CASE NO.
A24A1281

IN THE COURT OF APPEALS
STATE OF GEORGIA

STERLING PLANET, INC.
Appellant

v.

GRP HOLDCO, LLC, GRP MADISON, LLC, and
GRP FRANKLIN, LLC
Appellees

BRIEF OF APPELLEES

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COME NOW, Appellees GRP HoldCo, LLC ("GRP HoldCo"), GRP Madison, LLC ("GRP Madison"), and GRP Franklin, LLC ("GRP Franklin;" and collectively, "GRP," or "Appellees") respectfully submit this brief in opposition to Appellant Sterling Planet, Inc.'s ("Sterling" or "Appellant," and collectively with GRP, the "Parties") appeal of the February 28, 2024 Order on Pending Motions (the "Order") issued by the Georgia State-wide Business Court (the "Trial Court") in *GRP HoldCo, LLC, GRP Madison, LLC, GRP Franklin, LLC v. Sterling Planet, Inc.*, File no. 22-GSBC-0019 (the "Action").[1]

INTRODUCTION

Sterling's meritless appeal asserts waived arguments that should be summarily rejected by this Court. Sterling's new and unpreserved arguments are based on dismissed allegations in Sterling's pleadings by the Trial Court's order on GRP's motion to dismiss, rely on materially misleading interpretations of documents in the record, or are solely based on unfounded statements made by Sterling's principal, Therrell "Sonny" Murphy, Jr. ("Murphy").

This Court should affirm the Trial Court's ruling granting GRP's motion for

[1] Record citations to the records in this appeal are referred to herein as "R1." Record citations to the records in A241282, which is GRP's cross-appeal, are referred to herein as "R2." Sterling's Brief in support of its appeal, dated May 9, 2024, is referred to herein as "Sterling Br." GRP's Brief in support of its cross-appeal, dated May 9, 2024, in A241282 is referred to herein as "GRP Br."

summary judgment dismissing Sterling's promissory estoppel claim. Sterling waived its arguments on appeal by failing to respond to GRP's arguments before the Trial Court that requested dismissal of Sterling's promissory estoppel claim. Even if this Court finds that Sterling did not waive its promissory estoppel argument, Sterling still fails to rebut GRP's arguments.

This Court should further reject Sterling's request to overturn the Trial Court's ruling to disregard certain portions of the Murphy Affidavit. Sterling misreads the Trial Court's holding and has waived its argument regarding the relevance of statements that were disregarded by the Trial Court.

The Murphy Affidavit contains numerous assertions that are or should be known by Murphy and Sterling's counsel to be contrary to the Trial Court's rulings and the documented evidence in the record. The Trial Court properly disregarded certain paragraphs of the Murphy Affidavit because it is riddled with inaccuracies, irrelevant information, lacks evidentiary foundation, and is neither credible nor reliable. This Affidavit has only caused obfuscation, confusion, and delay.

This Court should also affirm the Trial Court's ruling denying Sterling's motion for summary judgment on GRP's property claims. Sterling never previously raised before the Trial Court its new argument that "RECs" are not property under Georgia law. This Court should summarily reject Sterling's new argument as waived.

Moreover, the Trial Court's ruling on GRP's property claims is narrowly premised on Sterling's course of dealings with GRP, Sterling's pre-litigation and litigation conduct, and statements made by Sterling's principal, Murphy, and its attorneys. Sterling's failure to provide **any** evidence from the record or relevant case law to support its position should compel this Court to reject Sterling's appeal.

Sterling's claim of a novel issue is also unfounded. The Trial Court's holding that GRP's property as intangible assets are subject to a conversion claim, was properly decided and cites to multiple Georgia cases, including Court of Appeals cases and which Sterling fails to address here.

PART THREE

STATEMENT OF THE CASE[2]

A. THIS ACTION

To avoid duplication, GRP incorporates its Statement of Case as set forth in its Cross-Appellants' Brief, dated May 9, 2024 in A241282 ("GRP's Cross-Appeal"). (*See* GRP Br. at 4–10.) Furthermore, because the Order resolved three different motions, for ease of reference and to avoid any confusion, below is a summary of

[2] The facts relevant to this appeal are summarized below and discussed in greater detail in the GRP's Statement of Theories of Recovery and Undisputed Material Facts in Support of Plaintiffs' Motion for Partial Summary Judgment, which is incorporated by reference herein. (R1 V4-484–553.)

the briefing that was filed by the Parties.

1. **GRP's Motion for Partial Summary Judgment and for Attorneys' Fees and Costs Pursuant to O.C.G.A. § 9-15-14**

    a. GRP's Brief in Support of their Motions for Partial Summary Judgment and Attorneys' Fees and Costs Pursuant to O.C.G.A. § 9-15-14, dated September 5, 2023. (*See* R1 V4-415–83.)

    b. Sterling's Brief in Support of Opposition to GRP's Motion for Summary Judgment, dated October 2, 2023. (*See* R1 V9-1–45.)

    c. GRP's Reply Brief in Further Support of Their Motions for Partial Summary Judgment and for Attorneys' Fees and Costs Pursuant to O.C.G.A. § 9-15-14, dated October 23, 2023. (*See* R1 V9-398–429.)

2. **Sterling's Motions for Partial Summary Judgment as to GRP's Liability Under Sterling's Counterclaim Count II and as to GRP's Second Through Fifth Causes of Action**

    a. Sterling's Brief in Support of its Motions for Partial Summary Judgment as to GRP's Liability Under Sterling's Counterclaim Count II and as to GRP's Second Through Fifth Causes of Action, dated September 5, 2023. (*See* R1 V6-119–48.)

    b. GRP's Brief in Opposition to Sterling's Motions for Partial Summary Judgment, dated October 2, 2023. (*See* R1 V9-65–86.)

    c. Sterling did not file a reply in support of its Motions for Partial Summary Judgment.

GRP also moved to strike the Affidavit of Therrell "Sonny" Murphy, Jr., dated September 5, 2023 (the "Murphy Affidavit") that was filed as part

of Sterling's Motion for Summary Judgment.

3. GRP's Motion to Strike the Affidavit of Therrell "Sonny" Murphy, Jr. and for Reasonable Expenses and All Additional Relief the Court Deems Appropriate Pursuant to O.C.G.A. § 9-11-56(g)

a. GRP's Brief in Support of its Motion to Strike the Affidavit of Therrell "Sonny" Murphy, Jr. and for Reasonable Expenses and All Additional Relief the Court Deems Appropriate Pursuant to O.C.G.A. § 9-11-56(g), dated October 2, 2023. (*See* R1 V8-114–26.)

b. Sterling's Brief in Opposition to GRP's Motion to Strike the Affidavit of Therrell "Sonny' Murphy, Jr., dated October 16, 2023. (*See* R1 V9-379–95.)

c. GRP's Reply Brief in Further Support of its Motion to Strike the Affidavit of Therrell "Sonny" Murphy, Jr. and for Reasonable Expenses and All Additional Relief the Court Deems Appropriate, dated October 26, 2023. (*See* R1 V9-629–44.)

B. OVERVIEW OF GRP FACILITIES

GRP owns and operates two renewable biomass power plants located in Madison County, Georgia (the "Madison Plant") and Franklin County, Georgia (the "Franklin Plant," and collectively with the Madison Plant, the "GRP Facilities"), which produce renewable energy and generated Renewable Energy Credits ("RECs").

Each GRP Facility generates a total of approximately 30,000-35,000 GRP RECs each month. (R1 V5-464–65.) These RECs are intangible assets that

constitute the property of GRP that can be sold by GRP to others. (R1 V5-1196–97.)

C. STERLING CONTACTS GRP IN 2021 ABOUT PURCHASING RECs FROM GRP

In May 2021, Sterling's principal, Therrell "Sonny" Murphy, emailed GRP employee Jeff Kuehr regarding the RECs generated by the GRP Facilities. (*See* R1 V5-1106–07.)[3] Murphy attached to his email what he characterized as the "REC ownership section" from an agreement between GRP HoldCo and Georgia Power, which stated that "Green Credits relating to the [GRP Facilities] remain the sole and exclusive property of [GRP HoldCo], which [GRP HoldCo] may make use of at [its] discretion." (*Id.*) Murphy stated to GRP that if the "REC ownership section" in the GRP-Georgia Power agreement "has not been changed," then he believed Sterling "could create some real value for GRP." (*Id.*)

Although initial discussions touched on potential selling GRP's RECs, Murphy insisted that specifics could only be addressed after the parties executed a non-disclosure agreement (the "NDA"), which was executed on July 19, 2021. (*See* R1 V5-1109.) Subsequently, on August 19, 2021, Sterling purchased from

[3] Sterling claims that the Parties entered into an agreement in 2015 regarding the sales of RECs (*see* Sterling Br. at 8); however, there are no executed agreements, emails, or any other documentation evidencing such an agreement. Sterling's sole basis for its claims is Murphy's unsupported assertions, which have not been corroborated by anyone else, including his own employees.

GRP 464,481 GRP RECs for $1.00 per REC. (*See* R1 V5-1111–19.) On August 31, 2021, Sterling purchased an additional 75,000 GRP RECs from GRP, also for $1.00 per REC. (*See* R1 V5-1121–25.) These RECs were not Green-e certified. (*See* R1 V5-1111–19, V5-1121–25.) Sterling's August 2021 purchases of these GRP RECs were documented in two written agreements that were executed by both parties. (*Id.*)

D. STERLING RECOMMENDS THAT GRP OBTAIN GREEN-E CERTIFICATION FOR THE GRP RECs

In July 2021, Sterling, through Murphy and Valerie Christopher Johnson, engaged in multiple conversations with GRP's personnel, principally Carey Davis (a GRP Executive Vice President) regarding the possibility of obtaining Green-e certification from the Center for Resource Solutions ("CRS") for GRP's RECs. (*See* R1 V5-1127–29.)[4] Sterling emphasized to Davis that the Green-E RECs had "much higher value than non Green-e." (*See* R1 V5-1185–87.)

On July 19, 2021, the same day that GRP and Sterling executed the NDA, Murphy sent GRP the North American Renewables Registry's ("NAR Registry's") Responsible Party Designation documents. (*See* R1 V5-1127–29.) Murphy claimed

[4] The Green-e certification, offered by CRS, establishes a benchmark for verifying and validating RECs ensuring transparency in the REC market by evaluating the sourcing and impact of renewable energy projects. (*See* R1 V5-1135–38.) The certification process involves evaluating criteria such as the origin of renewable generation, emissions reductions, and adherence to environmental regulations. (*Id.*)

that the "Responsible Party documents [] need to be completed for each [GRP] plant and executed to allow Sterling to register the plants with the North American Renewables Registry (NAR)" (*Id.*)

The NAR Registry is an electronic tracking system that facilitates the sale and transfer of RECs. (*See* R1 V5-1199–1200.) Murphy also stated that NAR registration "is **necessary** before we can begin the process with [CRS] for their Green-e certification" of the GRP Facilities. (*See* R1 V5-1127 (emphasis added).)

The NAR Operating Procedures define a "Responsible Party" as:

> An Account Holder who has been assigned the Registration Rights for a given asset. This gives the designated Account Holder **full and sole** management and authority over the transaction and activities related to the Asset within NAR.

(R1 V5-1197 (emphasis in original).)

The registration rights received by a Responsible Party on the NAR Registry only allows the Responsible Party to manage the Asset on behalf of the Asset's legal owner. (R1 V5-341, at 19:7–21.) The Asset is the renewable energy generator – here, GRP Franklin and GRP Madison. (R1 V5-1192.) There is no change in the legal ownership of the Asset or RECs as a result of being designated a Responsible Party. (R1 V5-344, at 22:23–25.)[5]

[5] Sterling erroneously argues that GRP's transfer of its RECs to Sterling on the NAR Registry evidences the transfer of ownership. (*See* Sterling Br. at 20 n.4.) NAR Registry Administrator, Charles Li, made clear that the transfer of the

On August 24, 2021, Murphy sent another email to a Sterling consultant again attaching Responsible Party Designations and stated, "This is the first step in the certification process for the GRP Plants." (R1 V5-1236.) Murphy also stated that Sterling "will get the [GRP] plants registered with NAR as soon as we get the NAR-Responsible-Party Designation forms executed." (*Id.*)

On November 8, 2021, GRP Franklin and GRP Madison executed Responsible Party Designations with Sterling, and these Responsible Party Designations were submitted to NAR the same day. (R1 V5-1240–41.)

The plain terms of Responsible Party Designations confirms that GRP Franklin and GRP Madison "hold legal title to the Generating Units(s)" specified in those documents, and Sterling's execution of these documents confirm Sterling's understanding that GRP Franklin and GRP Madison held and continue to hold legal title to those Generating Units. (*Id.*)

After being designated as Responsible Party, Sterling was enabled to transact GRP's RECs on the NAR Registry. (R1 V5-1197.) That is all. These Responsible Party Designations did not pass any legal title of GRP's property to Sterling. (R1 V5-344, at 22:23–25.)

Sterling knew that GRP owned its RECs. Sterling's Johnson, in a November

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ownership of RECs is a separate agreement outside the NAR Registry. (R1 V5-341, at 19:7–21.)

11, 2021 email states that "100% of the RECs are owned by GRP." (R1 V5-1243.) Further, the NAR Operating Procedures make clear that the RECs are property of the Assets, which are the Madison Plant and Franklin Plant that are owned by GRP. (R1 V5-1192.)

NAR approved the GRP Facilities for REC sales on the NAR Registry on December 13, 2021. (R1 V5-1245–46.) On January 26, 2022, Sterling submitted tracking attestation for the GRP Facilities to CRS. (R1 V5-1257–59.)

E. STERLING SENDS GRP MULTIPLE DRAFT CONTRACTS

After the GRP Facilities were registered on the NAR Registry and tracking attestation for Green-e certification was submitted to CRS, Abbott, who had recently started working with GRP, contacted Sterling to discuss Sterling's role regarding the GRP RECs. (R1 V5-1262.) On February 1, 2022, at 4:24pm, Murphy responded, stating:

> Charlie,
>
> Please give me a call at your earliest convenience to discuss our overall past and future relationship with GRP. Val told me that you were looking for contracts and that is what I've been working on for the past **seven** years.
>
> I've attached the contract that was negotiated with the purchase of plant.

(*Id.* (emphasis in original).)[6]

Murphy attached an unexecuted contract (the "First Draft Agreement"), dated January 1, 2015. (R1 V5-1263–69.) The named parties of this agreement were Sterling and non-party GreenFuels Energy, LLC. (*Id.*) Nonetheless, Sterling claimed that the First Draft Agreement was enforceable against GRP. (R1 V5-1315, at ¶ 5.) However, the Trial Court held in its July 7, 2023 Order on GRP's Motion to Dismiss Sterling's Counterclaims ("MTD Order") that the First Draft Agreement was not enforceable against GRP because it was not a named party to the agreement. (*See* R1 V2-1365–66.)[7]

[6] Sterling now claims – in direct contravention of what it argued to the Trial Court in response to GRP's motion to dismiss – that Murphy in this February 1, 2022 email was only "attempt[ing] to reduce the parties' agreement to writing" (Sterling Br. at 9–10), but this is clearly belied by the express language in the email where Murphy claimed that he was attaching a contract "that is what I've been working on for the past **seven** years" and that the contract was "negotiated with the purchase of the plant" (R1 V5-1262). (*See* R1 V2-533 (Sterling asserted in its opposition brief to GRP's motion to dismiss that "**[t]he 2015 Agreement placed in writing all the terms and conditions** for Sterling to market and be paid for its marketing services from [GRP]") (emphasis added).)

[7] Sterling erroneously asserts in its Statement of Case that "[i]n 2015, GRP and Sterling formed an agreement that provided for Sterling to be the exclusive marketer for RECs produced by the GRP Plants for a term of six years once the plants were placed in service, with Sterling to receive 20% of the RECs' sales price as compensation." (Sterling Br. at 8.) In support of this incorrect statement, Sterling cites to paragraphs in its Count I cause of action that were dismissed by the Trial Court on GRP's motion to dismiss (R1 V2-968–69, at ¶¶ 4–6, V2-971, at 12–13) and to the Exhibit C Agreements that are drafts and do not contain any of the terms alleged by Sterling. (R1 V2-999–1025.)

1. GRP Rejects Sterling's Second Draft Agreement In 2022

Just 21 minutes after sending the First Draft Agreement, Murphy sent another email to GRP, attaching a different unexecuted "template agreement" dated in 2022 (the "Second Draft Agreement"), and sought GRP's agreement to this Second Draft Agreement:

> Charlie and Adam,
>
> For your information I've attached a template of the agreement to be used in year 8 of my negotiations.

(R1 V5-1407.)

This Second Draft Agreement contained an "80/20 Provision" in its REC Contract Price Provision:

> **REC Contract Price.** Sterling Planet will pay Generator the Contract Price for all RECs purchased from the Projects. **Unless mutually agreed upon otherwise in writing by the Parties, the "Contract Price" shall be calculated as eighty percent (80%) of the Market Price**, less Broker's fees if any. The "Market Price" is defined as the price paid by Sterling Planet's retail or wholesale customer for Project RECs.

(R1 V5-1409 (emphasis added).)

Meanwhile, each of the Exhibit C Agreements attached to Sterling's Second Verified Amended Answer and Counterclaims, dated February 27, 2023 ("Answer & Counterclaims") provide a different REC Contract Price provision that does not contain an 80/20 Provision:

> **REC Contract Price.** For each sales opportunity Sterling Planet uncovers, Sterling Planet will make an offer to Generator Owner documented in substantially the form of a written term sheet as shown on Exhibit 1 for that particular sales opportunity ("Term Sheet"). Generator Owner will determine in its sole discretion if such Term Sheet is acceptable. Generator Owner will work diligently to approve such Term or reject it. If accepted, the "Contract Price" shall be agreed upon in an executed Term Sheet signed by both Parties.

(R1 V5-1361, 1367, 1377.)

GRP refused to execute the Second Draft Agreement and rejected Sterling's request for the 20% commission/fee specified in that agreement. (R1 V5-1416.) Sterling did not attach a copy of this Second Draft Agreement to its Answer & Counterclaims, and instead, Sterling attached three other draft agreements to Exhibit C. (R1 V5-1359–84.)[8]

2. GRP Counteroffers With $150,000 and 4% Commissions

The next day, GRP responded to Sterling's proposed draft agreements with a telephone call and email to Murphy, outlining a suggested generation target and

[8] The Exhibit C Agreements include the First Draft Agreement and two other draft agreements. The Trial Court in its MTD Order held that two of the draft agreements, including the First Draft Agreement, were not binding on GRP because it was not a named party to the agreements. (*See* R1 V2-1365–66.) As for the third draft agreement, the Trial Court held even if it was binding on the Parties, the last day it could become effective was December 31, 2015, so any possible breach would occur after the six-year period expired. (*See* R1 V2-1377–79.) Because the Trial Court found that the three Exhibit C Agreements were not enforceable against GRP in 2022, the Trial Court did not address GRP's other arguments regarding the contract price provision or limitation of liability clause. (*See* R1 V2-1379, at n.36.)

expressing interest in exploring a mutually agreeable structure for selling GRP's RECs moving forward. (R1 V5-1413.) GRP stated they would review Sterling's proposed agreement and respond after reviewing it. (*Id.*)

GRP then made a counteroffer to Sterling, proposing a fixed fee of $150,000, intended in part to compensate Sterling for its services in assisting GRP with obtaining Green-e certification, and a 4% commission for REC sales made by Sterling (contrasting Sterling's proposed 20% commission as set forth in the Second Draft Agreement). (R1 V5-1416.) GRP made this counteroffer following its market analysis for services similar to those provided by Sterling, which indicated that REC sale commissions typically ranged between 1.5% and 4%. (*Id.*)[9]

3. Sterling Rejects GRP's Proposed $150,000 and 4% Commissions

Sterling rejected GRP's counteroffer. (*See* R1 V5-211, at 210:4–11.) On March 25, 2022, Abbott emailed Murphy again, trying to reach an amicable, mutual agreement between the Parties. (*See* R1 V5-1418–19.) Sterling again rejected GRP's attempt to reach an agreement, now claiming the existence of a

[9] Sterling erroneously states in in its Statement of Case that in February 2022 Abbott had "informed Sterling that it would no longer be considered a marketer of GRP's RECS but rather a broker" (Sterling Br. at 9.) Abbott never made that statement to Murphy and there is nothing cited by Sterling to support that statement. (*See* R1 V5-1413, 1416.) Further, Sterling misleadingly implies that Abbott stated he was seeking to "renegotiate" the parties' business arrangement for RECs produced at the GRP Plants." (Sterling Br. at 9.) Again, the record is clear that Abbott never stated he wanted to "renegotiate" any business arrangement between the Parties because there was not one. (*See* R1 V5-1413, 1416.)

"marketing agreement" that governed REC sales between the Parties, but without providing any such contract. (*See* R1 V5-1421–24.)

4. Sterling Keeps 20% Commission Even After GRP Rejected Sterling's Proposed 80/20 Provision

Despite GRP's express rejection of the proposed "80/20 Provision" in the Second Draft Agreement, Sterling still retained 20% of revenue from its sales of GRP RECs. (*Id.*) Sterling's sole basis for the "80/20" compensation was its claim that there was a binding agreement between the Parties. (*Id.* ("I have adjusted the attached invoices that you submitted to conform to our Marketing Agreement and am remitting the corrected amount in accordance with the invoice remittance instructions.") Sterling continued to keep 20% even after GRP demanded that Sterling cease selling GRP's RECs and return GRP's property to GRP. (R1 V5-1715–16.)

F. STERLING CONTACTS A FORMER GRP OFFICER AND OBTAINS AN AFFIDAVIT WITH FACTUALLY INCORRECT INFORMATION

During this same period, and unbeknownst to GRP at the time, Murphy emailed a former GRP president, David Shaffer, in March 2022, and requested that he execute a declaration[10] that would purportedly support Sterling's claim that the Parties had entered an agreement concerning the sale of RECs by GRP. (R1 V5-

[10] Shaffer subsequently executed an affidavit on June 2, 2022 that is substantively identical to the Sterling-drafted declaration. (*See* R1 V5-1356–57.)

1438.) By March 2022, Shaffer had not been employed as president at GRP since October 2018. (R1 V5-629.)

In his email, Murphy clarified the purpose of the declaration as follows:

> Dave,
>
> I've taken the liberty of creating a declaration for you that memorializes our discussion about the Sterling/GRP marketing agreement. I've also attached our 2015 marketing agreement **and an updated 2022 version that we are trying to execute now. I would really like to have your signed Declaration in my files during discussions to update and execute a new marketing agreement**.

(R1 V5-1438 (emphasis added).)

The attached "new marketing agreement" was the Second Draft Agreement that Sterling never filed as an exhibit to Sterling's Answer & Counterclaims and that GRP had already rejected. (R1 V5-1441–44.)

In this rather unconventional situation, Murphy requested Shaffer to execute a declaration (and later an affidavit) that included language asserting the Parties had agreed to a 20 percent commission for Sterling in connection with the sale of the RECs. (R1 V5-1438.) Furthermore, Murphy's sought Shaffer's affirmation that the Parties had executed documents allowing Sterling to establish the necessary platforms for the sale of the RECs in 2022, even though Murphy knew that Shaffer could not have had any such knowledge as he had not been employed by Plaintiff for years. (R1 V5-1487, at 30:13–24.)

Shaffer clarified in a subsequent declaration and in testimony that he was not

aware of any agreement, during his tenure at GRP, by which GRP agreed to pay Sterling a 20 percent commission and that Shaffer had never executed such an agreement on GRP's behalf. (*See* R1 V5-629–31.) In fact, Shaffer stated that he never communicated with Sterling regarding the details of any REC sales made by Sterling. (*See* R1 V5-630–31.)

G. STERLING REFUSES TO RETURN GRP'S ASSETS AND RECS

Over the subsequent months from March 2022 to July 2022, GRP continued their efforts to establish a mutually agreeable arrangement. (R1 V5-1418–19.) However, Sterling persisted in asserting the enforceability of a previously existing agreement between the Parties. (R1 V5-1421–24.)

Then, beginning in July 2022, GRP requested the return of its Assets and RECs, but Sterling refused. (R1 V5-1708–10.) While Sterling claimed to be creating a REC reconciliation report, Sterling continued to sell GRP's RECs. (R1 V5-1708–10; V5-1715–16.) In August 2022, Sterling sold 25,751 GRP RECs in four separate transactions. (R1 V5-1715–16.) Sterling's continued sales of GRP RECs are plainly dated after GRP had demanded that Sterling return those RECs to GRP. (*Id.*)

On or around September 22, 2022, rather than returning the property to GRP or otherwise cooperating with the transfer, Sterling instead sent a proposed temporary forbearance agreement to GRP (the "Temporary Forbearance

Agreement") that would permit Sterling to continue to possess and control GRP's property. (R1 V5-1726–28.) However, GRP did not agree to Sterling's proposed Forbearance Agreement. (R1 V5-175–76, at 174:25–175:7.)

H. GRP COMMENCES LITIGATION

In pursuit of the return of their Assets and RECs, GRP commenced this action on October 31, 2022 and made an Emergency Motion for an Interlocutory Injunction (the "Emergency Motion"). (R1 V5-1745–1825.) The Emergency Motion sought an order compelling Sterling to return GRP's Assets and RECs. (R1 V5-1827–45.)

GRP withdrew its Emergency Motion after Sterling agreed to return the GRP's Assets and RECs on November 18, 2022. (R1 V5-1735–43.) In response to the Complaint, Sterling answered and asserted its Counterclaims. alleging breach of contract and *quantum meruit* claims against GRP that was thereafter amended twice by Sterling. (R1 V5-1271–1405.)

Subsequently, GRP filed a Motion to Dismiss, requesting dismissal of Sterling's Counterclaims. (R1 V5-1858–85.) On July 7, 2023, the Trial Court partially granted GRP's motion and dismissed Counts I and III of Sterling's Counterclaims which alleged breaches of a binding agreement between the Parties. (R1 V2-1342–97.)

PART FOUR

ARGUMENT AND CITATION OF AUTHORITIES

The Court of Appeals reviews the denial of summary judgment *de novo*. *See Hathaway Dev. Co., Inc. v. Am. Empire Surplus Lines Ins. Co.*, 301 Ga. App. 65, 66 (2009). Summary judgment should be granted when the movant shows "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." O.C.G.A. § 9-11-56(c). If the moving party meets its initial burden of proof, the nonmoving party cannot rely on mere allegations or denials in its pleadings. O.C.G.A. § 9-11-56(e).

> A party can successfully dismiss a claim on summary judgment,
>
> by showing the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of [the adverse party's] case. If there is no evidence sufficient to create a genuine issue as to any essential element of [the adverse party's] claim, that claim tumbles like a house of cards. All other disputes are rendered immaterial.

Lau's Corp. v. Haskins, 261 Ga. 491, 491 (1991).

I. THIS COURT SHOULD AFFIRM THE ORDER GRANTING SUMMARY JUDGMENT DISMISSING STERLING'S PROMISSORY ESTOPPEL CLAIM

"The essential elements of promissory estoppel are: (1) the defendant made a promise or promises; (2) the defendant should have reasonably expected the plaintiff to rely on such promise; (3) the plaintiff relied on such promise to its detriment; and (4) an injustice can only be avoided by the enforcement of the

promise, because as a result of the reliance, plaintiff changed its position to its detriment by surrendering, forgoing, or rendering a valuable right." *Hendon Props., LLC v. Cinema Dev., LLC*, 275 Ga. App. 434, 438–39 (2005) (quotation and punctuation omitted)

A. Sterling Waived Its Newly Made Promissory Estoppel Arguments On Appeal

Sterling failed to respond to each of GRP's three arguments seeking the dismissal of Sterling's promissory estoppel claim in GRP's motion for summary judgment before the Trial Court. (*See* R1 V9-35–37; *see also* R1 V4-36–37, V9-415–17) Sterling now attempts to rebut GRP's arguments by raising multiple **new** arguments on appeal that it did not present to the Trial Court and did not preserve for appeal. (*See* Sterling Br. at 12–22.) Sterling's new arguments were not raised before the Trial Court and are waived. *See Song v. eGPS Solutions I, Inc.*, 899 S.E.2d 530, 539 (Ga. App. Mar. 12, 2024) (party "did not raise th[e] argument in the trial court; therefore, we do not consider it"); *Pinnacle Properties V, LLC v. Mainline Supply of Atlanta, LLC*, 319 Ga. App. 94, 100 (2012) (appellate courts "do not consider whether summary judgment should have been granted for a reason not raised below") (citation and punctuation omitted).

When responding to a motion for summary judgment, the responding party has "a statutory duty 'to produce whatever viable theory of recovery they might have or run the risk of an adjudication on the merits of their case.'" *Pfeiffer v.*

Georgia Dep't of Transp., 275 Ga. 827, 828 (2002). Once the moving party "points out that there is an absence of evidence to support the [responding party's] case, the burden then shifts to [the responding party,] who '***must*** point to specific evidence giving rise to a triable issue." *Id.* at 828–29 (emphasis in original).

Here, GRP made three arguments requiring dismissal of Sterling's promissory estoppel claim, none of which Sterling addressed in response to GRP's motion for summary judgment:

1. There is nothing in the record showing that GRP promised Sterling the right to sell GRP's Green-e RECs nor that GRP would compensate Sterling for "building the platform, infrastructure and certifying the RECs." (R1 V4-457.)

2. There is nothing in the record showing that any of the promises Sterling alleges were made were not vague, indefinite, or promises of uncertain duration. (*Id.*)

3. There is nothing in the record showing Sterling's reliance on any purported promises made by GRP were reasonable. (*Id.*)

Sterling's appeal on this issue must be rejected because Sterling failed to address GRP's arguments in its Brief in Opposition to Plaintiffs' Motion for Summary Judgment; Sterling instead only addressed unjust enrichment and *quantum meruit*, and did not make any arguments regarding promissory estoppel or address any of the arguments made by GRP regarding promissory estoppel. (R1 V9-35–37.) Consequently, Sterling has waived any arguments in response to GRP's motion for summary judgment regarding promissory estoppel. Therefore,

the Trial Court's granting of summary judgment dismissing Sterling's promissory estoppel claim should be affirmed. (*See* R1 V10-47–50.)

B. Sterling Fails To Provide Any Specific Evidence Rebutting GRP's Arguments, And This Court Should Affirm The Dismissal Of Sterling's Promissory Estoppel Claim

Even if this Court finds that Sterling did not waive its argument regarding promissory estoppel, Sterling still fails to rebut GRP's arguments. Despite eight months of discovery, involving the exchange of thousands of pages of documents and the depositions of ten witness, including the corporate representatives of the Parties and APX, which administers the NAR Registry, Sterling relies exclusively on the unfounded allegations set forth in its Answer & Counterclaims to support its promissory estoppel cause of action.

Sterling cites six paragraphs in its Answer & Counterclaims (R1 V2-968–69 (Count I, ¶¶ 3–5); R1 V2-977–78 (Count II, ¶¶ 32–34)) in support of its assertion that GRP made a promise to Sterling regarding the sale of RECs. (*See* Sterling Br. at 13–14.) However, this Court should disregard the first three paragraphs (Count I, ¶¶ 3–5) as they were allegations in Sterling's Count I Breach of Contract claim against GRP, which the Trial Court had dismissed on GRP's motion to dismiss and is not at issue in this appeal. (*See* R1 V2-1386.)

Sterling's citation to the other three paragraphs (R1 V2-977–78 (Count II, ¶¶ 32–34) also fails to establish any cause of action for promissory estoppel.

Paragraphs 32–33 are not appliable to promissory estoppel because they pertain to the purported agreement between the Parties. *See* Sterling Br. at 13 (¶ 32) (Sterling "asserts a breach of the parties' agreement …."); *Id.* at 14 (¶ 33) (GRP "promised the term of the agreement would be for six years …."). Further, it is unclear if the "agreement" referred to in paragraphs 32–33 pertains to any of the draft agreements attached to Answer & Counterclaims or some other agreement. Sterling had previously argued that the terms between the Parties were memorialized in the Exhibit C Agreements[11] but having lost on that position, Sterling now appears to make a new factual argument on appeal that it was only seeking to "reduce the parties' agreement to writing in 2022," as opposed to its initial claims that the agreement had been memorialized in 2015. (*See* Sterling Br. at 9.)

The only statement that could potentially support a promissory estoppel claim would be paragraph 34, but it is clearly a vague statement not sufficient to create a genuine issue of whether there is promissory estoppel. *See Woodstone Townhouses, LLC v. S. Fiber Worx, LLC*, 358 Ga. App. 516, 531 (2021)

[11] "Sterling maintains that the parties agreed to the terms and conditions as stated in the writing in the 2015 Agreement which it attached as Exhibit 'C' to it its Counterclaims. Sterling has pled with specificity **all the material terms which were agreed to by the parties at the time the Agreement was entered into and manifests the parties' intent**, leaving no question about the parties' obligations to each other." (R1 V2-542–43 (emphasis added).)

("Although a promise need not meet the formal requirement of a contract to support a claim for promissory estoppel, it must have been communicated with sufficient particularity to be enforced"); (*see also* R1 V10-47–48.)

The Trial Court correctly held that these allegations fail to establish a genuine issue of fact for promissory estoppel as they do not show "**who** made the promise, **when** it was made, **where** it was made, or any other relevant factual circumstances." (R1 V10-47–48 (emphasis in original).) There is absolutely no factual detail supporting Sterling's claims of a purported promise made by GRP regarding the sale of RECs except for the self-serving affidavit submitted by Murphy and the disregarded Shaffer affidavit.[12] As for Shaffer's affidavit, which was drafted by Sterling, the Trial Court disregarded the statements regarding the existence of any agreement between the Parties regarding the sale of RECs because the Trial Court ruled that his statements on that issue were not made on personal knowledge.[13]

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[12] Sterling argues that GRP's statement in its Motion for Summary Judgment, claiming "the record is clear that GRP never made a promise to Sterling" is based on the Trial Court's dismissal of Sterling's breach of contract claims. (Sterling Br. at 14.) This is incorrect. GRP's assertion stems from the fact that there is not a single piece of documentation evidencing any promise made by GRP, apart from Murphy's self-serving affidavit. (*See* R1 V4-456–57.)

[13] Sterling has not appealed this portion of the Trial Court's ruling disregarding the statements from Shaffer's affidavit regarding any agreement between the Parties because "it appears that Shaffer's statement was not made upon his personal knowledge." (R1 V10-48–49, n.51.) Shaffer testified that when he executed the Sterling-drafted affidavit "**it wasn't important to me to be very truthful**." (R1

Therefore, Murphy's unfounded statements in his affidavit standing alone fail to establish a genuine issue of fact regarding the sale of its RECs to Sterling because they provide no factual detail. *Reuben v. First Nat'l Bank of Atlanta*, 146 Ga. App. 864, 866 (1978) (affirming dismissal of promissory estoppel claim because no particulars regarding construction loans were shown nor was there a showing the party was "obligated to accept" the loans).[14]

Georgia courts routinely rule that self-serving and conclusory affidavits such as Murphy's, "in absence of substantiating facts, are insufficient to create a factual issue when demonstrably opposed by business record evidence." *John C. Wilson Co., Inc. v. Regions Bank*, 352 Ga. App. 624, 625 (2019).[15] *See also Jones v. Bank of America Mortg.*, 254 Ga. App. 217, 217 (2002) ("The gravamen of Jones's

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V5-1494–95, at 37:23-38:8 (emphasis added).) Further, Sterling knows that Shaffer recanted the Sterling-drafted affidavit in subsequent testimony at deposition, and prior to that, Shaffer recanted the Sterling-drafted affidavit in another written declaration. (R1 V5-629–31.) Shaffer also specifically recanted the statements made in paragraphs 9 and 10 in the Sterling-drafted affidavit and upon which Sterling continues to improperly rely. (R1 V5-630.)

[14] In the section Sterling claims contains "[a]dditional record evidence" in support of its promissory estoppel claim (Sterling Br. at 19–22), Sterling merely reiterates the same assertions made by Murphy in his Affidavit without any record citations.

[15] Sterling's citation to *Rolland v. Martin*, 281 Ga. 190, 191 (2006) is inapposite as that case pertained to a prisoner seeking *habeus corpus* relief where no other factual information was available. In contrast, the Trial Court here found that many of Murphy's statements in his Affidavit consisted of "unsupported conclusions of law and self-serving, conclusory statements not supported by fact or circumstances." (*See* R1 V10-20–27; *see also* R1 V8-114–26, V9-629–44.)

argument is that the affidavits he and his wife, Callie Jones, filed in response to the summary judgment motion create a genuine issue of material fact … Contrary to Jones's argument, in the absence of substantiating facts, the affidavits are self-serving and conclusory and are therefore insufficient to create an issue for trial."); *Hobbs v. Western Surety Co.*, 247 Ga. App. 658, 658 (2001) (same).

Additionally, the Trial Court properly found that Sterling failed cite to any specific evidence showing how it 'reasonably relied' on GRP's purported promise when GRP expressly rejected the terms of a 20 percent commission proposed by Sterling in 2022 before any RECs were ever sold by Sterling. (R1 V10-49–50.) Despite this, Sterling proceeded to sell GRP's RECs without GRP's knowledge. (*See* R1 V5-1421–24.) Therefore, the Trial Court's order dismissing Sterling's promissory estoppel claim should be affirmed.

C. Sterling Misinterprets The Trial Court's Ruling Regarding Paragraphs 6, 7, and 29 Of Murphy's Affidavit.

Sterling misinterprets the Order regarding paragraphs 6, 7, and 29 of Murphy's Affidavit, claiming that the Trial Court disregarded those paragraphs solely because they were "unsupported conclusions or otherwise demonstrably opposed by business record evidence." (Sterling Br. at 23.) The Trial Court properly noted that those paragraphs either contained unsupported conclusions or were demonstrably opposed by business record evidence. (R1 V10-24.) However, the Trial Court ultimately disregarded the statements for a different reason: "[s]uch

statements are ultimately irrelevant for determining liability on the Motions for [Summary Judgment] and **thus the Court does not consider them on that basis**." (R1 V10-25 (emphasis added).)

Sterling has not argued that the Trial Court improperly ruled the statements were irrelevant to the motions for summary judgment, thereby waiving that argument for appeal.[16] Furthermore, a review of the Exhibit C Agreements (R1 V5-1359–84) clearly shows that Murphy's unfounded statements in paragraphs 6, 7, and 29 of his Affidavit are contradicted by the plain terms of the agreements and conflict with the Trial Court's Order dismissing Sterling's breach of contract claim. (*See* R1 V2-1356–80.) Therefore, Sterling's appeal on this issue should be rejected and this Court should affirm the Trial Court's ruling disregarding Paragraphs 6, 7, and 29.[17]

[16] This Court should reject Sterling's request regarding the other paragraphs disregarded by the Trial Court (Sterling Br. at 25) because Sterling fails to show how these statements are not "unsupported conclusions or are otherwise demonstrably opposed by business record evidence." (*See* R1 V10-21–23 (Trial Court's collection of cases showing that it may disregard self-serving affidavits on summary judgment); *see also supra*, at 26.)

[17] The Trial Court's complete analysis as to why multiple statements in the Murphy Affidavit were being disregarded is located at R1 V10-20–25. Further, GRP's arguments as to why these statements should be struck by the Trial Court are located at R1 V8-114–26 and R1 V9-629–44 and are incorporated herein.

II. THIS COURT SHOULD AFFIRM THE TRIAL COURT'S DENIAL OF STERLING'S MOTION FOR SUMMARY JUDGMENT SEEKING DISMISSAL OF GRP'S PROPERTY CLAIMS

Notably, Sterling seeks to appeal only the portion of the Order denying its Motion for Summary Judgment against GRP's claims for conversion and intentional interference with property rights based on its argument that "environmental attributes" and "RECs" are not property subject to conversion under Georgia law. (*See* Sterling Br. at 3, 33–34.) Sterling, however, does not appeal the portion of the Order granting Summary Judgment for GRP, which established that GRP had proven the first and second necessary elements of conversion. For the reasons explained herein, Sterling's appeal is invalid and should be rejected by this Court.

A. Sterling Waived Any Arguments Regarding Whether "RECs" Are Property Subject To Conversion

Similar to Sterling's new and unpreserved promissory estoppel arguments, Sterling's argument on appeal that "RECs" are not property subject to conversion was never asserted before the Trial Court and, therefore, has been waived. *See Pfeiffer*, 275 Ga. at 828.

Sterling instead made three other arguments to the Trial Court in support of its motion for summary judgment:

1. GRP cannot establish title to the property or right of possession. (R1 V6-133.)

2. GRP cannot establish Sterling held GRP's RECs. (R1 V6-134.)

3. GRP cannot establish damages under a claim for Conversion as such damages are too remote and speculative. (R1 V6-134–37.)

Sterling never previously argued that "RECs" were not property subject to conversion, and Sterling's appeal on this issue should be rejected as waived.

B. Sterling Fails To Show That "Environmental Attributes" and "RECs" Are Not Property Subject To Conversion As A Matter Of Law

Even if not deemed waived, Sterling's bases for declaring the Trial Cout's rulings erroneous are meritless: (1) the Trial Court conflated "RECs"[18] and "environmental attributes," (Sterling Br. at 30–33); (2) what it describes as the Trial Court's "sweeping statement" that the instruments at issue – whether "RECs" or "environmental attributes" – constituted property (*id.* at 26–30) and (3) the Trial Court's "imprecise use of industry terms of art" that would supposedly impact "subsequent litigation in this arena" (*id.* at 31).

Sterling's argument regarding the alleged conflation of the terms "environmental attributes" and "RECs" fails because it ignores the Trial Court's

[18] The U.S. Environmental Protection Agency defines a renewable energy certificate as "a market-based instrument that represents the property rights to the environmental, social, and other non-power attributes of renewable electricity generation. **RECs are issued when one megawatt-hour (MWh) of electricity is generated and delivered to the electricity grid from a renewable energy resource**." *See* https://www.epa.gov/green-power-markets/renewable-energy-certificates-recs (emphasis added).

extensive analysis of the record, including contracts at issue in this Action, Sterling's pre-litigation conduct, Sterling's conduct and statements made in pleadings, depositions, and arguments during litigation (including by Sterling's attorneys), and Sterling's use of these terms throughout Sterling's relationship with GRP. (*See* R1 V10-31–34.)

Sterling argued in its Motion for Summary Judgment that GRP never owned the "RECs" generated by the GRP Facilities and instead only owned the right to the "environmental attributes attributable to the production of renewable energy." (R1 V6-15.)

The Trial Court rejected Sterling's position, citing Sterling's purchases of RECs pursuant to written contracts: "Sterling's **purchases** under the RECPAs [contracts with GRP] further refute any purported distinction between 'RECs' and 'environmental assets' that Sterling argues undermines GRP's title to the allegedly converted property." (R1 V10-34, n.41 (emphasis added).) Sterling surprisingly appears to agree with the bases of the Trial Court's analysis in its Brief, as it asserts that a "far more prudential course would be to simply leave such issues to the parties' agreement, as recommended by the leading literature." (Sterling Br. at 30.) However, Sterling fails to cite any language from the REC agreements between the Parties at issue in its appeal. Instead, it refers to a "model" REC

agreement that is not pertinent to this Action and is not included in the record. (*See* Sterling Br. at 31–32.)

The Trial Court further concluded that the record undermined Sterling's position that an "environmental attribute" lacked value and could not be the subject of a conversion claim. Specifically, the Trial Court determined that "Sterling's **prior purchases of GRP's RECs under the RECPAs belie Sterling's argument** that environmental attributes cannot be valued while in 'inchoate form' given that Sterling paid GRP '$1.00 per MWH.'" (R1 V10-34 (emphasis added); *see also* R1 V10-30–33.)

Were that not enough, the Trial Court also found that that Sterling understood that GRP had ownership and transfer rights associated with the renewable energy generated by the GRP Facilities, which produce renewable energy and generated RECs based on Sterling's conduct and course of dealings with GRP, including by reviewing interactions between the Parties at issue in the Action:

> For example, Sterling recognized GRP's ownership and transfer rights when Sterling: (1) reached out to GRP in May of 2021 to discuss an arrangement to sell or purchase environmental attributes or RECs generated from the GRP Plants' energy production; (2) acted as the Responsible Party to transact environmental attributes generated by GRP's Assets on the NAR Registry on GRP's behalf; (3) executed the RECPAs and purchase environmental attributes or RECs from GRP; and (4) proposed the Draft Forbearance Agreement, contemplating that GRP would be the one "contract for the sale of the REC's [sic] and

> receive 100% of the purchase price subject to the fee charged by [Sterling as] Marketer."

(R1 V10-31–32, n.37.)

In attempting to undermine this substantial record, Sterling's cited to paragraph 41 of Murphy's Affidavit in support of its Motion for Summary Judgment. (R1 V6-133.) But the Trial Court struck that paragraph as an unsupported conclusion of law. (R1 V10-23–24.)

For all of Sterling's argument in its appeal that the property rights should be determined by the Parties, Sterling fails to cite to any part of the record in asserting that the Trial Court's ruling is erroneous, (*see* Sterling Br. at 30–38), which stands in stark contrast to the Trial Court's extensive review of the record (R1 V10-30–33). Thus, this Court should reject Sterling's argument because it is evident from the record that Sterling failed to provide any factual basis for its Motion for Summary Judgment, and that, for the reasons presented, the Trial Court correctly ruled that "RECs" and "environmental attributes," as construed by the Parties, constituted intangible property subject to a claim for conversion. (R1 V10-32–33.)[19]

[19] Sterling's citations to the article *Propertizing Environmental Attributes* (Sterling Br. at 28) in support of its assertions that only a "handful" of states have recognized RECs as property are misleading and inapplicable here. *See* 39 YALE J. ON REG. at 1396 n.13 (citing two websites discussing where RECs are recognized as part of a compliance regime for states' renewable portfolio standard programs); *id*. at 1402 n.44 (listing examples of states that do not have disclaimers in

Finally, Sterling fails to present any evidence to support its assertions that the Order will "impact . . . subsequent litigation in this arena" and "throw the renewable energy market into chaos." (Sterling Br. at 31.) Accordingly, these statements constitute complete speculation, as there simply is no basis in the record to conclude that the Trial Court's determination that intangible assets such as "RECs" are not considered property under Georgia law. However, logic dictates the contrary – that chaos would erupt in the marketplace if it was determined that such intangible assets did **not** constitute property under Georgia law.

C. The Trial Court's Determination That Intangible Assets Are Property Subject To A Conversion Claims Is Not An Issue of First Impression.

The Trial Court held that GRP's "RECs" and "environmental attributes" are intangible assets subject to a conversion claim. (R1 V10-32–33.) Multiple Georgia courts, including this Court, have held that intangible assets are property subject to conversion claims in Georgia, and this is not an issue of first impression.

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renewable energy programs created by the state because disclaimers are included to minimize the risk of constitutional claims for compensation under the Takings Clause). Furthermore, the article makes clear that there is a distinction between property rights between private parties as is the issue here as opposed to property protected against governmental takings. *See id*. at 1401 ("While there is, for the reasons noted above, **a strong case for regarding environmental attributes as proper objects of property between private parties**, many existing rights in environmental attributes are unlikely to be considered 'private property' protected against governmental takings under the Takings Clause." (emphasis added).)

Sterling asserts that the Trial Court failed to cite any caselaw in support of its ruling. (Sterling Br. at 27–28). However, citing an abundance of case law, the Trial Court reasoned, among other things, that:

> "Tangible personalty or specific intangible property may be the subject for an action for conversion …." *Taylor v. Powertel, Inc.*, 250 Ga. App. 356, 358–59 (2001); *see e.g.*, *Trotman v. Velociteach Project Mgmt., LLC*, 311 Ga. App. 208, 213 (2011) (holding "intangible teaching materials on [a] laptop" that were taken from a former employer could be subject to a conversion claim); *Bearoff v. Craton*, 350 Ga. App. 826, 839–841 (2019) (recognizing the conversion of social media accounts); *BDI Cap., LLC v. Bulbul Invs. LLC*, 446 F. Supp. 3d 1127, 1137 (N.D. Ga. 2020) (holding Georgia courts would likely find "bitcoins, as virtual, intangible cryptocurrency . . . . sufficiently identifiable to be considered 'specific intangible property' subject to an action for conversion"). *Cf. MasterMind Involvement Mktg., Inc. v. Art Inst. of Atlanta, LLC*, 389 F. Supp. 3d 1291, 1294 (N.D. Ga. 2019) (finding likelihood of success on the merits of a conversion claim involving social media accounts, where evidence established that defendants had "valid legal title to the social media accounts and login information," plaintiff had actual possession of the same, demanded their return but plaintiff refused to transfer back the accounts and login information to defendants).

(R1 V10-29–30.)

Sterling's arguments that this appeal presents a novel issue holds only if "RECs" or "environmental attributes" are treated differently than other intangible assets. However, Sterling makes no attempt to distinguish them from the broader category. Therefore, this assertion should be rejected, and this Court should affirm the Trial Court's denial of Sterling's Motion for Summary Judgment.

CONCLUSION

Based on the foregoing, Sterling's appeal is meritless, and this Court should affirm the Trial Court's ruling in its Order granting: (i) GRP's motion for summary judgment dismissing Sterling's promissory estoppel claim; and (ii) granting GRP's motion to strike disregarding certain paragraphs of Murphy's Affidavit. GRP further asserts that this Court should affirm the Trial Court's ruling dismissing Sterling's Motion for Summary Judgment regarding GRP's conversion and intentional interference with property rights causes of action.

Respectfully submitted this 29th day of May 2024.

This submission does not exceed the word count limit imposed by Rule 24.

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2024, I caused the Brief of Appellees, dated May 29, 2024 to be served via electronic service via email to the below-referenced email addresses. I certify that there is a prior agreement with Appellant's counsel to allow documents in a PDF format sent via email to suffice for service to Appellant at the below-referenced email addresses:

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