THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Steven C. Kirven, Master in Equity
Case No: 2020-CP-04-00443

Appellate Case No. 2020-000890

Vicki Littlefield……...……Respondent,

v.

Paul W. Cromer, Jr., individually and d/b/a Paul Cromer, Inc.……..Appellant.

INITIAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Did the trial court properly enter judgment in favor of Ms. Littlefield against Mr. Cromer where the evidence established that Mr. Cromer breached a promissory note by failing to remit interest payments when due and failing to pay the principal upon demand?

II. Did the trial court appropriately reject Mr. Cromer's efforts to offset the amount owed to Ms. Littlefield as a result of his breach of a promissory note where the promissory note did not define "bad debts" and the evidence showed that Mr. Cromer's alleged losses were not "bad debts" as the parties intended in the promissory note?

III. Did the trial court correctly find that Mr. Cromer was not entitled to recover any of his alleged losses against Ms. Littlefield where such losses accrued approximately eight years before he asserted his counterclaim and where he failed to assert the loss as an offset to any of the payments he made before the commencement of this litigation?

STATEMENT OF THE CASE

Respondent Vicki Littlefield initiated this action against Appellant Paul Cromer and Paul Cromer, Inc. (collectively, "Mr. Cromer") on February 16, 2016, to collect the amounts due to her as the current holder of the Note first executed in favor of Ms. Littlefield's father, Charles Whitfield. *See* Complaint. She asserted five causes of action in her Complaint including claims for breach of contract, breach of trust with fraudulent intent, fraud, and an accounting. *Id*.

Mr. Cromer responded with a general denial of any liability on the Note and asserted that the Note reflected his long-time partnership with Mr. Whitfield, whereby they agreed to equally split the profits and losses of Mr. Cromer's company. *See* Answer and Counterclaim. He further alleged that the amounts due on the Note were fully paid in 2013 due to his offsetting of a loss on an account. *Id*. He also asserted a counterclaim against Ms. Littlefield seeking to recover more than $220,000 for his alleged overpayment of the amounts due on the Note. *Id*.

After a trial on the matter, which was tried by reference before the Master-in-Equity, the court issued an order finding in favor of Ms. Littlefield and awarded her $257,073.00 for the

remaining principal and unpaid interest on the note. *See* Final Order ("Order"). The court also granted Ms. Littlefield's request for an assessment of attorney's fees and costs against Mr. Cromer in the amount of $56,868.53. *Id*; Attorney's Fee Affidavits. Mr. Cromer sought reconsideration of the Order, which the trial court denied. *See* Motion to Reconsider; Order Denying Motion to Reconsider. This appeal followed. *See* Notice of Appeal.

STATEMENT OF THE FACTS

Ms. Littlefield has known Mr. Cromer for most of her life. *See* Tr. pp. 25-60. They grew up together and Mr. Cromer had a close relationship with Ms. Littlefield's father, Charles Whitfield. *Id.* The relationship was such that Mr. Whitfield and Mr. Cromer worked together in Mr. Cromer's business of selling cars and providing inventory financing to other used car dealers for many years until Mr. Whitfield's retirement. *Id.* After retiring, Mr. Whitfield no longer participated in the business operations but chose to maintain an investment in Mr. Cromer's business in accordance with the terms of the Note. *Id*.

Mr. Cromer executed and delivered the Note to Mr. Whitfield on January 1, 2007. *Id*.; Pl. Ex. 1. As further security for the Note, Mr. Cromer personally guaranteed repayment. *Id.* The principal amount of the Note was Eight Hundred Thousand and 00/100 ($800,000.00) Dollars. *Id.* The Note provided for repayment as follows:

a) Principal. Maker shall pay the Holder the principal sum in full one hundred eighty (180) days after demand.
b) Interest: Interest accruing on the principal sum shall be paid semi-annually on the 15th day of July and January, beginning July 15, 2007.
c) Interest Rate: The interest rate which the Maker agrees to pay on the principal sum is a sum that is equal to fifty percent (50%) of profits on car loans during each calendar year, minus fifty percent (50%) of the bad debts on car loans.

Promissory Note. Mr. Whitfield died on March 24, 2008, leaving his wife, Helen Whitfield, as the holder of the Note. *See* Tr. pp. 27-60. After Ms. Whitfield's death on February 25, 2012, Ms. Littlefield inherited the Note. *Id.*

Mr. Cromer paid Mrs. Whitfield $400,000 of the principal amount on the Note prior to her death. *Id*; Tr. pp. 61-120; Pl. Ex. 4. Plaintiff's Exhibits. He remitted $50,000 of the outstanding principal due on the Note to Ms. Littlefield in 2013. *Id*. Mr. Cromer also continued paying interest twice per year as required until 2013 but, thereafter, defaulted on the payment terms of the Note. *Id*. On July 24, 2015, Ms. Littlefield made a written demand for payment in full on the Note in the principal amount of $350,000 plus accrued interest. *See* Tr. pp. 27-60; Tr. pp. 61-120; Pl. Ex. 8.

After Ms. Littlefield demanded payment on the Note, Mr. Cromer not only refused to honor the demand for payment but also contended that Ms. Littlefield owed him approximately $227,495.80 in overpayments. *Id;* Answer and Counterclaim. The overpayment amount purported to include certain tax payments made by Mr. Cromer that he alleged should have been made by Mr. Whitfield and the value of a vehicle given to Ms. Whitfield.[1] *Id.* He also alleged, for the first time, that he and Mr. Whitfield intended to continue their partnership by entering into the Note and continuing to share the profits and losses of the vehicle financing business including the losses Mr. Cromer says he incurred in 2008 on an account held by Darrell and Brandon Massey (the "Massey Account"). *Id*.

Mr. Cromer financed inventory on the Masseys' used car lot but allowed them to hold the titles for cars before remitting payment for them. *See* Tr. pp. 27-60; Pl. Exs. 2-3. Mr. Cromer's treatment of this inventory was inconsistent with his normal business practice of holding the car

[1] Ms. Littlefield's expert, Dr. Charles Alford, testified that Mr. Cromer never actually paid any taxes on income attributable to the interest payments made on the Note. The record also reflects that Mr. Cromer conveyed the vehicle in Ms. Whitfield in exchange for a different one rather than as payment on the Note. *See* Tr. pp. 61-120.

titles until he received payment. *Id.* As a result of Mr. Cromer's deviation from normal business practices, the Masseys sold many of the cars without making any payment to Mr. Cromer for the inventory financing. *Id.* Although Mr. Cromer pursued a claim against the Masseys and received a judgment in the amount of $282,142.00 in April of 2009, he never collected on the judgment and never allocated any of that amount as a "bad debt" or loss against the required interest payments on the Note. *Id*. In fact, Mr. Cromer submitted documents indicating that he recorded and remitted almost $100,000 in interest payments on the Note to Ms. Whitfield in 2008 alone and recorded some $130,000 more in interest payments on the Note in the following years until Ms. Whitfield's death in 2012. *See* Tr. pp. 61-120; Pl. Exs. 4 and 7.

More than a year after Ms. Littlefield commenced this litigation, Mr. Cromer produced a cancelled check made out to Mrs. Whitfield in the amount of $258,855.75 and demanded credit for the same against the principal balance of the Note. *Id*; Tr. pp. 27-60. He acknowledged that the account from which the $258,855.75 was drawn was a joint account with right of survivorship in his name and Mr. Whitfield's name. *Id*; Tr. pp. 160-200. Although Mr. Cromer admitted that all of the money in the account was deposited by Mr. Whitfield, Ms. Littlefield agreed to credit the amount of the cancelled check against the principal of the Note, leaving $91,144.25 in outstanding principal due on the Note. *Id*.

At trial, each party submitted expert witness testimony regarding the amounts due on the Note. Mr. Cromer's expert, Darrell Hardy, admitted that he and Mr. Cromer had "dropped the ball" and failed to "keep up with the actual computation of the Note." *See* Tr. pp. 120-159; Def. Exs. Mr. Hardy produced several accountings related to the Note during the litigation ranging from a computation of $31,000 owed by Mr. Cromer to Ms. Littlefield to his computation that Ms. Littlefield owed Mr. Cromer in excess of $227,000. *Id*. However, he could reference any evidence to support the losses claimed in his calculations. *Id*. In observing his demeanor at trial, the Master-

in-Equity found his testimony to be "hesitant, disjointed, vague, and confusing." Final Order. When combined with Mr. Hardy's admission on cross-examination that he surrendered his CPA license in 2012 and was prosecuted in federal court for impersonating an IRS agent 2015, the Master-in-Equity determined Mr. Hardy was neither reliable nor credible. *Id.*

Conversely, Ms. Littlefield presented the testimony of Dr. Charles Alford, who opined that Ms. Littlefield was due $91,145 in principal and $165,928.00 in interest payments. *See* Tr. pp. 61-120; Pl. Ex. 4; Def. Exs. In reaching his conclusions, Dr. Alford conducted extensive review of the business relationship between Mr. Cromer and Mr. Whitfield including a review of their individual and corporate tax returns and more than ten years of business records. *Id*. Significantly, Dr. Alford's investigation revealed that Mr. Cromer never recorded any losses related to the Massey Account until after Ms. Littlefield commenced this litigation. *Id*. He also observed that the Note did not provide for any offset in the amount of principal due. *Id*. Dr. Alford presented a concise and well-supported analysis based, in large part, on Mr. Cromer's own records. *Id*. The Master-in-Equity found Dr. Alford's testimony to be compelling and consistent with his extensive experience providing expert witness testimony in state and federal courts in multiple states.[2] *Id*.

In finding in favor of Ms. Littlefield, the trial court rejected Mr. Cromer's conspicuously convenient counterclaim for losses largely attributable to the Massey account and determined that Mr. Cromer had not proven his entitlement to any setoff in the amounts due under the Note. *See* Final Order. The court also awarded Ms. Littlefield $56,868.53 in fees and costs pursuant to a provision in the Note allowing recovery of collection costs including reasonable attorney's fees. *Id.*

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[2] Although he did not find evidence of a partnership between Mr. Cromer and Mr. Whitfield, Dr. Alford also determined that Mr. Cromer would still owe Ms. Littlefield approximately $165,000 for her half of the business profits after considering the Massey Account losses. *See* Tr. pp. 160-200

STANDARD OF REVIEW

The appellate court's review "for a case heard by a Master-in-Equity who enters a final judgment is the same as that for review of a case heard by a circuit court without a jury." *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1990). "On appeal from an action at law that was tried without a jury," the Court may "correct errors of law, but the findings of fact will not be disturbed unless found to be without evidence which reasonably supports the [trial court's] findings." *Blackmon v. Weaver*, 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005). However, when reviewing an action in equity, the Court may resolve questions of fact in accordance with its own view of the preponderance of the evidence though it is not required to disregard the findings at trial or to ignore the fact that the master was in a better position to assess the credibility of the witnesses. *See QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 202, 600 S.E.2d 105, 107 (Ct. App. 2004).

"An action to construe a contract is an action at law. Likewise, '[a]n action for breach of contract seeking money damages is an action at law.'" *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 590, 658 S.E.2d 539, 541–42 (Ct. App. 2008). But, an action for an accounting is one in equity seeking a calculation and judgment of the account balances between the parties. *See Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 427, 673 S.E.2d 448, 453 (2009).

"To determine whether an action is legal or equitable, this Court must look to the action's main purpose as reflected by the nature of the pleadings, evidence, and character of the relief sought." *Lollis v. Dutton*, 421 S.C. 467, 478, 807 S.E.2d 723, 728 (Ct. App. 2017) (quoting *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009)). "The character of the action is generally ascertained from the body of the complaint, but when necessary, resort may also be had

to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action." *Sloan v. Greenville Cty*., 380 S.C. 528, 534, 670 S.E.2d 663, 666-67 (Ct. App. 2009).

Here, Ms. Littlefield only pursued recovery of amounts due to her under the Note. In the opening statements of the trial in this matter, Mr. Cromer's counsel succinctly explained the issue to be decided by the Master-in-Equity as follows:

> The sole issue will be, I believe, the balance due on the promissory note, given various and sundry payments and it's the defendants' position that not only is there no money due on the note, it's his position he has overpaid and is due money back from the plaintiffs because of his overpayment.

Tr. pp. 20-25

Having heard testimony from the parties and their experts, the trial court undertook to resolve the very dispute described by Mr. Cromer – determining what amount, if any, was owed between the parties pursuant to the Note.

This describes a quintessential action at law for the recovery of money based on a written contract. It is irrelevant that Ms. Littlefield characterized part of her claim as an action for an accounting because the actual relief sought in her Complaint, and the relief ultimately awarded by the trial court, involved the construction of the Note and a determination of the amount owed under the Note. *See Newell Contracting Co. v. J.F. & J.D. Blanke*nship, 130 S.C. 131, 125 S.E. 420, 423 (1924) ("It is a mistake to suppose that, because an action at law involves the examination of a long account, the case presents the occasion for the interposition of the court of equity.").

However, Mr. Cromer would still fail to present any basis for reversal of the judgment in favor of Ms. Littlefield under an equitable standard of review. In taking its own view of the evidence in this record, the Court would be compelled to agree with the master's conclusion that

Mr. Cromer defaulted on the Note and manufactured a post hoc excuse for his failure to meet his obligations to Ms. Littlefield.

ARGUMENT

The trial court's judgment in favor of Ms. Littlefield should stand because Mr. Cromer has failed to note any material error of law or unsupported factual finding made in this case. Instead, he simply misrepresents the evidence in the record, disregards his own testimony regarding the alleged losses prior to Ms. Littlefield's demand for payment on the Note, and interposes illogical arguments that have no basis in the trial court's actual conclusions. This appeal is wholly without merit and the Court should affirm the Master-in-Equity's rulings in this case.

I. The trial court correctly determined that Mr. Cromer was liable to Ms. Littlefield for his breach of the promissory note.

Mr. Cromer asserts that he has fully paid the Note and that the Master-in-Equity committed error by failing to afford him credit for the amounts he allegedly loss on the Massey Account. This argument is not supported by the evidence.

The following facts are undisputed:

- The principal amount due on the Note was $800,000.
- The Note required interest payments until the principal amount of the Note was fully repaid.
- The interest payments were due on a semi-annual basis and calculated as half of the profits on the car loans minus half of the bad debts on car loans during each calendar year.
- Mr. Cromer made cash payments against the principal in the total amount of $450,000.
- Mr. Cromer paid Ms. Whitfield the proceeds of an account he held jointly with Mr. Whitfield in the amount of $258,856, and Ms. Littlefield stipulated to this amount as an additional payment toward the principal of the Note despite Mr. Cromer's admission that Mr. Whitfield had deposited all of the funds held in the account.
- Mr. Cromer filed a verified complaint against the Masseys on December 31, 2008, in which he asserted that it was his normal business practice to provide inventory financing for cars and hold the title until such time as the borrower paid off the loan for the car but that he failed to follow his normal business practice with the

Masseys, which resulted in his inability to fully collect amounts due from the Masseys.

- Mr. Cromer received a judgment against the Masseys in April of 2009 but failed to execute on the judgment.
- Mr. Cromer paid the interest amounts as required on the Note until 2013, without any deduction for the alleged losses on the Massey account.

See supra, Statement of the Facts and accompanying references.

At trial, Mr. Cromer and his expert witness gave inconsistent and conflicting testimony regarding the nature of the business relationship between Mr. Cromer and Mr. Whitfield, the intentions of the parties in entering into the Note, and the amounts that should be credited against the Note including the historical treatment of the alleged losses on the Massey account. *See* Tr. pp. 120-159; 160-200. Mr. Cromer and his expert testified that Mr. Cromer and Mr. Whitfield were partners in the used car inventory financing business and the Note reflected their intent to split all the profits and losses on the business. *Id*. They further testified that that they continued to treat the relationship as a partnership in Mr. Cromer's dealings with Ms. Whitfield after Mr. Whitfield's death. *Id.* However, neither Mr. Cromer nor his expert provided any evidence corroborating their testimony. They also presented multiple and significantly varying calculations of the amounts paid by or credited to Mr. Cromer on the Note. *Id.* For example, they initially contended that Mr. Cromer paid income taxes on the interest amounts paid on the Note. However, Mr. Cromer's corporate and individual tax returns showed that no such taxes were ever paid. *Id.* Mr. Cromer sought credit against the Note for a Mercedes vehicle given to Ms. Whitfield but failed to acknowledge his receipt of a Corvette from Ms. Whitfield. *Id.* Additionally, the judgment against the Masseys amounted to $282,142 but Mr. Cromer sought a $200,914 credit on the Note, almost $60,000 more than he would have been entitled to credit against the Note had the master accepted his arguments regarding his entitlement to credit for half of the losses. *Id.*

In contrast, Ms. Littlefield testified that her father's involvement with Mr. Cromer's business ended when he retired and that he only maintained an investment in Mr. Cromer's business as set forth in the Note. *See* Tr. pp. 27-60. Mr. Cromer's own business records supported Ms. Littlefield's testimony in that his accounts reflected a 50/50 split of profits and losses until the execution of the Note in January of 2007. *See* Tr. pp. 27-60, 61-120; Def. Exs. Thereafter, his business records only showed the payment of interest as provided in the Note. *Id*. Ms. Littlefield also presented expert witness testimony. *See* Tr. pp. 61-120. However, unlike Mr. Cromer's expert, Dr. Alford's testimony was consistent with the evidence in the case. *Id.* Specifically, Dr. Alford did not find any evidence of an ongoing partnership as Mr. Cromer contended. *Id.* He also noted that Mr. Cromer's business records never reflected the alleged losses from the Massey account – Mr. Cromer's records showed extensive calculations of the interest payments made on the Note but none of the records included deduction from the principal or interest due on the Note due to the Massey losses. *Id.* The only documents produced by Mr. Cromer reflecting a credit for the Massey losses are documents created after Ms. Littlefield demanded payment. *Id.* Given the consistency between the testimony provided by Ms. Littlefield and Dr. Alford and the other evidence in the case, the master found them to be more credible. *Id*.; Final Order.

Based on this record, the master found that Mr. Cromer was liable to Ms. Littlefield under the terms of the Note for the unpaid principal and unpaid interest without any credit for losses Mr. Cromer incurred in his dealings with the Masseys. *See* Final Order. In making this determination, the master referenced *Kline Iron & Steel Co. v. Superior Trucking Co. Inc.*, 261 S.C. 542, 201 S.E.2d 388, 390 (1973), for the proposition that the amount of "damages recoverable for a breach of contract are those which follow as a natural consequence of the breach or which may reasonably be supposed to have been within the contemplation of the parties at the time the contract was entered into." *See also* Final Order. Applying this proposition to the evidence at trial, the court

found that the purported losses on the Massey Account were beyond the contemplation of the parties and that Mr. Cromer's calculation of the interest on the Note year over year through 2013 reflected the parties' intent to exclude from the Note losses incurred outside the normal course of business, such as the losses on the Massey Account. *See* Final Order. As stated by the court, "[i]t would be an absurd interpretation of the Note to believe that Mr. Whitfield would loan $800,000 to Defendants and anticipate that they would effectively give away over $280,000 of inventory by handing over titles to cars for which they admittedly received no payment." *Id*. Therefore, the master's reliance on *Kline* was appropriate and the record supports his conclusion that neither party intended the Massey losses to be included in the interest calculation.

Mr. Cromer argues nothing in his appeal to refute these facts or legitimately challenge the legal conclusions of the trial court. Accordingly, the Order should be affirmed.

II. The trial court appropriately denied Mr. Cromer's request to deduct from the amounts owed to Ms. Littlefield losses he purportedly incurred on the Massey Account.

Mr. Cromer further contends that the trial court erred in failing to credit the losses he incurred on the Massey Account in determining the amount due on the Note. Mr. Cromer specifically complains that the trial court should have included the Massey Account losses as "bad debts" under the Note. Mr. Cromer's arguments are without merit.

In construing a contract, as the Master-in-Equity was called upon to do in this case, the court's primary objective is to determine and give effect to the parties' intentions. *See RentCo., a Div. of Fruehauf Corp. v. Tamway Corp*., 283 S.C. 265, 321 S.E.2d 199 (Ct. App. 1984). The court will look first to the language of the contract to ascertain the parties' intentions. *See Jacobs v. Service Merchandise C*o., 297 S.C. 123, 375 S.E.2d 1 (Ct. App. 1988). If its contract language is plain, unambiguous, and capable of only one reasonable interpretation, the contract's language

alone determines the its force and effect. *See Jordan v. Security Group, Inc*., 311 S.C. 227, 428 S.E.2d 705 (1993).

A contract is considered ambiguous when the terms are reasonably susceptible of more than one meaning. *See Hawkins v. Greenwood Development Corp*., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997) (citing 17A Am.Jur.2d Contracts § 338, at 345 (1991)). The court must determine whether the language of a contract is ambiguous. *Id*. Once the court finds ambiguity, it may look to other evidence to ascertain the intent of the parties. *Id*. Then, the determination of the parties' intent is a question of fact. *Id*.

Here, the Note allowed for the deduction of "bad debts" from profits on the car loans in calculating the interest amount due in a given year, but the Note did not define "bad debts." The parties disputed the types of losses that could be deducted as a bad debt and the master recognized that Mr. Cromer's arguments at trial regarding deductions for the Massey Account losses actually deviated from his historical treatment of the amounts. Therefore, the court was required to resolve the dispute as to the meaning of "bad debts," which was not apparent from the face of the Note.

Noticeably, Mr. Cromer does not provide any citation to authority or evidence that the master failed to consider in resolving the dispute regarding the intent of the parties with respect to the meaning of "bad debts." Rather, Mr. Cromer argues that the court made improper findings based on negligence or fraud-based principles. However, this argument is a red herring. The master expressly declined to make any findings related to tortious conduct by Mr. Cromer and explicitly noted that his conclusions were based on Mr. Cromer's own testimony regarding his handling of accounts and his treatment of the Massey losses in calculating the interest payments prior to Ms. Littlefield's demand.

Mr. Cromer's citation to *Brown v. Felkel*, 320 S.C. 292, 465 S.E.2d 93 (Ct. App. 1995), is also unavailing. While Ms. Littlefield's Complaint initially included tort allegations, she only

proceeded on her contractual claims at trial and the master only granted relief based on principles of contract law. The most cursory review of the Order and the record reflect this treatment of the case by the master. Therefore, Mr. Cromer's reference to *Brown* is perplexing, because he asks this Court to review findings and conclusions never actually made by the trial court.

At bottom, Mr. Cromer wants this Court to substitute its factual findings for those of the trial court. However, he has failed to point to any error in law or any factual finding that is unsupported by the record. Were the Court to indulge Mr. Cromer and make its own factual findings, the record includes compelling evidence that Mr. Cromer defaulted on the Note and only sought to use the losses on the Massey account to avoid liability for Ms. Littlefield's payment demand, a position at odds with the historical relationship of the parties, with Mr. Cromer's own conduct, and with the evidence concerning the meaning of "bad debts." Accordingly, the Court should affirm the judgment below.

III. The trial court properly applied the statute of limitations in denying Mr. Cromer any recovery on his counterclaim.

Lastly, Mr. Cromer complains that the Master-in-Equity committed error in finding his counterclaim to be untimely. Although Mr. Cromer now seeks to recast his counterclaim as an affirmative defense for setoff or recoupment against his liability under the Note, he never pleaded it as an affirmative defense and never limited recovery under his counterclaim to the amounts he owed to Ms. Littlefield under the Note. It was only in the context of his claim for affirmative relief that the master barred Mr. Cromer's counterclaim under the applicable statute of limitations, which is entirely permissible. [3]

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3 "A recoupment, unlike a counterclaim, only reduces the plaintiff's claim; it does not allow recovery of an affirmative money judgment for any excess over that claim." *Tuloka Affiliates, Inc. v. Moore*, 275 S.C. 199, 202, 268 S.E.2d 293 (1980). Recoupment is a "'defense arising out of some feature of the transaction upon which the plaintiff's action is grounded.'" *Rothensies v. Elec. Storage Battery Co*., 329 U.S. 296 (1946). "Unlike set-off, [recoupment] must grow out of the

South Carolina Code of Laws § 15-3-530(1) provides a three-year statute of limitations for an action upon "a contract, obligation, or liability." "Under 'the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered.'" *CoastalStates Bank v. Hanover Homes of S.C., LLC*, 408 S.C. 510, 517, 759 S.E.2d 152, 156 (Ct. App. 2014) (quoting *Dean v. Ruscon Corp*., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996)).

Mr. Cromer was aware of the losses on the Massey account when the Masseys failed to pay him by the end of 2008, and he unequivocally was aware of the alleged loss when judgment was entered in his favor against the Masseys in April 2009. Yet, Mr. Cromer did not report the purported losses on his corporate or individual tax returns, did not record the losses in the settlement book reflecting the interest amounts owed under the Note, did not deduct any amounts from the interest payments remitted under the Note, and did not assert any legal action against Ms. Littlefield or the prior Note holders until pleading his counterclaim on March 25, 2016. At that point, the losses on the Massey account were seven or eight years old, well beyond the limitations period provided in S.C. Code Ann. § 15-3-530. Given Mr. Cromer's request for an affirmative judgment against Ms. Littlefield, the master simply made clear that Mr. Cromer's efforts to have Ms. Littlefield pay him on the counterclaim was barred by the statute of limitations.

Mr. Cromer argues without citation to any authority that Ms. Littlefield waived her right to assert the statute of limitations as a defense to the counterclaim simply by requesting an accounting. As previously explained, Ms. Littlefield's cause of action for an accounting is a misnomer. The relief she sought through her Complaint was merely entry of a judgment in the

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identical transaction that gave rise to the plaintiff's claim." *Tuloka*, 275 S.C. at 202, 268 S.E.2d at 295. A recoupment defense only allows the defendant "to cut down or diminish the claim of the plaintiff in consequence of his failure to comply with some provision of the contract sought to be enforced, or because he has violated some duty imposed upon him by law in the making or performance of that contract." *Id*. (citations omitted).

amount Mr. Cromer owed under the Note. But, more importantly, the trial court never actually prevented Mr. Cromer from asserting any right to recoupment or reduction in the balance owed to Ms. Littlefield due to the losses on the Massey Account. Instead, the master rejected Mr. Cromer's characterization of the losses as "bad debts" under the terms of the Note. *See* Order ("The court further finds that the language of the Note . . . does not allow for recovery as alleged by [Mr. Cromer], nor does it allow them to reduce the Plaintiff's recovery to zero."). Mr. Cromer's claims failed, not because of any limitations period, but because they were squarely contradicted by the evidence presented at trial. Therefore, the trial court did not err in barring the counterclaim based on the statute of limitations.

CONCLUSION

Regardless of how he spins the facts and record in this case, Mr. Cromer cannot avoid liability for his breach of the Note held by Ms. Littlefield. She presented reliable evidence supporting her claim for the principal and interest due to her under the Note. The trial court rightly dismissed Mr. Cromer's evidence for lack of credibility. Therefore, Mr. Cromer categorically failed to prove his entitlement to any credit for the Massey Account losses.

The Master-in-Equity did not commit any reversible error in law and his factual findings are well-supported by the evidence. For these reasons, the Court should affirm the judgment in favor of Ms. Littlefield in the amount of $313,941.53 plus accrued interest on the judgment and additional attorney's fees and costs as allowed under the Note.

Respectfully Submitted,

s/ *Meliah Bowers Jefferson*

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Dated: October 7, 2020

THE STATE OF SOUTH CAROLINA
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APPEAL FROM ANDERSON COUNTY
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Paul W. Cromer, Jr., individually and d/b/a Paul Cromer, Inc.……..Appellant.

CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the Initial Brief of Respondent and Designation of Matter on counsel of record below this 7th day of October, 2020, by electronic mail to the address listed with AIS as follows:

Joshua B. Raffini, Esq.
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s/*Meliah Bowers Jefferson*
Meliah Bowers Jefferson

W Y C H E

Attorneys at Law

October 7, 2020

Via E-mail
Hon. Jenny Abbott Kitchings
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Re: *Vickie Littlefield, Respondent vs. Paul W. Cromer, Jr., individually and d/b/a Paul Cromer, Inc., Appellant*
Appellate Case No. 2020-000890

Dear Ms. Kitchings:

Please find enclosed for filing the Initial Brief of Respondent Vickie Littlefield in the above referenced case, along with the Certificate of Service of the same.

With highest regards,

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Enclosures

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