THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
In The Circuit Court

Teasa K. Weaver, Master in Equity

Appellate Case No. 2020-001023

Mark Giles Pafford, Appellant,

v.

Robert Wayne Duncan, Jr.,
Robert Duncan, Sr., and Frank Eason,
d/b/a "Rock City Heavy Hauling, Inc."
of whom
Robert Wayne Duncan, Jr. and
Robert Duncan, Sr. are the Respondents.

PETITION FOR WRIT OF *CERTIORARI*

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BACKGROUND OF CASE

The Appellant PAFFORD sued in claim and delivery to recover a 2003 Kenworth W 3900 truck, VIN # 1XKWDB9X03J392961, a 1998 TrailKing trailer and a 2009 TrailKing trailer (hereafter "the vehicles"). The Respondents DUNCAN, operating as "Rock City Heavy Hauling" acknowledged that sale, but deny PAFFORD's ability to deliver good title. PAFFORD also sues for unpaid wages as a trucker for the Respondents, and for penalties and attorney fees under S.C. Code § 41-10-40 *et seq*.

The Respondents asserted full payment under the truck sale agreement, repairs to the truck, damages from PAFFORD's attempt at repossession and damages from a separate agreement by which PAFFORD was to buy a Thunderbird automobile. At trial, they plead for title to be executed to them, for reimbursement for repairs, and attorney fees. They also asserted fraud or negligent misrepresentation due to PAFFORD's lack of title. The Respondents asserted payment of PAFFORD's wages.

After a hearing without jury, the Trial Court held the Appellant liable for $42,500.00, the difference in value between the vehicles that Court concluded he could convey and those he could not. Against that figure the Trial Court offset an unpaid balance of $931.91 in wages and $8,000.00 for the resale value of the Thunderbird auto. The Respondents were thus awarded damage in the amount of $33,569.09. The Order also required transfer of the 2003 Kenworth and 1998 TrailKing trailer to the Respondents, and return of the 2009 TrailKing trailer to PAFFORD.

By its Order filed October 19, 2022, the Court of Appeals affirmed the Order of the Circuit Court finding in favor of the Respondents.

The Appellant's Petition for Rehearing was filed November 3, 2022 and denied by Order of the Court of Appeals

STANDARD OF REVIEW

The Court of Appeals has recently restated the rules as to the review of matters determined by a lower Court hearing a case without a jury:

> "An action for breach of contract seeking money damages is an action at law." *Johnson v. Little*, 426 S.C. 423, 428, 827 S.E.2d 207, 210 (Ct. App. 2019) (quoting *Branche*

Builders, Inc. v. Coggins, 386 S.C. 43, 47, 686 S.E.2d 200, 202 (Ct. App. 2009)). "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law." *Miller Constr. Co. v. PC Constr. of Greenwood, Inc.*, 418 S.C. 186, 195, 791 S.E.2d 321, 326 (Ct. App. 2016) (quoting *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009) (per curiam)). "The [c]ourt will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings." *Id.* (quoting *Temple*, 381 S.C. at 600, 675 S.E.2d at 415).

[*Nexstar Media Grp.* v. *Davis Roofing Grp.*, App. Case No. 2017-001546, Op. No. 5772, August 26, 2020, p.4.]

The burden of proof is upon the Respondents in a civil case whenever that party has the affirmative on an issue. 29 AM.JUR.2D *Evidence* § 127. In this case, the Respondents produced:

No written agreements for sale of the vehicles;

No employment contracts with PAFFORD;

No tax returns;

No W-4 forms dealing with payments to PAFFORD;

No 1099 forms dealing with payments to PAFFORD;

No ledgers, spreadsheets or writings showing how payments to PAFFORD were intended; and

No persons claiming to have written checks, or to have written payments to PAFFORD;

No persons claiming ownership of the vehicles to be sold under the recited contract;

No titles showing ownership of the vehicles to be sold under the recited contract; and

No persons with knowledge of such titles;

[RECORD ON APPEAL, *generally* and p. 887-890.]

In this matter, the Appellant contends that the conclusions and findings of the Circuit Court are in violation of legal precedent or without factual bases.

I. AS TO THE CLAIM OF FRAUD ON APPELLANT'S PART AS TO THE VEHICLE CONTRACT

In proof of the agreement for sale of the vehicles, PAFFORD produced title copies of the 2003 truck – one from 2012 in the name of a third party and one from 2017 in his name [RECORD

ON APPEAL, p. 565 and 45.] He asserted ownership of the vehicles to be conveyed or his ability to convey titles. [RECORD ON APPEAL, p.940, l.13-17; p.944, l.7-10.]

Over objection, the Circuit Court allowed the introduction of a third party document purporting to show a 2009 ownership, obtained over the internet and produced by the Respondents for the first time at trial and outside discovery. [RECORD ON APPEAL, p.913, l.4 – p.915, l.10.] This was done despite the Court's earlier disallowance of such matter in response to PAFFORD's *in limine* Motion. [RECORD ON APPEAL, p.478 - 480926, l.1 – p.927, l.21.] Counsel for Appellant also objected to testimony flowing from, or in support of that document. [RECORD ON APPEAL, p.913, l.4 – p.915, l.10.]

No opposing titles or any other evidence from the SC DMV were produced by the Respondents nor any testimony or evidence from the claimed insurance company owner of the 2009 TrailKing trailer. [RECORD ON APPEAL, *generally* and p. 887-890.]

By its Order, the Trial Court found that PAFFORD fraudulently represented himself as having ownership of the 2009 TrailKing trailer and being capable of transferring title to the Respondents. [RECORD ON APPEAL, p.5.]

The insurance company which Respondents claimed to be an owner was not joined as a party. No evidence of any claim of ownership or possession of the 2009 TrailKing trailer by that insurance company was shown. [RECORD ON APPEAL, *generally* and p. 887-890.] No title more current than that dated 08-15-2012 in a third party was produced.

No evidence supporting the Circuit Court's conclusion exists in the Record. The claim of ownership – without title – by an insurance company is barred as based upon evidence which should have been excluded. In light of the title placed in evidence dated 08-15-2012, no credible proof of ownership by an insurance company exists.

Even should such evidence be allowed, the claimed ownership by an insurance company apparently concern events in 2009; any claim based thereon is precluded by operation of the Statute of Limitations as set out in S.C. Code § 15-3-540. The Respondents have suffered no damage as the result of PAFFORD's alleged problems with that title.

No cognizable basis for a claim of lack of title has been shown, and any claims or defenses based thereon are precluded.

II. THE CLAIM OF FRAUD IS PRECLUDED BY WAIVER OR ESTOPPEL

The Appellant has advanced the doctrines of waiver and estoppel against the Respondents. By its Order of October 19, 2022, the Court of Appeals concluded:

> 2. Because Pafford raised his argument related to waiver for the first time in his motion to alter or amend the master's judgment, we hold this argument is not preserved for appellate review.

The conclusion stated above is incorrect as a matter of record. The issues of waiver and estoppel were effectively asserted against the Respondents in the Replies filed by the Plaintiff to the Respondents' Amended Answers and Counterclaims. As such, they were cognizable by the Circuit Court and cognizable by the Appellate Court. Those Replies stated:

> 10. The Plaintiff would affirmatively allege that the Defendant DUNCAN, Sr. was fully aware of the status of the subject truck as it related to an insurance claim by the Plaintiff, at and after the time of the parties's [*sic*] dealings as to that truck.
> [RECORD ON APPEAL, p.289 - 295; the accompanying Reply as to DUNCAN, Jr. uses similar language.]

The Appellant plead the factual basis for the defenses of waiver and estoppel. There is no requirement that he must use any one term or magical words to invoke those doctrines; they were adequately plead; they should have been dealt with by the Circuit Court. This issue is now before this Court.

In *Plyler* v. *Burns*, 373 S.C. 637, 647 S.E.2d 188 (2007), the Supreme Court allowed an affirmative defense set out in a Memorandum to a Motion. The Court stated:

> Generally, "a failure to plead an affirmative defense is deemed a waiver of the right to assert it." *Whitehead v. State*, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002). However, because the aim of this pleading requirement is to avoid surprise defenses, *see* Rule 8(c), SCRCP note, many courts allow the assertion of affirmative defenses despite a technical

failure to comply with the initial pleading requirements where the defense is timely raised to the trial court without resulting in unfair surprise to the opposing party.

[*Id.*, 373 S.C. at ___, 647 S.E.2d at 194.]

This Court followed the holding above with a list of Federal precedent, citing *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 404 S.E.2d 200 (1991) for the proposition that where there are no South Carolina cases directly on point, the Court may look to the construction placed on the corresponding Federal Rules of Civil procedure. In addition to that cited Federal precedent, the Petitioner would also note the holding of *LSREF2 Baron, L.L.C.* v. *Tauch*, 751 F.3d 394 (5th Cir. 2014):

> A defendant must plead with "enough specificity or factual particularity to give the plaintiff 'fair notice' of the defense that is being advanced." *Rogers v. McDorman*, 521 F.3d 381, 385–86 (5th Cir.2008) (quoting *Woodfield v. Bowman*, 193 F.3d 354, 362 (5th Cir.1999)).
>
> . . .
>
> However, "a technical failure to comply precisely with Rule 8(c) is not fatal." *Levy Gardens Partners 2007, L.P. v. Commonwealth Land Title Ins. Co.*, 706 F.3d 622, 633 (5th Cir.2013) (citing *Aunt Sally's Praline Shop, Inc. v. United Fire & Cas. Co., Inc.*, 418 Fed.Appx. 327, 330 (5th Cir.2011) (unpublished) (citing *Allied Chem. Corp. v. Mackay*, 695 F.2d 854, 855 (5th Cir.1983))). A defendant does not waive a defense if it was raised at a "pragmatically sufficient time" and did not prejudice the plaintiff in its ability to respond. *Rogers*, 521 F.3d at 386.
>
> [*Id.*, 751 F.3d at 398.]

The Appellant timely raised the issue of the Respondents' waiver and estoppel by his Reply. The Respondents were not prejudiced in their ability to respond.

Robert Wayne Duncan, Jr. testified that he discovered a problem with the title of the 2009 TrailKing trailer some 18 months after the vehicle contract was made, that is to say, in approximately August, 2016. [RECORD ON APPEAL, Transcript of Hearing, p.959, l.1-11.] In spite of this fact, payments to PAFFORD by the Respondents continued through April, 2017.

The Respondents' claim for fraud as to that trailer was raised for the first time in the Respondents' Amended Answers and Counterclaims filed in May, 2018. [RECORD ON APPEAL, p.282-283.]

Whether the payments after August, 2016 are considered as wages to an employee who the Respondents knew had committed fraud, or for the purchase of equipment with questionable title, the Respondents' action in continuing the payments was a waiver of their claim, or an estoppel to advance a claim of fraud.

III. THE EVIDENCE PRESENTED ALLOWS THE APPELLANT A CLAIM TO UNPAID WAGES

In its Order, in dealing with the payment of PAFFORD's wages, the Trial Court held:

> The parties agree that the sum total of payments made to Plaintiff toward wages and the sale agreement is $163,000.00[1]; however, Respondents dispute the amounts allotted by Plaintiff between these categories in his self-prepared spreadsheet (Plaintiff's exhibit 6). Most of the checks and receipts in evidence do not show the purpose of the payment. A few show that $2,000.00 was paid toward wages, and $63,000.00 was paid toward the sale agreement. (Plaintiff's exhibit 5). Plaintiff admitted the payment amounts listed in his spreadsheet were applied arbitrarily, and there was no other evidence proving which category the remaining $98,000.00 in payments should be attributed. Therefore, this court is unable to make any such findings.
> [RECORD ON APPEAL, Order of May 4, 2020, p.2 – 3.]

The Respondent Robert Wayne Duncan, Jr. and the Office Manager Nancy Green Duncan submitted their Affidavits in response to Plaintiff's Summary Judgment Motion alleging full payment for the vehicles in the amount of $85,000.00, which they then maintained to be the full amount agreed to be paid for the vehicles. [RECORD ON APPEAL, p.142.] At trial, they submitted a list stating the sales amount to be $95,000.00, and testified to that larger figure. [RECORD ON APPEAL, Respondent's Exhibit 1, p.887.] as against the claim in Paragraph 25. of the Affidavit. [RECORD ON APPEAL, p.142.] The Circuit Court's Order did not address this discrepancy.

1 The expenses of $11,067.62 are not in dispute and are omitted from further discussion or calculation.

The conclusion of the Trial Court's Order, that the burden of assigning payments between wages and the truck sale lies on the Plaintiff, is incorrect in law. To quote the commentary of AMERICAN JURISPRUDENCE 2D:

> Occasionally the law divides the burdens in connection with certain defenses and assigns the burdens of pleading and production to the Respondent, while imposing upon the plaintiff the burden of persuasion.
>
> > [29 AM.JUR.2D *Evidence* § 160 (1994); Ftn. 21, citing *Keeler Brass Co.* v. *Continental Brass Co*. (CA4 NC) 862 F.2d 1063, 9 U.S.P.Q.2d 1331, 27 Fed.Rules Evid. Serv. 278 (defense of independent creation in copyright infringement actions); *Palenkas* v. *Beaumont Hospital*, 432 Mich. 527, 443 N.W.2d 354 (Respondent must satisfy the burden of production when raising the statute of limitations as a defense.]
>
> Where the information necessary to prove an issue is peculiarly within the possession of one party, courts sometimes reason that convenience and fairness justify placing the burdens of pleading and proving those facts upon that party.
>
> > [29 AM.JUR.2D *Evidence* § 161 (1994, Ftn. 22, citing *United States* v. *New York, N. H. & H. R. Co.*, 355 U.S. 253, 2 L.Ed.2d 247, 78 S.Ct. 212; *Bank of Crete, S.A.* v *Koskotas* (SD NY) 733 F.Supp. 648; *United States* v. *Continental Ins. Co*. (CA ll Fla) 776 F.2d 962, 33 CCF ¶ 74094; *Browzin* v. *Catholic University of America*, 174 U.S. App. DC 60, 527 F.2d 843; *Lindahl* v. *Office of Personnel Management* (CA FC) 776 F.2d 276; *Albert Mendel & Son, Inc.* v. *Krogh*, 4 Conn.App. 117, 492 A.2d 536; *Thomas* v. *Allegheny & Eastern Coal Co*., 309 Pa.Super. 333, 455 A.2d 637; *Jackson* v. *Green* (Tex.App. Corpus Christi) 700 S.W.2d 620, *writ ref n r e* (Jan 22, 1986) and r*ehg of writ of error overr* (Feb 26, 1986).]

The general rule as to the effect of information peculiarly within the possession of party has been applied specifically to matters relating to accounts. To quote again the commentary of AMERICAN JURISPRUDENCE 2D:

> Ordinarily, an account is proved by proving each item, including the date, the correctness of each item contained in the account, the charge made, and the reasonableness of that charge, [Footnote omitted} although this does not mean that, in order to support a suit on an open account, each individual item must be specifically proved.
>
> [Footnote 17:

1) *Miller* v. *Schmidt,* 123 Ind.App. 379, 110 N.E.2d 347 (Ind.App. 1953); *Horton* v. *Haralson,* 130 La. 100, 57 So. 643 (La. 1912); *Bass* v. *Ring,* 210 Minn. 598, 299 N.W. 679, 169 A.L.R. 980 (Minn. 1941).

Once a *prima facie* case has been established, the burden of proof shifts to the Respondent to disprove the inaccuracy of the account, or to prove entitlement to credits. [Footnote 18:

2) *Rabalais* v. *Al-Dahir*, 563 So.2d 514 (La.App. 4th Cir 1990); *Cole Oil & Tire Co.* v. *Davis*, 567 So.2d 122 (La.App. 2d Cir 1990)

Testimony of a witness to the effect that certain of the invoices exhibited to the original declaration appeared, when exhibited to the final amended declaration, to have been changed, in that some of them bore notations upon the issue of whether they had been paid, and to the effect that one of the invoices originally appearing in the name of another person was switched and made to appear in the Respondent's name, is competent as tending to impeach the plaintiffs claim on the invoices. *Philley* v. *Toler*, 239 Miss. 347, 123 So.2d 223 (Miss. 1960).

The Respondent also has the burden of proving affirmative defenses, such as payment. [Footnote 19]:

3) *H.C. Whitmer Co.* v. *Richardson*, 271 Ky. 112, 111 S.W.2d 577 (Ky. 1937); *Pitre* v *Bourg*, 77 So.2d 113 (La.App. 1st Cir 1954); *Philley* v. *Toler*, 239 Miss. 347, 123 So.2d 223 (Miss. 1960); *J. D. Streett & Co.* v *Bone*, 334 S.W.2d 5 (Mo. 1960).

[1 AM.JUR.2D *Accounts and Accounting* § 17 (11/2002).]

The Appellant would note that the Order of October 19, 2022 does not address the precedent cited above and in Appellant's Brief, either to distinguish it or to disregard it.

The Respondents had the burden of showing payment for the vehicles, which they asserted, and by extension the burden of showing which payments were not made for that purpose. They failed to meet this burden. No evidence, other than their testimony – as to which they have contradicted themselves – exists on point.

The only statements on the respective memo lines of the checks received from the Respondents by Appellant are for purchase of equipment or reimbursement of expenses. The remaining amounts are, therefore, logically assignable to wages.

The Appellant notes that after stating the Circuit Court could not assign the payments between those for the truck and those for wages, the Trial Court went on to effectively do so, stating:

> Plaintiff also failed to show that he has not been fully paid for wages he earned. Plaintiff marked ninety-one (91) weeks of earned wages in his spreadsheet. With a weekly wage of $1000.00, Plaintiff earned a total of $91,000.00. Plaintiff has been paid a total of $100,000.00 in addition to the $63,000.00 shown to have been paid toward the sale agreement.
> [RECORD ON APPEAL, Order of May 4, 2020, p.3.]

Counsel for Respondents asserted the Plaintiff was employed for 91 weeks: no testimony or other evidence to support that period was produced. No testimony to contradict the Plaintiff's testimony for employment over the greater period shown on his spreadsheet entered as Plaintiff's Exhibit 6. [RECORD ON APPEAL, p.612 – 614 and *generally*.]

Rejecting the Plaintiff's assertion that his pay rose by agreement to $1,500.00 per week, the Trial Court found that the Plaintiff, according to his submitted spreadsheet had worked 91 weeks. [RECORD ON APPEAL, Order of May 4, 2020, p.3.] The Court may take judicial notice that the period from 02/10/2015 through April 15, 2017 (the dates on which PAFFORD received payments) consists of 115 weeks.[2]

The Plaintiff was reimbursed for expenses by the Respondents. For the purpose of this discussion, those amounts are disregarded, in that they would lower the amount owed by the Respondents to the Plaintiff.

$161,500 was shown as paid by the Appellant's testimony and Exhibit 6; an additional $15,000.00 was agreed at trial paid to Plaintiff, for a total payment of $176,500.00. Assuming payment made at $95,000.00 for the vehicles, the non-vehicle payments made by the Respondents would amount to $81,500.00. ($176,500.00 - $95,000.00 = $81,500.00) Given the proof of the Plaintiff's uncontested employment for 115 weeks, and accepting (for this argument) a weekly payment of $1,000.00 per week, the Plaintiff is still owed an amount of $33,500.00. ($115,000.00 - $81,500.00 = $33,500.00).

2 These dates are from a $1,000.00 payment to Appellant on February 10, 2015 through his last payment of $4,000.00 on April 15, 2017. [RECORD ON APPEAL, Plaintiff's Exhibit 6, p.612 - 614; TRANSCRIPT OF HEARING, p.941, l.14 -18.] There was no evidence of differing employment dates from the Respondents.

The Trial Court's math is incorrect, and the resulting findings and conclusions must be corrected. Those corrections show that the Appellant is owed wages, plus the remedies accorded for that lack of payment.

PAFFORD testified to his salary being $1,500.00 per week. The Respondents produced no tax forms and no ledgers, check stubs or proof as to the amount of PAFFORD's weekly payments. As stated before, from Counsel's examination of the checks received from the Respondents, the only statements on their respective memo lines are to purchase of equipment or reimbursement of expenses. The remaining amounts are, therefore, logically assignable to wages. Allowing this point, the payments indicate a rate of $1,500.00 per week.

Given this fact, the payments owed by the Respondents, and PAFFORD's resulting damages and remedies, must be adjusted accordingly.

IV. AS TO RESCISSION ON THE THUNDERBIRD, THERE IS NO SUFFICIENT EVIDENCE ESTABLISHING THE WORTH THEREOF

Counsel for Appellant acknowledges that the Appellant's Briefs may have argued this issue backwards. There was an agreement to give the Appellant a 2002 Thunderbird in exchange for wages. There is no dispute this car was returned to the Respondents and retained by them. There is no dispute the Appellant intended a rescission. There was no written contract nor any security agreement governing the parties' agreement as to the Thunderbird. As such, this issue is moot.

Dealing with this issue, the Trial Court held, in relevant part:

> Thereafter, Plaintiff and Duncan Jr. agreed to modify the sale agreement. The modifications reduced the purchase price owed to Plaintiff. First, Plaintiff agreed to reduce the amount owed by $14,000.00 in exchange for a 2002 Ford Thunderbird. . . .
>
> After having the Thunderbird for about a week, Plaintiff returned it to Respondents' property, stating only he was not satisfied. Plaintiff refused return of the vehicle or the transfer of its title. Respondents later sold the vehicle to a third party for $8,000.00.
>
> [RECORD ON APPEAL, Order of May 4, 2020, p.2.]

It is undisputed that the reduction in wages that the Circuit Court's Order references was agreed to. It is also undisputed that the Ford Thunderbird was returned within ca. a week; there is no evidence title to this car was ever placed in PAFFORD's name. By the Court's reasoning, PAFFORD's rescission of the purchase of this car entitles the Respondents the full value of the car less its resale. This conclusion can only be reached if a) there was no right to rescind, and b) there is proof that the true value of the vehicle was $14,000.00. The value was placed in dispute by PAFFORD in his testimony as to the cause of the car's return. [RECORD ON APPEAL, p.921, l.20 – p.922, l.15.] No contrary evidence, showing a true value of $14,000.00, was put forward. [RECORD ON APPEAL, *generally* and p. 887-890.] There is therefore no evidentiary basis to assume that the car was worth the $14,000.00 as against the claimed amount of $8,000.00 which the Respondents received at a later sale.

To state this argument in another way, for the Trial Court to hold PAFFORD with having agreed to a true value of $14,000.00, there must either be no contest on his part as to value, or independent proof thereof. PAFFORD did contest the value by rescinding the purchase on the explicit ground that the car had problems; there was no other evidence of the car's value or dispute as to his action, and no independent proof of value; there is, therefore, no evidentiary basis for the car's value. Without proof of its value (whether by the Appellant or independent evidence), there is no basis for the Court's ruling as to remaining debt.

The Appellant would also point out that if the intended conclusion of the Trial Court was that he had no basis to rescind, or that rescission had not occurred, that conclusion is nowhere stated in the Court's Orders.

V. THERE IS NO CREDIBLE EVIDENCE OF DAMAGES FROM APPELLANT'S ATTEMPT AT REPOSSESSION.

The Respondents claim damages from PAFFORD's attempt to repossess the 2003 Kenworth W 3900 truck from them. They acknowledge filing criminal charges against PAFFORD for this attempt. [RECORD ON APPEAL, p.459 – 463; p.1011, p.7 – p.1012, l.5.] Their testimony and a repair invoice created by themselves is the proof of such damage. [RECORD ON APPEAL, p.1010, l.18 – p.1011, l.6.] PAFFORD acknowledged breaking a lock to enter the building where the truck was held. [RECORD ON APPEAL, p.933, l.2 - 7.]

The Appellant has listed above the items and witnesses which were not produced by the Respondents in this case. The decision of the Trial Court as to damages from PAFFORD's attempted repossession must, therefore, rest on the Trial Court's judgment. The Appellant argues that, in light of the Respondents' failure to produce evidence in this case, as referenced above, the Trial Court's finding herein is not reasonably supported by the evidence.

CONCLUSION

There is a lack of evidence of fraud or misrepresentation as to the title to the truck and trailers. Even had the Circuit Court rightfully concluded that such fraud existed, the Respondents have waived and are estopped from asserting the same.

The Appellant's rescission of the parties' agreement as to the Thunderbird, and the lack of a security agreement, preclude any claim for damages due to later, lesser price for the car. No basis has been claimed, none is found by the Circuit Court, and none exists, to dispute the Appellant's rescission.

The burden as to wages rests upon the Respondents. They have failed to meet their burden.

Appellant are entitled to a ruling granting them relief from the Orders of May 4th and June 24th, 2020. The findings of the Circuit Court are, in the matter of ownership of the 2003 Kenworth W 3900 truck, and in that of wages, unsupported. The other issues as discussed are improper in law.

January 23, 2023

Respectfully submitted,

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CERTIFICATION

Pursuant to Rule 242(d)(1), the undersigned counsel certifies that a petition for rehearing herein was made and finally ruled on by the Court of Appeals.

Respectfully submitted,

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January 23, 2023

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CERTIFICATE OF SERVICE

I certify that I have served the Petition for Writ of *Certiorari*, the accompanying Appendix, and this Certificate of Service dated January 23, 2023, on the following counsel or persons of record:

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by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the

respective last known address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262, S.C.A.C.R., and

by service to the opposing lawyer's primary e-mail address listed in the Attorney Information System (AIS), as authorized by Section a(2) of the Order of the Supreme Court dealing with Electronic Filing and Service issued May 6, 2022.

Respectfully submitted,

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January 23, 2023

Rock Hill, South Carolina