THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2023-000294

RONALD SOLES, ……Respondent,

v.

IOAN GHERMAN d/b/a USA AUTO TRANSPORT LLC, and
JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC, ……Defendants,

Of whom JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC is the ……...Appellant.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS:

TABLE OF AUTHORITIES:

Cases:

Statutes:

Restatements:

ARGUMENT:

(I.) The Court erred in its Orders and Motions:

Not to belabor the point of Rule 56 SCRCP,

> An abuse of discretion occurs when the trial judge's ruling is based upon an error of law or when based on factual conclusions, is without evidentiary support. (Osborne v. Adams, 338 S.C. 82, 525 S.E.2d 268 (S.C. App. 1999) citing: Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565(1987)) It is the practice of the appellate court to make **"all reasonable presumptions"** to the effect that "**the discretionary powers of the trial court have been exercised properly, correctly, or without abuse..**" and **"will not presume or assume, that there has been an abuse of discretion**. [Emphasis added] (Id. Citing: 5 C.J.S Appeal and Error §773 (1993))." Respondent, Ronald Soles', Reply To Appellant, Jason Brockman's, Initial Brief paragraph 2, page 9.

In this case there are glaring errors of law, and the lower Court abused its discretion, as set forth hereinbelow. Moreover, there are genuine factual issues, and, therefore, summary judgment is inappropriate. These include, but are not limited to, who caused the delay in the Plaintiff's receiving his Grandmother's automobile, and who was the at fault Party giving rise to this action, and the existence or non-existence of a contract between the appellate Parties, and if so, whether it was breached.

> When the existence of a contract is questioned and the evidence either conflicts or gives rise to more than one inference, the issue of the contract's existence becomes a question for the finder of fact. See Small v. Springs Indus., Inc., 292 S.C. 481, 483, 357 S.E.2d 452, 454 (1987) (stating that under the common law, a trail court should submit to the jury the issue of existence of a contract when its existence is questioned and the evidence either conflicts or admits of more than one inference). Sherman v. W. & B ENTERPRISES, INC., 357 S.C. 243, 592 S.E.2d 307 (S.C. App. 2003). Obviously, the Respondent lacks all standing, as well.

(II.) Jurisdiction:

> The South Carolina Rule of Civil Procedure Rule 59(e) states that "a motion to alter or amend the judgment shall be served not later than ten (10) days after receipt of

> written notice of the entry of the order." There are three circumstances by which the court grants a Rule 59(e) motion: **"(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice."** [Emphasis added] Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Respondent, Ronald Soles' Reply To Appellant Jason Brockman's Initial Brief ground 2, paragraph 2, page 10.
>
> Clearly, the trial Court ignored errors of law and failed to prevent manifest injustice. Id.

To say that the issue of who owned the vehicle and to whose name it was registered is immaterial is ludicrous. To allow a lawsuit by a person, who does not own or have title to the property in question smacks of champerty, as well as fraud on the Court. There is no conceivable way to get around the fact that the Respondent had to have known the true owner of the vehicle before instituting this lawsuit. As the Respondent states, "the issue of who owned the car was not litigated at the Motion For Summary Judgment hearing", which is clearly subject to the Appellant's Motion To Reconsider, pursuant to Rule 59(e). Respondent, Ronald Soles', Reply To Appellant, Jason Brockman's, Initial Brief paragraph 1, page 11.

> The petitioners correctly assert that the result of that decision is to place the burden of assuring that all indispensable parties are before the court squarely on the defendant. The effect of this holding is to excuse plaintiffs from their duties under Rule 19 while providing a means for a plaintiff to completely circumvent the purpose and meaning of Rule 12(b)(7), SCRCP.
>
> A Motion Under Rule 12(b)(7) is proper where a necessary party under Rule 19 should be joined for a just adjudication of the issues, and, "may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits." Rule 12(h)(2), SCRCP. The rule provides an affirmative defense for the failure to join any interested party who is subject to service of process, and who will not deprive the court of jurisdiction over the subject matter under Rule 19, SCRCP.
>
> The relevant portions of Rule 19, SCRCP provide that: (a) Persons to be joined if Feasible. A person … shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition

> of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. BancOhio Nat. Bank v. Neville, 426 S.E.2d 773, 310 S.C. 323 (S.C. 1992). [Emphasis added]

In addition, the fact that the Respondent was not the titled owner of the vehicle was disclosed neither to the Court, nor the Appellant by the Respondent. This is fraudulent. Nor is this a customary occurrence, which a rational attorney would search, and in addition, the Respondent presented to the Court and the Appellant during the proceedings that he was the titled owner of the vehicle, when he instituted this lawsuit. The Respondent's Grandmother is obviously a necessary and indispensable Party to this lawsuit. SCRCP 19(a)(ii). Since the Respondent's Grandmother is not named as a Party to this lawsuit, the Court lacks both personal and subject matter jurisdiction. The indispensable and necessary Party, the titled owner of the vehicle, is absolutely essential. The Court can retain neither personal, nor subject matter jurisdiction. She was neither named as a Party, nor made a Party to this action, and since she is the owner of the vehicle, there is neither subject matter jurisdiction, nor personal jurisdiction. In addition, there is no contract between the Appellant and the Respondent. However, the existence of a contract and its breach are issues for the trier of fact, i.e. the jury.

Conclusion:

It should be apparent that the Court lacks jurisdiction, since the Respondent does not own the automobile, and the Grandmother, who is not a named Party in this action, is a necessary and indispensable Party in this action. SCRCP 19. During these proceedings, this was made known to the Court, which was ignored by the Court, and, therefore, the Court committed both errors of

law and errors of fact and abused its discretion, as well. Therefore, this appeal should be granted with costs and attorney's fees for this appeal granted to the Appellant from the Respondent.

Respectfully submitted,

Dated: December 1st, 2023
Greenville, South Carolina

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Brief and Final Reply Brief comply with Rule 211(b), SCACR.

Respectfully submitted,

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