documentation to that effect. In addition, the Defendant Water Flow provided the Plaintiff with accurate documentation as to those locations under which the Defendant had exclusive location contracts with merchants.
14. That the Defendants deny the allegations set forth in Paragraph 15, 16, 17 and 18.

15. That the Defendants admit the allegations set forth in Paragraph 20.
16. That the Defendants deny the allegations set forth in Paragraph 21 and 22 and its subparts.
17. That the Defendants deny the allegations set forth in Paragraph 23 and 24.
18. That the Defendant Water Flow admits the allegations set forth in Paragraph 26 but denies that Plaintiff paid the Defendant the full amount of the contract.
19. That the Defendant Water Flow denies the allegations set forth in Paragraphs 27, 28, 29, 31, 32, 33 and 34.
20. That the Defendant Cannon denies that he made misrepresentation of fact to the Plaintiff as set forth in Paragraph 35.
21. That the Defendant Cannon denies the allegations set forth in Paragraph 36 and demands strict proof thereof.
22. That as to the allegations as set forth in Paragraph 37, while the Defendant Cannon admits he is an authorized agent for the Defendant Water Flow and that as such his actions on behalf of the Defendant Water Flow are imputed to the Defendant Water Flow, he denies that in connection with his dealings with the Plaintiff on behalf of the Defendant Water Flow, he denies that he made fraudulent or intentional misrepresentations that should be imputed to the Defendant Water Flow.

23. That the Defendant Cannon denies the allegations set forth in Paragraph 38 and 39.

COUNTER CLAIM I

The Defendant Water Flow hereby asserts the following Counter Claim against the Plaintiff.

24. That with regard to the above-referenced Asset Purchase Agreement the Plaintiff failed to pay the Defendant the total amount of \$95,000.00 in consideration for the Defendant Water Flow selling certain assets to the Plaintiff.
25. That the Plaintiff paid to the Defendant Water Flow the sum of \$75,000.00 in violation of the Asset Purchase Agreement which required the Plaintiff to pay the Defendant Water Flow the sum of \$95,000.00.
26. That the Plaintiff's failure to pay the agreed amount set forth in the Asset Purchase Agreement amounts to a breach of contract.
27. That as a result of the Plaintiff's breach of the Asset Purchase Agreement the Defendant Water Flow has been damaged in an amount to be proven at trial, but believed to be at least \$20,000.00.

COUNTER CLAIM II

The Defendant Water Flow incorporates by reference the allegations contained in Paragraphs 24-27.

28. After the Plaintiff purchased certain assets from the Defendant Water Flow the Plaintiff and the Defendant Ryan Cannon entered into an Employment Agreement on or about the 17th day of March, 2016, wherein the Plaintiff hired the Defendant Ryan Cannon as an employee of the Plaintiff.

29. That Section 3(b) of the Employment Agreement between the Plaintiff and the Defendant Ryan Cannon provided that during the first sixteen (16) weeks of the Defendant Ryan Cannon's employment with the Plaintiff, the Defendant Ryan Cannon was entitled to receive a weekly draw in the amount of four hundred dollars (\$400.00) per week.

30. That the Defendant Ryan Cannon only received eleven (11) weeks of compensation from the Plaintiff pursuant to the above-referenced Employment Agreement.

31. That the Plaintiff has refused to pay the Defendant Ryan Cannon the additional five (5) weeks to which he is entitled pursuant to the above-referenced

Employment Agreement and has therefore violated and breached the terms of the above-referenced Employment Agreement.

32. That the Defendant Ryan Cannon has been damaged as a direct and proximate result of the Plaintiff's breach of contract.

WHEREFORE, based on the foregoing, the Defendants Water Flow and Ryan Cannon respectfully request that this Court:

- a) Inquire into this matter and dismiss the complaint herein;
- b) Enter judgment on behalf of the Defendants on their counterclaims against the Plaintiff;
- c) Award the Defendants their damages, legal fees and cost arising out of this matter; and
- d) Award the Defendants such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

The Defendants hereby request a trial by jury on its counterclaims.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted by:

s/ Dennis N. Cannon, Jr.
Attorney for the Plaintiff
S.C. Bar #001106
512 Rutledge Street
Post Office Box 532
Camden, South Carolina 29021-0532
Phone: (803) 432-4402
Email: dncannon@bellsouth.net

Dated: January 12, 2018
Camden, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF HORRY
 SOUTHEAST PAYPHONE GROUP, INC., a
 South Carolina corporation,

 Plaintiff,

 v.

 WATER FLOW BUSINESS BROKERS,
 LLC, a South Carolina limited liability
 Company, and RYAN CANNON,

 Defendants.

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 2017-CP-26-08242

**PLAINTIFF’S REPLY TO
 COUNTERCLAIM
 [Jury Trial Demanded]**

Plaintiff/Counterclaim Defendant Southeast Payphone Group, Inc. (“SEPG”), responding to the allegations of the Counterclaim filed by Defendants/Counterclaim Plaintiffs Water Flow Business Brokers, LLC and Ryan Cannon, assert the following defenses and answer the allegations of the numbered paragraphs as follows:

FIRST DEFENSE

Dismiss Defendants’ Counterclaims per Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

SECOND DEFENSE

Defendants’ counterclaims are barred due to Defendants’ prior material breach of the agreement at issue, the Asset Purchase Agreement, and the Employment Agreement, which excused Plaintiff’s further performance.

THIRD DEFENSE

Defendants’ counterclaims are barred by the doctrines of estoppel, laches, and waiver. The preceding doctrines bar Defendants’ recovery due to, among other things: violations of the covenants of the Asset Purchase Agreement; Defendant Cannon’s failure to honor his contractual

obligations; Defendants' fraud in the inducement of the parties' contracts; and Defendants' willful conduct in violation of the parties' agreements.

FOURTH DEFENSE

Defendants' counterclaims are barred due to Defendants' breach of conditions precedent to Plaintiff's contractual obligations.

FIFTH DEFENSE

Defendants Counterclaims are barred by the doctrine of *in pari delicto*.

SIXTH DEFENSE

Defendants' Counterclaims are barred due to their respective failure to mitigate their damages.

By way of an additional defense, SEPG responds to the numbered paragraphs of the Counterclaim as follows and incorporates the preceding defenses as if fully set forth herein:

1. Plaintiff payed Defendant(s) all that was owed under the terms of the Asset Purchase Agreement. Indeed, Defendants received more than they were entitled to receive given their prior material breach of the terms of the Asset Purchase Agreement. Except as expressly admitted herein, the allegations of paragraph 24 are denied.

2. It is admitted that Plaintiff paid Defendant \$75,000.00. Except as expressly admitted herein, the allegations of paragraph 25 are denied.

3. Denied.

4. Denied.

5. The Employment Agreement is a writing and, as such, speaks for itself. To the extent the allegations of paragraph 28 contradict or differ from the written document, the allegations are denied.

6. The Employment Agreement is a writing and, as such, speaks for itself. To the extent the allegations of paragraph 29 contradict or differ from the written document, the allegations are denied.

7. Denied that Plaintiff first breached any terms or conditions of the Employment Agreement. Except as expressly stated herein, the allegations of paragraph 30 are denied.

8. Plaintiff denies owing Defendant Ryan Cannon any payments, including those made to Cannon. Except as expressly stated herein, the allegations of paragraph 31 are denied.

9. The allegations of paragraph 32 are denied.

PRAYER FOR RELIEF

WHEREFORE Plaintiff Southeast Payphone Group, Inc., prays for the following:

1. Hold Plaintiff have and recover all damages prayed for in Plaintiff's Complaint;
2. Dismiss Defendants' counterclaims;
3. Hold Defendants have and recover nothing from Plaintiff;
4. Tax all costs of this action against Defendants;
5. Any and all other relief the Court deems just and equitable; and
6. A **trial by jury** on all issues so triable per Rule 38 of the South Carolina Rules of

Civil Procedure.

This the 24th day of January, 2018.

BRAY & LONG, PLLC

/s/ Jeffrey A. Long
Jeffrey A. Long
S.C. Bar No. 71073
2820 Selwyn Ave., Ste. 400
Charlotte, NC 28209
(704) 523-7777 Telephone
(704) 523-7780 Facsimile
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply has this date been served on Defendants' counsel of record by depositing a copy of same with the United States Postal Service, sufficient postage prepaid and addressed as follows:

Dennis N. Cannon, Jr.
Post Office Box 532
Camden, South Carolina 29021-0532

This the 24th day of January, 2018.

BRAY & LONG, PLLC

/s/ Jeffrey A. Long
Jeffrey A. Long
S.C. Bar No. 71073
2820 Selwyn Ave., Ste. 400
Charlotte, NC 28209
(704) 523-7777 Telephone
(704) 523-7780 Facsimile
Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
)	
SOUTHEAST PAYPHONE GROUP	)	DOCKET NO. 2018-CP-40-01434
INC., a South Carolina Corporation,)	
PLAINTIFF,)	
vs.	)	NOTICE OF MOTION AND MOTION
	)	TO DISMISS
WATER FLOW BUSINESS BROKERS,)	
LLC, a South Carolina Limited Liability)	
Company, and RYAN CANNON,)	
DEFENDANTS.)	

Now comes the Defendant, Ryan Cannon, by and through the undersigned counsel, and moves for an Order from this Honorable Court dismissing the Defendant, Ryan Cannon, from this action. The grounds for the Motion are as follows:

At all times mentioned in the complaint the Defendant Ryan Cannon was operating in his representative capacity as an officer and agent for the Defendant Water Flow. With respect to the Asset Purchase Agreement referenced in the Plaintiff's Complaint, the Defendant Ryan Cannon signed the agreement in his representative capacity as an officer and an agent for the Defendant, Water Flow, as is clearly reflected in the Asset Purchase Agreement which is attached as an exhibit to the Plaintiff's Complaint and marked as Exhibit I.

WHEREFORE, based upon the foregoing, the Defendant Ryan Cannon prays that he be dismissed from this action for the reasons set forth herein above.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted by:

s/ Dennis N. Cannon, Jr.

Attorney for the Plaintiff

S.C. Bar #001106

512 Rutledge Street

Post Office Box 532

Camden, South Carolina 29021-0532

Phone: (803) 432-4402

Email: dncannon@bellsouth.net

Dated: January 12, 2018
Camden, South Carolina

1	STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	COUNTY OF RICHLAND	)	2018-CP-40-01434
2)	
	SOUTHEAST PAYPHONE GROUP, INC.,)	
3)	
	PLAINTIFF,	)	MOTION HEARING
4)	
	vs.	)	TRANSCRIPT OF RECORD
5)	
	WATER FLOW BUSINESS)	
6	BROKERS, LLC.,)	
)	
7	DEFENDANT.)	
	_____)	

8

9

Wednesday, April 11, 2018
Columbia, South Carolina

10

11

12

B E F O R E:

13

The Honorable L. Casey Manning

14

A P P E A R A N C E S:

16

Jeffrey A. Long, Esquire
Attorney for Plaintiff

17

Dennis N. Cannon, Jr., Esquire
Attorney for Defendant

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Maria Dempsey, RPR
Official Court Reporter
Richland County Circuit Court
Fifth Judicial Circuit
Columbia, South Carolina

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INDEX TO PROCEEDINGS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PAGE

MOTION HEARING	3
CERTIFICATE OF THE COURT REPORTER	10

E X H I B I T S

(No Exhibits Proffered.)

1 THE COURT: Southeast Payphone Group, Water Flow
2 Business Brokers?

3 MR. CANNON: That's correct, Your Honor.

4 THE COURT: It's your motion?

5 MR. CANNON: It's my motion, Your Honor.

6 THE COURT: Go ahead.

7 MR. CANNON: May it please the Court. Your Honor, this
8 matter involves a contract dispute between the parties named
9 in the complaint before you. We have brought this action,
10 it involves an ATM situation where one party has bought out
11 the interest of another party. The relationship soured,
12 Your Honor, and they have -- the plaintiff brought an action
13 for breach of contract, as well as some others. They named
14 Water Flow, and they've named the defendant Ryan Cannon. We
15 bring this motion because it is our position that the action
16 should sound against Water Flow only. Mr. Cannon is the
17 principal of Water Flow, and any and all actions that he
18 undertook were in capacity as an agent of the Water Flow.

19 THE COURT: He's been sued individually?

20 MR. CANNON: Yes, sir, individually.

21 THE COURT: And you ask that it be dismissed as an
22 individual, and proceed against the company?

23 MR. CANNON: Absolutely.

24 THE COURT: Okay. Go ahead.

25 MR. CANNON: The contract itself was signed by

1 Mr. Cannon.

2 THE COURT: It was some action against you?

3 MR. CANNON: Yes, sir. And in addition, Your Honor, I
4 would draw your attention to Paragraph 37 of the third cause
5 of action of the plaintiff's complaint, we in agreement
6 filed with the action of Cannon are imputed to Water Flow
7 under the doctrine of respondeat superior, serving the
8 agreement wholeheartedly. The proper party is Water Flow,
9 by Mr. Cannon.

10 THE COURT: Okay. Yes, sir.

11 MR. LONG: Good morning, Your Honor. Jeff Long of Bray
12 & Long in Charlotte here on behalf of Southeast Payphone.
13 Your Honor, you're familiar with the standard at this point
14 in time, at this procedural posture. All the allegations of
15 the complaint are to be accepted as true. All reasonable
16 inferences to be drawn in favor of the nonmovant, the
17 plaintiff, and if I understand Mr. Cannon's argument, it is
18 that Ryan Cannon, the individual defendant cannot be
19 responsible for his own torts. Anything he does as an agent
20 of the --

21 THE COURT: I don't think he said that, but that's your
22 argument.

23 MR. LONG: Right.

24 THE COURT: He said he shouldn't be sued as an
25 individual, but the company should be sued, but go ahead.

1 MR. LONG: Your Honor, our contention is, and the only
2 allegations against Mr. Cannon is that he committed a fraud.
3 And if you look at the third cause of action in the
4 complaint, we have stated that Mr. Cannon individually, and
5 on behalf of Water Flow made specific misrepresentations of
6 material fact. We've laid out --

7 THE COURT: Well, did he do it as an individual or did
8 he do it as an agent?

9 MR. LONG: Well, he can do it as both, because the
10 asset purchase agreement attached to the complaint and
11 incorporated in the complaint identifies Mr. Cannon not as
12 simply officer or director, he identified himself as the
13 owner. Your Honor, accepting that fact, that representation
14 by Mr. Cannon as true, that he is the owner of Water Flow
15 Business Brokers, he is better suited than anyone to know
16 exactly what it is Water Flow can sell and assign.

17 The allegations of the complaint contend that what
18 Mr. Cannon and Water Flow represented was to be sold, ATM
19 machines and contracts for the placement of those ATM
20 machines could not be transferred by terms of the asset
21 purchase agreement. They are encumbered. In fact, we've
22 alleged they may have been owned by somebody else.

23 THE COURT: Why do you want to sue them as an
24 individual instead of a company? I would assume, I don't
25 know, I'm assuming there's some insurance coverage

1 somewhere?

2 MR. CANNON: No.

3 THE COURT: All right. Go ahead.

4 MR. LONG: Your Honor, we are suing Mr. Cannon
5 individually because he committed a tort, and under South
6 Carolina law, an individual that commits a tort may be held
7 personally responsible for that tort, and I would direct you
8 to the case BPS, Inc. versus Worthy. I have a copy that I
9 can hand up. May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 MR. LONG: And specifically on Page 5 of this opinion,
12 South Carolina Court of Appeals noted, and I quote, nothing
13 in the law shields Worthy --

14 THE COURT: And that was written by Ralph King Anderson
15 of Florence, and I know him very well, but continue anyway.

16 MR. LONG: Nothing in the law shields Worthy from
17 direct liability in tort for his own actions.

18 THE COURT: Well, how is this case factually similar to
19 the case that's before me today? Connect the dots for me.

20 MR. LONG: Mr. Worthy executed a purchase and sale
21 agreement on behalf of his company. BPS determined that
22 there was fraud and unfair trade practices associated with
23 that proposed transaction. So the purchaser, BPS, sued
24 Mr. Worthy, who was an officer of the defendant seller.

25 So I think that we have clear case law here in South

1 Carolina that indicates an individual, whether it be an
2 officer or director of a company who participates in a fraud
3 may be held individually liable for that role.

4 THE COURT: This is a matter of appeal to the Supreme
5 Court or to the State Court of Appeals?

6 MR. LONG: Your Honor, I saw no further -- no further
7 case.

8 THE COURT: Do you have a Supreme Court opinion that
9 supports your position, sir?

10 You do you have a Supreme Court opinion that
11 supports your position?

12 MR. LONG: No, I apologize.

13 THE COURT: You know, the Court of Appeals likes
14 appealing, but go ahead.

15 MR. LONG: Because this case was so square --

16 THE COURT: You know, this is my job, so don't take it
17 personally.

18 MR. LONG: I understand, I understand. But the Court
19 of Appeals closed, in that paragraph that I just cited, that
20 Worthy is personally liable for any tortious acts he
21 participated in or directed. We have alleged that
22 Mr. Cannon participated in --

23 THE COURT: Is there any discovery that's been taken?
24 Any depositions? What sort of discovery have y'all engaged
25 in?

1 MR. LONG: Your Honor, we served written discovery on
2 the defendants, but we have taken --

3 THE COURT: All right. Look, I'm just here.

4 MR. LONG: I understand.

5 THE COURT: All right. Mr. Cannon, any response?

6 MR. CANNON: Yes, Your Honor. I still -- the words of
7 the allegations of the plaintiff in his own summons and
8 complaint, I think, are telling. Again, the actions of
9 Cannon are imputed to Water Flow under the doctrine of
10 respondeat superior. These are their own words. If it's
11 imputed to the Water Flow, then Water Flow is the principal
12 party, not the individual that asks on behalf of Water Flow.
13 That is the basis of our entire motion, Your Honor.

14 THE COURT: Okay. Anything further, gentlemen?

15 MR. CANNON: Nothing from us, Your Honor.

16 THE COURT: Where are you originally from?

17 MR. LONG: Your Honor, I'm from Charlotte. Went here
18 to the University of South Carolina for law school. I was
19 telling Mr. Cannon before we began, I have not been in your
20 courtroom in over 18 years when I served as a clerk for the
21 solicitor's office. It's good to see you again. I don't
22 get down to Richland County that often.

23 THE COURT: Yes, sir. You know, I'll give y'all a
24 chance. Y'all give me five or ten days. Send me a proposed
25 order, if you would. I'll take a look at it, and then the

1 prevailing party will get an e-File.

2 MR. CANNON: I'm scheduled to be out of the country.

3 THE COURT: I'm here to help you out, you know.

4 MR. CANNON: Just could you give me some time, maybe
5 'til the end of this month, because I'll be out for about
6 ten days.

7 THE COURT: What works for both of you. I'm not going
8 to put any pressure on you, you know.

9 MR. LONG: If he needs extra time, I have no reason
10 to --

11 THE COURT: You want 30 days?

12 MR. CANNON: That would be great.

13 THE COURT: Okay. Let's say 30 days. That's what I
14 mean. You tell your clients, he's out of the country, gave
15 you 30 days to submit the proposed order.

16 MR. CANNON: Thank you, Your Honor.

17 MR. LONG: Thank you, Your Honor.

18 THE COURT: But I'll take my time, do the best I can.

19 MR. CANNON: Thank you.

20 MR. LONG: Thank you.

21 THE COURT: All right. Thank you.

22 (END OF TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Richland)

I, Maria Dempsey, Official Court Reporter for the Fifth
Judicial Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Circuit Court for Richland County, South Carolina,
on the 11th day of April 2018.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

December 28, 2018

Maria Dempsey, RPR
Official Court Reporter
Richland County Circuit Court
Fifth Judicial Circuit
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2018-CP-40-01434

Southeast Payphone Group, Inc., a
South Carolina corporation,

Appellant,

RECEIVED
APR 23 2019
SC Court of Appeals

v.

Water Flow Business Brokers, LLC, a
South Carolina limited liability company,

Defendants,

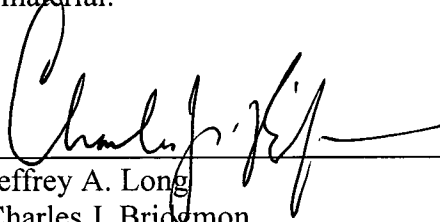
Of Whom Ryan Cannon is the,

Respondent.

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 3, 2019



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