THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas, 13th Circuit

Perry H. Gravely, Circuit Court Judge

COMMON PLEAS CASE NO.: 2020-CP-23-01886

Appellate Case No. 2021-000851

Tiger Enterprises & Trading Company Inc., Bonnie Walker and Dwight Walker,

Appellants,

v.

ARO-D Enterprises, LLC, Rudy Dixon, T3 Aviation Inc., and Frank T. Gangi,

Respondents.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

This is an appeal from an order granting summary judgment prematurely on a Claim and Delivery claim, and before the parties could take depositions of the Plaintiff. The gist of the underlying action is a dispute between Appellant and Plaintiff ARO-D Enterprises, LLC (and its owner, Rudy Dixon), regarding airplane parts that Dixon agreed to ship from Nigeria to Appellant in July 2019.

The lower court has erroneously and prematurely concluded, without the benefit of (or opportunity for) adequate discovery by the parties, "that a valid, enforceable agreement did not exist between Plaintiff and [Appellant] with regard to the aircraft parts at issue, it necessarily follows that [Appellant] cannot have a legally cognizable claim against T3 Aviation, Inc. and Mr. Gangi for tortious interference with that non-existent contract."

The lower court order fails to address the applicability or implications of the S.C. Uniform Electronic Transactions Act on the parties exclusive electronic communications in arranging to ship airplane parts from Nigeria to the United States.

The lower court erred by not applying the requirement of a claim for Claim and Delivery and by not addressing those requirements in its order.

The lower court order did not view the evidence in the light most favorable to Appellant.

FACTS AND PROCEDURAL HISTORY

As is set forth in the Affidavit of Dwight Walker filed in this action on June 10, 2020, Appellant and Plaintiff / Respondent's principal, Rudy Dixon, have known each other for over 40 years. Starting in the 2014 time period, Appellant via Walker began communications with Respondent about airplane parts from a crashed Hawker 4000 aircraft in Nigeria. In 2019, those negotiations continued and ultimately led to Respondents arranging to ship some of the airplane parts to Appellant's facilities in Greenville South Carolina, from Nigeria, at Appellant's expense.

Prior to even considering becoming involved in this transaction, on July 24, 2019, by email as all communications were required to occur between these parties on different continents, Appellants sent the required Letter Agreement to Respondents. (Walker Aff., at Ex. 2, filed June 10, 2020). The Letter Agreement stated, ***inter alia***, "this program cannot be terminated as there are monies owed Tiger for the action It has taken." ***Id.*** Respondents, at a minimum, agreed to the Letter Agreement when they subsequently arranged for the parts to be shipped to Appellant.

Respondents ARO-D via Dixon also stated in emails to Respondents T3 Aviation and Frank Gangi in electronic communications, as follows:

- **August 1, 2019**: stating to a third-party in Nigeria, I give "Tiger Enterprise full authorization to sell or trade any parts from the Hawker 4000 aircraft or engine APU, airframes,"[1] (Rule 59 Appellant's Reply at Ex. A, filed June 25, 2021);
- **August 5, 2019**: stating to Frank Gangi, "if you want to buy any parts from the

[1] The "remaining" Hawker 4000 engine and airframe were still in Nigeria and were party of Dixon's promises to Tiger that they would be responsible for brokering / selling those valuable parts as well.

Hawker 4000 you have to go to Tiger not me," (Walker Aff. at 6 of 10, ¶ 24);

- **August 1, 2019**: Dixon emails Walker regarding the subject, "Purchase Order and Invoice to ARO for freight," which transactions occurred without objection at any time from ARO-D (Walker Aff. at Ex. 4);

Dixon apparently remained in communication with Frank Gangi and T3 Aviation, the same parties he previously told on Aug. 5, 2019, "if you want to buy any parts from the Hawker 4000 you have to go to Tiger not me," and decided at some point in time he thought he could get a better deal for himself with them, instead of Appellant. By October 15, 2019, ARO-D / Dixon and Frank Gangi / T3 aviation had enough of a common interest in the matter to be jointly represented at that time by present day counsel to ARO-D / Dixon. Those parties, despite the appearance of new counsel for Gangi / T3 as of June 15, 2020, continue to assert a common interest privilege between themselves and have refused to provide their communications after approximately Sept. 2019.

ARO-D filed its first lawsuit on Nov. 14, 2019, which was later dismissed on March 25, 2019, for lack of capacity to sue due to the fact that the "Plaintiff did not legally exist," at the time of filing. This lawsuit was filed on March 27, 2020.

ARO-D has made numerous motions, including motions for a preliminary injunction and a receivership, each of which were denied by order of the Circuit Court dated June 11, 2020.

ARGUMENT

This appeal presents several questions, each of which is addressed below.

I. SUMMARY JUDGMENT WAS PREMATURELY GRANTED

In *Baughman v. At&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991), the S.C. Supreme Court stated as follows with respect to summary judgments and the required amount of discovery:

> Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); *see also Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the **opposing party has had a full and fair opportunity to complete discovery**. 10A Wright & Miller, *Federal Practice and Procedure* § 2741, p. 543 (1983); 6 *Moore's Federal Practice* para. 56.02[6], p. 56-39 (2d. ed. 1990).

Id. (bold and underline emphasis added.

In *Baughman*, the parties had conducted extensive discovery, much of which was dominated by the defense's extensive discovery. *Id.* at 544 (noting despite "two years into the litigation, Plaintiffs had not yet received satisfactory responses to their interrogatories regarding the substances emitted from the Nassau plant."). Likewise here, ARO-D first attempted to bring this dispute in Greenville County on Nov. 14, 2019, yet Rudy Dixon, ARO-D's sole owner and principal, has evaded being deposed and continues to do so. (June 25, 2021 Reply at 3, noting unilateral cancellations of his deposition). Most recently, on Oct. 25, 2021, the undersigned was informed that Mr. Dixon "was still in the hospital as of 2 weeks ago and he was waiting on a room in a nursing home." As was the case in Baughman, one party (the non-moving party) has been deprived of the opportunity to obtain necessary discovery from the other party (the moving

party).

The record in this case, even if all that is considered is the June 10, 2020 Affidavit of Dwight Walker and Exhibits 1-6 of same, shows that Appellant has done way more than merely to "'show there is some metaphysical doubt as to the material facts' but [has] 'come forward with 'specific facts showing that there is a genuine issue for trial.'" *Baughman* at 545.

Rudy Dixon, as can be seen by the emails in the record, speaks and types a broken form of the English language. He should not be given every benefit of every doubt to compensate for his communication skills. This is particularly true when the June 10, 2020 Affidavit of Dwight Walker sets forth indisputable instances and evidence of an agreement between Appellant and ARO-D / Dixon. *Id.* at ¶¶'s 17-25, and Exhibits 4 and 5. Still further, Dixon himself confirms the existence of the parties' agreement in his written communications with Frank Gangi and others, including stating in an email on July 31, 2019, that Tiger has "full authorization to sell or trade any parts from the Hawker 4000 aircraft," and later referring to Appellant as his "client" (on August 5, 2019), and further stating to Gangi on that same date, "if you want to buy any parts from the Hawker 4000 you have to go to Tiger not me." *Id.* at ¶ 25.

Still further, the lower court orders have ignored the existence of the Letter Agreement (as identified in Dwight Walker's Affidavit at ¶¶'s 26-27, and Exhibit 2). Despite this evidence in the record since June of 2020, the lower court order concludes that Appellant "Defendants have not provided any indication that additional discovery would lead to admissible evidence that a written agreement exists." (April 16, 2021 Order on Third-Party Defendant [Frank Gangi and T3 Aviation's] Motion For Partial Summary Judgment, at 3 of 6).

Even viewed in the light not most favorable to Appellant, Tiger had a written agreement

with Dixon / ARO-D at least until he showed up at their facility in South Carolina on or around August 27, 2019, and refused to sign the Consignment Agreement. Still further, as the Letter Agreement made clear, "this program cannot be terminated as there are monies owed Tiger for the action it has taken." (Walker Aff. at Ex. 2, page 2). Dixon at no time made any effort to settle his debts with Appellant to obtain a release of the subject property.

Perhaps this is due to Dixon's poor communication skills. Perhaps this is due to Dixon being controlled by Frank Gangi who clearly became his source of funding for this litigation at least as early as Sept. 3, 2019, when he was wired $15,000.00 from Gangi (Rule 59 Motion, at 5 of 14, bullet point 5), and certainly by October 15, 2019, when present day counsel to ARO-D emailed the undersigned and stated, *inter alia*, as follows:

> I've been retained by ARO (Rudy Dixon) and T3 (Frank Gangi) regarding a dispute with Tiger Enterprise. The basic outline of the dispute is that ARO purchased and dismantled an airplane in Nigeria. ARO shipped the parts to Tiger, where the parts were to be inventoried. After that, Tiger was supposed to make an offer to purchase the parts or sell them on consignment (details are both fuzzy and in dispute). The parties were unable to reach an agreement on the terms of purchase/consignment and ARO requested the parts to be shipped to T3. In response, Tiger has submitted the attached invoice and demanded payment before anything would be shipped.

Id. (underline emphasis added).

Appellant Tiger submitted its invoice in accordance with the parties' Letter Agreement.

The above email from present day counsel to ARO-D / Dixon, dated Oct. 15, 2019, shows, at a minimum, a factual dispute existed between the parties as to the existence of their written agreement. In addition, as noted at the hearing on the motion on March 9, 2021 (*Id.* at 16 of 37), the parties and the lower court must consider the implications of S.C. Code Ann. § 26-6-10 *et seq*, which is South Carolina's version of the Uniform Electronic Transactions Act ("UETA"). The UETA provides in relevant part, "This chapter applies only to transactions

between parties who agree to conduct transactions by electronic means." S.C. Code Ann. § 26-6-50(B).

ARO-D / Dixon's communications with Appellant were from overseas and he never indicated anything but an intention to conduct the "transaction by electronic means." The lower court orders do not even mention the UETA, indicating that the facts and the law were not applied in the light most favorable to Appellant.

Appellant has been greatly prejudiced by the lower court order prematurely granting partial summary judgments to all opposing parties without the benefit of adequate discovery. Adequate discovery, at a minimum, requires the parties to be able to take the depositions of the Plaintiff in the action that chose to file suit in Greenville County, despite his residence in Nigeria or Florida or Massachusetts or wherever. Absent an initial deposition, the opposing party is deprived of even having an opportunity to explore whether or not they received an appropriate response of responsive documents, or other discovery responses from the opposing party.

The lower court order also fails to set forth the legal basis for granting the claim and delivery remedy to ARO-D. As noted in Appellant's filings, claim and delivery in South Carolina is a statutory remedy. There appears to be some confusion as to which of the following statutory provisions should apply here, S.C. Code Ann. § 15-69-10 as identified in *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 658, 780 S.E.2d 263, 275-276 (2015) (stating, "The cause of action for claim and delivery is governed by South Carolina Code sections 15-69-10 to -210."), or S.C. Code Ann. § 22-3-1310, which appears to be the code to apply in Magistrate's Court. The lower court order neither cites to or references either of these code provisions, and instead, provides references only to S.C. Code Ann. § 36-9-102 and 203.

The remaining errors in the lower court's orders are all related to its refusal to provide Appellant an opportunity to conduct adequate discovery and its conclusion taken in the light most favorable to the Appellant, "that a valid, enforceable agreement did not exist between Plaintiff and [Appellant] with regard to the aircraft parts at issue." *Id.* at 4 of 6.

CONCLUSION

For at least the reasons set forth herein, Appellant respectfully requests that this Court reverse the grant of partial summary judgments, specifically the two April 16, 2021 orders and the July 6, 2021 order, and remand all related matters back to Circuit Court for further proceedings.

Respectfully submitted,

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Greenville, South Carolina
November 11, 2021