

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No: 2015-CP-10-3325 & Case No. 2017-CP-10-05055  
Appellate Case No: 2018-001413

**RECEIVED**

MAY 28 2019

SC Court of Appeals

Phillip DeClemente, a/k/a Alec Rochford, ..... Appellant,

v.

Assistive Technology Medical Equipment  
Services, LLC; Jeffrey Reed; Murrell G. Smith, ..... Respondents,

and

Phillip DeClemente, a/k/a Phillip Goodpaster, ..... Appellant,

v.

Assistive Technology Medical Equipment  
Services, LLC (ATMES); and Jeffrey Reed; Murrell G. Smith, .... Respondents.

**SUPPLEMENTAL RECORD ON APPEAL**

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Attorneys for Respondents

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 PHILLIP DECLEMENTE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ASSISTIVE TECHNOLOGY MEDICAL )  
 EQUIPMENT SERVICES, LLC, )  
 JEFFERY REED, MURRELL G. SMITH, )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO.: 2015-CP-10- 3325

AFFIDAVIT OF  
 PHILLIP DECLEMENTE

FILED  
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 CLERK OF COURT  
 6)

I, Phillip DeClemente, being duly sworn under oath, declare that I am an adult person over the age of 18 years and that if called as a witness, I would competently testify to the following:

1. On June 30, 2009 A.T.M.E.S. and Phillip DeClemente executed a contract sale agreement which included a Bill of Sale and Promissory Note in favor of the Plaintiff Phillip DeClemente in the amount of Two Hundred Sixty-Five Thousand dollars (\$265,000.00), plus interest at a yearly rate of twelve percent (12%).
2. At the time the Promissory Note was executed, it was agreed by both parties that the total amount owed to the Defendant, for his share of the company would be Three Hundred Thirty Thousand Three Hundred Eighty Two Dollars and Fifty Nine Cents (\$330,382.59).
3. The monthly payment agreed upon in the contract is in the amount of Seven Thousand Three Hundred Forty-One dollars and Eighty Four cents (\$7,341.84) for 45 months and the Plaintiff was entitled to interest for the entire time of amortization, regardless if the Defendants paid off the balance early as the contract says "There will be no benefit to the Company for early payment". Interest was to be applied to any unpaid balance and continues to accrue at 12% per the agreement.
4. Valuable consideration was provided by each party for the execution of this contract sale.
5. The Bill of Sale, Non-Compete Agreement and Promissory Note documents constitute a contract sale between the parties and the mutual Release of Liability Covenant Not to Sue agreement that was executed, was part of this contract sale.
6. In July 2009 Murrell Smith required the mutual release of liability in order to complete the sale of my ATMES stock.

7. Defendants made it a requirement that we execute a mutual "Release of Liability" as a condition for the sale of my ATMES stock to them. Because Murrell Smith and Jeff Reed executed this "Full and Final Release" document in my favor on July 10, 2009, I never believed it was legal for them to sue me.

8. Defendants have not made a payment to me since September 2011.

9. The maturity date of the Promissory Note is March 1, 2013.

10. The Defendants are in default on the Promissory Note and their payment obligation under the non-compete agreement.

11. I have given written notice of Defendants' default in compliance with paragraph six of the Promissory Note.

12. In 2015, I filed this action against Defendants for their breach of contract. The Defendants admit the breach of contract they have committed.

13. Defendants are in default on the Promissory Note and their payment obligation under the non-compete agreement. At the time of this filing, Defendants are in arrears of payments on the note for a total of One Hundred, Eighty Eight Thousand Eight Hundred Eighty One Dollars and Eighteen Cents (\$188,811.18).

14. Additionally, I am owed late fees of 5% on the delinquent payments as of the time of this filing totaling Six Thousand Six Hundred Seven Dollars and Sixty-Four Cents (\$6,607.64).

15. I am owed 12% interest on all missed payments before and after any default described in the promissory note, which includes interest, principle and late fees. At the time of this filing, the interest on the balance owed is Forty Six Thousand Four Hundred Ninety Nine Dollars and Eighty Seven Cents (\$46,499.87).

16. I am owed Thirty Thousand Dollars (\$30,000.00) compensation for compliance with the "Covenant Not to Compete". In paragraph 9 of the Bill of Sale, it states "That it is further agreed by and between the parties that if at the end of the buyout period as set forth hereinabove, Smith and Reed remain as members and have an ownership interest in the Company then I shall be paid an additional Thirty Thousand Dollars over a six month period as a compliance bonus, interest paid at zero percent at the rate of Five Thousand and 00/100 Dollars per month and subject to DeClemente not having violated any of the terms of this Buy/Sell Agreement, the Confidentiality Agreement referenced herein and the Covenant Not to Compete referenced hereinabove and has not acted in any manner detrimental to the success of any of the companies referenced herein".

17. The Defendants restricted Plaintiff from receiving the full benefit from the Purchase Rights of the business property at 2353 Highway 17 North, Mt. Pleasant, SC. Under paragraph 11 of the Bill of Sale, Plaintiff was entitled to the purchase rights of the business property at 2353 Highway 17 North, Mt. Pleasant, South Carolina, and the Plaintiff reached an agreement with the property owners to sell his rights to the property for Twenty Five Thousand Dollars (\$25,000.00).

18. I am entitled to \$12,500.00 because Defendants intervened in my right to sell the option to purchase the business property after demanding half of the fees owed me, totaling Twelve Thousand, Five Hundred Dollars (\$12,500.00) before I could receive the money due under this obligation. I was forced and held hostage by Defendants Reed and Smith, to forfeit Twelve Thousand Five Hundred Dollars (\$12,500.00) for Defendants to receive one-half the benefit of selling my rights to the business property back to the original property owners.

19. In March 2011, Defendants Smith, Reed and A.T.M.E.S. disposed of my truck in violation of their contract with me. The referenced truck is a 2008 Chevrolet Silverado 2500HD.

20. My money was used to make all payments on the truck as required in the Bill of Sale. At the time of the truck's disposition, there was at least Fifteen Thousand dollars (\$15,000.00) equity in the vehicle, and payments of Twenty Eight Thousand Dollars (\$28,000.00) of my money had been made since purchasing of this vehicle.

21. As of today's date, and subject to recalculation with the passage of time, I am entitled to recover One Hundred Eighty Eight Thousand Eight Hundred Eighty One Dollars and Eighteen Cents (\$188,811.18) in arrearage, Six Thousand Six Hundred Seven Dollars and Sixty Two Cents (\$6,607.62) in late fees, and Thirty Thousand (\$30,000.00) for the balance of the amount due under the Non-Compete Agreement, Fifteen Thousand dollars (\$15,000.00) for lost equity in the referenced truck, the interest on the balance owed is Forty Six Thousand Four Hundred Ninety Nine Dollars and Eighty Seven Cents (\$46,499.87) for a grand total of Two Hundred Eighty Eight Thousand, Eight Hundred Seventy Two Dollars and Eighty Seven Cents (\$288,872.87) and all attorney's fees and costs associated with collection as provided in paragraph 6(D) of the Promissory Note.

22. I am entitled to the full amount of payment made under my right to sell the business property and am entitled to recover the Twelve Thousand Five Hundred Dollars (\$12,500.00) the Defendants Reed and Smith unlawfully confiscated.

23. That the Defendants' conduct constitutes breach of contract.

24. That I have been damaged as a proximate result of Defendants' contractual breaches.

FURTHER AFFIANT SAYETH NOT.

Executed on 9-6, 2016

Judy Dsh  
SWORN to and subscribed before me

this 6 day of Sept, 2016

My commission expires: 7/17/2026

P. Goodpaster  
~~Phillip DeClemente~~  
PHILLIP GOODPASTER

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**CERTIFICATE OF COUNSEL**

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

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May 28, 2019

Attorney for Respondents