

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

---

Case No. 2018-CP-32-1854  
Appellate Case No. 2019-001181

---

**RECEIVED**  
DEC 23 2019  
SC Court of Appeals

Twin Bridge Logistics, LLC n/k/a Twin Bridge Transport, LLC, .....Appellant,

v.

Fisher Tank Company, f/k/a Fisher Tank Company, Inc., .....Respondent.

---

**RECORD ON APPEAL**

---

William H. Edwards, Esquire  
Moore Taylor Law Firm  
1700 Sunset Boulevard  
Post Office Box 5709  
West Columbia, South Carolina 29171  
803-796-9160  
Attorney for Appellant

W. Joseph Moore, Jr.  
1416 Laurel Street (29201)  
Post Office Box 456  
Columbia, SC 29202  
803-252-152  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
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Twin Bridge Logistics, LLC n/k/a Twin Bridge Transport, LLC, .....Appellant,

v.

Fisher Tank Company, f/k/a Fisher Tank Company, Inc., .....Respondent.

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THE STATE OF SOUTH CAROLINA  
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v.

Fisher Tank Company, f/k/a Fisher Tank Company, Inc., .....Respondent.

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**RECORD ON APPEAL**

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By: /s/William H. Edwards  
Moore Taylor Law Firm  
William H. Edwards  
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West Columbia, SC 29171  
803-796-9160  
will@mttlaw.com  
Attorney for Appellant

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I certify that this designation contains no matter which is irrelevant to this appeal.

By:  /s/William H. Edwards  
Moore Taylor Law Firm  
William H. Edwards  
1700 Sunset Boulevard  
P.O. Box 5709  
West Columbia, SC 29171  
803-796-9160  
will@mttlaw.com  
Attorney for Appellant

STATE OF SOUTH CAROLINA

**FILED**

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2014 JUL -2 P 4: 19

C.A. No.: 2014 - CP - \_\_\_\_\_

Twin Bridge Logistics, LLC, n/k/a  
Twin Bridge Transport, LLC,

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

**ORIGINAL**

Plaintiff,

vs.

**SUMMONS**

Fisher Tank Company f/k/a  
Fisher Tank Company, Inc.

Defendant.

**2014CP3202453**

**TO: THE DEFENDANT ABOVE-NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff's attorneys, Moore Taylor Law Firm, P.A., at their office located at 1700 Sunset Boulevard, West Columbia, South Carolina 29171, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

MOORE TAYLOR LAW FIRM, P.A.

By: 

William H. Edwards  
1700 Sunset Boulevard  
P. O. Box 5709  
West Columbia, SC 29171  
(803)796-9160  
*Attorney for Plaintiff*

West Columbia, South Carolina  
July 2, 2014.

STATE OF SOUTH CAROLINA

**FILED** IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2014 JUL 2 4:19

C.A. No.: 2014 - CP - \_\_\_\_\_

Twin Bridge Logistics, LLC, n/k/a  
Twin Bridge Transport, LLC,

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

**ORIGINAL**

Plaintiff,

vs.

COMPLAINT

Fisher Tank Company f/k/a  
Fisher Tank Company, Inc.

Defendant.

**2014CP3202453**

Plaintiff above-named Complaining of the Defendant herein alleges that:

**FOR A FIRST CAUSE OF ACTION**

**(Breach of Contract)**

1. Plaintiff is a domestic business entity, organized under the laws of South Carolina with its principal place of business in Lexington County, South Carolina.
2. Defendant is a foreign business entity operating in Lexington County, South Carolina.
3. Venue is proper in Lexington County, South Carolina, and the Court has proper subject matter and personal jurisdiction.
4. Plaintiff and Defendant had an ongoing business relationship and binding verbal contract for many years in which Plaintiff would provide logistics and related services to Defendant and Defendant would pay Plaintiff for services rendered within ten (10) days of service.
5. By virtue of the business relationship between Plaintiff and Defendant, Plaintiff was entitled to receive payments from Defendant for the logistics and related services provided

to Defendant.

6. Plaintiff at all times performed the services requested by Defendant to completion and satisfied its obligations under the contract.

7. On or about August 1, 2012, Defendant terminated the verbal contract with Plaintiff without cause or prior notice.

8. By terminating the verbal contract without cause or prior notice, Defendant violated the implied term of good faith and fair dealing Defendant owed to Plaintiff.

9. Defendant further violated the contract and the implied term of good faith and fair dealing by failing to make payments to the Plaintiff for services rendered, which were required as a part of the verbal contract between the parties.

10. The Defendant's termination of the verbal contract and failure to pay for services rendered was an unjustifiable failure to perform and amounts to a breach of contract. As a direct and proximate result of Defendant's breach of the verbal contract, Plaintiff has been damaged in that it has lost the benefit of its bargain; has incurred costs and fees for storage, insurance, and maintenance of equipment purchased and placed in service for the exclusive purpose of meeting Defendant's logistics demands and for which Plaintiff can no longer utilize for any other customers; has lost income and profits; and has otherwise been damaged, all to its actual damage.

11. Plaintiff is entitled to an order of this court awarding it actual, consequential, and incidental damages for breach of contract as alleged above.

**FOR A SECOND CAUSE OF ACTION**  
**(Promissory Estoppel)**

12. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

**FILED**  
2014 JUL -2 P 4: 19  
BETH A. CARRIGG  
CLERK OF COURT  
WINSTON-SALEM, NC

13. Defendant's promise to pay Plaintiff for the services rendered on Defendant's behalf were clear and unambiguous.

14. As alleged above, Defendant has breached that promise.

15. Plaintiff relied upon the promise of Defendant when Plaintiff agreed to provide its services to Defendant.

16. Plaintiff's reliance was reasonable and foreseeable.

17. As a direct and proximate cause of Defendant's actions and Plaintiff's reliance, Plaintiff has been damaged in the amount of \$65,823.37.

18. Plaintiff is entitled to a judgment for actual damages.

**FOR A THIRD CAUSE OF ACTION**  
**(Quantum Meruit/Unjust Enrichment)**

19. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

20. Plaintiff performed logistics and related services for Defendant and incurred costs while acting for Defendant's benefit. Plaintiff has conferred a benefit upon Defendant, which Defendant has realized.

21. Plaintiff has requested the reasonable value of the services Plaintiff performed and the reasonable value of the costs it has incurred. However, Defendant has refused, and continues to refuse, to pay Plaintiff for these services rendered and costs incurred.

22. Defendant's refusal and failure to pay Plaintiff for the services rendered and costs incurred to Plaintiff while acting for Defendant's benefit and Defendant's retention of the conferred benefit is under such conditions as to make it unjust for Defendant to retain such benefit without paying Plaintiff its value.

23. As a direct and proximate result of Defendant's failure to pay Plaintiff for the

**FILED**  
2014 JUL -2 P 4: 20  
BETH A. CARROLL  
CLERK OF COURTS  
LEXINGTON, VA

services performed and costs incurred, Plaintiff has suffered damages in the amount of \$65,823.37.

24. Plaintiff is entitled to a judgment for actual damages.

**FOR A FOURTH CAUSE OF ACTION**  
**(Conversion)**

25. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

26. Pursuant to their agreement, Defendant was to pay Plaintiff for the services rendered within ten (10) days of their completion.

27. Plaintiff had a legal interest in receiving the payments from Defendant within ten (10) days of service.

28. From on or about July 1, 2011, through August 1, 2012, Defendant repeatedly and consistently withheld payment from Plaintiff for approximately forty-five (45) days or more after the completion of Plaintiff's services.

29. Defendant's repeated withholding of payments from Plaintiff constitutes conversion and deprived the Plaintiff of the use of the monies it was legally entitled to possess.

30. Defendant's repeated withholding of payments from Plaintiff was done without the Plaintiff's permission.

31. As a direct and proximate result of Defendant's repeated conversion of payments owed to Plaintiff, Plaintiff is entitled to interest on payments withheld by Defendant.

**FOR A FIFTH CAUSE OF ACTION**  
**(Negligence)**

32. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

**FILED**  
2014 JUL -2 P 4: 20  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, VA

33. Defendant was in physical possession and control of a trailer owned by Plaintiff and used by Plaintiff in serving Defendant's logistics needs, which had been locked in Defendant's building, which was also enclosed by a locked fence.

34. Defendant owed a duty to exercise reasonable care in the possession and safeguarding of Plaintiff's trailer.

35. Defendant breached the duty of reasonable care owed to Plaintiff when Defendant moved Plaintiff's trailer out of Defendant's locked building and placed the trailer outside of Defendant's locked gate. Defendant's actions were negligent and/or grossly negligent, reckless, willful and/or wanton.

36. As a direct, foreseeable, and proximate result of Defendant's negligence, Plaintiff's trailer was stolen from outside of Defendant's locked gates and was later damaged, resulting in actual damage to Plaintiff. Plaintiff has incurred and will incur costs to repair this trailer.

37. Plaintiff is entitled to a judgment for actual and punitive damages.

**FOR A SIXTH CAUSE OF ACTION**  
**(Bailment for Mutual Benefit)**

38. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

39. Plaintiff delivered its trailer in good condition to Defendant in trust for the specific purpose of facilitating Defendant's logistics needs.

40. The parties had a mutual understanding and agreement that the trailer was to be physically possessed by Defendant for several days and thereafter returned to Plaintiff.

41. Defendant owed a duty to exercise reasonable care in the possession and safeguarding of Plaintiff's trailer.

**FILED**  
2014 JUL -2 P 4: 20  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, VA

42. Defendant breached the duty of reasonable care owed to Plaintiff when Defendant moved Plaintiff's trailer out of Defendant's locked building and placed the trailer outside of Defendant's locked gate, where Plaintiff's trailer was thereafter stolen and later damaged.

43. The theft and later damage to Plaintiff's trailer was a direct and proximate result of Defendant's actions of moving the trailer out of Defendant's building and placing Plaintiff's trailer outside of Defendant's locked gate. Plaintiff has incurred and will incur costs to repair this trailer.

44. Plaintiff is entitled to a judgment for actual damages.

WHEREFORE, having complained against Defendant herein, the Plaintiff prays this Court for judgment against the Defendant for actual, consequential and incidental damages, for interest, for costs and reasonable attorney's fees, but in no event more than \$74,999.00, and such other relief as the Court deems fair and equitable.

MOORE TAYLOR LAW FIRM, P.A.

By: 

William H. Edwards  
1700 Sunset Boulevard  
P.O. Box 5709  
West Columbia, SC 29171  
803-796-9160  
will@mttlaw.com  
Attorney for the Plaintiff

West Columbia, South Carolina  
July 2, 2014

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

Twin Bridge Logistics, LLC, n/k/a  
Twin Bridge Transport, LLC,

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

FILED

2014 Plaintiff(s) 19

2014-CP -

vs.

BETH A. CARRIGAN  
CLERK OF COURT  
LEXINGTON

Fisher Tank Company f/k/a  
Fisher Tank Company, Inc.

Defendant(s) )

Submitted By: William H. Edwards  
Address: 1700 Sunset Blvd.  
Post Office Box 5709  
West Columbia, SC 29171

SC Bar #: 0071199  
Telephone #: 803-796-9160  
Fax #: 803-791-8410  
Other:  
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check the Box Below)

2014 CP 3202453

- |   |  |   |   |
|---|--|---|---|
| <input type="checkbox"/> Contracts<br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input checked="" type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199) | <input type="checkbox"/> Torts - Professional Malpractice<br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20____-CP-_____<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)   | <input type="checkbox"/> Torts - Personal Injury<br><input type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399)   | <input type="checkbox"/> Real Property<br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)   |
| <input type="checkbox"/> Inmate Petitions<br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)  | <input type="checkbox"/> Administrative Law/Relief<br><input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899) | <input type="checkbox"/> Judgments/Settlements<br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)<br><input type="checkbox"/> Other (799) | <input type="checkbox"/> Appeals<br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate Civil (910)<br><input type="checkbox"/> Magistrate Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input checked="" type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Special/Complex /Other<br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)   | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Sexual Predator (510)   |   |   |

cc: Box  
cc: Mail  
cc: Person  
cc: None

Submitting Party Signature:

*Will H. Edwards*

Date: July 2, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous

**FOR MANDATED ADR COUNTIES ONLY**

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

FILED  
2019 JUL -2 PM 4:19  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON )

C.A. NO. 2018-CP-32-01854

(Formerly 2014CP3202453)

Twin Bridge Logistics, LLC )

n/k/a Twin Bridge Transport, LLC )

DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

Plaintiff )

vs. )

Fisher Tank Company, )

Defendant. )

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant, Fisher Tank Company ("Fisher"), by and through its undersigned counsel, hereby moves the court for an order granting Partial Summary Judgment in favor of the Defendant on the grounds that there are issues of material fact and the Defendant is entitled to judgment as a matter of law as follows:

1. As to the Plaintiff's First Cause of Action (Breach of Contract) on the grounds that there is no contract or written between the Plaintiff and the Defendant for the services claimed by the Plaintiff (Rule 30(b)(6) of Plaintiff, Plaintiff's Responses to Defendant's Request to Admit and Affidavit of Paul Windham) and that the alleged verbal agreement is barred by the Statute of Frauds as it was incapable of being performed within one year.
2. As to the Plaintiff's Fifth Cause of Action (Negligence) and Sixth Cause of Action (Bailment for Mutual Benefit) on the grounds that the claims are barred by the applicable statute of limitations. The claims arise out of the alleged theft of a trailer owned by the Plaintiff from the Defendant's premises which occurred on November 10, 2009 (Rule 30(b)(6) Deposition of Plaintiff, Plaintiff's Responses to Defendant's Request to Admit and Affidavit of Paul Windham). However, the Plaintiff did not

institute this action until July 2, 2014. The claims are there for barred by the applicable statute of limitations and the Defendants is entitled to judgment as a matter of law.

3. As to Plaintiff's claim for an award of interest on the grounds that there is no contract, agreement or other writing signed by the Defendant wherein the Defendant agreed to pay interest on the amounts claimed by the Plaintiff. (Rule 30(b)(6) Deposition of Plaintiff, Plaintiff's Responses to Defendant's Request to Admit and Affidavit of Paul Windham).
4. As to the Plaintiff's claim for an award of attorney's fees on the grounds that there is no contract, agreement or other writing signed by the Defendant wherein the Defendant agreed to pay interest on the amounts claimed by the Plaintiff. (Rule 30(b)(6) Deposition of Plaintiff, Plaintiff's Responses to Defendant's Request to Admit and Affidavit of Paul Windham).

This motion is based upon applicable law and pleadings, Plaintiff's Responses to Defendant's Request to Admit, Rule 30(b)(6) Deposition of the Plaintiff and the Affidavit of Paul Windham In Support of Defendant's Motion for Partial Summary Judgment, which are attached hereto and incorporated by referenced herein.

Pursuant to Rule 11 SCRCP there is no duty to consult in connection with this motion for Summary Judgment.

January 11, 2018

W. Joseph Moore, Jr.  
W. Joseph Moore, Jr. (SC Bar 10236)  
Gertz & Moore, LLP  
1416 Laurel Street  
P.O. Box 456  
Columbia, SC 29202-0456  
(803) 252-1524  
[wjmoore@gertzandmoore.com](mailto:wjmoore@gertzandmoore.com)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
Twin Bridge Logistics, LLC, n/k/a )  
Twin Bridge Transport, LLC, )  
Plaintiff, )  
 )  
v. )  
 )  
Fisher Tank Company f/k/a )  
Fisher Tank Company, Inc. )  
Defendant, )  
 )

IN THE COURT OF COMMON PLEAS  
C/A No.: 2018-CP-32-01854

**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiff, Twin Bridge Logistics, LLC, by and through its undersigned counsel, hereby asks the court for an order denying the Defendant's Motion for Partial Summary Judgment on the grounds that there are issues of material fact thereby operating to ensure the Defendant is not entitled to a judgment as a matter of law. Those genuine issues of material fact are as follows:

1. The alleged verbal agreement is not barred by the Statute of Frauds because the South Carolina Supreme Court has held that when part performance is alleged to remove an oral contract from Statute of Frauds the court must find the following factors. 1) Clear evidence of an oral contract; 2) the contract had been partially executed; and 3) the party who requested the performance had complete of was willing to complete his part of the oral contract. *Settlemyer v. McCluney*, 359 S.C. 317, 320, 596 S.E.2d 514, 516 (Ct. App. 2004). Here there is enough of a dispute as to genuine issues of fact concerning the alleged oral contract between the parties that summary judgment at this juncture would be improper.
2. The claims arising from the theft of a trailer owned by the Plaintiff placed in the care of

the Defendant are not beyond the statute of limitations due to the claims made by the Plaintiff. The Plaintiff's claims are grounded in recovering the costs of repairs to the trailer upon the subsequent discovery and recovery of the stolen trailer. The Plaintiff was unable to know the costs of the repairs until the trailer was back in the possession of the Plaintiff. While the Plaintiff concedes that the trailer was stolen in 2009, and recovery for those damages would clearly be barred by the Statute of Limitations. However, the Plaintiff is not seeking recovery for those damages associated with the theft of the trailer, rather the Plaintiff is seeking recovery for the repairs the trailer needed due to it being damaged. Those damages could not be ascertained until 2012 when the trailer was recovered in 2012. Therefore, the applicable clock for the statute of limitations was tolled until the discovery and recovery of the trailer; thus, the statute of limitations does not bar the Plaintiff from recovering the costs of damages associated with repairing the stolen trailer.

This response is based upon applicable law and pleadings, Affidavit of Glenn LaMotte In Opposition of Defendant's Motion for Partial Summary Judgment, which are attached hereto and incorporated by reference herein.

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ William H. Edwards  
William H. Edwards, SC Bar.: 71199  
1700 Sunset Boulevard  
P. O. Box 5709  
West Columbia, SC 29171  
(803) 796-9160  
ATTORNEY FOR DEFENDANT

West Columbia, South Carolina  
February 18, 2019

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
Twin Bridge Logistics, LLC, n/k/a )  
Twin Bridge Transport, LLC, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Fisher Tank Company f/k/a )  
Fisher Tank Company, Inc. )  
 )  
Defendant, )  
 )

IN THE COURT OF COMMON PLEAS

C/A No.: 2018-CP-32-01854

**AFFIDAVIT OF GLENN LaMOTTE  
IN OPPOSITION OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

PERSONALLY APPEARED BEFORE ME, Glenn LaMotte, who being first duly sworn,

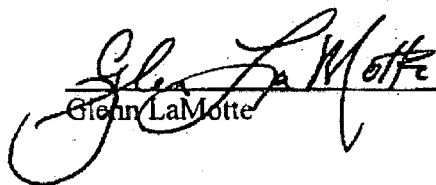
deposes and states as follows:

- 1) My name is Glenn LaMotte. I am a member of the Plaintiff in the above-titled matter. I am at least 18 years of age and competent to execute an affidavit in my individual capacity and I am the authorized member and agent of Twin Bridge Logistics, LLC n/k/a Twin Bridge Transport, LLC, for the purposes of this Affidavit and this action. All statements contained herein are based on my own personal knowledge.
- 2) My company first began to haul steel for Fisher Tank Company on or about the year 2004 and continued hauling steel for them until our relationship was terminated by them in 2012.
- 3) While transporting steel for Defendant in this period, we never had a written or signed contract. Rather, Mr. Windham, in his role with Defendant as Vice President, and I agreed orally that I would be the sole carrier of the Defendant's material after it was no longer painted in Neeses, South Carolina.
- 4) Additionally, we served as the only transportation carrier for Fisher Tank Company

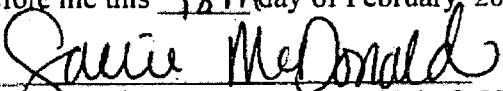
- for loads out of South Carolina plants except for local hauls by H&H Transportation.
- 5) In furtherance of our continuing relationship with Fisher Tank, I developed a loading manual and trained employees at Fisher Tank on the proper way to load a trailer to comply with Department of Transportation standards and to make sure that the weight requirement was met for more complex loads.
  - 6) Once Fisher Tank relocated to a new facility in Leesville, South Carolina, it was customary for my company to leave six (6) to eight (8) trailers on the property so that Fisher Tank employees could load the trailers at anytime according to Gerald Gunter, Sr.'s, Defendant's Production Manager, and Defendant's instructions.
  - 7) Gerald Gunter, Sr., requested late on November 6, 2009, if I could drop a step-deck trailer for an emergency load that would be loaded over the weekend and needed to be delivered to Florence, South Carolina, on Monday morning. Gerald Gunter, Sr., called me on Monday morning asking if I had already picked up the trailer. I informed that I had not but was on my way. We later discovered that the trailer had been stolen from Fisher Tank. I left the trailer parked inside a locked building inside the locked fence at the Defendant's premises. Upon information and belief, Defendant must have moved the trailer and left it outside the locked fence. The trailer was subsequently recovered in 2012 as the result of a police investigation.
  - 8) I could not have any way of knowing how much damage was done to my trailer until it was recovered; this took so long due to the trailer initially being recovered in a police investigation and used as evidence against the suspects. Therefore, I had no way to know what actual damages I had suffered until its recovery in 2012.
  - 9) It is my belief that there are substantial issues of material fact remaining in this case

and that partial summary judgment would not be proper. While there was not a written contract between Fisher Tank and Twin Bridge, the part performance by Twin Bridge in the delivery of various loads shows that Twin Bridge was operating pursuant to the contractual agreement with the Defendant.

**FURTHER AFFIANT SAYETH NOT**

  
Glenn LaMotte

SWORN TO AND SUBSCRIBED  
before me this 18<sup>th</sup> day of February, 2019.

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 04/04/2024

1	State of South Carolina	)	In the Court
		)	Of Common Pleas
2	County of Lexington	)	Case No.: 2018-CP-32-01854
		)	
3	Twin Bridge Logistics,	)	
	LLC,	)	
4		)	
	Plaintiff,	)	
5		)	
	vs.	)	Transcript of Record
6		)	
	Fisher Tank Company,	)	
7		)	
	Defendant.	)	
8	<hr/>	)	

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February 20, 2019  
Lexington, South Carolina

BEFORE:

The Honorable Keith Kelly, Judge

APPEARANCES:

William H. Edwards, Esquire  
Attorney for the Plaintiff

William Joseph Moore, Junior, Esquire  
Attorney for the Defendant

ALSO PRESENT:

Glen Lamonte

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EXHIBITS

NO.	DESCRIPTION	ID	EVDS.
	NONE		

1 Thereupon, the following proceedings were had,

2 THE CLERK: Okay. Next up will be Twin Bridge  
3 Logistics, LLC versus Fisher Tank Company. Case number  
4 2018-CP-32-01854.

5 THE COURT: Gentlemen, good afternoon.

6 MR. EDWARDS: Good afternoon, Your Honor.

7 MR. MOORE: Good afternoon.

8 THE COURT: Yes, sir.

9 MR. MOORE: Your Honor, my name is Joe Moore. I'm  
10 here on behalf of the defendant Fisher Tank Company. We  
11 made a motion for partial summary judgment as to various  
12 parts of the plaintiff's complaint in this matter. I do  
13 have a memorandum of law which I would like to hand up.  
14 I have given Mr. Edwards a copy of it.

15 THE COURT: Yes, sir.

16 MR. MOORE: (Proffering.) Your Honor, this has the  
17 latest cases and information.

18 Your Honor, generally this is the case where the  
19 plaintiff Twin Bridge Logistics is a trucking company and  
20 it provided trucking services to Fisher Tank Company  
21 either directly through contacts with Fisher or through a  
22 trucking broker known as Greentree for a number of years,  
23 basically 2004 to 2012 at which time Fisher Tank  
24 terminated that relationship. Thereafter Twin Bridge  
25 sent Fisher Tank a number of invoices for basically non

1 trucking related items such as logistic support,  
2 scheduling, employee training, a number of items.

3 Your Honor, Fisher disputed those invoices and this  
4 suit was filed by Twin Bridge in July of 2014. Your  
5 Honor, the undisputed facts in this case based on the  
6 pleadings, the request to admit which we served upon the  
7 plaintiff and his responses to those request to admit,  
8 the affidavits in the 30(b)(6) deposition that we took of  
9 the plaintiff are as follows; that Twin Bridge provided  
10 the trucking services to Fisher Tank on a job by job  
11 basis. There was no written continuing contract which  
12 specified the rates, the terms of the services, the terms  
13 of payment, or any other things that would normally be in  
14 a contract, Your Honor. It was just basically either  
15 Greentree arranged for them to come haul it or Fisher  
16 called them to come haul, services.

17 That relationship, as I said, continued for almost  
18 eight years. The defendant admits - I mean the plaintiff  
19 admits in his answers to our interrogatories and in our  
20 request to admit, or in our request to admit and in his  
21 deposition that there was no written contract between the  
22 parties, there was no agreement by Fisher Tank in writing  
23 to pay interest on any amounts due, there was no written  
24 agreement by Fisher Tank to pay collection costs or  
25 attorney's fees of any amounts which may be not paid or

1           disputed. In fact, Your Honor, like I said, there was no  
2           contract at all.

3           In 2009, November of 2009 the defendant left a  
4           trailer on Fisher Tank's yard. There's some dispute as  
5           to whether it was in the fence or outside of the fence  
6           but that's not really relevant for this argument at this  
7           point, Your Honor. That trailer was stolen on November  
8           9th, 2009 from Fisher Tank's location. The defendant was  
9           aware of it - I mean the plaintiff was aware of it. The  
10          plaintiff filed a police report on the day the trailer  
11          was stolen and the plaintiff followed up and continued to  
12          pursue the trailer. The plaintiff never demanded payment  
13          of the trailer from Fisher or submitted any invoices for  
14          the trailer to Fisher Tank. The plaintiff then sues  
15          Fisher Tank in July of 2014 for negligence and negligent  
16          bailment arising out of the loss of the trailer.

17          Your Honor, based on these facts we have made a  
18          motion for partial summary judgment in this matter on the  
19          following items and I'm gonna work through it backwards,  
20          kind of take the low hanging fruit first and work my up  
21          to the more expansive arguments.

22          The first one is, Your Honor, is that we have moved  
23          for summary judgment as to the claim for attorney's fees.  
24          It's well settled law in South Carolina that a party  
25          seeking to recover attorney's fees that they're not

1 recoverable unless there's a written agreement or a  
2 statute that provides for the recovery of attorney's  
3 fees. For that proposition I would cite Weeks versus  
4 McMillan as one of the cases, 291 SC 287. In this case,  
5 Your Honor, as I have mentioned before there is no  
6 written agreement between the parties and there is no  
7 statute that would provide for the recovery of attorney's  
8 fees in this action which was commenced by the plaintiff  
9 which is why we have moved for partial summary judgment  
10 as to the issue of attorney's fees.

11 The second item, Your Honor, would be the claim of  
12 the plaintiff to interest on the amounts he invoiced to  
13 the plaintiff - to the defendant, Your Honor. The  
14 plaintiff has submitted invoices to the defendant and is  
15 seeking to recover interest on the amounts which he  
16 alleges are owed at a rate of 18 percent per annum. Your  
17 Honor, again, it's well settled in South Carolina that  
18 you cannot recover interest in excess of the statutory  
19 rate absent a written agreement by the parties to pay  
20 interest on the amounts.

21 Again, the plaintiff in this action has admitted  
22 that no such agreement exists which would mean that the  
23 only possible claim that the plaintiff might be able to  
24 assert for interest would be interest at the statutory  
25 rate under 34-31-20(a) which requires that the amount be

1        either liquidated or for a sum certain. Your Honor, the  
2        courts have argued that it's the burden on the plaintiff  
3        to prove that the amount is liquidated or sum certain or  
4        capable to be determined and it's not in dispute.

5                Your Honor, I would cite Southern Welding Works  
6        versus K and S Construction, 286 SC 158, one of the cases  
7        that holds that way. Your Honor, it's also been held  
8        that in order to be entitled to damages at the statutory  
9        rate under that statute that the amount claimed must be a  
10       sum certain or capable of being reduced to a sum certain.  
11       Your Honor, as I have cited, told you there is no written  
12       contract, there is no agreement to pay anything. There  
13       is no rates and, in fact, Your Honor, the things that the  
14       plaintiff is suing the defendant for the most part are  
15       services which he alleged to provide to the plaintiff  
16       outside of the - I mean to the defendant outside of the  
17       transportation services which the defendant claims it  
18       never authorized or asked the plaintiff to perform.

19               Your Honor, on the matter of attorney's fees - I  
20       mean interest, I would also point out that the Court has  
21       held in Bickerstaff versus Provost that interest and the  
22       entitlement to interest is not an issue of fact but is an  
23       issue of law to be decided by the Court so therefore we  
24       would argue that since there is no agreement, the  
25       plaintiff has not met its burden of establishing a

1 liquidated amount that there is no issue of fact as to  
2 the entitlement of interest and that, therefore, the  
3 defendant would be entitled to partial summary judgment  
4 as to the claim of interest as well both as to the 18  
5 percent he's seeking in his invoices and as to the legal  
6 rate of interest.

7 Your Honor, the next item would be the two claims  
8 that the plaintiff has attempted to assert against the  
9 defendant for negligence and negligent bailment arising  
10 out of the theft of the trailer from the defendant's  
11 property in November of 2009. Your Honor, that claim  
12 would fall within the three year statute of limitations  
13 provided by 15-3-530 either paragraph 4 or 5, either an  
14 action to recover property or an action for damage to  
15 property which requires that the action be brought within  
16 three years of the accrual of the cause of action or it's  
17 forever barred. In this case the plaintiff acknowledges  
18 in its complaint in paragraphs 42 and 35 that the breach,  
19 if any, occurred in November of 2009 when the defendant  
20 allegedly moved the trailer from its locked yard to an  
21 unsecured portion of the yard.

22 The defendant - I mean the plaintiff in his  
23 responses to our request to admit acknowledges that he  
24 knew in November of 2009 that his trailer had been stolen  
25 and yet he waited until July of 2014 to file this case

1           which is more than three years later to assert a claim  
2           for negligent bailment or negligence arising out of the  
3           theft of the trailer so we would argue, Your Honor, that  
4           that claim, both of those claims are barred by the three  
5           year statute of limitations, that we are entitled to  
6           partial summary judgment on those issues as well.

7           The plaintiff argues that he didn't recover the  
8           trailer until 2012 from the, up in Pennsylvania and that  
9           he didn't know what his damages were for the repairs to  
10          the trailer until he got it back. But that's not the  
11          standard, Your Honor. The cause of action arises when  
12          the duty was breached which was in 2009, otherwise, every  
13          wreck case you ever hear would wait until the person had  
14          completed their medical treatment which is not the  
15          standard. This is not a hidden sponge or a latent defect  
16          in construction that he didn't know about. He knew that  
17          his trailer was stolen and he knew where it was stolen  
18          from but he didn't file the suit within the three year  
19          period.

20          Lastly, Your Honor, as to the plaintiff's claim of  
21          breach of a contract, the plaintiff is attempting to  
22          assert a cause of action that he had a verbal contract to  
23          be the exclusive trucking company for the defendant from  
24          2004 going forward. The contract had no start date, no  
25          end date, and only existed in the mind of the plaintiff,

1 Your Honor. There is no evidence that there was a  
2 meeting of the mind as to the contract. As I told you  
3 earlier, Your Honor, even in his 30(b)(6) deposition the  
4 plaintiff acknowledges that there was no contract, there  
5 was no document specifying the terms, the conditions, the  
6 obligations of any of the parties. Your Honor, we would  
7 argue that under the statute of frauds 32-3-10-5 the  
8 contract which the plaintiff is attempting to allege in  
9 this case is one that could not be performed within a  
10 period of a year and therefore is unenforceable unless  
11 the contract is reduced to writing signed by the  
12 defendant which is as I have said numerous times, Your  
13 Honor, there is no written contract in this case so we  
14 would move for partial summary judgment as to the breach  
15 of contract action as well.

16 THE COURT: Yes, sir.

17 MR. EDWARDS: Thank you, Your Honor. May it please  
18 the Court. Counsel. Your Honor, I represent the  
19 plaintiff Twin Bridge Logistics, LLC. Mr. Glen Lamonte  
20 who is the member, authorized member of the LLC is here  
21 today and I guess I'll go in the opposite direction from  
22 counsel in this.

23 The breach of contract cause of action, there is no  
24 dispute about there not being a written contract for  
25 that, Your Honor, but it was an eight year relationship

1 and there is a part-performance exception to the statute  
2 of frauds that I believe this claim falls under and in  
3 the case of Settlemeyer versus McCluney which is 359 SC  
4 317, 596 Southeastern Second 514, it's a 2004 Court of  
5 Appeals decision sets forth the part-performance  
6 exception that there is an oral agreement which, and I  
7 think in a light most favorable to the non moving party  
8 in this case the Court has to accept the position from  
9 the plaintiff that there was a verbal agreement and that  
10 it was partially executed. The relationship went on for  
11 at least eight years and that the plaintiff was willing  
12 and able to continue to complete the contract and clearly  
13 we would not have filed this action making this breach of  
14 contract claim if my client were not willing and able to  
15 continue to complete this contract.

16 So we believe that for the purposes of summary  
17 judgment at this stage and in a light most favorable to  
18 the non moving party the Court would have to find that  
19 there is a part-performance exception here based on the  
20 creation of the material fact issue here and so that's  
21 our response to the partial summary judgment motion as to  
22 the breach of contract matter.

23 For the negligence and bailment cause of action,  
24 that's our fifth and sixth cause of action, Your Honor, I  
25 believe this is different from a personal injury case.

1           There is no doubt that the trailer was stolen in 2009 and  
2           there is no doubt that the lawsuit was filed in 2014.  
3           However, the plaintiff is not seeking damages for the  
4           loss of use of the trailer. The plaintiff is seeking  
5           damages for the cost to repair the trailer and my client  
6           could not have known that it was damaged before 2012,  
7           could not have known how much it would cost to repair it  
8           before 2012. It was part of a theft ring investigation  
9           that was across several different states, Your Honor, and  
10          it was impounded and held for evidence in the criminal  
11          cases in Pennsylvania, New Hampshire, Vermont, somewhere  
12          pretty far off, Your Honor, and my client was not able to  
13          retrieve it until that criminal investigation and those  
14          trials were completed in approximately September of 2012  
15          and the lawsuit was filed less than three years after  
16          that time.

17                 So if we were seeking the loss of use of the trailer  
18          or the value of the trailer of what it was worth at the  
19          time, it would be a different story but we are seeking  
20          the cost to repair the trailer which we didn't even know  
21          was damaged until 2012 when my client was finally able to  
22          retrieve it from law enforcement from a different state  
23          and this is supported also, Your Honor, I apologize, my  
24          office submitted a return and an affidavit from  
25          Mr. Lamonte on Monday. We filed it electronically. It

1 may not have popped up until yesterday because of the  
2 holiday but we did try to file it and we did file it  
3 electronically on the 18th and Mr. Lamonte's affidavit  
4 provides factual support for these arguments, Your Honor.

5 As for the interest and this is a little more  
6 complicated, Your Honor. I agree there is no written  
7 agreement for the non transportation related invoices  
8 that my client had submitted. However, there is a  
9 freight bill for a load of steel that my client did  
10 deliver that is my understanding the defendant admits is  
11 still owed approximately \$1100.00. I would argue that  
12 there is an agreement for interest on that one based on  
13 the freight bill, Your Honor. But now that is the only  
14 transportation related interest claim, Your Honor. I  
15 agree that there is no writing for the non transportation  
16 related invoices.

17 However, my client has also pled a cause of action  
18 which is not subject of the partial summary judgment  
19 motion for conversion. And, Your Honor, the measure of  
20 damages for conversion is the value of the property  
21 converted plus interest. So I don't think it's proper to  
22 provide summary judgment across the board as to an  
23 interest claim because I think we have - it's just a part  
24 of the measure of damages for the conversion claim and  
25 the case that supports that contention is Industrial

1 Welding Supplies, Inc., versus Atlas Vending Company, and  
2 that's 276 SC 196 and 277 Southeastern Second 885 and  
3 that's a 1981 Supreme Court case.

4 So, Your Honor, I believe that as for the interest  
5 the one transportation related invoice which I believe  
6 counsel will agree the defendant admits it has not paid  
7 that one. It's approximately \$1100.00, so there would be  
8 interest that could apply to that one, Your Honor, and  
9 then as far as interest as it relates to the conversion  
10 cause of action I believe that that would still survive  
11 even though there's no writing because that's part of the  
12 measure of damages.

13 As for attorney's fees, Your Honor, I do not dispute  
14 that there is no written agreement between the parties as  
15 to attorney's fees. We have also made a claim for unjust  
16 enrichment and I would argue that the Court would have  
17 within its authority in equity to award that as damages  
18 but I agree there is no written agreement between the  
19 parties as to attorney's fees, Your Honor. But for the  
20 purpose of Rule 56 for summary judgment the non moving  
21 party only has to set forth a mere scintilla of evidence  
22 in the State Court to support his claims and the Court  
23 has to construe the evidence in the light most favorable  
24 to the plaintiff here and based on that, Your Honor, I  
25 would argue that defendant's motion for partial summary

1 judgment should be denied. Thank you.

2 THE COURT: Yes, sir.

3 MR. MOORE: Your Honor, I only have two things I  
4 would like to just bring up. On the interest document  
5 with regard to the invoice, Your Honor, the mere  
6 statement of an interest rate in an invoice is not  
7 enforceable on the party receiving the invoice unless the  
8 party signs some document agreeing to pay that rate of  
9 interest. This is the 18 percent interest that he says  
10 he's claiming. There's no document whereby the plaintiff  
11 agreed to pay - I mean whereby the defendant agreed to  
12 pay 18 percent interest or has ever paid 18 percent  
13 interest in this matter.

14 Your Honor, that invoice is like he said, \$1100.00  
15 and that's not - that invoice is not in dispute and is  
16 not part of this motion. Our motion is to the interest  
17 as a whole on all the other invoices whereby the  
18 defendant is claiming that he's entitled to recover  
19 interest at 18 percent on these amounts which the  
20 plaintiff - I mean the defendant contends it never  
21 employed the defendant (sic) for services to provide.  
22 The defendant admits there's no written agreement to  
23 provide those services or any provision for interest on  
24 those services.

25 Your Honor, on the statute of limitations claim it's

1 interesting that he brought up the Industrial Welding  
2 Supplies versus Atlas Vending Company case in his  
3 argument. I believe that's the one he cited. That  
4 case is actually attached to our memorandum of law, Your  
5 Honor, because it specifically sets forth when a cause of  
6 action for negligent bailment arises which is when the  
7 party in possession of the goods is unable to deliver  
8 them to the owner of the goods which is the day that  
9 trailer was stolen and it holds that the statute of  
10 limitations runs three days - three years from the date.  
11 At that time it was a six year statute, Your Honor, but  
12 it runs from that date not from the date he discovers his  
13 goods.

14 Your Honor, that's a measure of damages. If he had  
15 discovered the trailer during the pendency of the  
16 lawsuit, he would have had an opportunity to change his  
17 measure of damages in the lawsuit. If he had discovered  
18 the trailer after he had gotten a judgment assuming he  
19 was successful in the negligent bailment claim, then the  
20 trailer would have belonged to my client at that point  
21 because they would have paid for it. He would have  
22 gotten a judgment. The law is clear. He had three years  
23 from the date he alleges the breach occurred which was us  
24 taking that trailer out of the locked yard which occurred  
25 in November of 2009 to file his lawsuit. He didn't do

1           it. I'm sorry, but that's what the law is. He's got  
2           three years to file it. He didn't do it. Thank you,  
3           Your Honor.

4           MR. EDWARDS: Your Honor, just a very brief point of  
5           clarification. I cited the Industrial Welding Supplies  
6           case as to the argument about interest being a measure of  
7           damages for the conversion cause of action.

8           THE COURT: Okay. Gentlemen, pay close attention to  
9           your a-i-s e-mail addresses. We'll read on it and talk  
10          about it and Laura will send you something.

11          MR. EDWARDS: Thank you, Your Honor.

12          MR. MOORE: Thank you, Your Honor.

13          THE CLERK: Thank you, gentlemen. Good to see both  
14          of you.

15          WHEREUPON, THE HEARING WAS CONCLUDED.

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## 1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON )

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,  
6 and Official Circuit Court Reporter for the Eleventh Judicial  
7 Circuit in and for the State of South Carolina, do hereby  
8 certify that I reported the proceedings in the before  
9 captioned case in the Court of Common Pleas in and for the  
10 State of South Carolina on the 20th day of February, 2019.

11 I FURTHER CERTIFY that the forgoing 17 pages  
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel  
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at  
16 Lexington County, this 1st day of August, 2019.

17

18

19 By:s/Steven E. LeBlanc

20

21 Steven E. LeBlanc, Sr., R.P.R.  
22 Eleventh Circuit Court Reporter  
23 State of South Carolina.

24

25

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Twin Bridge Logistics, LLC n\k\la Twin Bridge Transport, LLC,

Plaintiff,

vs.

Fisher Tank Company, f/k/a Fisher Tank Company, Inc.

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2018-CP-32-1854

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter came before the court on February 20, 2019 for a hearing on the Defendant's Motion for Partial Summary Judgment. Present at the hearing were W. Joseph Moore, Jr. of Gertz & Moore, LLP, attorneys for the Defendant and William H. Edwards, of Moore Taylor Law Firm, P.A. attorneys for the Plaintiff.

The Plaintiff's complaint in this matter asserts various claims arising out of an alleged oral agreement pursuant to which the Plaintiff claims to have provided transportation and related services to the Defendant. The claims asserted by the Plaintiff include, but are not limited to, breach of contract arising out of the failure of the Defendant to pay for services which Plaintiff claims to have provided pursuant to the agreement, breach of contract by the Defendant in terminating the agreement, attorney's fees and interest. In addition, the Plaintiff's complaint includes causes of action against the Defendant for negligence and bailment for mutual benefit arising out of the theft from the Defendant's property of a trailer which belonged to the Plaintiff.

The Defendant's motion seeks partial summary judgment as to the claims asserted by the Plaintiff as follows:

1. As to the Plaintiff's cause of action for breach of contract on the grounds that the alleged oral agreement between the parties is incapable of being performed within a year and is therefore barred by the Statute of Frauds.
2. As to the causes of action for negligence and bailment for mutual benefit on the grounds that the claims are barred by the three (3) year Statute of Limitations.
3. As to the Plaintiff's claim for interest on the grounds that there is no written contract or other agreement between the parties signed by the Defendant wherein the Defendant agreed to pay interest on the amount or terms claimed by the Plaintiff; and
4. As to the Plaintiff's claim for an award of attorney's fees on the grounds that there is no written contract or other agreement between the parties signed by the Defendant wherein the Defendant agreed to pay attorney's fees.

The Defendant submitted the Plaintiff's Responses to Defendant's Request to Admit, portions of the Rule 30(b)(6) Deposition of the Plaintiff and the Affidavit of Paul Windham in support of its motion. The Plaintiff submitted the Affidavit of Glenn LaMotte In Opposition to the Motion for Partial Summary Judgment.

#### STANDARD OF REVIEW

Summary judgment should be granted where the pleadings, depositions, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56 (c) SCRPC.

#### UNDISPUTED FACTS

Based on a review of the request for admission, deposition testimony and the affidavits submitted by the parties, the following facts are not in dispute:

1. The Plaintiff is in the business of providing freight carrier services. (Rule 30(b)(6) Deposition of Plaintiff)

2. The Plaintiff provided hauling services to the Defendant Fisher Tank from approximately 2004 until 2012. (Affidavit of Glenn LaMotte In Opposition to Motion Partial Summary Judgment)

3. No written contract existed between the parties for the hauling services provided by the Plaintiff to the Defendant. (Rule 30(b)(6) Deposition of Plaintiff, Plaintiff's Responses to Defendant's Request for Admissions, Affidavit of Paul Windham and Affidavit of Glenn LaMotte In Opposition to Motion Partial Summary Judgment)

4. There is no written contract, agreement or other document signed by the Defendant wherein the Defendant agreed to pay interest, costs of collection or attorney's fees. (Rule 30(b)(6) Deposition of Plaintiff, Plaintiff's Responses to Defendant's Request for Admissions and Affidavit of Paul Windham)

5. The step-deck trailer which is the subject of the Plaintiff's claims for negligence and bailment for mutual benefit was stolen from the Defendant's facility in Lexington on November 10, 2009. (Plaintiff's Responses to Defendant's Request for Admissions, and Affidavit of Glenn LaMotte In Opposition to Motion Partial Summary Judgment)

6. The Defendant did not make a demand for payment arising out of the theft of the trailer until April 15, 2013, which demand was denied by the Defendant. (Rule 30(b)(6) Deposition of Plaintiff).

7. This action which includes the claims for Negligence and Bailment for Mutual Benefit arising out of the theft of the trailer was filed by the Plaintiff on July 2, 2014 and served on October 14, 2014.

## LAW AND ANALYSIS

### A. Statute of Frauds:

S.C. Code § 32-3-10 provides that a verbal contract which cannot be performed within one year is unenforceable as a matter of law. S.C. Code § 32-3-10 (3), See *Springob v. Univ of S.C.*, 407 S.C. 490, 757 S.E.2d 384 (S.C. 2014) Partial performance by the parties can remove the oral contract from the Statute of Frauds. *Settlemyer v. McCluney*, 359 S.C. 317, 596 S.E.2d 514 (S.C. Ct. App. 2004).

Based on the deposition testimony and the affidavits submitted in connection with the motion, there are genuine issues as to the partial performance of the parties, which would remove the agreement from the Statute of Frauds. Accordingly, I find that the Defendant is not entitled to partial summary judgment on the basis of the Statute of Frauds and the Defendant's motion is denied to the extent it seeks partial summary judgment based on the Statute of Frauds.

### B. Statute of Limitations as to Plaintiff's Claims for Negligent Bailment and Bailment for Mutual Benefit:

South Carolina Code § 15-3-530(5) requires that "an action for taking, detaining or injuring any goods or chattels including an action for the specific recovery of personal property "must be brought within three (3) years of the accrual of the cause of action or else be forever barred." "Under the discovery rule, the statute begins to run when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." *McMaster v. John H Dewitt, MD. & Carolina Psychiatric Servs., P.A.*, 767 S.E.2d 451, 454 (S.C. App., 2015). The Plaintiff's claim for negligent bailment arose on the day the Plaintiff was informed that its trailer had been stolen from the Defendant's property.

*Industrial Welding Supplies, Inc. vs. Atlas Vending Co., Inc.* 272 S.C. 293, 251 S.E.2d 741 (1979).

It is undisputed that the Plaintiff had actual knowledge that his trailer was stolen from the Defendant's location on November 10, 2009. The alleged negligence of the Defendant which led to the loss of the trailer occurred when the trailer was stolen. Pursuant to S.C. Code § 15-3-530(5) the Plaintiff had three years from November 2009, until November 2012, to commence its action against the Defendant or the claims would be forever barred. However, the Plaintiff did not commence this action until July 2014.

There is no issue of fact that the Plaintiff failed to commence this action within three (3) years of the date the Plaintiff learned that his trailer had been stolen. The Affidavits and Plaintiff's Responses to the Defendant's Request to Admit clearly establish that the Plaintiff failed to commence the action within three (3) years of the date the trailer was stolen. Accordingly, I find that the Plaintiff's claims for Negligence and Bailment for Mutual Benefit are barred by the Statute of Limitations and that the Defendant is entitled to judgment as a matter of law. Accordingly, the Defendant's motion for partial summary judgment as to the Plaintiff's Fifth Cause of Action for Negligence and Sixth Cause of Action for Bailment for Mutual Benefit is granted and the claims are dismissed with prejudice.

C. Plaintiff's Claims for Interest:

As noted above it is undisputed that no written agreement exists between the parties whereby the Defendant agreed to pay interest on the amounts claimed by the Plaintiff. The Plaintiff's claims for interest is therefore is subject to SC Code Ann §34-31-20(A) which states, "[i]n all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest

shall be at the rate of eight and three-fourths percent per annum." "[T]he essential elements of an account stated are (1) that the account is actually stated; and (2) that the parties either expressly or impliedly agreed that it is a true statement and is due to be paid then or at some other specified time. The burden [is] on [the proponent] to prove agreement to the account as stated." *Southern Welding Works, Inc. v. K & S Const Co.*, 286 S.C. 158, 165 (S.C. App., 1985) The recovery of prejudgment interest is only permitted "if the sum is certain or capable of being reduced to certainty." *Vaughn Development, Inc. v Westvaco Development Corporation* 372 S.C. 576, 642 S.E.2d 757 (S.C. App 2007).

While partial performance is sufficient to remove the alleged oral contract between the parties from the Statute of Frauds, it is not sufficient to establish an agreement to pay interest, the amount owed or the terms of payment. It is undisputed that there was no agreement as to the amount or for the payment of interest. Accordingly, I find that the Defendant is entitled to judgment as a matter of law as to the Plaintiff's claims of entitlement to contractual interest and the Defendant's motion for partial summary judgment as to the Plaintiff's claims for interest based on the alleged contract is granted.

D. Plaintiff's Claims for Attorney's Fees:

It is well established in South Carolina that attorneys' fees are not recoverable unless authorized by contract or statute. *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 557 S.E. 2d 708 (S.C. App 2001); *Duke Power Co. v. South Carolina Public Service Com'n*, 284 S.C. 81, 326 S.E.2d 395 (S.C.1984); *Hegler v. Gulf Ins. Co.* 270 S.C. 548, 243 SE2d 443 (S.C. 1978).

Partial performance of the alleged oral contact between the parties, is not sufficient to establish an agreement to pay attorney's fees. It is undisputed that there was no contract

between the parties which provides for the recovery of attorney's fees by the Plaintiff in this action. The Plaintiff has also failed to allege any statute which provides for the recovery of attorney's fees. Accordingly, I find that the Defendant is entitled to judgment as a matter of law as to the Plaintiff's claims for the recovery of attorney's fees and the Defendant's motion for partial summary judgment as to the Plaintiff's claims for attorney's fees is granted.

ACCORDINGLY, IT IS ORDERED that the Defendant's motion for partial summary judgment is denied in part and granted in part as follows;

IT IS ORDERED that the Defendant's motion is denied to extent it seeks partial summary judgment pursuant to the Statute of Frauds (S.C. Code § 32-3-10) as to the Plaintiff's contract claims;

IT IS ORDERED that Defendant's motion for partial summary judgment is granted as to the Plaintiff's Fifth Cause of Action for Negligence and Sixth Cause of Action for Bailment for Mutual Benefit on the grounds that the claims are barred by the Statute of Limitation set forth in S.C. Code § 15-3-530(5) ;

IT IS ORDERED that the Defendant's motion for partial summary judgment is granted as to the Plaintiff's claims for the interest and attorney's fees;

IT IS THEREFORE ORDERED, that the Plaintiff's Fifth Cause of Action for Negligence, Sixth Cause of Action for Bailment for Mutual Benefit, claim for interest and claim for attorney's fees are hereby dismissed with prejudice.

AND IT IS SO ORDERED.



Lexington Common Pleas

**Case Caption:** Twin Bridge Logistics LLC , plaintiff, et al VS Fisher Tank Company  
, defendant, et al  
**Case Number:** 2018CP3201854  
**Type:** Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165

JM

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 Twin Bridge Logistics, LLC, n/k/a )  
 Twin Bridge Transport, LLC, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 Fisher Tank Company f/k/a )  
 Fisher Tank Company, Inc., )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

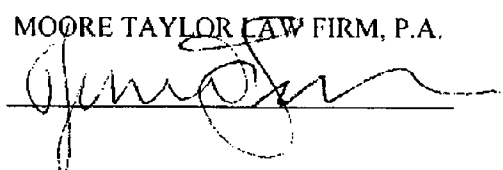
**AFFIDAVIT OF SERVICE**

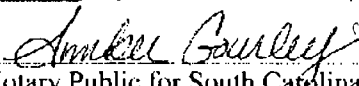
C.A. No.: 2014 - CP - 32-02453

I, Jennie Freeman, law clerk to William H. Edwards, attorney with the Moore Taylor Law Firm, P.A., for the Plaintiff, hereby certify that I have served a filed copy of the **Summons and Complaint** to the following person by depositing same in the United States Mail post office, certified mail, return receipt requested and attached with proper postage affixed thereto, this day:

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>Frances Baine</i>
1. Article Addressed to: Fisher Tank Company Paul A. Windham 104 Fisher Tank Drive Leesville, SC 29070	B. Received by (Printed Name)   C. Date of Delivery Frances Baine   10/14/14
2. Article Number (Transfer from serv)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No 3. Service Type <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
2. Article Number 7014 0150 0001 7824 4035	

FILED  
 2014 OCT 22 P 3 21  
 U.S. MAIL

MOORE TAYLOR LAW FIRM, P.A.  


SWORN to before me this  
21 day of October, 2014  
  
 Notary Public for South Carolina  
 My Commission Expires: 4-21-2024  
 (SEAL)

**ORIGINAL**

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

Twin Bridge Logistics, LLC )

n/k/a Twin Bridge Transport, LLC )

Plaintiff )

vs. )

Fisher Tank Company, )

Defendant. )

IN THE COURT OF COMMON PLEAS  
C.A. NO. 2014-CP-32-02453

AMENDED ANSWER

RETHA A. CARROLL  
CLERK OF COURT  
LEXINGTON, SC

2016 JUL - 1 P 12: 1

FILED

Defendant, Fisher Tank Company ("Fisher"), by and through its undersigned counsel, answers Plaintiff, Twin Bridge Transport, LLC, ("Plaintiff") Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted, explained or qualified is denied and strict proof demanded thereof.
2. Fisher lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 1 therefore denies same and demands strict proof thereof.
3. Fisher admits the allegations contained in Paragraph 2 of the Complaint in so far as Fisher is a corporation organized and existing pursuant to the laws of the State of Pennsylvania, and authorized to and does business in the State of South Carolina.
4. Fisher lacks sufficient knowledge and information to form a belief as to the truth of the allegations regarding the propriety of venue contained in Paragraph 3 and therefore denies the same and demands strict proof thereof.

5. As to Paragraph 4, it is admitted only that Fisher had infrequent and discrete transactions with the Plaintiff to provide delivery and transport services, for which Plaintiff has received full compensation from Fisher; Fisher denies the rest of the allegations in Paragraph 4 of the Complaint and demands strict proof thereof.

6. Fisher craves reference to a definition of “logistics and related services,” contained in Paragraph 5, but denies the rest of the allegations contained in Paragraph 5 and demands strict proof thereof.

7. Fisher denies the allegations in Paragraphs 6, 7, 8, 9, 10 and 11 of the Complaint and demands strict proof thereof.

8. Paragraph 12 is a paragraph of incorporation that requires no response from Fisher. However, to the extent a response is required, Fisher incorporates its answers to Paragraphs 1 through 11 above.

9. Fisher denies the allegations in Paragraphs 13, 14, 15, 16, 17, and 18 and demands strict proof thereof.

10. Paragraph 19 is a paragraph of incorporation that requires no response from Fisher. However, to the extent a response is required, Fisher incorporates its answers to Paragraphs 1 through 18 above.

11. Fisher denies the allegations in Paragraphs 20, 21, 23 and 24 and demands strict proof thereof.

12. Paragraph 25 is a paragraph of incorporation that requires no response from Fisher. However, to the extent a response is required, Fisher incorporates its answers to Paragraphs 1 through 24 above.

13. Fisher denies Paragraph 26, 27, 28, 29, 30 and 31 and demands strict proof thereof.

14. Paragraph 32 is a paragraph of incorporation that requires no response from Fisher. However, to the extent a response is required, Fisher incorporates its answers to Paragraphs 1 through 31 above.

15. Fisher denies Paragraphs 33, 34, 35, 36 and 37 and demands strict proof thereof.

16. Paragraph 38 is a paragraph of incorporation that requires no response from Fisher. However, to the extent a response is required, Fisher incorporates its answers to Paragraphs 1 through 37 above.

17. Fisher denies Paragraphs 33, 40, 41, 42, 43 and 44 of the Complaint and demands strict proof thereof.

18. Fisher denies any and all allegations contained in the WHEREFORE clause and any allegations stating the Plaintiff is entitled to any form of recovery from Fisher.

FOR A SECOND DEFENSE  
INSUFFICIENT CLARITY AND PARTICULARITY

19. The Complaint is insufficiently clear and lacks particularity such that Fisher is unable to answer or to prepare intelligently its defense, so as to avoid being surprised by any issues at trial.

FOR A THIRD DEFENSE  
FAILURE TO STATE A CLAIM (SCRCP 12 (b) (6))

20. Fisher would show that Plaintiff has failed to allege facts sufficient to constitute a cause of action, either on contract or tort; therefore, Plaintiff's Complaint

should be dismissed pursuant to Rule 12(b) (6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE  
NO ACCEPTANCE BY FISHER

21. No meeting of the mind occurred as Fisher rejected Plaintiff's offer, made in or about July 2012, to provide the delivery of goods for a price certain.

22. Without the element of Fisher's acceptance, no contract and thus no breach resulted.

FOR A FIFTH DEFENSE  
STATUTE OF FRAUDS

23. The verbal contract, if any exists, that purportedly bound the parties "for many years" (Paragraph 4) is void pursuant to South Carolina's Statute of Frauds, S.C. Code § 32-3-10.

FOR A SIXTH DEFENSE  
NO PROMISE, NO REASONABLE RELIANCE

24. Fisher did not, either in words or in action, promise an exclusive relationship with Plaintiff.

25. It was neither reasonable nor foreseeable that the isolated transactions between the parties could have induced Plaintiff to incur costs for storage, insurance and equipment maintenance "for the exclusive purpose of meeting [Fisher's] logistics demands" (Paragraph 10).

26. Fisher could not have reasonably expected that the isolated transactions between the parties could have induced Plaintiff's forbearance with respect to Plaintiff's "other customers" *Id.*

FOR A SIXTH DEFENSE  
NO QUANTUM MERUIT

27. After August 1, 21012, Fisher neither knowingly nor voluntarily accepted Plaintiff's delivery and transport services.

28. Fisher did not receive or retain any goods or benefits from such services, if rendered.

FOR A SEVENTH DEFENSE  
FISHER WAS NOT UNJUSTLY ENRICHED

29. Any services Plaintiff rendered in the past, on behalf of Fisher were fully compensated.

30. Plaintiff has not provided delivery and transport services for, or on behalf of, Fisher since August 1, 2012.

31. Any costs incurred by Plaintiff for storage, insurance and equipment maintenance did not enrich Fisher nor conferred any benefit to Fisher.

FOR AN EIGHTH DEFENSE  
CONVERSION

32. If Plaintiff's claim for conversion arises from statutory law, Fisher craves reference to a specific statute.

33. If, however, Plaintiff's claims are based in common law, the tort of conversion is wholly inappropriate as the amounts owed constitute mere obligations on the part of Fisher to pay a debt.

34. As Plaintiff concedes in Paragraph 28, Fisher satisfied its obligations.

35. Moreover, at the time of the discrete transactions, the parties did not agree, verbally or otherwise, that payment would be remitted within ten (10) days of rendering service.

36. Without a binding agreement, Plaintiff had no ownership interest in receiving payments within such time.

FOR A NINTH DEFENSE  
INVOLUNTARY BAILMENT-NO DUTY OF CARE

37. Fisher did not request that Plaintiff deliver goods to Fisher.

38. In July of 2012, after Fisher timely notified Plaintiff that it was rejecting Plaintiff's offer to deliver goods to Fisher for a price certain, Plaintiff, nevertheless delivered shipment using its trailer.

39. Plaintiff neither notified nor obtained Fisher's permission to park its trailer outside Fisher's fence.

40. Therefore, Fisher was an involuntary bailee and owed no duty of care with respect to Plaintiff's trailer.

41. Any actual damages incurred by Plaintiff were the proximate and direct result of the Plaintiff parking its trailer outside Fisher's fence.

FOR A TENTH DEFENSE  
FAILURE TO MITIGATE

42. The Plaintiff failed to take reasonable action to minimize and/or avoid its alleged damages. Accordingly the Plaintiff's is barred from recovery or in the alternative its recovery should be reduced as a result of its failure to mitigate its damages.

FOR AN ELEVENTH DEFENSE  
FAILURE TO ADEQUATELY PLEAD DAMAGES

43. The Complaint fails to set forth he consequential and special damages claimed by the Plaintiff with specificity and therefore such claims are barred.

FOR AN TWELETH DEFENSE  
DAMAGES ARE SPECULATIVE

44. The damages claimed by the Plaintiff are too remote, uncertain and speculative so that the Plaintiff is barred from recovery.

FOR AN THIRTEENTH DEFENSE  
EQUITABLE DEFENSES

45. The Plaintiff's claims are barred by the doctrines of unclean hands, laches, waiver and/or estoppel.


FOR A FOURTEENTH DEFENSE  
STATUTE OF LIMITATIONS

46. The Plaintiff's claims are barred by the applicable statute of limitations.

COUNTERCLAIM  
ATTORNEY FEES

47. As Plaintiff's claims are wholly lacking in legal merit, Fisher prays that it be awarded attorney fees and costs incurred as a result of defending against this suit.

WHEREFORE, the Defendant prays that the Court enter its order dismissing the Plaintiff's complaint in this action, with prejudice and awarding the judgment in favor of the Defendant for the costs and expenses, including reasonable attorney's fees incurred by the Defendant in defending against the frivolous claims made by the Plaintiff.

  
\_\_\_\_\_  
William Joseph Moore  
SC Bar No.: 10236  
Gertz & Moore, LLP  
P.O. Box 456  
Columbia, SC 29202  
(803) 252-1524  
Attorney for Defendant Fisher

Columbia, South Carolina  
June 29, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

C/A NO: 2014-CP-32-2453

Twin Bridge Logistics, LLC n/k/a Twin Bridge  
Transport, LLC,

Plaintiff,

**CERTIFICATE OF SERVICE**

vs.

Flint Equipment Company,

Defendant.

The undersigned, of GERTZ & MOORE, LLP, attorneys for the Defendant Fisher Tank  
Company, does certify that on the 25 day of June 2016, I served a copy of the documents listed  
below upon the attorney for Plaintiff via *United States Mail First Class*, addressed as follows:

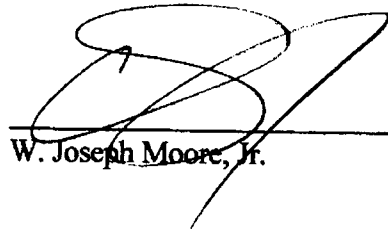
William H. Edwards, Esquire  
Moore Taylor Law Firm, P.A.  
P.O. Box 5709  
West Columbia, SC 29171

BETH A. DARRING  
CLERK OF COURT  
LEXINGTON, SC

2016 JUL - 1 P 12:12

FILED

Document(s) served: **AMENDED ANSWER**

  
\_\_\_\_\_  
W. Joseph Moore, Jr.

June 25 2016  
Columbia, South Carolina

**Gertz & Moore, LLP**  
Attorneys and Counselors at Law  
1416 Laurel Street (29201)  
Post Office Box 456  
Columbia, South Carolina 29202

Frederick A. Gertz  
(S.C., N.Y. & Ga)  
W. Joseph Moore, Jr.

Phong T. Nguyen

June 29, 2016

Telephone (803) 252-1524  
Telecopier (803) 799-6946

Alice S. Moore  
1946 - 2012

William H. Edwards, Esquire  
Moore Taylor Law Firm, P.A.  
P.O. Box 5709  
West Columbia, SC 29171

RE: Twin Bridge Logistics, LLC n/k/a Twin Bridge Transport, LLC vs. Fisher Tank Company  
Civil Action No.: 2014-CP-32-02453

Dear Mr. Edwards,

Enclosed please find the Defendant's First Set of Request for Admissions which are hereby served upon you as counsel for the Plaintiff in the above referenced matter.

Sincerely,

  
W. Joseph Moore, Jr.

encls.

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2014-CP-32-2453

Twin Bridge Logistics, LLC n\k\la Twin Bridge  
Transport, LLC,

Plaintiff,

vs.

Fisher Tank Company f/k/a Fisher Tank  
Company, Inc.

Defendant.

**DEFENDANTS' FIRST SET OF  
REQUEST FOR ADMISSIONS  
TO PLAINTIFF**

TO: William H. Edwards, Esquire, Attorney for the Plaintiff

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Defendant, Fisher Tank Company, ("Fisher"), by and through its counsels, hereby serves upon counsels for Plaintiff, Twin Bridge Logistics, LLC n\k\la Twin Bridge Transport, LLC ("Twin Bridge"), its First Set of Requests for Admissions to which written responses must be served within thirty (30) days from the date of service hereof.

**DEFINITIONS**

1. "You", "Your" or "Plaintiff" refers to Twin Bridge and any and all of Twin Bridge, its employees, officers, agent(s), representative(s), accountant(s), attorney(s) and any person acting or purporting to act on its behalf.
2. "Defendant" refers to Fisher Tank Company.
3. "Document" has the broadest connotation ascribed to it under the Rules of Civil Procedure including, but not limited to, any writing of any kind that will include the original (and in the absence thereof a copy) and each non-identical copy or draft thereof, as well as electronically stored information. The term "document" will include writings, business records, minutes, financial statements, receipts, tax returns, regulatory filings, reports, projections, market studies, contracts, drawings, graphs, charts, photographs, phone records, bank statements,

electronically stored information, and other data compilations from which information can be retrieved, including but not limited to, emails and electronic data files.

4. "Concerning" or "relating" means referring to, describing, evidencing or constituting.

### INSTRUCTIONS

If you fail to respond or object to any request within 30 days of the service of the Requests, the matter shall be deemed admitted under Rule 36. As is more fully set out in Rule 36(a), you must admit or deny each request, and, where necessary, specify the parts of each request to which you object or cannot in good faith admit or deny.

### STANDARD INTERROGATORIES

1. The documents attached hereto and incorporated herein by reference as Exhibit A is a true and correct copy of the Lexington County Sheriff's Department Incident Report pertaining to the thief of the Plaintiff's trailer referenced in paragraphs 36 and 42 of the Plaintiff's complaint.

2. The thief of the Plaintiff's trailer from the Defendant's property as referenced in paragraphs 36 and 42 of the Plaintiff's complaint occurred on or before November 10, 2009

3. That as of November 10, 2009 the Plaintiff knew that its trailer had been stolen from the property of the Defendant.

4. The Plaintiff has no document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to pay interest on outstanding invoices owed to the Plaintiff.

5. The Plaintiff has no document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to pay attorney's fees incurred by the Plaintiff.

6. The Plaintiff has no documents signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to pay costs of collection incurred by the Defendant in seeking to collect any invoices allegedly owed by the Defendant.

7. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to utilize the Plaintiff exclusively for the transportation of Defendants equipment.

8. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to utilize the Plaintiff exclusively for the transportation of outgoing tank materials from the Defendant's Lexington plant..

9. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to utilize the Plaintiff exclusively for the transportation of incoming steel to the Defendants Lexington plant.

10. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to employee or to pay the Plaintiff to provide logistic training or scheduling services to the Defendant's employees.

11. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to employee or to pay the the Plaintiff to provide fork lift operation, load distribution and load security training to Defendant's employees.

12. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to employee the Plaintiff to provide traffic and shipping coordination and management services.

13. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to employ or utilize the Plaintiff to provide hauling services for the Defendant.

14. The invoices which form the basis of the Plaintiff's claims in this action are attached as Exhibits 2 through 11 to the deposition given by Glenn Lamotte as 30(b)(6) designee of Twin Bridge Logistics, LLC n/k/a Twin Bridge Transportation, LLC on November 18, 2014.

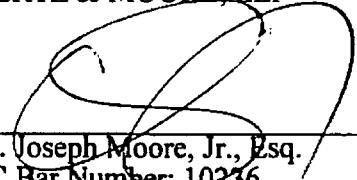
15. With the exception of the trailer which the Plaintiff claims was stolen from the Defendant's plant, as referenced in paragraphs 36 and 42 of the Plaintiff's complaint, the Plaintiff has not asserted any other claim against the Defendant for physical damage to Plaintiff's equipment ("Yard Damage") which occurred on the yard or property of the Defendant.

16. With the exception of the trailer which the Plaintiff claims was stolen from the Defendant's plant, as referenced in paragraphs 36 and 42 of the Plaintiff's complaint, the Plaintiff has not submitted any invoices to the Defendant for Yard Damage.

17. With the exception of the trailer which the Plaintiff claims was stolen from the Defendant's plant, as referenced in paragraphs 36 and 42 of the Plaintiff's complaint, the Plaintiff is not asserting a claim against the Defendant in this matter for Yard Damage.

18. The Invoice attached hereto and incorporated herein by reference as Exhibit B, is the only invoice which the Plaintiff alleges is owed by the Defendant for hauling services provided by the Plaintiff.

GERTZ & MOORE, LLP



W. Joseph Moore, Jr., Esq.  
SC Bar Number: 10236  
1416 Laurel St.  
P.O. Box 456  
Columbia, SC 29202  
(803) 252-1524  
Attorneys for the Defendant Fisher Tank  
Company

This 25 day of June 2016

AGENCY I.D. LEXINGTON COUNTY SHERIFF'S DEPARTMENT  
SCO 320000 INCIDENT REPORT

CASE NUMBER

09104294

1538

EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM <input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Religious <input type="checkbox"/> Social/Club <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Other	
	1. LARCENY OTHER -		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Parking Lot/Garage	0		
	2.		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE		
	FISHER TANK / 2330 TWO NOTCH RD., LEXINGTON, SC				29072			
	INCIDENT DATE	24 HR CLOCK	TO DATE	24 HR CLOCK	DISPATCH DATE TIME 24 HR CLOCK		LOCATION NO.	
11/09/2009	20:00	11/10/2009	08:00	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART TIME	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	
SAME AS VICTIM				#1	J	W	M	
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
115 ROCKYRIDGE RD.				LEESVILLE	SC	29070		
SUBJECT NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	
	LAMOTTE GLENN		#1	J	W	M	62	
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES CLOTHING, PHYSICAL PECULIARITIES, ETC.			
600	240	BRO	BLU					
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
115 ROCKYRIDGE RD.				LEESVILLE	SC	29070		
VICTIM (NO 1) USING ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK				DRUGS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK				TYPE
TWO-MAN VEH <input type="checkbox"/> ONE-MAN VEH <input checked="" type="checkbox"/> DETECTIVE/SPLASMT <input type="checkbox"/> OTHER <input type="checkbox"/> ALONE <input checked="" type="checkbox"/> ASSISTED <input type="checkbox"/>				J. This Jurisdiction, A. State, C.A. of State, U- Unknown				LEXINGTON
NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	
UNKNOWN		U	U		U	11/10/2009		
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.			
		UNK						
SUBJECT (NO 1) USING ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST		
DRUGS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		TYPE		TOTAL # ARRESTED				
VICTIM BILL OF RIGHTS (COPY PROVIDED) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>				BOND HEARING (DATE / TIME)				
VICTIM WISHES TO BE NOTIFIED OF FUTURE LEGAL PROCEEDINGS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>								
<p>NARRATIVE</p> <p>R/O responded to I/L concerning the larceny of a trailer for use with a tractor. During incident times, unknown Subject(s) removed the trailer from the parking lot at Fisher Tank. Comp. advised that Subject(s) drug the trailer across the gravel parking lot and that it had to have BEEN removed with a tractor. Trailer is a 1999 Fontane Stepdeck, black in color with a red number 47 in the back and white number 47 on both sides. Trailer is a spread axle type with 8 wheels with Pennsylvania tag PT 6554-B. Has a FAI sticker of 08/09. VIN 13N2Y8308X1581061. Handling equipment that is strapped</p>								
VICTIM SIGNATURE				JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
				LEXINGTON				
PROPERTY EST	TYPE (GROUP)	Heavy Construction					TOTAL VALUE	
	STOLEN	22000					22000.00	
	DAMAGED							
	BURNED							
	RECOVERED							
	SEIZED							
	FORGED							
	UNKNOWN							
<p>ADMINISTRATIVE</p> <p>SUBJECT IDENTIFIED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p>								
SUBJECT LOCATED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM.CLOSED		<input type="checkbox"/> ARRESTED UNDER 10		<input type="checkbox"/> EX-CLEAR UNDER 18		
		<input type="checkbox"/> UNFOUNDED		<input type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> EX-CLEAR 18 AND OVER		
<p>REASON FOR EXCEPTIONAL CLEARANCE</p> <p>1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DISCLINES COOPERATION 5. <input type="checkbox"/> AVOIDS-NO CLINTSOY</p>								
REPORTING OFFICER (S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER	
Robinson Tom		11/10/2009	612	OFFICER		11/10/09	987	
		11/10/2009		FOLLOW UP INVESTIGATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>				

EXHIBIT  
A

1539

AGENCY I.D. SCO 320000

LEXINGTON COUNTY SHERIFFS DEPARTMENT SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

09104294

NO.

NCIC

EXTD.

- ORIGINAL REPORT
- MODIFIES ORIGINAL
- SUPPLEMENTAL REPORT
- CASE STATUS CHANGE
- ADDITIONAL VICTIMS
- ADDITIONAL OFFENDERS
- ADDITIONAL STOLEN PROPERTY
- ADDITIONAL RECOVERED PROPERTY

Page 2 of 2 Pages

**VICT/SUBJ ID. OVERFLOW**

COMPLAINT  
 VICTIM #  
 SUBJECT #  
 RUNAWAY  
 WANTED  
 WARRANT  
 ARREST  
 JAIL  
 SUMMONS

NAME (LAST, FIRST, MIDDLE) \_\_\_\_\_ VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3

HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL, PECULIARITIES, ETC.

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_ LOCATION NO. \_\_\_\_\_ DAY PHONE \_\_\_\_\_ EVENING PHONE \_\_\_\_\_

VICTIM NO. VISIBLE INJURY:  NO  YES COMPLAINT OF NON-VISIBLE INJURIES:  NO  YES VICTIM USING ALCOHOL:  NO  YES  UNK.  TWO-MAN VEHICLE  DETECTIVE/PL. ASMT.  ALONE  ASSISTED

EXPLAIN: \_\_\_\_\_ DRUGS:  NO  YES TYPE \_\_\_\_\_  UNK.  ONE-MAN VEHICLE  OTHER \_\_\_\_\_

SUBJECT NO. USING ALCOHOL:  NO  YES USING DRUGS:  NO  YES TYPE \_\_\_\_\_  UNK.

**VICT/SUBJ ID. OVERFLOW**

COMPLAINT  
 VICTIM #  
 SUBJECT #  
 RUNAWAY  
 WANTED  
 WARRANT  
 ARREST  
 JAIL  
 SUMMONS

NAME (LAST, FIRST, MIDDLE) \_\_\_\_\_ VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3

HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL, PECULIARITIES, ETC.

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_ LOCATION NO. \_\_\_\_\_ DAY PHONE \_\_\_\_\_ EVENING PHONE \_\_\_\_\_

VICTIM NO. VISIBLE INJURY:  NO  YES COMPLAINT OF NON-VISIBLE INJURIES:  NO  YES VICTIM USING ALCOHOL:  NO  YES  UNK.  TWO-MAN VEHICLE  DETECTIVE/PL. ASMT.  ALONE  ASSISTED

EXPLAIN: \_\_\_\_\_ DRUGS:  NO  YES TYPE \_\_\_\_\_  UNK.  ONE-MAN VEHICLE  OTHER \_\_\_\_\_

SUBJECT NO. USING ALCOHOL:  NO  YES USING DRUGS:  NO  YES TYPE \_\_\_\_\_  UNK.

**NARRATIVE**

to the bed consists of 4 coil racks, 4 side posts, straps and reels with spare tire rack containing 2 spare tires 255.70R22.5. Registration is in the name of M&K Transportation, 845 Pleasant Ave. Dallastown, PA 17313. Value of trailer is \$ 22,000.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY \_\_\_\_\_ JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY \_\_\_\_\_

STATUS:  STOLEN  RECOVERED  FOUND  TOWED  SUSPECT  VICTIM

TYPE:  VEHICLE  GUN  BOAT  LICENSE PLATE  SECURITIES/BONDS/STOCKS  ARTICLE

VIN AND/OR LICENSE NO. 13N2Y8308X1581061 BOAT HULL NO. AND/OR REG. NO. \_\_\_\_\_

SERIAL AND/OR OWNER APPLIED NO. \_\_\_\_\_ STATE PA

YEAR OF REGISTRATION 1999 YEAR OF EXPIRATION 2010 YEAR 1999 MAKE FONTANE TYPE \_\_\_\_\_

MODEL \_\_\_\_\_ STYLE STEPDECK COLOR BLACK BRAND NAME \_\_\_\_\_ CALIBER \_\_\_\_\_

NIC. NO. \_\_\_\_\_ DENOMINATION \_\_\_\_\_ ISSUER \_\_\_\_\_ SECURITIES DATE \_\_\_\_\_

MISCELLANEOUS TRAILER THAT ATTACHES TO A TRACTOR

**PROPERTY EST.**

TYPE (GROUP)	TOTAL VALUE
STOLEN	
DAMAGED	
BURNED	
RECOVERED	
SEIZED	
FORGED	
UNKNOWN	
NONE	

**ADMINISTRATIVE**

SUBJECT IDENTIFIED: YES  NO  SUBJECT LOCATED: YES  NO

ACTIVE  ADM. CLOSED  ARRESTED UNDER 18  EX-CLEAR UNDER 18

UNFOUNDED  ARRESTED 18 AND OVER  EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1  OFFENDER DEATH 2  NO PROSECUTION 3  EXTRADITION DENIED 4  VICTIM DECLINES COOPERATION 5  RETURN AND CUSTODY

REPORTING OFFICER (S) Robinson Tom DATE 11/10/2009 UNIT NUMBER 612 APPROVING OFFICER \_\_\_\_\_ DATE \_\_\_\_\_ UNIT NUMBER \_\_\_\_\_

FOLLOW-UP INVESTIGATION:  YES  NO

772385

Recovery of Charged Back Freight

POSTED

NAME ESG Assoc. 1001 Mithan Street	SHIP TO Fisher Tank Co.
ADDRESS	ADDRESS 104 Fisher Tank Drive
CITY, STATE, ZIP Conshohocken PA	CITY, STATE, ZIP Leesville, SC 29070

ORDER NUMBER	DEPARTMENT Recovery	SALES PERSON S. [unclear]	DATE WHEN SHIPPED 11/10	HOW SHIPPED TRUCK	DATE 9/14/13
--------------	------------------------	------------------------------	----------------------------	----------------------	-----------------

QUANTITY	DESCRIPTION	PRICE	AMOUNT
(1)	Emergency move to steel plant originally damaged steel		
	Originally invoiced by Consulate and now charged back to Fisher Tank due to non-payment Load # 6861950A - 7/9/12		
	Original Steel Order issued by J. Buckley to Fisher Tank and J. Reyes / Co. Gutter ordered expedite to field job and meet delivery to present site Other part of Friday pick up @ Chester, Pa made unavailable last minute. Original Invoice \$1100.00 1 year + 2 months Interest to date \$236.00 Total to date \$1336.00		
	Invoice to: Fisher Tank Co. 104 Fisher Tank Drive Leesville, SC 29070. %/ Paul Wickham		
	Note: Further interest will continue to accrue @ .015% / month or 18% annually.		

KEEP THIS SLIP FOR REFERENCE

EXHIBIT  
B

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

C/A NO: 2014-CP-32-2453

Twin Bridge Logistics, LLC n/k/a Twin Bridge  
Transport, LLC,

Plaintiff,

**CERTIFICATE OF SERVICE**

vs.

Flint Equipment Company,

Defendant.

The undersigned, of GERTZ & MOORE, LLP, attorneys for the Defendant Fisher Tank  
Company, does certify that on the 25<sup>th</sup> day of June 2016, I served a copy of the documents listed  
below upon the attorney for Plaintiff via *United States Mail First Class*, addressed as follows:

William H. Edwards, Esquire  
Moore Taylor Law Firm, P.A.  
P.O. Box 5709  
West Columbia, SC 29171

Document(s) served: *Defendants First Set of Request for Admissions to Plaintiff*

June 25 2016  
Columbia, South Carolina

  
\_\_\_\_\_  
W. Joseph Moore, Jr.



S. Jahue Moore†  
 J. Mark Taylor\*  
 C. Vance Stricklin, Jr.  
 James Edward Bradley†  
 Sheila McNair Robinson  
 Christian G. Spradley  
 C. David Sawyer, Jr.  
 William H. Edwards  
 Stanley L. Myers  
 Jane H. Downey\*  
 S. Jahue Moore, Jr.  
 John C. Bradley, Jr.  
 Melissa K. Moore  
 William B. Fortino  
 Ralph Nichols Riley, Jr.  
 Amber Cary Fulmer  
 Sarah Taylor Cassidy  
 Gregory R. Close  
 -----  
 Robert D. Hazel  
 OF COUNSEL  
 Billy C. Coleman  
 RETIRED

July 29, 2016

W. Joseph Moore, Jr., Esq.  
 GERTZ & MOORE, LLP  
 P.O. Box 456  
 Columbia, SC 29202

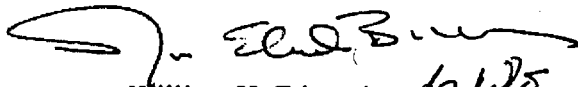
RE: Twin Bridge Logistics, LLC, n/k/a Twin Bridge Transport, LLC v. Fisher Tank  
 Company f/k/a Fisher Tank Company, Inc.  
 C.A.: 2014-CP-32-02453

Dear Joe:

Please find enclosed one (1) copy of the Plaintiff's Responses to Defendant's Requests to Admit for the above referenced matter.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



William H. Edwards *for WHE*

WHE/gea  
 Enclosure  
 cc: Glenn Lamotte

1700 Sunset Boulevard, West Columbia SC 29169 | PO Box 5709, West Columbia SC 29171  
 TEL 803.796.9160 FAX 803.791.8410 www.mooretaylorlaw.com

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
Twin Bridge Logistics, LLC, n/k/a )  
Twin Bridge Transport, LLC, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Fisher Tank Company f/k/a )  
Fisher Tank Company, Inc. )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. No.: 2014 - CP - 32-02453

**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S FIRST SET OF  
REQUESTS FOR ADMISSIONS**

TO: W. JOSEPH MOORE, JR., ESQ., COUNSEL FOR DEFENDANT:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff Twin Bridge Logistics, LLC, n/k/a Twin Bridge Transport, LLC, by and through the undersigned counsel, hereby responds to Fisher Tank Company f/k/a Fisher Tank Company, Inc.'s First Set of Requests for Admission as follows:

**GENERAL OBJECTIONS**

1. To the extent that any Request for Admission requests information concerning communications made between the attorney and client, with the intent that the communications remain confidential, attorney work product or other information that may be privileged, the Plaintiff objects to the Request for Admission and has not provided such privileged information in response to the Request for Admission posed. **Plaintiff reserves the right to amend all discovery responses upon further discovery.**

2. Plaintiff has made reasonable inquiry and search of sources that would be likely to produce information responsive to the Requests for Admission. To the extent that the Request for Admission posed requests that the Plaintiff make other inquiry or search, the Plaintiff objects.

1. The documents attached hereto and incorporated herein by reference as Exhibit A is a true and correct copy of the Lexington County Sheriff's Department Incident Report pertaining to the thief of the Plaintiff's trailer referenced in paragraphs 36 and 42 of the Plaintiff's complaint.

**RESPONSE: Admitted.**

2. The thief of the Plaintiff's trailer from the Defendant's property as referenced in paragraphs 36 and 42 of the Plaintiffs complaint occurred on or before November 10, 2009.

**RESPONSE: Admitted.**

3. That as of November 10, 2009 the Plaintiff knew that its trailer had been stolen from the property of the Defendant.

**RESPONSE: Admitted.**

4. The Plaintiff has no document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to pay interest on outstanding invoices owed to the Plaintiff.

**RESPONSE: Admitted.**

5. The Plaintiff has no document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to pay attorney's fees incurred by the Plaintiff.

**RESPONSE: Admitted.**

6. The Plaintiff has no documents signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to pay costs of collection incurred by the Defendant in seeking to collect any invoices allegedly owed by the Defendant.

**RESPONSE: Admitted.**

7. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to utilize the Plaintiff exclusively for the transportation of Defendants equipment.

**RESPONSE: Admitted. However, there may not be a single written contract, but the documents and conduct and testimony of the witnesses establishes a contract.**

8. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to utilize the Plaintiff exclusively for the transportation of outgoing tank materials from the Defendant's Lexington plant.

**RESPONSE: Admitted. However, there may not be a single written contract, but the documents, conduct and testimony of the witnesses establishes a contract.**

9. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to utilize the Plaintiff exclusively for the transportation of incoming steel to the Defendants Lexington plant.

**RESPONSE: Admitted. However, there may not be a single written contract, but the documents, conduct and testimony of the witnesses establishes a contract.**

10. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to employee or to pay the Plaintiff to provide logistic training or scheduling services to the Defendant's employees.

**RESPONSE: Admitted.**

11. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to employee or to pay the Plaintiff to provide fork lift operation, load distribution and load security training to Defendant's employees.

**RESPONSE: Admitted.**

12. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to employee the Plaintiff to provide traffic and shipping coordination and management services.

**RESPONSE: Admitted.**

13. The Plaintiff has no contact, agreement or other document signed by an officer, agent or employee of the Defendant, whereby the Defendant agreed to employ or utilize the Plaintiff to provide hauling services for the Defendant.

**RESPONSE: Denied.**

14. The invoices which form the basis of the Plaintiff's claims in this action are attached as Exhibits 2 through 11 to the deposition given by Glenn Lamotte as 30(b)(6) designee of Twin Bridge Logistics, LLC n/k/a Twin Bridge Transportation, LLC on November 18, 2014.

**RESPONSE: Denied. Plaintiff reserves the right to amend this response upon further discovery.**

15. With the exception of the trailer which the Plaintiff claims was stolen from the Defendant's plant, as referenced in paragraphs 36 and 42 of the Plaintiff's complaint, the Plaintiff has not asserted any other claim against the Defendant for physical damage to Plaintiff's equipment ("Yard Damage") which occurred on the yard or property of the Defendant.

**RESPONSE: Denied. Plaintiff submitted an invoice describing engine damage due to a steep incline during a job for Defendant. Plaintiff reserves the right to amend this response upon further discovery.**

16. With the exception of the trailer which the Plaintiff claims was stolen from the Defendant's plant, as referenced in paragraphs 36 and 42 of the Plaintiff's complaint, the Plaintiff has not submitted any invoices to the Defendant for Yard Damage.

**RESPONSE: Denied. Plaintiff submitted an invoice describing engine damage due to a steep incline during a job for Defendant.**

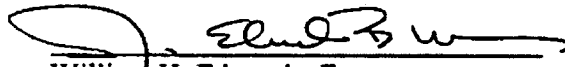
17. With the exception of the trailer which the Plaintiff claims was stolen from the Defendant's plant, as referenced in paragraphs 36 and 42 of the Plaintiff's complaint, the Plaintiff is not asserting a claim against the Defendant in this matter for Yard Damage.

**RESPONSE: Denied. Plaintiff submitted an invoice describing engine damage due to a steep incline during a job for Defendant.**

18. The Invoice attached hereto and incorporated herein by reference as Exhibit B, is the only invoice which the Plaintiff alleges is owed by the Defendant for hauling services provided by the Plaintiff.

**RESPONSE: Plaintiff admits only that the invoice is still due and owed for hauling services. Plaintiff reserves the right to amend this response upon further discovery.**

MOORE TAYLOR LAW FIRM, P.A.



William H. Edwards, Esq.

Attorney for the Plaintiff

1700 Sunset Boulevard

Post Office Box 5709

West Columbia, SC 29171

(803) 796-9160

West Columbia, South Carolina  
July 29, 2016

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
Twin Bridge Logistics, LLC, n/k/a )  
Twin Bridge Transport, LLC, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
 )  
Fisher Tank Company f/k/a )  
Fisher Tank Company, Inc. )  
 )  
Defendant. )  
\_\_\_\_\_ )

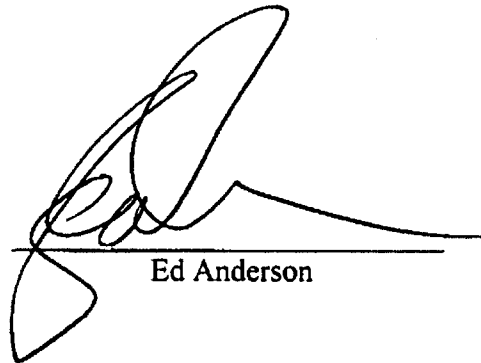
IN THE COURT OF COMMON PLEAS  
C.A. No.: 2014 - CP - 32-02453

**CERTIFICATE OF SERVICE**

I, Ed Anderson, law clerk for William H. Edwards, Esq., of the Moore Taylor, Law Firm, P.A., certify that I have on this day effected service of Plaintiff's Responses to Defendant's Requests to Admit on counsel for Defendant by placing a copy of same in an envelope in the United State Mail, with sufficient postage affixed thereto, addressed as follows:

W. Joseph Moore, Jr., Esq.  
GERTZ & MOORE, LLP  
P.O. Box 456  
Columbia, SC 29202

West Columbia, South Carolina  
July 29, 2016

  
\_\_\_\_\_  
Ed Anderson

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
Twin Bridge Logistics, LLC )  
n/k/a Twin Bridge Transport, LLC )  
 )  
Plaintiff )  
 )  
vs. )  
 )  
Fisher Tank Company, )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
C.A. NO. 2018-CP-32-01854

AFFIDAVIT OF PAUL WINDHAM  
IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

PERSONALLY, APPEAR BEFORE ME, Paul Windham, who being first duly sworn  
deposes and states as follows:

1. I am over eighteen (18) years of age and am competent to testify as to the matters set forth herein.
2. I am a President of Fisher Tank Company and am the General Manager of Fisher Tank Company's location in Leesville, South Carolina.
3. Fisher Tank Company is engaged in the business of design, fabrication and construction of above ground steel storage tanks.
4. Fisher Tank Company currently maintains plants in Chester, PA, Leesville SC and Cropwell, AL. Fisher previously had a plant located in Lexington, SC.
5. Fisher Tank Company routinely contracts with independent common carriers and freight companies to deliver raw steel plate to its plants, to deliver processed tank components to its painting and other subcontractors for preparation and to deliver final tank components to job sites to be used in the construction of above ground steel storage tanks.
6. Fisher Tank Company is not in the freight delivery business. plants or job sites.
7. Transportation of incoming steel delivered to Fisher's plants is arranged by the steel mill from which the steel is purchased and the transportation charges are included in the cost of the steel invoiced by the steel mill to Fisher.

8. Fisher Tank Company did not enter into any agreement, written, verbal or otherwise; wherein it employed or agreed to employ the Plaintiff as its exclusive carrier for the delivery of its tanks or tank materials or for the transportation of incoming steel to Fisher's plants.

9. Fisher Tank Company never promised that it would exclusively use the Plaintiff to deliver its tanks and material or for the transportation of incoming steel to Fisher's plants.

10. Fisher Tank Company based its decision on which freight carrier to utilize solely on which carrier offered the most competitive prices and could deliver the tanks and materials in a timely manner.

11. The Plaintiff was only one of several freight carriers that Fisher used to transport material and tanks. During the period from 2001 to March 2012.

12. Fisher Tank Company employed the Plaintiff on a job by job basis to haul raw steel, tank parts and finished tank components from steel mills to Fisher's plants and between Fisher's plants and its sub-contractors and to job sites.

13. Fisher Tank Company did not employ or contract with the Plaintiff to provide training to its employees.

14. Fisher Tank Company did not employ or contract with the Plaintiff to provide traffic and/or shipping coordination or management services.

15. Fisher Tank Company requires all sub-contractors and freight carriers, to maintain certain liability insurance, and, as is customary in the industry to produce certificates of insurance to confirm coverage. The costs of the insurance is considered by Fisher Tank Company to be a costs of doing business of the sub-contractor and freight carriers and Fishers Tank Company has never agreed to reimburse the parties for the costs of said insurance.

16. Fisher Tank Company has no written or other agreement with the Plaintiff which provides for the payment of interest or service charges on outstanding invoices.

17. Fisher Tank Company has no written or other agreement with the Plaintiff which provides for the recovery of attorney's fees or costs of collection in connection with unpaid or outstanding invoices or any other amounts which either party may claim is due.

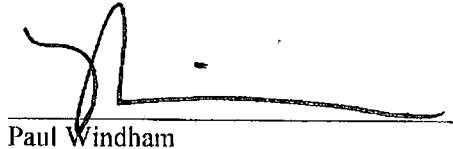
18. Fisher Tank Company was informed that on November 10, 2009, Plaintiff's step-deck trailer ("step-deck") was stolen from outside Fisher's facilities in Lexington, South Carolina.

20. Fisher Tank Company denied any liability for the theft of the Plaintiff's step trailer in 2009.

21. Plaintiff has been paid for all hauling services rendered to Fisher Tank Company and billed by the Plaintiff.

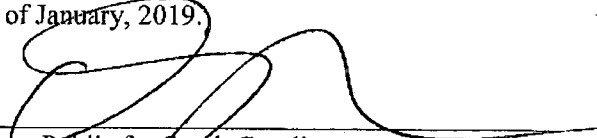
22. He is informed and believes that there may be one outstanding invoices for services billed to Fisher Tank Company by Greentree Transportation in July 2012 in the approximate amount of \$1100. However, Fisher has no record that the Plaintiff performed these services or that the amount of said invoices if owed to the Plaintiff.

FURTHER THE DEPONENT SAITH NOT.



Paul Windham

Sworn to before me this 11  
day of January, 2019.

  
Notary Public for South Carolina  
My commission expires: May 30, 2028

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) C/A #: 2014-CP-32-02453

Twin Bridge Logistics, LLC n/k/a )  
Twin Bridge Transport, LLC, )

Plaintiff, )

v. )

Fisher Tank Company, Inc., )

Defendant. )

**COPY**

**30(b)(6) DEPOSITION OF  
TWIN BRIDGE LOGISTICS, LLC n/k/a  
TWIN BRIDGE TRANSPORT, LLC**

**GLENN LAMOTTE**

\*\*\*\*\*

**Tuesday, November 18, 2014  
10:04 a.m. - 1:30 p.m.**

The 30(b)(6) deposition of Twin Bridge Logistics, LLC n/k/a Twin Bridge Transport, LLC, GLENN LaMOTTE, taken on behalf of the Defendant at the Moore Taylor Law Firm, 1700 Sunset Boulevard, West Columbia, South Carolina on the 18th day of November, 2014, before Mary H. Occhipinti, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



**CREEL COURT REPORTING, INC.**  
1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: And what documentation did you have from Fisher  
2 establishing an account with Twin Bridge?

3 A: What documentation? Do you mean accounting  
4 wise for a line of credit?

5 Q: Well, let me tell you where I'm going. We've  
6 got in here you've filed a lawsuit or Twin  
7 Bridge filed a lawsuit where it's saying that  
8 it had an agreement from Fisher to pay interest  
9 and that Fisher agreed to certain payment  
10 terms.

11 A: Correct.

12 Q: And I'm trying to find out what documentation  
13 exists that specifies those terms.

14 A: With Twin Bridge or Greentree?

15 Q: With Twin Bridge.

16 A: Okay. My arrangement was, what I hauled Monday  
17 through Friday for a week, I hand it in, and  
18 the next Friday I had a check in the mailbox  
19 for that week.

20 Q: Yeah, but did you ...

21 A: And that's what the arrangement was on a  
22 handshake. That's what it was for years.

23 Q: Did you have any written document ...

24 A: I did not have a written document in that  
25 regard other than submitting invoices and



getting a check.

Q: So no written document to provide for the payment of interest?

A: The interest on the payments, if you're talking about what's in the complaint, came from their changing the arrangement.

Q: I'm asking what written documentation there is?

A: I don't have one.

Q: Okay. How about any written documentation for the payment of attorney's fees and cost of collection?

A: No.

Q: Any written documentation that states that the payments are due net 10 signed by Fisher Tank?

A: No. I mean, I'd have to go ... I don't have a written per se contract. I'd have to give you the information in our files in emails and that sort of thing that back up our claim.

Q: The reason I'm asking this is, the law in South Carolina is real specific about when you can collect interest and when you can collect attorney's fees, okay?

A: Okay.

Q: So ... and I'm asking Twin Bridges right now, and you're the 30(b)(6) designee of the