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SC Court of Appeals

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.

RECORD ON APPEAL

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INDEX:

Orders

Order Denying The Defendant, Jason Brockman’s, Motion To Reconsider 3

Proposed Order For Plaintiff’s Motion For Summary Judgment Against Defendant Jason Brockman’s d/b/a JNJ Transport, LLC 6

Proposed Order For Plaintiff’s Motion For Default Judgment Against Defendant Ioan Gherman d/b/a USA Auto Transport, LLC 9

Order Denying The Defendant, Jason Brockman’s, Motion For New Trial; In The Alternative, Motion To Amend/Alter Judgment Under SCRCP 59(a)(2) and 59(e); & Motion To Set Surety And Stay Enforcement Of The Order 12

Order/Electronic Form 4 15

Pleadings

Summons and Complaint with attached Exhibits A through F 18

Defendant’s Answer And Counterclaim 56

Motion For Default Judgment Against Defendant Ioan Gherman d/b/a USA Auto Transport, LLC 72

Plaintiff’s Reply To Defendant’s Jason Brockman D/B/A JNJ Transport Answer And Counterclaim 74

Motion For Summary Judgment And Attorney’s Fees Against Defendant Jason Brockman d/b/a JNJ Transport LLC 76

Defendant Jason Brockman’s Motion To Dismiss Or In The Alternative Motion For Summary Judgment 78

Plaintiff’s Response To Defendant’s Motion To Dismiss Pursuant To Rule 12(b)(6) And In The Alternative Motion For Summary Judgment 88

Defendant, Jason Brockman’s, Motion To Reconsider 95

Motion For New Trial In The Alternative Motion To Amend/Alter Judgement Under SC RCP 59 (a)(2) and 59 (e) with attached Exhibit A 99

Plaintiff’s Response To Defendant’s Motion For A New Trial In The Alternative Motion To Amend/Alter Judgment Under SCRCP 59(a)(2) and 59(e) 111

Motion To Enforce The Court's Order Of March 23, 2023 And To Impose Further Sanctions with attached Exhibits A through C. 114

Defendant Jason Brockman's Reply And Memorandum In Opposition Of Motion To Enforce The Court's Order Of March 23, 2023 And To Impose Further Sanctions . . . 129

Transcript of Record February 24, 2023 135

Transcript of Record March 23, 2023 149

Transcript of Record April 20, 2023 161

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-23-05403

Ronald Soles,

Plaintiff,

vs.

Ioan Gherman d/b/a USA Auto Transport, LLC
and Jason Brockman d/b/a JNJ Transport,
LLC,

Defendants.

**ORDER DENYING THE DEFENDANT,
JASON BROCKMAN'S, MOTION TO
RECONSIDER**

The Defendant, Jason Brockman, filed a Motion to Reconsider Pursuant to SCRCR Rule 59(e) dated February 24, 2023, asking this Court to reconsider its February 24, 2023 ruling reflected in its Order signed February 28, 2023 denying Defendant's Motion for Summary Judgment.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant 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." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.")

JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Defendant’s Motion, as well as those set forth arguments made during the initial hearing, the Court hereby DENIES Defendant’s Motion to Reconsider. Furthermore, it is ORDERED that the vehicle be delivered by Wednesday, March 1, 2023, at 4 p.m. to the original location discussed by the parties and a check from Plaintiff counsel’s trust account be exchanged in the amount of \$450.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Ronald Soles vs. Ioan Gherman , defendant, et al
Case Number: 2022CP2305403
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-02-28 15:27:52 page 3 of 3

000005

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
RONALD SOLES,)
PLAINTIFF,)
VS.)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT,)
JASON BROCKMAN d/b/a)
JNJ TRANSPORT, LLC)
DEFENDANTS.)

IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT

**PROPOSED ORDER FOR PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AGAINST DEFENDANT JASON BROCKMAN
d/b/a JNJ TRANSPORT, LLC**

CIVIL CASE NO: 2022-CP-23-05403

This matter came before this honorable court on February 24, 2023. The Plaintiff was represented by Attorney Simone Holloway of the Law Office of James Stone Craven. The Defendant was represented by Attorney Brian Smith. After a trial of the issues, evidence, applicable law, and testimony, the Court rules in favor of Plaintiff and makes the following findings of fact:

1. Plaintiff's Motion for Summary Judgment is granted.
2. Defendant retained possession of Plaintiff's vehicle and did not deliver the vehicle as contracted.

NOW, IT IS THEREFORE ORDERED that the Court finds in favor of Plaintiff, and he is AWARDED:

- a. Physical possession of his vehicle, the 1969 Chevrolet Camaro, to be delivered to him by Defendant at a meeting place facilitated by the parties' attorneys. In return, Plaintiff shall pay Defendant six hundred and fifty dollars (\$650.00) for the re-delivery of the vehicle.
- b. A damages hearing upon the discovery of any damages to the vehicle resulting from Defendant Brockman's improper storage and/ or delivery whereby this court will retain jurisdiction and consider the granting of appropriate relief.

IT IS SO ORDERED.

The Honorable Bentley Price
Presiding Judge



Greenville Common Pleas

Case Caption: Ronald Soles vs. Ioan Gherman , defendant, et al
Case Number: 2022CP2305403
Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-02-28 15:27:38 page 3 of 3

000008

- c. For a total award amount of two hundred and sixty-two thousand six hundred dollars \$262,600.00

IT IS SO ORDERED.

The Honorable Bentley Price
Presiding Judge



Greenville Common Pleas

Case Caption: Ronald Soles vs. Ioan Gherman , defendant, et al
Case Number: 2022CP2305403
Type: Order/Entry of Default

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-02-28 15:27:23 page 3 of 3

000011

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-23-05403

Ronald Soles,

Plaintiff,

vs.

Ioan Gherman d/b/a USA Auto Transport, LLC
and Jason Brockman d/b/a JNJ Transport,
LLC,

Defendants.

**ORDER DENYING THE DEFENDANT,
JASON BROCKMAN'S, MOTION FOR
NEW TRIAL; IN THE ALTERNATIVE,
MOTION TO AMEND/ALTER
JUDGMENT UNDER SCRCP 59(a)(2)
and 59(e); & MOTION TO SET SURETY
AND STAY ENFORCEMENT OF THE
ORDER**

The Defendant, Jason Brockman, filed a Motion for New Trial Pursuant to SCRCP Rules 59(a)(2) and 59(e) dated March 1, 2023, asking this Court to reconsider its February 24, 2023 ruling reflected in its Order signed February 28, 2023 denying Defendant's Motion for Summary Judgment due to newly discovered evidence. In the alternative, Defendant asked this Court to amend its previous judgment. Additionally, the Defendant filed a Motion to Set Surety Under SC Code Section 8-9-150 and Stay Enforcement of the Order on March 1, 2023 asking this Court to allow the Defendant to post a reasonable surety bond for the vehicle at issue in this matter.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.")

available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Defendant’s Motions, arguments made during the initial hearing, and consideration of arguments made at a virtual hearing before this Court held on March 23, 2023, the Court hereby DENIES both Defendant’s Motion for New Trial or, in the alternative, Motion to Amend/Alter Judgment and Defendant’s Motion to Set Surety and Stay Enforcement of the Order. Furthermore, the Court finds that the motions brought by the Defendant were frivolous and sole for the purpose of delay and therefore it is ORDERED that the Defendant, Jason Brockman, individually, pay Plaintiff’s counsel \$2,500.00 by Monday, April 3, 2023. The Court finds that the Defendant is in direct violation of this Court’s previous Order to return the car to the owner and if not returned by Monday, April 3, 2023, the Court will entertain any and all motions by the Plaintiff to enforce the Court’s Order and impose further sanctions.

AND IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Ronald Soles vs. Ioan Gherman , defendant, et al
Case Number: 2022CP2305403
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-03-23 15:12:49 page 3 of 3

000014

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2305403

Ronald Soles
PLAINTIFF(S)

Joan Gherman et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on April 20, 2023 upon Plaintiff's Motion to Enforce and Impose Sanctions filed April 4, 2023. This hearing was held in Charleston County and Defendant, Jason Brockman, failed to appear. Attorney Brian T. Smith was present on behalf of the Defendant and attorneys Simone Holloway and James Craven appeared virtually via WebEx on behalf of the Plaintiff. After reviewing Plaintiff's Motion and hearing arguments from both parties, the Court hereby GRANTS Plaintiff's Motion finding that Jason Brockman has failed to comply with the Court's previous Orders. Therefore, it is hereby ordered that Defendant is to comply with the Court's previous Orders and all previous sanctions ordered by this Court are hereby withdrawn. (continued on page 2)

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/20/2023 .

Empty box for NAMES OF TRADITIONAL FILERS SERVED BY MAIL

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

(continued from page 1) The Court also holds the Defendant in contempt of court and orders that he is to be held in the Greenville County Detention Center for 6 months or until he complies with the previous Orders of this court and returns the subject vehicle to the Plaintiff or allows for the Plaintiff to take possession of the vehicle. A bench warrant will be issued for the Defendant on Monday, April 24, 2023. Furthermore, the Court awards Plaintiff his attorney's fees in the amount of \$8,373.13.



Greenville Common Pleas

Case Caption: Ronald Soles vs. Ioan Gherman , defendant, et al
Case Number: 2022CP2305403
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-04-20 11:45:12 page 3 of 3

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000017

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

RONALD SOLES)

Plaintiff,)

vs.)

IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT, LLC and)
JASON BROCKMAN d/b/a)
INI AUTO TRANSPORT, LLC)

Defendant(s))

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Docket No. 2022-CP-23-_____

SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is attached and herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, at 600 East Washington, Suite 612, Greenville SC 29601, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the thirty-day period, the Plaintiff (s) will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you.

s/James Stone Craven
James S. Craven
Attorney for Plaintiff
600 East Washington Street, Suite 612
Greenville, SC 29601
(864) 729-8722

Greenville, SC
September 30, 2022

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

RONALD SOLES,)

Plaintiff,)

vs.)

IOAN GHERMAN d/b/a)

USA AUTO TRANSPORT LLC and)

JASON BROCKMAN d/b/a)

JNJ TRANSPORT, LLC)

Defendant(s)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Docket No. 2022-CP-23-_____

COMPLAINT

(Jury Trial Requested)

The Plaintiff, Ronald Soles, complaining of the Defendants, Ioan Gherman d/b/a USA Auto Transport, LLC and Jason Brockman d/b/a JNJ Transport, LLC, would show unto this Honorable Court as follows:

JURISDICTION ALLEGATIONS

1. Plaintiff, Ronald Soles, is a citizen and resident of Volusia County, State of Florida.
2. Upon information and belief Defendant Ioan Gherman d/b/a USA Auto Transport, LLC is a limited liability company located in the county of Maricopa, in the state of Arizona. The principal place of business is at 9228 W. Black Hill Road, Peoria AZ 85383.
3. Upon information and belief, Defendant Jason Brockman d/b/a JNJ Transport, LLC is a limited liability company located in the County of Charleston, State of South Carolina. The principal place of business is 1591 Savannah Highway, Suite 201, South Carolina 29407.

4. Upon information and belief, the vehicle at issue is located at Defendant Jason Brockman's residence in the County of Greenville, State of South Carolina. The residence is 412 Mapleton Drive, Greenville SC 29607.
5. The property that is the subject of the parties' contract agreement is a 1969 Chevrolet Camaro with a market value price of twenty-eight thousand dollars (\$28,000.00).
6. This court has jurisdiction over the parties and allegations complained of herein, and the venue is proper in Greenville County.

FACTUAL ALLEGATIONS

7. On or about July of 2022, Plaintiff entered into a contract with USA Auto Transport, LLC and through a booking agency, Linus Auto Transport LLC entered into an agreement with a third-party transport company: JNJ Transport, LLC. (Please see Exhibit A)
8. On or about July of 2022, Plaintiff entered into a contract with Defendants and Defendants' companies, USA Transport LLC and JNJ Transport LLC, to execute the following services for Plaintiff:
 - a. Transfer his 1969 Chevrolet Camaro from Tennessee to South Carolina; and
 - b. Deliver the Plaintiff's vehicle to Plaintiff and/or Plaintiff's representative at agreed upon drop-off location. (Please see Exhibit B)
9. The total costs for the services Defendants promised to provide Plaintiff was five hundred and fifty dollars (\$550.00). Plaintiff paid a deposit of one hundred and twenty-five dollars (\$125.00) with the balance of four hundred and twenty-five dollars (\$425.00) being due at delivery. The parties' contract states: "The total fee is due in two

installments, the first due when Linus Auto Transport designates a Carrier to transport your Vehicle (the "Initial Payment") and the balance due when your Vehicle is delivered (the "Remaining Balance") (Please see Exhibit A, page 2).

10. On or about July 22, 2022, Plaintiff received a text message from Defendant, Jason Brockman, requesting payment before delivery of Plaintiff's vehicle. Defendant, Jason Brockman, tells Plaintiff "Shoot me a screenshot when sent and I'll get headed that way to drop off." Plaintiff responds with the following text message, "When you get there I'll send it, then send a screenshot." (Please see Exhibit C)

11. On or about July 22, 2022, Defendant, Jason Brockman, sends Plaintiff a text message with a screenshot revealing that he was 5.1 miles away from the drop-off location, the Plaintiff sends a response stating "Here is the gate code to get in. *5303#." "It is the first storage on the right." Defendant, Jason Brockman, responds with the following: "I'll be leaving in five. The car will be stored at our yard and there will have to be an additional charge for storage and to return it to anderson." "Or you can arrange for it to be picked up from Greenville, after the transport costs plus storage is paid." (Please see Exhibit C) The Plaintiff responds with a text message that states, "He'll be there about 20 minutes."

(Please see Exhibit D). Defendant, Jason Brockman, replies with a text message stating: "I do not have 20 minutes. I have to get to another pickup. If you cannot pay for the transport I will have to leave sorry." Ten minutes later, Defendant Jason Brockman sends an additional text message, "FYI Unsecured additional items in the vehicle especially one without glass such as this, are unlawful to transport per D.O.T. I accommodated as a courtesy. I have reached the end of the courtesy I can extend to you. I am leaving Anderson now and will have to update your transport with additional charges for having

to leave without payment. Thanks," Defendant then sent a few photos of the vehicle. Plaintiff responded with, "He's ten minutes away." (Please see Exhibit D) Defendant, Jason Brockman, sent an additional text message, "I have already left. I cannot continue to wait and go back and forth, if I need to turn around I need payment before I turn around." Plaintiff responds: "I spoke to John. You'll get your money." Defendant, Jason Brockman sends an additional text message, "Otherwise the vehicle will have to be picked up from my office, and there will be an additional charge. I cannot turn around without payment. I have another pick up I have to get to." Plaintiff responds "He's there. As soon as you pull in I'll send the payment." Defendant Jason Brockman responds: "No." (Please see Exhibit D)

12. Plaintiff continues to text Defendant to garner information as to the address so that he can pick up his vehicle. However, Defendant, Jason Brockman continues to give him an increased balance for the proposed storage of the vehicle and refuses to provide that information. (Please see Exhibit E)

13. Plaintiff's vehicle was left outside without proper care from Defendant, Jason Brockman, and depreciated in value from exposure to natural elements.

14. Due to Defendants abandonment and unprofessional work, Plaintiff suffered actual damages of sixty five thousand six hundred and fifty dollars (\$65,650.00). Plaintiff has made multiple attempts to resolve the issue with Defendants, and Defendants have failed and continue to fail to adhere to any responsibilities pursuant to the agreement made between Plaintiff and Defendants. Plaintiff sent a demand letter via certified mail to 412 Mapleton Drive, Greenville SC 29607 on August 4, 2022. Plaintiff also sent a demand

letter via certified mail to 3371 Buffalo Shoals Road, Newton NC 28658. Defendants have failed to respond. (Please see Exhibit F).

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

15. Plaintiff incorporates each and every paragraph of this complaint and restates all allegations contained therein.
16. That, on or about July of 2022, Plaintiff entered into a contract by which consideration of monetary payment, Defendants agreed to perform duties to the Plaintiff's vehicle from Tennessee to South Carolina to be delivered to Plaintiff. This agreement constituted a bilateral contract between Plaintiff and Defendant.
17. Plaintiff provided the first payment installment of one hundred and twenty-five dollars (\$125.00) for transport and was obligated to provide the complete transport fee upon delivery of the vehicle; therefore, Defendant and his company are in breach of the contract by refusing to deliver the vehicle to Plaintiff as previously agreed upon and by maintaining possession and ownership of the vehicle after subsequent requests for delivery.
18. Plaintiff has been damaged and was without his vehicle as a direct and proximate result of Defendant's breach. The vehicle continues to depreciate in value due to improper storage and exposure to the elements.
19. Plaintiff sustained actual damages and is informed and believes he is entitled to an award of actual damages.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract accompanied by a Fraudulent Act)

20. Plaintiff incorporates by reference each and every paragraph of this complaint and restates all allegations contained therein.
21. Defendants, whether acting individually or through its agent, had a duty of care under the Contract to uphold the implied covenant of good faith and fair dealing when performing and enforcing the terms of the Contract. The parties to the Contract must employ honesty in fact, either during the transaction involved or by one's conduct when performing under the Contract, pursuant to the community standards of decency, fairness, and reasonableness. Neither party to the Contract may do anything to destroy or injure the other party's rights under the Contract that amounts to a breach when acting in a manner that deprives the other party of the benefits under the Contract.
22. Defendants, whether acting individually or through its agents, breached the Contract and rendered nonperformance of the terms and conditions of the Contract therein when acting in bad faith by
- A. Refusing to deliver the vehicle as contracted;
 - B. Failing to maintain and care for the vehicle while in Defendant's possession;
 - C. Hiring unprofessional employees/subcontractors who could not perform the work agreed upon, and
 - D. Failing to rectify the issues when Plaintiff sought relief.
23. Defendants, whether acting individually or through its agents, acted intentionally in a willful, wanton, and reckless manner in disregard of Plaintiff's rights when materially breaching the Contract in bad faith accompanied by fraudulent acts.

- 24. Defendants' intentional false representation of his ability to transport a vehicle for monetary payment rendered by Plaintiff constitutes a dishonest and fraudulent act on Defendants' part and was a material fact that was used to entice Plaintiff to contract with Defendants for services and was rightfully relied upon by Plaintiff.
- 25. As a direct and proximate result of this breach, Plaintiff has suffered damages. Plaintiff is entitled to recover actual and punitive damages in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Fraud and Misrepresentation)

- 26. Plaintiff incorporates each and every paragraph of this complaint and restates all allegations contained therein.
- 27. Defendants fraudulently represented to Plaintiff that they would provide a complete transport of Plaintiff's 1969 Chevrolet Camaro for monetary payment rendered by Plaintiff, upon which Plaintiff relied upon.
- 28. Defendants' misrepresentations were material, sufficiently important, and warranted Plaintiff's decision to hire Defendants to complete the vehicle transport.
- 29. Plaintiff was ignorant of the falsity of Defendants' misrepresentations and rightfully relied on Defendants' misrepresentations regarding his ability to provide vehicle transportation services.
- 30. Plaintiff has incurred consequential and proximate damages as a result of his reliance on Defendants' misrepresentations.

FOR A FOURTH CAUSE OF ACTION

(Conversion)

31. Plaintiff incorporates each and every paragraph of this complaint and restates all allegations contained therein.
32. The Defendants' breach of duty owed to Plaintiff under the bailment relationship between the parties and Defendants' disposition or concealment of Plaintiff's said Chevrolet Camaro constituted and was a willful and deliberate conversion of Plaintiff's property to the use and benefit of the Defendants entitling Plaintiff to both actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION

(Implied Warranty)

33. Plaintiff incorporates each and every paragraph of this complaint and restates all allegations contained therein.
34. The Defendants held themselves out to be specifically qualified to perform work of a particular character, namely performing transportation of automobiles in an effective, professional, and quality manner.
35. This representation of being specifically qualified and performing said services as such caused an implied warranty to arise that the task which the Defendants, and/or agent of the Defendants, undertook would be of proper workmanship and reasonably fit for its intended purpose.
36. The Defendants knew or had reason to know of the particular purpose for which auto transportation was required, and Plaintiff relied on the same.

37. The transportation of the vehicle was not complete and was not of the proper workmanship that Plaintiff relied upon, therefore the Defendants breached its implied warranty for fitness for a particular purpose, and Plaintiff is entitled to actual damages.

FOR A SIXTH CAUSE OF ACTION
(Negligence)

38. Plaintiff incorporates each and every paragraph of this complaint and restates all allegations contained therein.

39. The Defendants placed the 1969 Chevrolet Camaro at its business, without proper precautions, or without proper security, and by reason of Defendants' negligence, gross negligence, or willfulness; Plaintiff's Chevrolet Camaro suffered severe damage.

40. Defendants were negligent, grossly negligent, reckless, and/or willful, and such negligence, gross negligence, recklessness, and/or willfulness proximately caused Plaintiff's damage, in one or more of the following particulars:

- a. In failing to have the vehicle covered to prevent weather damage;
- b. In leaving the vehicle in an unenclosed area where it was unprotected from weather damage;
- c. In failing to take any action to protect Plaintiff's vehicle from damage.

41. That because of Defendants' negligence, gross negligence, or reckless action or inaction, Plaintiff has suffered actual damages.

FOR A SEVENTH CAUSE OF ACTION
(Bailment)

42. Plaintiff incorporates by reference each and every paragraph of this complaint and restates all allegations contained therein.

- 43. Plaintiff went to Defendants' delivery drop-off and discovered that his vehicle was no longer there due to the preceding departure by Defendant.
- 44. Upon the delivery by the Plaintiff of said vehicle to the Defendants' place of business, there was established and there arose between the parties a bailment for the exclusive use and benefit of the Defendants and for the sole purpose of the Defendants making automotive transports. As a consequence of said bailment for the exclusive benefit of the Defendants, the Defendants owed the Plaintiff the highest duty of care in the preservation of the Plaintiff's vehicle.
- 45. The duty owing to Plaintiff by the Defendants as a result in the aforementioned bailment was violated by the Defendants by its concealment of said vehicle from Plaintiff, its disposition of said vehicle in derogation of Plaintiff's rights, or the Defendants' negligence in the preservation of Plaintiff's property while Defendants allowed the removal of Plaintiff's vehicle from its property.
- 46. That the Defendants' conduct as hereinabove alleged was deliberate, willful, malicious, and in derogation of Plaintiff's rights therein and/or was grossly negligent, willful, wanton, and/ or negligent therein entitling Plaintiff judgment against Defendants for the value of the said vehicle as of the date of its delivery to the Defendants and punitive damages together with interest therein at the judgment rate since said date until judgment from all of which Plaintiff prays together with all cost of this action.

FOR AN EIGHTH CAUSE OF ACTION

(Breach of Unfair Trade Practices Act pursuant to S.C. Code Ann §39-5-10 to 730)

- 47. Plaintiff incorporates by reference each and every paragraph of this complaint and restates all allegations contained therein.

48. Defendants, whether acting individually or through Defendants' agents engaged in deceptive acts, including but not limited to the acts, representations, and omissions set forth herein of this complaint, that amount to unfair and deceptive acts or practices in the conduct of commerce and trade.
49. Defendants, whether acting individually or through the Defendants' agents, has breached Plaintiff's right herein by engaging in unfair and deceptive trade practices that affect commerce in violation of South Carolina Law S.C. Code Ann. §39-5-10.
50. The conduct of Defendants, whether acting individually or through Defendant's agents, in this regard has been immoral, unethical, oppressive, and unscrupulous that has caused substantial injury to Plaintiff.
51. Defendants, whether acting individually or through Defendants' agents, has acted intentionally, willfully, and with reckless disregard for Plaintiff's rights and the established public policy in South Carolina. Defendants, whether acting individually or through Defendants' agents, knew or should have known that Defendants violated the South Carolina Unfair Trade Practice Act.
52. Defendants' deceptive acts and practices impact the public interest, and the likelihood of repetition of misconduct is substantial. As a result of the foregoing deceptive methods and practices, Plaintiff has been and continues to be injured.
53. As a direct and proximate result of this misconduct, Plaintiff has suffered damages. Plaintiff is entitled to recover actual and punitive damages in an amount to be determined at trial and reasonable attorneys fees and costs incurred in this action. Plaintiff is also entitled to treble damages resulting from the unfair and deceptive trade practices of

Defendants, whether acting individually or through Defendants' agents. S.C. Code Ann. §39-5-140.

FOR A NINTH CAUSE OF ACTION

(Attorney's Fees)

54. Plaintiff incorporates each and every paragraph of this complaint and restates all allegations contained therein.

55. Plaintiff is informed and believes that he is entitled to recover attorneys fees and costs inasmuch as it is Defendants' actions that necessitated filing such litigation. Plaintiff, therefore, seeks an order of the court requiring Defendants to pay all fees and costs incurred associated with Plaintiff's claims and allegations.

FOR A TENTH CAUSE OF ACTION

(Damages)

56. Plaintiff incorporates each and every paragraph of this complaint and restates all allegations contained therein.

57. As a result of Defendants' above-stated actions, Plaintiff has sustained the following damages of approximately sixty-five thousand six hundred and fifty dollars (\$65,650.00).

WHEREFORE, Plaintiff demands judgment against Defendants and prays for the following relief:

1. That the relief sought in Plaintiff's Complaint be granted;
2. Judgment against Defendants for actual damages in the amount of sixty-five thousand six hundred and fifty dollars (\$65,650.00) to be compensated to Plaintiff;
3. Judgment against Defendants for punitive damages to be determined by the trier of fact;

4. Judgment against Defendants for treble damages;
5. Judgment against Defendants for all attorney's costs and fees associated with this action;
6. Any and all other relief that this court deems just and proper under the circumstances.

Respectfully Submitted,

s/James Stone Craven
James Stone Craven
Attorney for the Plaintiff
SC Bar No. 69847
600 East Washington Street
Suite 612
Greenville, SC, 29601
(864) 729-8722
stoneycraven.com

Greenville, SC
September 30, 2022

Exhibit A

Terms and Conditions - Linus Auto Transport

1. ACCEPTING THESE TERMS

This document makes up our Terms and Conditions ("Terms" or "Agreement"). The Terms are a legally binding contract between you ("you", or the "Client") and Linus AT, LLC, a Texas limited liability company ("Linus Auto Transport"). This contract sets out your rights and responsibilities when you use <https://linusat.com> and when you use Linus Auto Transport's Services (defined below). Please read these Terms carefully.

2. CHANGES

Linus Auto Transport may amend the Terms at any time by providing you with a revised version. The revised version will be effective at the time you receive the revised version.

3. SERVICES

Linus Auto Transport will identify a third-party transport car carrier ("Carrier") who is willing to transport your vehicle ("Vehicle") in accordance with your order ("Linus's Broker Services"). Linus's Broker Services are considered rendered when Linus Auto Transport has dispatched a Carrier to transport your Vehicle. In providing Linus's Broker Services, Linus Auto Transport is acting solely in the capacity of a vehicle transport broker to connect you with a Carrier who is willing to transport your Vehicle. Linus Auto Transport's involvement is limited strictly to the role of a broker between services sought by the Client and fulfilled by the Carrier. Nothing in this Agreement shall be construed to mean Linus Auto Transport is subcontracting work to the Carrier. Linus Auto Transport is not responsible for moving any vehicle nor will Linus Auto Transport take possession of any vehicle.

Carrier shall be the party responsible for the moving transportation of your vehicle ("Carrier's Services"). Carrier is solely responsible for controlling the method, manner, and means of accomplishing the performance of Carrier's Services. Carrier and its Drivers are responsible for performing Carrier's Services in a timely manner without damage in transit, as well as determining the appropriate route for transportation. "Driver" means, collectively, the employees of Carrier, any contractors of Carrier (including owner-operators under contract with Carrier and any employees of any such owner-operator) and any other service provider or other personnel of Carrier, in each case, who is assigned to operate any motor vehicle transporting any vehicle on behalf of Carrier.

In the performance of Carrier's Services, Carrier will be solely responsible for the acts and omissions of each of its employees, agents, representatives, contractors (including independent contractors and subcontractors) and any other service providers engaged by Carrier (including its Drivers, collectively, "Carrier Representatives").

Carrier will be solely responsible for ensuring that such Carrier Representatives are fully qualified to perform Carrier's Services hereunder.

The relationship between Linus Auto Transport and Carrier is solely as independent business enterprises, each of which operates a separate and distinct business enterprise that provides a service outside the usual course of business of the other. Carrier assumes full responsibility for all taxes, assessments, insurance (including workers compensation, unemployment compensation, disability, pension, and social security insurance) and other financial obligations due to or otherwise involving Carrier Representatives (including compensation of its Drivers) arising out of Carrier's Services. Linus Auto Transport is not an agent of Carrier or Customer, and Carrier is not an agent of Linus Auto Transport. This Agreement does not create a joint venture, joint enterprise or partnership between Linus Auto Transport, the Customer, and/or Carrier.

Carrier will furnish all equipment necessary or required for the performance of Carrier's Services (the "Equipment").

4. PLACING AN ORDER FOR Linus'S BROKER SERVICES

To place an order for Linus's Broker Services, you must provide accurate information identifying your Vehicle that will be transported, whether the Vehicle is operable, addresses for Pickup and Delivery, preferred Pickup date, the names and contact information for responsible individuals who will be present at Pickup and Delivery, the type of transport you would like (e.g., open or enclosed carrier), and a credit/debit card number for payment. After you initially provide your order information, Linus Auto Transport will send you an email ("Order Confirmation Email") containing your order information and the fees you will be charged for Linus's Broker Services based on the information you provided. At that time, you must review and confirm your information and acceptance of the fee and this Agreement by submitting your order on the Linus Auto Transport website as directed in the Order Confirmation Email. By submitting your order, you represent that all information you provided (as presented in the Order Confirmation Email) is complete and accurate and agree to pay the fees for Linus's Broker Services and the fees for transportation of your Vehicle to Carrier.

By submitting your order, you authorize Linus to provide your contact information and all order details to prospective Carriers and represent and warrant that you are the registered legal owner of the Vehicle, or that you have been duly authorized by the legal owner of the Vehicle to enter into this Agreement and acquire services to transport the Vehicle.

5. FEES

Linus Auto Transport reserves the right to charge a non-refundable booking fee up to seventy-five dollars (\$75.00) when Client places an order for Linus's Broker Services. You agree to pay in full the fees for Linus's Broker Services and any additional charges that may be incurred in accordance with this Agreement. The fees for Linus's Broker Services will be set forth in the Order Confirmation Email and on the Linus Auto Transport website before you submit your order. The total fee is due in two installments, the first due when Linus Auto Transport designates a Carrier to transport your Vehicle (the "Initial Payment") and the balance due when your Vehicle is delivered (the "Remaining Balance").

The Initial Payment must be paid by credit/debit card. By submitting an order (which must include your credit/debit card information), you authorize Linus Transport Auto to immediately conduct a \$1 authorization to validate the card and then to charge the Initial Payment to the card when it becomes due.

The Remaining Balance and any additional charges incurred in accordance with this Agreement must be paid in full by credit/debit card, cash, or certified check directly to the Carrier upon delivery of your Vehicle. Failure to remit the Remaining Balance when due may result in storage of the Vehicle at your expense until the balance is paid in full.

All amounts due must be paid in full when due and the fees are not subject to dispute or offset for any damages or any other reason (including, without limitation, because you are not satisfied with the Services). Once paid, charges are non-refundable.

In addition, if you fail to make any payment when due or we receive a chargeback for your payment (whether due to a dispute of the charge or any other reason), then you must pay Linus Auto Transport the outstanding amount owed plus reimbursement for all reasonable costs incurred in collecting any overdue payment or chargeback and related interest, including, without limitation, attorneys' fees, legal costs, court costs, and collection agency fees. All late payments and chargebacks will be charged interest, calculated from the date the payment was originally due, at a rate that is the lesser of: (a) 1.5% per month and (b) the highest rate permissible under applicable law.

6. DISPATCH OF CARRIER

You will be notified by email (at the email address provided on your order form) when a Carrier has been dispatched to transport your Vehicle. The dispatch email (Dispatch Notification Email) will include information about the Carrier as well as estimated Pickup and Delivery dates.

7. PREPARATION OF VEHICLE FOR TRANSPORT

You shall take the following steps prior to the designated Pickup time to prepare your Vehicle for transport:

- a) Remove and secure all loose parts, fragile accessories and low hanging spoilers, etc.;
- b) Remove all non-permanent, outside mounted luggage and other racks;
- c) Remove or deactivate any toll pass transponders or other sensors that may get charged to your account. Note that 100% of any toll charges incurred by the Client are the responsibility of the Client;
- d) Ensure your Vehicle is in good working condition (unless previously noted on your order) and with between 1/4 and 1/2 tank of fuel;
- e) Disarm any alarm system or provide Carrier with keys and instructions for arming/disarming any alarm system; and
- f) Remove all personal belongings and sensitive materials and do not store any dangerous or illegal items inside the Vehicle (including, but not limited to, explosives, guns, ammunition, fireworks, flammable materials, alcohol, legal or illegal drugs, money, legal or financial documents, pets, plants, and any other personal belongings, sensitive materials, or unlawful contraband).

Failure to take these steps will result in you being liable for damages caused to your Vehicle, the transport

vehicle, or other property. Neither Carrier nor Linus Transport Auto will be liable for any damages or loss caused to your Vehicle or any other property that is caused in part by your failure to reasonably comply with this Agreement. Any items left in your Vehicle shall be at your own risk.

8. TRANSPORT OF VEHICLE

By submitting an order, you authorize the dispatched Carrier to operate and transport your Vehicle between the Pickup and Delivery location and take such steps the Carrier deems necessary to complete such transportation, including driving the Vehicle. Either Linus Auto Transport or the Carrier will contact you prior to Pickup or Delivery to inform you of the approximate time and location of such Pickup or Delivery. The Carrier will attempt to make the actual Pickup and Delivery location as close to the address requested as possible, taking various factors into account, including, without limitation, transportation restriction laws and safety. These factors may require you and the Carrier to designate an alternative Pickup/Delivery location other than the one you originally requested. If you are unable to be at the designated Pickup/Delivery location at the designated time, you must designate with the Carrier another individual (who must be at least 18 years old) to act as your agent for purposes of the Pickup/Delivery. You are solely responsible for the acts and omissions of your designee/agent.

You and/or your designee/agent and your Vehicle must be present at the Pickup location at the designated time or you risk cancellation of your order and incurring the cancellation fee.

If you or your designee/agent are not at the Delivery location at the designated time, your Vehicle may be stored and/or the delivery delayed, each at your sole expense.

Pickup. The Carrier will arrive at the designated location and load your Vehicle onto the Carrier's transport vehicle ("Pickup"). At the time of Vehicle Pickup, prior to Carrier taking possession of the Vehicle, you and Carrier shall conduct a full inspection of the Vehicle for existing exterior damage. The results of this inspection shall be recorded on the inspection report on the Bill of Lading. You and Carrier shall acknowledge the existing condition of the Vehicle by signing the Bill of Lading. **YOU ARE RESPONSIBLE FOR OBTAINING AND RETAINING A COPY OF THE ORIGINAL BILL OF LADING FOR YOUR RECORDS.** If the Vehicle is found inoperable, contains any additional items inside or outside that are not part of your stock vehicle or is not as described in the order (e.g. oversized), you may be subject to additional charges by the Carrier which will be payable upon Delivery.

Delivery. At the time of Vehicle is dropped off at the delivery location ("Delivery"), you and Carrier shall conduct a full inspection of the Vehicle for any exterior damage that may have been caused during transport. The results of this inspection shall be recorded on the inspection report on the Bill of Lading. You must notate any new damage to the Vehicle (as compared to the condition of the Vehicle at the time of Pickup) on the Bill of Lading inspection report. You and Carrier shall acknowledge the condition of the Vehicle by signing the Bill of Lading. **YOU ARE RESPONSIBLE FOR OBTAINING AND RETAINING A COPY OF THE ORIGINAL BILL OF LADING FOR YOUR RECORDS. BY SIGNING THE BILL OF LADING WITHOUT NOTATION OF DAMAGE, YOU ACKNOWLEDGE THAT YOU RECEIVED YOUR VEHICLE IN SATISFACTORY CONDITION AND WITHOUT DAMAGE AND THEREBY RELEASE LINUS AUTO TRANSPORT AND CARRIER OF ANY CLAIMS OR RESPONSIBILITY FOR ANY DAMAGE TO YOUR VEHICLE.**

Carrier's responsibility for the Vehicle commences only when the Bill of Lading is signed by you and Carrier at Pickup and terminates when you sign the Bill of Lading at delivery or otherwise take delivery of the Vehicle.

Transportation services are subject to delays caused by numerous factors prior to or during transport of your Vehicle, many of which are out of the control of Linus Auto Transport and the Carrier, including, without

limitation, road conditions, weather, and mechanical issues. Therefore, neither Linus Auto Transport nor Carrier guarantee Pickup/Delivery dates, times, or locations. Any estimate of Pickup/Delivery date, time, or location that is provided to you by Linus Auto Transport or Carrier is approximate and subject to change.

9. DISCLAIMER OF WARRANTY

YOUR USE OF Linus'S BROKER SERVICES IS AT YOUR SOLE RISK. Linus'S BROKER SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND Linus AUTO TRANSPORT MAKES NO WARRANTIES OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, NON-INFRINGEMENT, OR AVAILABILITY. Linus AUTO TRANSPORT DOES NOT WARRANT THAT Linus'S BROKER SERVICES WILL BE AVAILABLE OR WILL MEET YOUR REQUIREMENTS.

SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR CONDITIONS, OR ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH EVENT, Linus AUTO TRANSPORT'S WARRANTIES AND CONDITIONS WITH RESPECT TO Linus'S BROKER SERVICES WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW IN SUCH JURISDICTION.

10. LIMITATION OF LIABILITY; ACKNOWLEDGEMENT OF NO CONTROL

UNDER NO CIRCUMSTANCES WILL Linus AUTO TRANSPORT OR ITS AFFILIATES BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE, INABILITY TO USE, OR THE RESULTS OF USE OF THE Linus'S BROKER SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, INCLUDING WITHOUT LIMITATION DAMAGES RESULTING FROM LOST PROFITS, LOSS OF BUSINESS OR BUSINESS INTERRUPTION, WHETHER DIRECT OR INDIRECT, ARISING OUT OF THE USE, INABILITY TO USE, OR THE RESULTS OF USE OF Linus'S BROKER SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY.

Linus AUTO TRANSPORT'S TOTAL AGGREGATE LIABILITY TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING FROM OR OUT OF Linus'S BROKER SERVICES OR THIS AGREEMENT (WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CLIENT TO Linus AUTO TRANSPORT FOR Linus'S BROKER SERVICES.

Linus AUTO TRANSPORT AND THE CLIENT FURTHER HEREBY ACKNOWLEDGE THAT Linus AUTO TRANSPORT RETAINS NO CONTROL OF ANY PART OF THE DELIVERY OF THE VEHICLE UNDER THESE TERMS; THAT Linus AUTO TRANSPORT HAS NO RIGHT TO ORDER THE DELIVERY STOPPED OR RESUMED FOR SAFETY REASONS OR ANY OTHER REASON, NO RIGHT TO INSPECT ITS PROGRESS OF RECEIVE REPORTS, AND NO RIGHT TO MAKE SUGGESTIONS OR

RECOMMENDATIONS CONCERNING THE DELIVERY OF THE VEHICLE. FURTHERMORE, Linus AUTO TRANSPORT TAKES NO ACTIVE ROLE IN ENSURING SAFETY IN RELATION TO THE DELIVERY OF THE VEHICLE, AND Linus AUTO TRANSPORT DOES NOT COMPLETE ANY INSPECTION OF THE VEHICLE CARRIER USES TO COMPLETE CARRIER'S SERVICES.

11. INDEMNIFICATION

Client agrees to defend, indemnify, and hold harmless Linus Auto Transport, its affiliates, as well as its directors officers, employees, agents and representatives (collectively, the "Indemnified Parties"), from and against all losses, liabilities, damages, claims, judgments, fines, penalties, interest, costs or expenses, including reasonable attorney's fees, arising out of or related to the transportation of your Vehicle or the breach of this Agreement by Customer, including Indemnified Claims for or related to personal injury (including death) or property damage. Notwithstanding the foregoing, Client's defense, indemnification and hold harmless obligations under this Section 11 will not apply to the extent that any Indemnified Claim is finally determined by a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of an Indemnified Party.

12. ORDER CHANGES AND CANCELLATION

You may change your order at any time prior to Carrier taking control of your Vehicle. Order changes may result in additional fees. If the additional fees are not agreed upon, the order will be canceled. If you cancel your order before a Carrier has been dispatched to transport your Vehicle, you will be charged a dispatch fee of \$25. If you cancel your order after a Carrier has been dispatched to transport your Vehicle, you will be charged a cancellation fee in the amount of your Initial Payment, as Linus's Broker Services have been rendered. Orders cannot be canceled or changed after Carrier has taken control of your Vehicle.

13. GOVERNING LAW

These Terms shall be construed in accordance with the laws of the state of Texas, without reference to its conflict of law provisions, and the obligations, rights and remedies of the Parties hereunder shall be determined in accordance with such laws.

14. ARBITRATION CLAUSE

All disputes and differences of any kind arising under this Agreement, arising between Client and Linus Auto Transport including the existence or continued existence of this Agreement and the arbitrability of a particular issue which cannot be settled amicably by Client and Linus Auto Transport, shall be submitted to arbitration. The arbitration shall be conducted in Austin, Texas, and shall finally be settled in accordance with the Rules of Arbitration of the of the American Arbitration Association by one arbitrator appointed in accordance with the consumer rules. The arbitrator shall not be allowed to apportion fees according to the ruling and may not award

attorney's fees to the prevailing party. The decision of the arbitrator shall be final and binding upon Client and Linus Auto Transport and may be enforced in any court in Travis County, Texas, and no party shall seek redress against the other in any court or tribunal except solely for the purpose of obtaining execution of the arbitral award or of obtaining a judgment consistent with the award.

15. COST OF ARBITRATION

Client and Linus Auto Transport shall bear their own expenses in connection with any arbitration related to this Agreement. All fees and expenses of the arbitrator and court reporter and report, if any, shall be borne and paid in full and shared equally by Client and Linus Auto Transport. In the event that an arbitration hearing is canceled resulting in a cancellation fee, the party initiating the request or causing the cancellation shall bear the full cost of the cancellation fee, unless Client and Linus Auto Transport agree otherwise.

16. ENTIRE AGREEMENT

These Terms contain the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

17. NO AGENCY

Carrier shall be deemed not to be an independent contractor, agent, joint venturer or representative of Linus Auto Transport, and Carrier may not create any obligations or responsibilities on behalf of or in the name of Linus Auto Transport. Client shall be deemed not to be an independent contractor, agent, joint venturer or representative of Linus Auto Transport, and Client may not create any obligations or responsibilities on behalf of or in the name of Linus Auto Transport.

18. NO ASSIGNMENT

You may not sell, transfer, assign, pledge or hypothecate your rights, interests, or obligations under these Terms.

19. CONSTRUCTION

Client and Linus Auto Transport acknowledge that they have participated fully in the review and revision of these Terms and have had the opportunity to seek the advice of legal counsel. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

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20. SEVERABILITY

If any provision of this Agreement shall for any reason be held illegal or unenforceable, such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect or impair the validity or enforceability of the remaining provisions of this Agreement.

21. WAIVERS

No delay or omission on the part of Linus Auto Transport in requiring performance by you or in exercising any right hereunder shall operate as a waiver of any provision hereof or of any right or rights hereunder, and the waiver, omission or delay in requiring performance or exercising any right hereunder on any one occasion shall not be construed as a bar to or waiver of such performance or right, or of any right or remedy under this Agreement, on any future occasion. A waiver must be in writing, executed by Linus Auto Transport, in order to be enforceable.

22. SECTION HEADINGS

Section headings are for descriptive purposes only and shall not control or alter the meaning of these Terms.

23. NO REPRESENTATION

You represent that you have carefully read and understand the scope and effect of the provisions of these Terms. Neither you nor Linus Auto Transport has relied upon any representations or statements made by the other party which are not specifically set forth in these Terms.

24. SURVIVAL OF CERTAIN PROVISIONS

The warranties and the indemnification obligations set forth in the Agreement shall survive the termination of the Agreement by either Linus Auto Transport or Customer for any reason.

Exhibit B



Fwd: Dispatch Notification - #1211

3 messages

Ronald Soles <ronaldsolesjr@live.com>

Tue, Jul 26, 2022 at 4:42 PM

To: "simone@stoneycraven.com" <simone@stoneycraven.com>

Contract

Sent from my T-Mobile 5G Device
Get Outlook for Android

From: tom@linusat.com <tom@linusat.com>

Sent: Tuesday, July 19, 2022 12:28:26 PM

To: Ronaldsolesjr@live.com <Ronaldsolesjr@live.com>; tom@linusat.com <tom@linusat.com>

Subject: Dispatch Notification - #1211

Hello Ronald,

We are glad to inform you that the carrier has been dispatched to pick up your vehicle(s).
Please see details below:

Company

Name USA Auto Transport

Address 2020 New Braunfels Road, P.O. Box 22343

Phone 502-312-4864

Driver Name John

Driver Phone 702-701-6831

Shipping Information

Estimated Pick-Up Date 07/19/2022

Estimated Delivery Date 07/19/2022

Payment Information

Total Price \$550

Payment Received \$125

Remaining Balance \$425

Few things to keep in mind:

- The driver will be able to go as close as to your address as safely/legally possible. Please inform the dispatcher if you have a preferred location to meet.
- Personal items are not allowed inside the vehicle during the transport, unless informed upon booking.
- Any automatic toll booth device should be removed from the car so that you won't get charged extra.
- Pickup/Delivery dates are estimated as truckers can run into delays due to traffic, detours, weather, mandatory rest stops, weight station check-ups/ police inspections, truck breakdowns etc.

Please Note:

We are here to answer your questions from 7am to 7pm Central Time. We look forward hearing from you.

By booking an order with Linus Auto Transport LLC, you agree to the Terms and Conditions.
© Copyright 2021-2022 Linus Auto Transport 5900 Balcones Drive, Austin, TX, 78731

Simone Holloway <simone@stoneycraven.com>
To: Ronald Soles <ronaldsolesjr@live.com>

Tue, Jul 26, 2022 at 4:44 PM

Received, thank you!
[Quoted text hidden]

Simone Holloway <simone@stoneycraven.com>
To: Shatoria Sanders <tori@stoneycraven.com>, Rashad Rucker <rashad@stoneycraven.com>

Wed, Aug 3, 2022 at 6:04 PM

[Quoted text hidden]

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Exhibit C

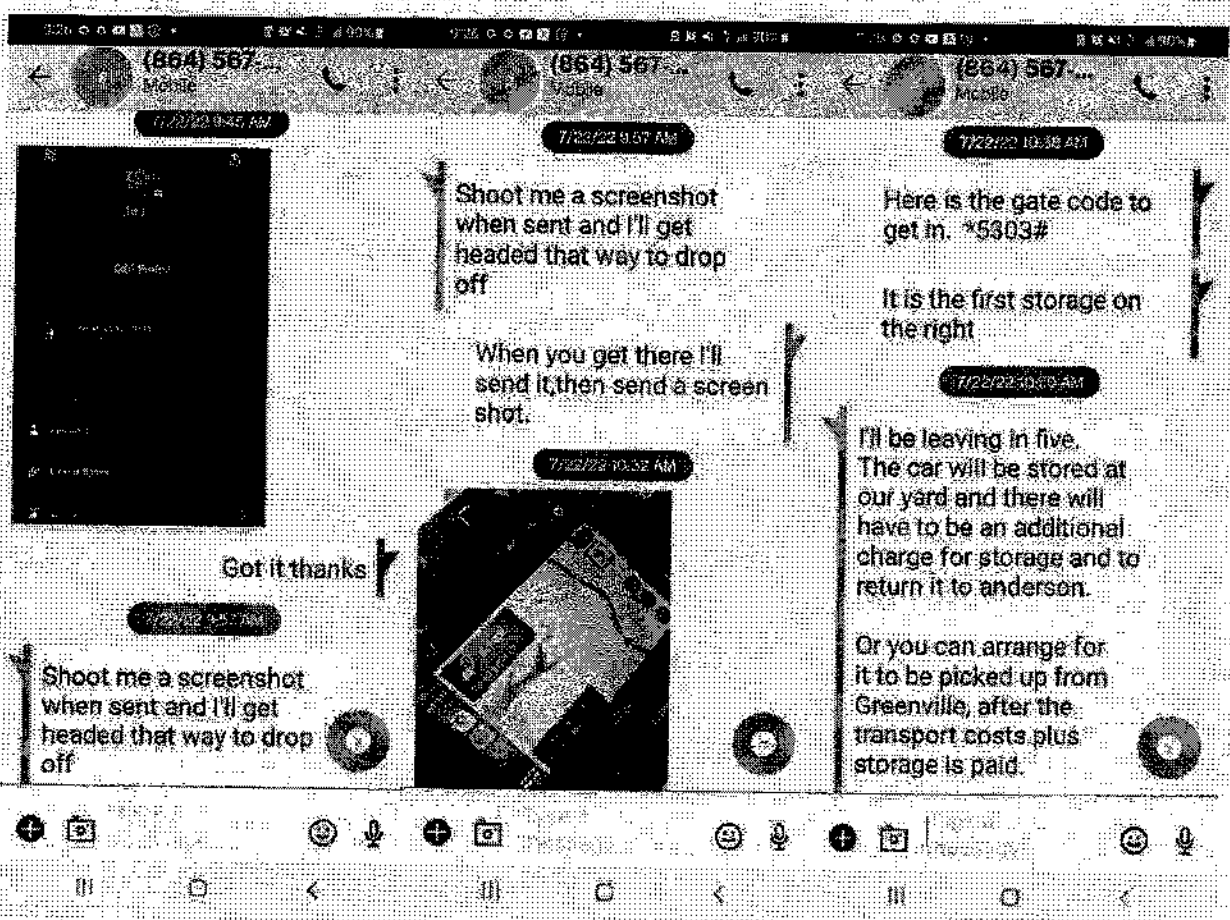


Exhibit D

ELECTRONICALLY FILED - 2022 Sep 29 4:05 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2305403

000046

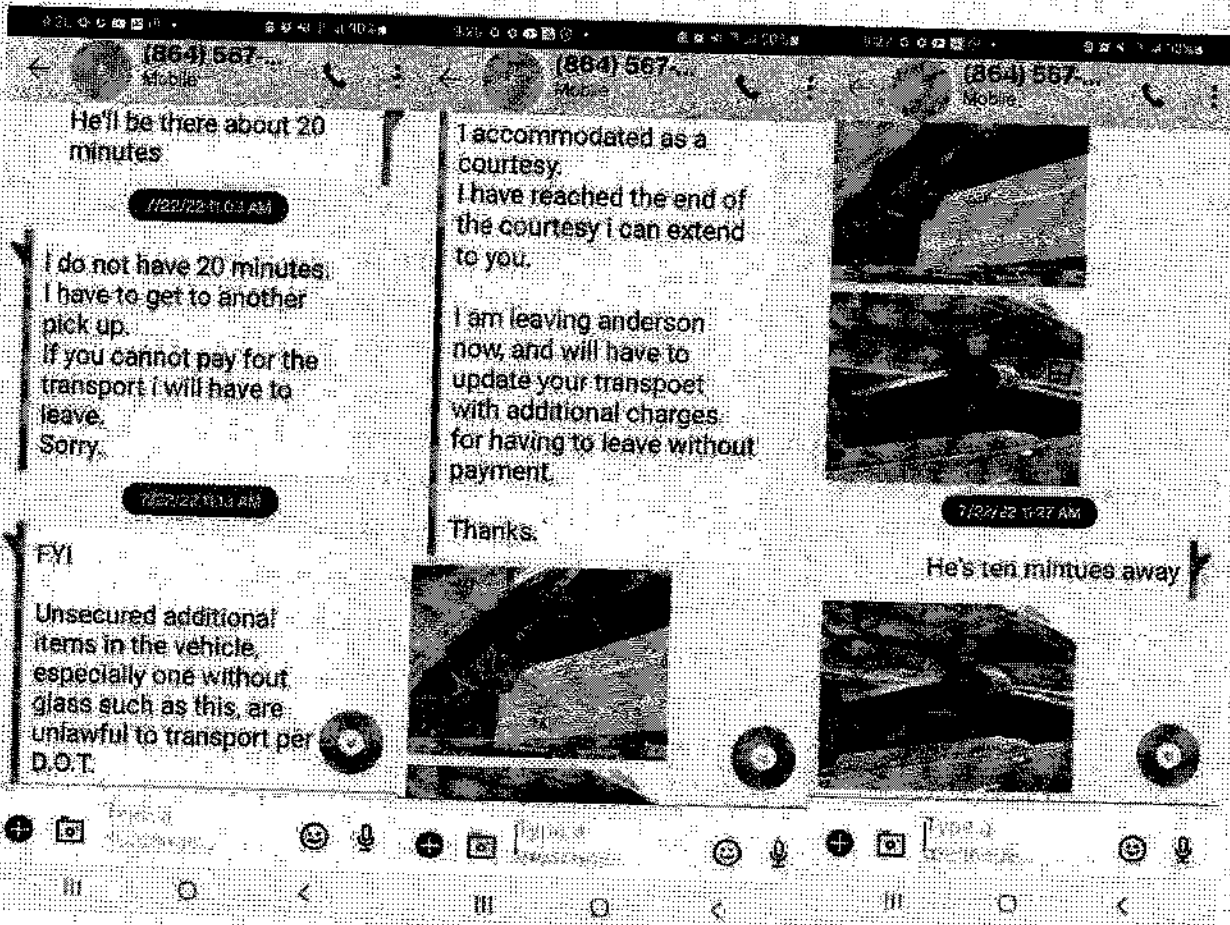
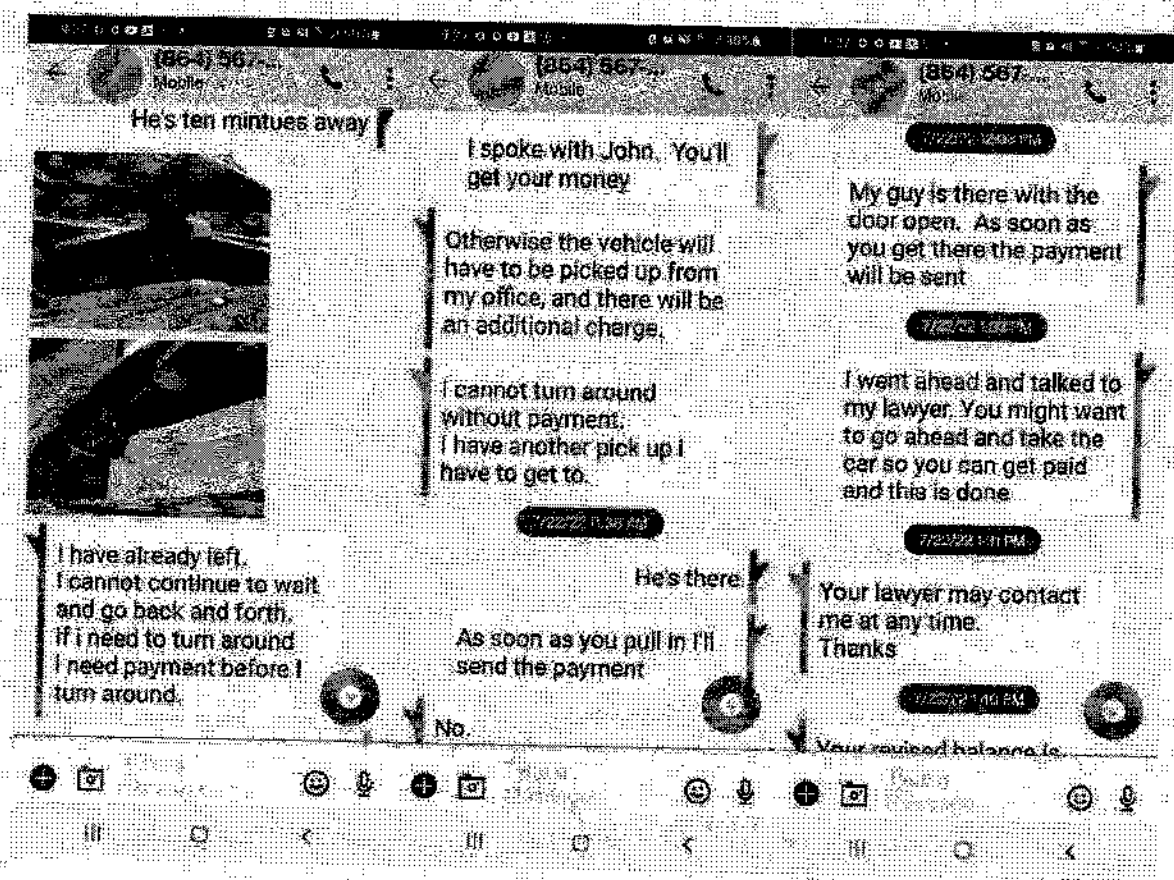


Exhibit E

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000048



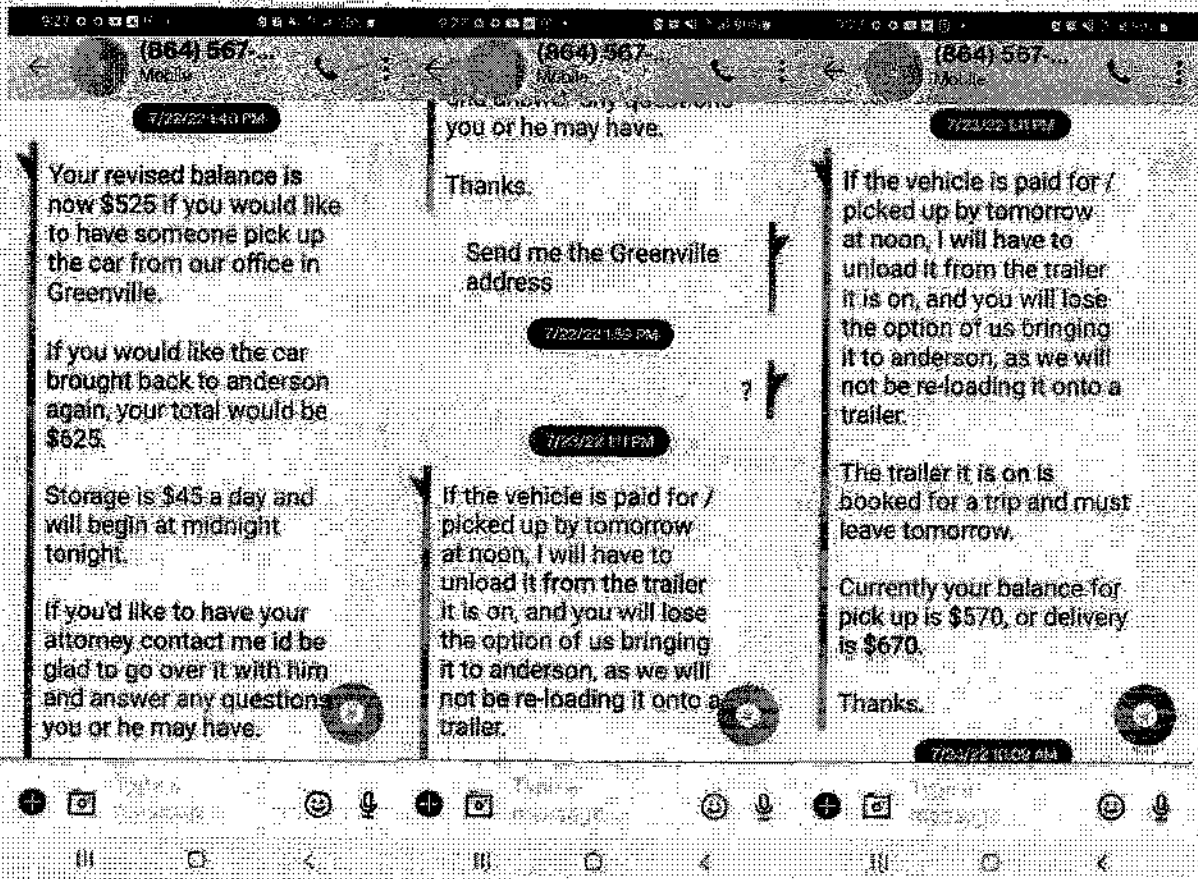


Exhibit F

LAW OFFICE OF JAMES STONE CRAVEN

ATTORNEYS AT LAW

600 E. WASHINGTON STREET, STE. 620,
GREENVILLE S.C. 29601

James Stone Craven, Esq.

Simone R. Holloway, Esq.

TELEPHONE (864) 729-8722

FAX (864) 236-8798

August 4, 2022

VIA U.S. MAIL/EMAIL

USA Auto Transport, LLC

% Ioan Gherman

25194 N 73rd Lane

Peoria AZ 85383

RE: Ronald Soles

176 West Highbanks Rd

Debarry FL 32713

Mr. Gherman,

I have been retained by Ronald Soles as it relates to the transport of our client's 1969 Chevrolet Camaro from Tennessee to South Carolina by your company. As you are aware, there have been some ongoing issues with the transportation of the vehicle. As of approximately two weeks ago, you informed my client that you had enlisted a third party by the name of JnJ Transport to deliver said vehicle and they have failed to do so. In fact, they have illegally retained the vehicle in their possession and refused to release the vehicle until they receive payment for the transport. I have included a copy of my client's contract with proof of the problems herewith. The contract between JnJ Transport, our client, and the broking company of Linus Auto Transport, LLC clearly states that payment will be tendered upon delivery of the vehicle. Thus, they are not entitled to payment for transport of the vehicle until the vehicle is delivered to my client at the agreed-upon drop-off location.

We are requesting that you return the vehicle to our client immediately. While we desire to resolve this amicably, should you fail to return the vehicle, we will be forced to contact law enforcement and you will be responsible for all costs associated with any damage to the vehicle while in the third party's possession and potentially any litigation that may be required to effectuate the repairs.

Once you have received this letter, please contact my office to schedule a time to rectify these deficiencies. Should you fail to take action in response to this letter, we will seek all remedies available under the law both civilly and criminally, including attorneys' fees and costs for having to do so. I look forward to your prompt response.

000052

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Very Truly Yours,

James Stone Craven

JSC/am
cc: Ronald Soles

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000053

LAW OFFICE OF JAMES STONE CRAVEN

ATTORNEYS AT LAW
600 E. WASHINGTON STREET, STE. 620,
GREENVILLE S.C. 29601

James Stone Craven, Esq.
~~James Stone Craven, Esq.~~

Simone B. Holloway, Esq.

TELEPHONE (864) 729-8722
FAX (864) 236-8798

August 4, 2022

VIA U.S. MAIL/EMAIL

InJ Auto Transport, LLC
% Jason Brockman
412 Mapleton Dr
Greenville SC 29607

RE: Ronald Soles
176 West Highbanks Rd
DeBary FL 32713

Mr. Brockman,

I have been retained by Ronald Soles as it relates to the transport of our client's 1969 Chevrolet Camaro from Tennessee to South Carolina by your company. As you are aware, there have been some ongoing issues with the transportation of the vehicle. As of approximately two weeks ago, you informed my client that you would deliver said vehicle and you have failed to do so. In fact, you have illegally retained the vehicle in your possession and refuse to release the vehicle until you receive payment for the transport. I have included a copy of my client's contract with proof of the problems herewith. The contract between you, our client, and the broking company of Linus Auto Transport, LLC clearly states that payment will be tendered upon delivery of the vehicle. Thus, you are not entitled to payment for transport of the vehicle until the vehicle is delivered to my client at the agreed-upon drop-off location.

We are requesting that you return the vehicle to our client immediately. While we desire to resolve this amicably, should you fail to return the vehicle, we will be forced to contact law enforcement and you will be responsible for all costs associated with any damage to the vehicle while in your possession and potentially any litigation that may be required to effectuate the repairs.

Once you have received this letter, please contact my office to schedule a time to rectify these deficiencies. Should you fail to take action in response to this letter, we will seek all remedies available under the law both civilly and criminally, including attorneys' fees and costs for having to do so. I look forward to your prompt response.

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Very Truly Yours,

James Stone Craven

JSC/am

cc: Ronald Soles

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	Docket No. 2022-CP-23-05403
)	
RONALD SOLES,)	
)	
Plaintiff,)	DEFENDANTS' ANSWER
)	AND COUNTERCLAIM
vs.)	
)	
IOAN GHERMAN d/b/a)	
USA AUTO TRANSPORT LLC and)	
JASON BROCKMAN d/b/a)	
JNJ TRANSPORT, LLC)	
Defendant(s))	

TO: PLAINTIFF Ronald Soles, By and Through his Attorney, Defendant Brockman Answers the Complaint and brings forth Counterclaims.

1. Defendants deny allegations in Paragraph 1 of Plaintiff's Complaint as Defendants believe Plaintiff lives in Laurens, South Carolina.
2. Defendants admit allegations in Paragraph 2 of Plaintiff's Complaint.
3. Defendants make a limited admission as to Paragraph 3 Plaintiff's Complaint. Defendant JNJ Transport's Headquarters is in the county of Charleston, however, the principal place of business is in Greenville County.
4. Defendants deny Paragraph 4 of Plaintiff's Complaint and strict proof is requested therein.
5. Defendants make a limited admission as to Paragraph 5 of Plaintiff's Complaint in that the 1969 Chevrolet Camaro is the vehicle at issue in the lawsuit. However, upon information and belief, Defendants specifically deny the market value of said vehicle is \$28,000. Strict proof is requested therein for the market value of the 1969 Chevrolet Camaro.

6. Defendants admit Paragraph 6 of Plaintiff's Complaint.
7. Defendants deny Paragraph 7 of Plaintiff's Complaint and strict proof is requested therein.
8. Defendant makes a partial admission of Paragraph 8 of Plaintiff's Complaint in that USA Transport LLC contracted with the Plaintiff. However, Defendants specifically deny that J N J Transport LLC contracted with the Plaintiff and strict proof is requested therein. Defendants, however, upon information and belief, agree that subpart A was an agreement to transport the 1969 Chevrolet Camaro from Tennessee to South Carolina. However, upon information and belief, the Defendants only make a limited admission to subpart B that the Defendant was supposed to deliver Plaintiff's vehicle to Plaintiff and not Plaintiff's representative.
9. Defendants deny Paragraph 9 of Plaintiff's Complaint as to Linus Auto Transport being a party to the action and strict proof is hereby requested therein.
10. Defendants make a limited admission to Paragraph 10 of Plaintiff's Complaint. The Defendants only admit payment was demanded prior to delivery of the vehicle to the Plaintiff after Plaintiff sent text messages to Defendant that he would not be present at pickup. Defendant reiterates that this is a highly unusual practice and that is why payment was demanded prior to delivery.
11. Defendants make a limited admission to Paragraph 11 of Plaintiff's Complaint in that the Plaintiff changed the delivery terms several times. The Plaintiff and Defendants had agreed that the Plaintiff would meet Defendants upon delivery of the motor vehicle. However, the Plaintiff changed this term of the agreement and told the Defendants he would not meet them upon the delivery of the vehicle. Further, the Plaintiff had agreed to prepay the Defendants upon delivery due to his changing of the original terms of the agreement. Defendants request strict proof therein and deny any element of Paragraph 11 not specifically admitted.

12. Defendants deny Paragraph 12 of Plaintiff's Complaint and demand strict proof therein.

13. Defendants deny Paragraph 13 of Plaintiff's Complaint and demand strict proof therein.

14. Defendants deny Paragraph 14 of Plaintiff's Complaint and demand strict proof therein.

FOR A FIRST DEFENSE TO PLAINTIFF'S CAUSE OF ACTION

(Breach of Contract)

15. In response to Paragraph 15 of Plaintiff's Complaint, the Defendants reallege all its responses in Paragraphs 1-14 of Defendant's Answer and Counterclaim.

16. Defendants make a limited admission to Paragraph 16 of Plaintiff's Complaint and demand strict proof therein. Defendants admit there was an agreement among the parties but demands strict proof as to the terms.

17. Defendants deny Paragraph 17 of Plaintiff's Complaint and demand strict proof therein.

18. Defendants deny Paragraph 18 of Plaintiff's Complaint and demand strict proof therein.

19. Defendants deny Paragraph 19 of Plaintiff's Complaint and demand strict proof therein.

FOR A SECOND DEFENSE TO PLAINTIFF'S CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act)

20. In response to Paragraph 20 of Plaintiff's Complaint, the Defendants reallege all its responses in Paragraphs 1-19 of Defendant's Answer and Counterclaim.

21. Defendants make a limited admission to Paragraph 21 of Plaintiff's Complaint and demand strict proof therein. The Defendants only admit that both parties had a duty of care under the contract to uphold the implied covenant of good faith and fair dealing when performing and enforcing the terms of the contract. None of the Defendants admission should be construed as to admission as to a breach of contract for failure to perform the duties under said contract. Further,

Defendants require strict proof therein for the Plaintiff to establish any further allegations arising out of this Paragraph 21.

22. Defendants deny Paragraph 22 a, b, c, and d of Plaintiff's Complaint and demand strict proof therein.

23. Defendants deny Paragraph 23 of Plaintiff's Complaint and demand strict proof therein.

24. Defendants deny Paragraph 24 of Plaintiff's Complaint and demand strict proof therein.

25. Defendants deny Paragraph 25 of Plaintiff's Complaint and demand strict proof therein.

FOR A THIRD DEFENSE TO PLAINTIFF'S CAUSE OF ACTION

(Fraud and Misrepresentation)

26. In response to Paragraph 26 of Plaintiff's Complaint, the Defendants reallege all its responses in Paragraphs 1-25 of Defendant's Answer and Counterclaim.

27. Defendants deny Paragraph 27 of Plaintiff's Complaint and demand strict proof therein.

28. Defendants deny Paragraph 28 of Plaintiff's Complaint and demand strict proof therein.

29. Defendants deny Paragraph 29 of Plaintiff's Complaint and demand strict proof therein.

30. Defendants deny Paragraph 30 of Plaintiff's Complaint and demand strict proof therein.

FOR A FOURTH DEFENSE TO PLAINTIFF'S CAUSE OF ACTION

(Conversion)

31. In response to Paragraph 31 of Plaintiff's Complaint, the Defendants reallege all its responses in Paragraphs 1-30 of Defendant's Answer and Counterclaim.

32. Defendants deny Paragraph 32 of Plaintiff's Complaint and demand strict proof therein.

FOR A FIFTH DEFENSE TO PLAINTIFF'S CAUSE OF ACTION
(Implied Warranty)

33. In response to Paragraph 33 of Plaintiff's Complaint, the Defendants reallege all its responses in Paragraphs 1-32 of Defendant's Answer and Counterclaim.
34. Defendants deny Paragraph 34 of Plaintiff's Complaint and demand strict proof therein.
35. Defendants deny Paragraph 35 of Plaintiff's Complaint and demand strict proof therein.
36. Defendants deny Paragraph 36 of Plaintiff's Complaint and demand strict proof therein.
37. Defendants deny Paragraph 37 of Plaintiff's Complaint and demand strict proof therein.

FOR A SIXTH DEFENSE TO PLAINTIFF'S CAUSE OF ACTION
(Negligence)

38. In response to Paragraph 38 of Plaintiff's Complaint, the Defendants reallege all its responses in Paragraphs 1-37 of Defendant's Answer and Counterclaim.
39. Defendants deny Paragraph 39 of Plaintiff's Complaint and demand strict proof therein.
40. Defendants deny Paragraph 40 of Plaintiff's Complaint and demand strict proof therein.
41. Defendants deny Paragraph 41 of Plaintiff's Complaint and demand strict proof therein.

FOR A SEVENTH DEFENSE TO PLAINTIFF'S CAUSE OF ACTION
(Bailment)

42. In response to Paragraph 41 of Plaintiff's Complaint, the Defendants reallege all its responses in Paragraphs 1-41 of Defendant's Answer and Counterclaim.
43. Defendants deny Paragraph 43 of Plaintiff's Complaint and demand strict proof therein.
44. Defendants deny Paragraph 44 of Plaintiff's Complaint and demand strict proof therein.
45. Defendants deny Paragraph 45 of Plaintiff's Complaint and demand strict proof therein.

46. Defendants deny Paragraph 46 of Plaintiff's Complaint and demand strict proof therein.

FOR AN EIGHTH DEFENSE TO PLAINTIFF'S CAUSE OF ACTION
(Breach of Unfair Trade Practices Act Pursuant to S.C. Code Ann. §39-5-10 to 730)

47. In response to Paragraph 47 of Plaintiff's Complaint, the Defendants reallege all its responses in Paragraphs 1-46 of Defendant's Answer and Counterclaim.

48. Defendants deny Paragraph 48 of Plaintiff's Complaint and demand strict proof therein.

49. Defendants deny Paragraph 49 of Plaintiff's Complaint and demand strict proof therein.

50. Defendants deny Paragraph 50 of Plaintiff's Complaint and demand strict proof therein.

51. Defendants deny Paragraph 51 of Plaintiff's Complaint and demand strict proof therein.

52. Defendants deny Paragraph 52 of Plaintiff's Complaint and demand strict proof therein.

53. Defendants deny Paragraph 53 of Plaintiff's Complaint and demand strict proof therein.

FOR A NINTH DEFENSE TO PLAINTIFF'S CAUSE OF ACTION
(Attorney's Fees)

54. In response to Paragraph 54 of Plaintiff's Complaint, the Defendants reallege all its responses in Paragraphs 1-53 of Defendant's Answer and Counterclaim.

55. Defendants deny Paragraph 55 of Plaintiff's Complaint and demand strict proof therein.

FOR A TENTH DEFENSE TO PLAINTIFF'S CAUSE OF ACTION
(Damages)

56. In response to Paragraph 56 of Plaintiff's Complaint, the Defendants reallege all its responses in Paragraphs 1-55 of Defendant's Answer and Counterclaim.

57. Defendants deny Paragraph 57 of Plaintiff's Complaint and demand strict proof therein.

FOR A SECOND DEFENSE BY WAY OF AN AFFIRMATIVE DEFENSE
(Work of Others)

58. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-57 consistent as if fully stated herein.

59. The injuries and damages, if any, sustained by Plaintiff and alleged against Defendant were the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of others and, as such, recovery against Defendant should be barred.

FOR A THIRD DEFENSE BY WAY OF AN AFFIRMATIVE DEFENSE
(Unforeseen events)

60. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-59 consistent as if fully stated herein.

61. Defendants allege that Plaintiff's damages, if any, were caused by unforeseen and unforeseeable events for which the Defendants are not liable.

FOR A FOURTH DEFENSE BY WAY OF AN AFFIRMATIVE DEFENSE
(No Act of Omission)

62. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-61 consistent as if fully stated herein.

63. No act or omission of Defendants was the cause of any damages to Plaintiff.

FOR A FIFTH DEFENSE BY WAY OF AN AFFIRMATIVE DEFENSE
(No Breach)

64. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-63 consistent as if fully stated herein.

65. At all times relevant to the matters complained of in the Complaint, Defendants exercised the degree of skill and care required by law along with any duties under the contract.

FOR A SIXTH DEFENSE BY WAY OF AN AFFIRMATIVE DEFENSE
(Failure to State a Claim Under SC Rule Civ. P 12(b) (6))

66. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-65 consistent as if fully stated herein.

67. The allegations of the Plaintiff's Complaint fail to state grounds upon which relief can be granted.

FOR A SEVENTH DEFENSE BY WAY OF AN AFFIRMATIVE DEFENSE
(Failure to Mitigate)

68. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-67 consistent as if fully stated herein.

69. Defendants allege that any recovery by Plaintiff is barred by their failure to mitigate damages, and/or that recovery must be reduced by those damages that Plaintiff failed to mitigate. Plaintiff has failed to adequately or properly mitigate their alleged damages

FOR AN EIGHTH DEFENSE TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE
(Set off)

70. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-69 consistent as if fully stated herein.

71. Defendants allege that any recovery by Plaintiff must be set off or reduced, abated, or apportioned to the extent that any other party's actions caused or contributed to damages if there were any.

FOR A NINTH DEFENSE AS AN AFFIRMATIVE DEFENSE
(Equitable Defense)

72. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-71 consistent as if fully stated herein.

73. Some or all of the Plaintiff's claims in the Complaint are or may be barred by the doctrines of waiver, estoppel, unclean hands, and/or laches. Furthermore equitable claims made by Plaintiff are or may be barred by other equitable defenses applicable under SC law.

FOR A TENTH DEFENSE AS AN AFFIRMATIVE DEFENSE
(Failure of Condition Precedent or Subsequent)

74. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-73 consistent as if fully stated herein.

75. To the extent any contract between Plaintiff and Defendants does exist, there has been failure of condition precedent or subsequent with the result that Plaintiff cannot recover from Defendants.

FOR AN ELEVENTH DEFENSE AS AN AFFIRMATIVE DEFENSE
Rule 8 c

76. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-75 consistent as if fully stated herein.

77. Defendants hereby incorporate and set forth each of the affirmative defenses as required by Rule 8 c), including but not limited to accord and satisfaction, arbitration, contributory negligence, release, statute of frauds, statute of limitations, and waiver to the extent any individual defense applies to the allegations set forth in this Complaint.

FOR A TWELFTH DEFENSE AS AN AFFIRMATIVE DEFENSE
Laches

78. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-77 consistent as if fully stated herein.

79. That the Plaintiff neglected for an unreasonable and unexplained length of time to provide notice of any alleged deficiencies to Defendants who have been prejudiced by the delay, and such unreasonable delay and resulting prejudice constitutes a complete defense to all claims.

FOR A THIRTEENTH DEFENSE AS AN AFFIRMATIVE DEFENSE
Off Set

80. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-79 consistent as if fully stated herein.

81. Defendants allege that, to the extent Plaintiff alleges Defendants had any obligation or duty as to which full performance has not been rendered or excused, the Defendants are due an offset equal to a portion of, all, or more of the damages alleged by the Plaintiff.

FOR A FOURTEENTH DEFENSE AS AN AFFIRMATIVE DEFENSE
(Bad Faith)

82. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-81 consistent as if fully stated.

83. Defendants allege that Plaintiff's bad faith bars its claims or that any damages must be reduced as a result of Plaintiff's comparative bad faith.

FOR A FIFTEENTH DEFENSE AS AN AFFIRMATIVE DEFENSE
Unclean Hands)

84. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-83 consistent as if fully stated.

85. Defendants allege that Plaintiff's action is barred under the equitable doctrine of unclean hands.

FOR A SIXTEENTH DEFENSE AS AN AFFIRMATIVE DEFENSE
(Defendants obligations void or excused)

86. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-85 consistent as if fully stated.

87. Defendants allege that, to extent Plaintiff alleges the Defendants had any obligation as to which full performance has not been rendered or excused, that obligation did not exists or was based upon acts or omissions that were void or otherwise extinguished.

FOR A SEVENTEENTH DEFENSE AS AN AFFIRMATIVE DEFENSE
(Reservation of Right to Bring more Affirmative Defenses)

88. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-87 consistent as if fully stated.

89. Defendants allege that because the Complaint herein is couched in conclusionary terms, Defendants cannot fully anticipate all affirmative defenses, if and to extent that such affirmative defenses are applicable is hereby reserved.

FOR AN EIGHTEENTH DEFENSE AS AN AFFIRMATIVE DEFENSE
(Right To Cure Not Offered)

90. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-89 consistent as if fully stated.

91. As required by SC Code 37-5-110 and 37-5-111, the Plaintiff has not given the Defendants the right to cure and the conditions precedent have not been given.

FOR A NINETEENTH DEFENSE AS AN AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

92. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-91 consistent as if fully stated.

93. The Defendants reserve and do not waiver any further defenses as may be revealed by additional information that may be acquired in discovery or thereafter.

FOR A TWENTIETH DEFENSE AS AN AFFIRMATIVE DEFENSE
(Impossibility)

94. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-93 consistent as if fully stated.

95. Defendants received neither prepayment nor were met by the Plaintiff at the time of delivery and therefore were unable to complete the agreement.

FOR DEFENDANTS' FIRST COUNTERCLAIM
(Breach of Contract)

96. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-95 consistent as if fully stated.

97. The parties had entered into a valid contract and the express terms of payment was that the Plaintiff was to meet the Defendants upon delivery of the motor vehicle at issue in this lawsuit. The Plaintiff violated the agreement by not meeting the Defendants in person. Nonetheless, the Defendants agreed to deliver the motor vehicle only in the event that they were prepaid to do so. The Plaintiff refused to set prepayment upon delivery of the motor vehicle, violating the agreement by first not meeting the Defendants in person and second, by not fulfilling the prepayment terms in the event of not meeting the Defendants.

FOR DEFENDANTS' SECOND COUNTERCLAIM
(Breach of Contract With Fraudulent Intent)

98. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-97 consistent as if fully stated.

99. The Plaintiff showed fraudulent intent by agreeing to meet the Defendants in person and then failing to do so while the vehicle was being transported. The Plaintiff also showed fraudulent intent by saying they would send prepayment via text message and failing to do so. The Plaintiff knew that he had to make such communications for the Defendants to perform on the contract. The Plaintiff demonstrated fraudulent intent by said actions.

FOR DEFENDANTS' THIRD COUNTERCLAIM
(Fraud and Misrepresentation)

100. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-99 consistent as if fully stated.

101. The Plaintiff fraudulently represented to Defendants that he would meet Defendants upon delivery of the motor vehicle. Once the vehicle was in transit, he changed the delivery terms saying he would send prepayment because he could not meet the Defendants.

102. Plaintiff's misrepresentation was material, sufficiently important, it warranted Defendants' decision to deliver the motor vehicle. Defendants were ignorant of the falsity of Plaintiff's misrepresentation and rightly relied on Plaintiff's misrepresentation regarding their ability to meet them upon delivery or prepay. Defendants have incurred consequential and proximate damages.

FOR DEFENDANTS' FOURTH COUNTERCLAIM
(Breach of Unfair Trade Practices (SC Code Section 39-5-10-730))

103. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-102 consistent as if fully stated.

104. Plaintiff, whether acting individually or through Plaintiff's agent, engaged in deceptive acts including but not limited to acts, representations and admissions set forth herein to this answer, that amounted to unfair and deceptive acts or practices in the conduct in the commerce or trade.

105. The conduct of the Plaintiff, whether acting individually or through Plaintiff's agents in this regard, has been immoral, unethical, oppressive and unscrupulous causing substantial injury to the Defendants.

106. Plaintiff's actions violated the Sc Unfair Practices Act.

107. Plaintiff's deceptive acts and practices impact the public interest and likelihood misrepresentation of conduct is substantial.

108. As a direct an proximate result of this misconduct, Defendants have suffered damages. Defendants are entitled to recover actual punitive damages in an amount to be determined at trial and reasonable attorney fees and costs incurred in this action. Defendants are entitled to treble damages from the unfair trade practices of the Plaintiff whether acting individually or through Plaintiff's agents. SC Code 39-5-140.

FOR DEFENDANTS' FIFTH COUNTERCLAIM
Attorney Fees

109. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-108 consistent as if fully stated.

110. Defendants are informed and believe they are entitled to recover attorney fees and costs that are necessary for defending this lawsuit. Defendants seek an order of the court requiring Plaintiff to pay all fees and costs incurred associated the defending this lawsuit brought by the Plaintiff.

FOR DEFENDANTS' SIXTH COUNTERCLAIM
Damages

111. The Defendants incorporate herein by reference and reallege the allegations of the preceding paragraphs 1-110 consistent as if fully stated.

112. As a result of Plaintiff's above stated actions, Defendants have sustained the following damages of approximately \$6,785 for the amount due and unpaid on the day of delivery for transport and \$4,950 for storage fees.

WHEREFORE, the Defendants pray for dismissal of the Plaintiff's Complaint, judgment against the Plaintiff for actual, consequential and punitive damages in an appropriate amount, an injunction preventing the enforcement of the agreements, the dismissal of Plaintiff's actions, the costs of this action including attorney fees, for further relief as the Court may deem just and proper, and a judgment for Plaintiff's violation of the SC Unfair Trade Practices Act and Plaintiff's violation of SC Code Section 37-5-108 unconscionability inducement by unconscionable conduct.

- A. That the costs of this action be taxed against Plaintiff including a reasonable fee for the Defendants' attorney;
- B. For interest on any compensatory judgment from date of the institution of this caption;
- C. For such other, further and different relief as the Defendants may be entitled in the action, and be awarded by the Court in this action;
- E. That this matter should be tried by a jury.

signature page follows

Respectfully submitted:

s/Brian T. Smith

Brian T. Smith Law

714 Pettigru Street

Greenville, SC 29601

Telephone: 864-239-2007

Fax: 864-230-2039

Attorney for Defendant

This 11th day of November 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES,)
Plaintiff,)
)
)
-vs-)
)
JOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a)
INJ TRANSPORT, LLC)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL DISTRICT

CASE NO.: 2022-CP-23-05403

**MOTION FOR DEFAULT JUDGMENT
AGAINST DEFENDANT IOAN GHERMAN
d/b/a USA AUTO TRANSPORT, LLC**

This matter comes on the motion of James Stone Craven, Attorney for the

Plaintiff, and would show unto the court as follows:

1. Defendant, Ioan Gherman d/b/a USA Auto Transport, LLC, was served with a summons and complaint on October 6, 2022, at 9228 W. Black Hill Road, Peoria, AZ 85383. (copy of Affidavit of Service attached)
2. More than thirty days have passed since that date, and Defendant has failed to file or serve upon me or Plaintiff an answer to the complaint or otherwise to file or to serve any responsive pleading.
3. Based thereon, Defendant is in default for failure to file or to serve an answer or any responsive pleading.

Wherefore the Plaintiff would pray as follows:

1. That this Court issues a Default Judgment against the defendant for failure to file a responsive pleading.
2. That this Court grant the relief sought in the Plaintiff's complaint in its entirety
3. An award of attorneys fees and costs.
4. And for such other relief as this court would deem just and proper.

/s/James Stone Craven
James Stone Craven
Attorney at Law
Bar #: 69847
600 E Washington Street, Suite 612
Greenville, SC 29601
(864) 729-8722

November 28, 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES,)
)
Plaintiff,)
)
)
)
-vs-)
)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a)
JNJ TRANSPORT, LLC)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL DISTRICT

CASE NO.: 2022-CP-23-05403

**PLAINTIFF'S REPLY TO DEFENDANT'S
JASON BROCKMAN D/B/A
JNJ TRANSPORT
ANSWER AND COUNTERCLAIMS**

NOW COMES Plaintiff, Ronald Soles, by and through his attorney, James Stone Craven, and replies to the Defendant's Jason Brockman d/b/a JnJ Transport's Answer and Counterclaim as follows:

- 1. Plaintiff denies the allegations set forth in Paragraph 11, and strict proof is demanded.
- 2. Plaintiff denies the allegations set forth in Paragraphs 66 through 112, and strict proof is demanded.

WHEREFORE, Plaintiff prays for the following relief:

- 1. An Order dismissing the Defendant, Jason Brockman d/b/a JnJ Transport's Counterclaims.
- 2. For any further relief that the Court deems just and proper.

Signature Page to Follow

JAMES STONE CRAVEN, ATTORNEY AT LAW

/s/James Stone Craven
James Stone Craven, Esq.
SC Bar No. 69847
Attorney for the Plaintiff
600 East Washington Street, Ste 620
Greenville, SC 29601
(864) 729-8722
(864) 236-8798
stoney@stoneycraven.com

Greenville, SC
December 8, 2022

ELECTRONICALLY FILED - 2022 Dec 07 5:08 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2305403

Respectfully submitted this 30th day of December, 2022,

Greenville, SC

/s/James Stone Craven
James Stone Craven
Attorney at Law
Bar #: 69847
600 E Washington Street, Suite 612
Greenville, SC 29601
(864) 729-8722

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES,)
)
Plaintiff,)
)
vs.)
)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a)
JNJ TRANSPORT, LLC,)
)
Defendants.)
)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE No.: 2022-CP-23-05403

**DEFENDANT JASON BROCKMAN'S
MOTION TO DISMISS OR IN THE
ALTERNATIVE MOTION FOR
SUMMARY JUDGMENT**

TO: PLAINTIFF RONALD SOLES AND HIS ATTORNEY JAMES STONE

CRAVEN:

NOTICE IS HEREBY GIVEN, that the undersigned attorney for Defendant JASON BROCKMAN, will move before the Court at such time and place as the Court may determine for an Order dismissing Plaintiff's Complaint pursuant to 12(b)(6) and Rules 17(a) of the South Carolina Rules of Civil Procedure and/or an Order granting Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

This Motion is made upon the grounds that Plaintiff has failed to properly name the Defendants in accordance with Rules 17(a) of the South Carolina Rules of Civil Procedure and had failed to state a claim upon which relief may be granted against Defendants Jason Brockman and/or JNJ Transport, LLC pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure. Alternatively, Defendants Jason Brockman and/or JNJ Transport, LLC are entitled to

summary judgment on the grounds there exists no issue of material fact and he is entitled to judgment as a matter of law.

Defendants Jason Brockman and/or JNJ Transport, LLC are entitled to dismissal of the suit under Rule 12(b)(6) for failure to state a claim upon which relief may be granted and under Rules 17(a) of the South Carolina Rules of Civil Procedure, Plaintiff has failed to properly name the Defendants in this lawsuit.

Defendants Jason Brockman and/or JNJ Transport, LLC are also entitled to an Order granting Summary Judgment as to all claims against him individually and JNJ Transport, LLC pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendants Jason Brockman and/or JNJ Transport, LLC, by and through their undersigned attorney, will move this Court for an Order dismissing Plaintiff's Complaint, or in the Alternative, a Motion for Summary Judgment in favor of the Defendant and any further relief deemed proper by this Court.

This motion will further be based upon the applicable statutory and case law of the State of South Carolina, the pleadings and other documents on file, affidavits, exhibits and memorandum of fact and laws, and arguments as may be provided or submitted in support of this Motion.

Respectfully submitted,

s/Brian T. Smith
Brian T. Smith
Attorney for the Plaintiff
714 Pettigru Street
Greenville, SC 29601
bsmith@btsmithlaw.com
Telephone: (864) 239-2007
Facsimile: (864) 239-2039

Greenville, South Carolina
Dated: February 7, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES,)
)
)
Plaintiff,)
)
vs.)
)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a)
JNJ TRANSPORT, LLC,)
)
Defendants.)
)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE No.: 2022-CP-23-05403

**DEFENDANT JASON BROCKMAN'S
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS OR IN THE
ALTERNATIVE MOTION FOR
SUMMARY JUDGMENT**

TO: PLAINTIFF RONALD SOLES AND HIS ATTORNEY JAMES STONE

CRAVEN:

Defendant JASON BROCKMAN, respectfully submits this Memorandum of Law in Support of Defendant's Motions to Dismiss the Complaint of Ronald Soles ("Plaintiff") under Rule 12(b)(6) and Rules 17(a) of the South Carolina Rules of Civil Procedure and pursuant to S.C. Code Ann. § 33-44-201, and/or an Order granting Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure:

BACKGROUND

On or about July of 2022, Plaintiff contracted with the Linus Auto Transport, LLC to arrange the transport of an inoperable 1969 Chevrolet Camaro. Shortly after Linus arranged for a third-party transport company USA Auto Transport, LLC to coordinate the transport. Ultimately, JNJ Transport, LLC was dispatched as the carrier to pick up the vehicle and transport the vehicle

from Tennessee to South Carolina. JNJ Transport, LLC agreed to transport the inoperable 1969 Chevrolet Camaro from Tennessee to South Carolina and deliver Plaintiff's vehicle to Plaintiff. The Plaintiff paid an initial fee of one hundred and twenty-five dollars (\$125.00) to the booking agent. The remaining fee of four hundred and twenty-five dollars (\$425.00) for the transport was to be paid directly to the carrier at the time of delivery to the Plaintiff's destination. This is commonly referred to as Cash on Delivery (COD). The Plaintiff was to meet the Defendants upon delivery of the motor vehicle at issue in this lawsuit. The Plaintiff violated the agreement by not meeting the Defendants in person. Nonetheless, JNJ Transport agreed to deliver the motor vehicle if they were paid to do so upon arrival at the destination. The inoperable vehicle would not be unloaded from the transport trailer until payment was received. Plaintiff was notified by text when JNJ Transport was approximately five (5) miles away. (See **Exhibit C to Complaint**). Defendant JNJ Transport arrived at the destination, and no one was there to receive the vehicle or make payment for the transport. JNJ Transport then notified the Plaintiff again via text that after waiting a period of time that he would be leaving soon and unable to wait any longer as he had another transport to perform. JNJ Transport also notified the Plaintiff that the car would be placed at their lot and there would be additional storage fees and a fee to make a return trip or second attempt to deliver the car. In the alternative, the Plaintiff was given the option to pay the necessary fees owed and he could pick up the vehicle from JNJ Transport's Greenville, SC location. After nearly an hour of waiting for a representative to take possession of the vehicle and for payment from the Plaintiff, JNJ Transport had to leave Anderson with the vehicle and without payment for the transport. Plaintiff was notified of the additional charges he would incur. Plaintiff was also notified of the safety concerns present and that it is unlawful to transport the loose items that were placed in the vehicle that has no windows. JNJ Transport also informed the Plaintiff that if he made

payment for the transport, that JNJ Transport would turn around, but without payment being made, he could not turn around.

The Plaintiff and Defendants had originally agreed that the Plaintiff would meet Defendants upon delivery of the motor vehicle. However, the Plaintiff changed this term of the agreement and told the Defendants he would not meet them upon the delivery of the vehicle but would send a representative. Further, the Plaintiff had agreed to prepay the Defendants upon delivery due to his changing of the original terms of the agreement. The Plaintiff refused to send payment to JNJ transport upon delivery of the motor vehicle, violating the agreement by first not meeting the Defendants in person and second, by not fulfilling the prepayment terms in the event of not meeting the Defendants. Defendant JNJ Transport asserts that this is a highly unusual practice and that is why payment was demanded for fear that they would not be paid or that they would make multiple unpaid attempts. Ultimately, JNJ Transport had to take the vehicle to their Greenville location for storage pending payment. To date, Plaintiff has refused payment and the vehicle remains in storage.

ARGUMENT

- I. Under Rules 17(a) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 33-44-201, Plaintiff has failed to properly name the Defendants.**

Plaintiff has failed to properly name the Defendants in accordance with Rules 17(a) of the South Carolina Rules of Civil Procedure. Plaintiff has named the Defendants as Ioan Gherman d/b/a USA Auto Transport LLC and Jason Brockman d/b/a JNJ Transport, LLC as the parties to this lawsuit. Pursuant to S.C. Code Ann. § 33-44-201, "Except as provided in Section 12-2-25 for single-member limited liability companies, a limited liability company is a legal entity distinct

from its members.” Defendant asserts that to allow Plaintiff’s complaint to proceed as filed would “pierce the corporate veil” and should be dismissed. “If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons.” *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008). **“The party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied.”** *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 653-655, 817 S.E.2d 280-281 (2018). (emphases added).

Plaintiff has provided no showing to this Court that their case should be allowed to “pierce the corporate veil” and should be dismissed.

II. Under Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure, Plaintiff has failed to state a claim upon which relief may be granted.

Plaintiff has failed to state a claim upon which relief may be granted against Defendants Jason Brockman and/or JNJ Transport, LLC pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure.

Because a Rule 12(b)(6) motion tests the sufficiency of a complaint rather than the merits of the claim, it is to be determined based solely upon the pleading. Under South Carolina Rules of Civil Procedure, a complaint is subject to dismissal when it “fail[s] to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), SCRCPP. According to the South Carolina Supreme Court, dismissal under Rule 12(b)(6) is thus appropriate if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, do not entitle the plaintiff to relief on any theory. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” *Flateau v. Harrelson*, 355 S.C. 197, 201-02, 584 S.E.2d 413, 415 (Ct. App. 2003) (citations omitted).

Plaintiff fails to state a claim or facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because he has not alleged any elements of a cause of action. The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint. *State v. Board of Medical Examiners v. Fenwick Hall, Inc.*, 300 S.C. 274, 397 S.E.2d 458 (1990).

Defendants Jason Brockman and/or JNJ Transport, LLC are entitled to dismissal of the suit under Rule 12(b)(6) for failure to state a claim upon which relief may be granted and pursuant to Rules 17(a) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 33-44-201, Plaintiff has failed to properly name the Defendants in this lawsuit and Plaintiff has not provided a showing to this Court that their case should be allowed to “pierce the corporate veil” and should be dismissed.

III. Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants Jason Brockman and/or JNJ Transport, LLC are also entitled to an Order granting Summary Judgment as to all claims against him individually and JNJ Transport, LLC.

Alternatively, Defendants Jason Brockman and/or JNJ Transport, LLC are entitled to summary judgment on the grounds there exists no issue of material fact and he is entitled to an Order granting Summary Judgment in their favor as to all claims against him individually and JNJ Transport, LLC judgment as a matter of law pursuant to Rule 56 of the South Carolina Rules of

Civil Procedure. Defendant Jason Brockman and/or JNJ Transport, LLC are entitled to summary judgment on their Counterclaims in their favor for payment of monies owed, attorney fees, and all other relief this Court deems proper.

Summary Judgment is appropriate only where there is no genuine issue of material fact and it is clear the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). "Summary judgment should be granted when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 240, 672 S.E.2d 799, 802 (Ct.App.2009).

The facts of this case are simple. Plaintiff arranged the transport of his inoperable 1969 Chevrolet Camaro from Tennessee to South Carolina. Plaintiff only paid the initial fee required to engage the transport location service. The remaining payment was to be made as a Cash on Delivery (COD) payment directly to JNJ Transport. JNJ Transport made the transport to the Plaintiff's desired location. Plaintiff changed the terms of delivery and altered the contract. Defendant JNJ Transport arrived at the destination and requested payment for his services. Plaintiff or the Plaintiff's representative were not present for the attempted delivery and after waiting a reasonable amount of time, JNJ Transport had to leave without payment or the ability to leave the Plaintiff's vehicle. Once a representative was available to take possession of the vehicle Plaintiff demanded that JNJ Transport turn around and deliver the vehicle. JNJ Transport offered to turn around if payment for their services were rendered before turning around. Plaintiff refused to pay

for JNJ Transport's services and JNJ Transport brought the car to their storage location pending payment.

The Federal Motor Carrier Safety Administration (FMCSA) provides information to consumers on the "Protect Your Move" website (<https://www.fmcsa.dot.gov/protect-your-move>) to assist consumers in understanding every phase of the moving process, address questions and expectations. Pursuant to Subpart H of their guidelines,

If you do not pay the transportation charges at the time of delivery, your mover has the right, under the bill of lading, to refuse to deliver your goods. The mover may place them in storage, at your expense, until the charges are paid. However, the mover must deliver your goods upon payment of 100 percent of a binding estimate, plus the cost of any additional services that you requested after the contract was executed that were not included in the estimate, and any charges for impracticable operations, not to exceed 15 percent of all other charges due at time of delivery.

Collection of charges (subpart H). FMCSA. (n.d.). Retrieved February 17, 2023, from <https://www.fmcsa.dot.gov/protect-your-move/how-to/subpartH>.

The "Fees" section of the Terms and Conditions of the Agreement provided by the Plaintiff as **Exhibit A to their Complaint** specifically states,

The Remaining Balance and any additional charges incurred in accordance with this Agreement must be paid in full by credit/debit card, cash, or certified check, directly to the carrier upon delivery of your Vehicle. **Failure to remit the remaining balance when due may result in the storage of the Vehicle at your expense until the balance is paid in full.**" (emphasis added).

All amounts due must be paid in full when due and the fees are not subject to dispute or offset for any damages or any other reason (including, without limitation, because you are not satisfied with the Services).

JNJ Transport delivered the vehicle to the destination in accordance with the Agreement and should be paid their services for doing so. Through Plaintiff's own actions they neglected to be present at the time of delivery, make payment, and take possession of

the vehicle. Accordingly, Defendants Jason Brockman and/or JNJ Transport, LLC should be granted Summary Judgment on all counterclaims.

CONCLUSION

Defendants Jason Brockman and/or JNJ Transport, LLC, by and through their undersigned attorney, move this Court for an Order dismissing Plaintiff's Complaint, and/or Summary Judgment in favor of the Defendant including an award of all counterclaims and any further relief deemed proper by this Court.

Respectfully submitted,

s/Brian T. Smith
Brian T. Smith
Attorney for the Plaintiff
714 Pettigru Street
Greenville, SC 29601
bsmith@btsmithlaw.com
Telephone: (864) 239-2007
Facsimile: (864) 239-2039

Greenville, South Carolina
Dated: February 17, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES)
Plaintiff)
v.)
)
)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a,)
INJ TRANSPORT, LLC,)
Defendants)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-23-05403

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO
DISMISS PURSUANT TO RULE 12(b)(6)
AND IN THE ALTERNATIVE MOTION FOR
SUMMARY JUDGMENT**

Now, therefore, Plaintiff Ronald Soles, by way of their counsel James Stone Craven, respectfully show unto this Honorable Court the following:

1. Plaintiff denies each and every allegation contained in Defendant's Motion to Dismiss and in the alternative Motion for Summary Judgment where not hereinafter specifically admitted, modified, controverted, or explained
2. Defendant, Jason Brockman, has filed his motion titled, "Defendant Jason Brockman's Motion to Dismiss or in the alternative Motion for Summary Judgment" Defendant, in his motion, at no time makes an argument that Plaintiff has failed to state a claim against him. Instead, he improperly argues that he is not properly named in accordance with the South Carolina Rules of Civil Procedure, Rule 17(a). SCRPC Rule 17(a) does not address the naming of parties for an action; instead, it provides instructions for Defendants who fail to file an answer and how notice of a hearing must be made to the Defendant in spite of that failure. SCRPC Rule

17(a) does not apply and is incorrectly used for the Defendant's motion argument. Plaintiff has properly stated a claim against Defendant Hammond, and therefore his motion should be dismissed.

3. Furthermore, it would be premature to dismiss Defendant Jason Brockman as a defendant, as we have not yet conducted discovery, which is likely to show that Defendant Brockman, through his conduct, has availed himself personally to liability.

4. In addition, the vehicle in question, which is at issue in this case, is still in the possession of the Defendant. This possession of the Plaintiffs' vehicle is a material fact for which relief can be granted, and therefore, summary judgment should not be granted in this case.

5. The Plaintiff asks that this Court dismiss the Defendant's Motion to Dismiss and, in the alternative Motion for Summary Judgment

WHEREFORE, the Plaintiff, having fully replied to the Motion to Dismiss and in the alternative Motion for Summary Judgment, prays as follows:

- A. For an Order dismissing the Defendant's Motion to Dismiss and in the alternative Motion for Summary Judgment; and
- B. For such other and further relief as the Court may deem just and proper.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

ATTORNEY FOR PLAINTIFF

s/James Stone Craven

James Stone Craven, Esq.

SC BAR No. 69847

600 East Washington Street, Ste 620.

Greenville, SC 29601

864-729-8722

stonej@stoneycraven.com

February 22, 2023

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES)
)
Plaintiff)
)
v.)
)
)
)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a,)
JNJ TRANSPORT, LLC,)
)
Defendants)
)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-23-05403

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION
TO DISMISS PURSUANT TO RULE 12(b)(6)
AND IN THE ALTERNATIVE MOTION FOR
SUMMARY JUDGMENT**

TO: DEFENDANT JASON BROCKMAN d/b/a JNJ TRANSPORT LLC AND HIS
ATTORNEY BRIAN SMITH:

Plaintiff, RONALD SOLES, respectfully submits this Memorandum of Law in
Opposition to Defendant (Jason Brockman)'s Motion to Dismiss the Complaint of Ronald Soles
("Plaintiff") under Rule 12(b)(6) and Rules 17(a) of the South Carolina Rules of Civil Procedure
and pursuant to S.C. Code Ann. §33-44-201, and/or an Order granting Summary Judgment
pursuant to Rule 565 of the South Carolina Rules of Civil Procedure.

BACKGROUND

On or about July 2022, Plaintiff entered into a contract with USA Auto Transport, LLC,
and through a booking agency, Linus Auto Transport LLC, entered into an agreement with a
third-party transport company: JNJ Transport, LLC. (Agreement attached to Plaintiff's
Complaint as Exhibit A) This agreement was for the following services: to transport a 1969
Chevrolet Camaro from Tennessee to South Carolina and to deliver the Plaintiff's vehicle to the

Plaintiff or his representative (Agreement attached to Plaintiff's complaint as **Exhibit B**). The total cost of services was five hundred and fifty dollars (\$550.00). One hundred and twenty-five dollars (\$125.00) was due upon booking the transport service, and the remaining balance of four hundred and twenty-five dollars (\$425.00) was to be paid to the transport agency upon vehicle delivery. On or about July 22, 2022, Plaintiff received a text message from Defendant requesting payment for the services prior to delivery of the vehicle, clearly violating the parties' agreement (attached to Plaintiff's Complaint as **Exhibit C**). This correspondence between the parties continued and increased into further text messages and aggressive behavior, resulting in Defendant refusing to deliver the vehicle to Plaintiff and demanding that Plaintiff pay additional storage fees. This correspondence between the parties is reflected in Plaintiff's complaint as **Exhibits C, D, and E**. Plaintiff hired counsel, and Plaintiff's counsel sent a demand letter hoping that the parties could handle this conflict amicably, to which there was no response. This letter from counsel is attached to Plaintiff's complaint as **Exhibit F**. Since July 2022, Plaintiff's vehicle has been in Defendant's possession, and Defendant has refused to accept payment and/or release the vehicle back to Plaintiff's possession.

ARGUMENT

1. Defendant's direct and egregious conduct allows him to be made personally liable for his own acts under S.C. Code Ann. §33-6-220(b).

South Carolina Code Ann. §33-6-220(b) states, "A shareholder of a corporation is not personally liable for the acts or debts of the corporation except he may become personally liable by reasons of his own acts or conduct." Though Defendant is the owner and sole member of the principal business, JNJ Transport, LLC, he was the direct agent who serviced Plaintiff's vehicle in the capacity of an automotive transport service provider. In similar circumstances with cases involving mechanics and those who provide specialized auto services, the Court has asked the following question: whether Defendant owed a duty of care upon which to establish a claim? The South Carolina Court of Appeals held that:

Most owners do not possess the mechanical skills necessary to maintain a motor vehicle in a reasonably safe condition. Therefore, when a vehicle is in need of maintenance, the ordinary prudent person will have a qualified mechanic service it. When a mechanic undertakes to repair a vehicle, he holds himself out as specifically qualified to perform the work.¹

Similarly, most vehicle owners hire a specialized transport service to transport their vehicles from one location to another. Transport service providers must have specialty trucks and licenses and are held to the same standard as a mechanic at an automotive repair shop. When Defendant took possession of Plaintiff's vehicle to transport it from Tennessee to South Carolina, he held himself out as "specifically qualified" to perform the work he was contracted to perform.

The South Carolina Court of Appeals also held that: "He [the mechanic] also impliedly assumes a duty to make the repairs in a skillful, careful, diligent, and workmanlike manner."² The defendant, too, impliedly assumed a duty to serve Plaintiff, including the care of the car while in his possession, in a skillful, careful, diligent, and workmanlike manner. The Defendant did not do that; instead, he allowed the vehicle to become damaged in his possession and dramatically decreased the car's value due to extensive exposure to inclement weather. The defendant had a duty of care to provide a specific service to the Plaintiff; he breached that duty and, therefore, should be personally held liable for his behavior.

2. The Defendant's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure should be dismissed because there is a genuine issue of material fact.

¹ *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 19 (Cl. App. 1984)

² *Carter v. Jordan Oil Co., Inc.*, 365 S.E. 2d 324 (Cl. App. 1988)

South Carolina Rules of Civil Procedure Rule 56 provides that summary judgment is appropriate only where there is no genuine issue of material fact, and the moving party is clearly entitled to judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.³ The facts stipulated in Plaintiff's Complaint reveal a genuine issue of material fact: Defendant's possession of Plaintiff's vehicle and the failure to receive payment for delivery as contracted between the parties. There is also an issue of when payment should have been rendered for services. In addition, there are also issues of fraud, unjust trade practices, etc. These genuine issues of fact should be presented to the trier of fact and given the opportunity to be evaluated so that relief may be granted. Therefore, since a summary judgment motion and its corresponding evidence must be viewed in the light most favorably to the non-moving party, the motion should be denied, and this case should be allowed to come before a jury.

CONCLUSION

Plaintiff Ronald Soles, by and through his undersigned attorney, moves this Court for an Order denying Defendant's Motion to Dismiss and in the Alternative Motion for Summary Judgment.

Respectfully submitted,

/s/James Stone Craven

James Stone Craven
Attorney for Plaintiff
600 East Washington Street,
Ste 620

Greenville, SC 29601

(864) 729-8722

stoneycr@stoneycraven.com

Greenville, South Carolina
February 23, 2023

³ Koester v. Carolina Rental Co., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES,)
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)
Plaintiff,)
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vs.)
)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a)
JNJ TRANSPORT, LLC,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE No.: 2022-CP-23-05403

**DEFENDANT JASON BROCKMAN'S
MOTION TO RECONSIDER**

TO: PLAINTIFF RONALD SOLES AND HIS ATTORNEY JAMES STONE

CRAVEN:

NOTICE IS HEREBY GIVEN, that the undersigned attorney for Defendant JASON BROCKMAN AND JNJ TRANSPORT, LLC, by and through its undersigned counsel, hereby respectfully moves this Court, pursuant to Rules 59(e) of the South Carolina Rules of Civil Procedure, to reconsider and set aside Judge Bentley Price's order of February____, 2023, denying Defendant's Motion for Summary Judgment.

This motion to alter or amend the judgment is made pursuant to Rules 59(e), SCRPC, as Defendant Brockman has raised an issue in their Motion for Summary Judgment, but the court failed to rule upon it. Defendant Brockman moves to alter or amend the judgment upon the grounds that the Court did not rule on the Defendant's Motion for Summary Judgment regarding the Plaintiff's naming of the Defendants. Plaintiff failed to properly name the Defendants in accordance with Rules 17(a) of the South Carolina Rules of Civil Procedure by naming both the

business and the individual. Defendant Brockman argues that there were no grounds presented by Plaintiff to allow them to pierce the corporate veil. "The party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied." *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 653-655, 817 S.E.2d 280-281 (2018). Defendant prays the court reconsider and give proper consideration to Plaintiff's improperly piercing the corporate veil.

Defendant further moves under Rules 59(e), SCRCP that there is a remaining issue of storage fees owed to Defendant and any disputed damages to the Defendant as presented in Defendants' Memorandum and Support of Defendant's Motion for Summary Judgment. Under the contract between the parties (**Exhibit A to their Complaint**), it specifically states:

The Remaining Balance and any additional charges incurred in accordance with this Agreement must be paid in full by credit/debit card, cash, or certified check, directly to the carrier upon delivery of your Vehicle. Failure to remit the remaining balance when due may result in the storage of the Vehicle at your expense until the balance is paid in full." (emphasis added).

All amounts due must be paid in full when due and the fees are not subject to dispute or offset for any damages or any other reason (including, without limitation, because you are not satisfied with the Services). (emphasis added.)

Under the contract of the parties, Plaintiff is not entitled to offset for any damages.

Defendant JNJ Transport delivered the vehicle to the destination in accordance with the Agreement. Through Plaintiff's own actions they neglected to be present at the time of delivery, make payment, and take possession of the vehicle. Defendants ask this court to reconsider and grant appropriate storage fee to the Defendant in addition to the \$650.00 granted for transport as the contract between the parties clearly states under Section 8, Paragraph 3 that, "If you or your designee/agent are not at the Delivery location at the designated time, your Vehicle may be stored and/or the delivery delayed, each at your expense." (**Exhibit A to their Complaint**).

(emphasis added.) Defendant prays the court reconsider and give proper consideration to the contract between the parties.

Additionally, Defendant asserts that no consideration was given to the Federal Motor Carrier Safety Administration (FMCSA) guidelines. Pursuant to Subpart H of their guidelines,

If you do not pay the transportation charges at the time of delivery, your mover has the right, under the bill of lading, to refuse to deliver your goods. The mover may place them in storage, at your expense, until the charges are paid. However, the mover must deliver your goods upon payment of 100 percent of a binding estimate, plus the cost of any additional services that you requested after the contract was executed that were not included in the estimate, and any charges for impracticable operations, not to exceed 15 percent of all other charges due at time of delivery. (emphasis added.)

Collection of charges (subpart H). FMCSA. (n.d.). Retrieved February 17, 2023, from <https://www.fmcsa.dot.gov/protect-your-move/how-to/subpartH>.

Defendant pray the Court reconsider and give proper consideration to the Federal Motor Carrier Safety Administration (FMCSA) guidelines that JNJ Transport is required to operate under.

Summary Judgment is appropriate only where there is no genuine issue of material fact and it is clear the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

Defendant prays for reconsideration pursuant to the standards of *Koester* and under Rules 59(e), SCRCP, and pursuant to Rule 62(b), SCRCP, for a stay of execution of the order and a stay of delivery of the vehicle to the Plaintiff until this motion is properly ruled upon.

This motion will further be based upon the applicable statutory and case law of the State of South Carolina, the pleadings and other documents on file, affidavits, exhibits and memorandum of fact and laws, and arguments as may be provided or submitted in support of this Motion.

Respectfully submitted,

s/Brian T. Smith
Brian T. Smith
Attorney for the Defendant
714 Pettigru Street
Greenville, SC 29601
bsmith@btsmithlaw.com
Telephone: (864) 239-2007
Facsimile: (864) 239-2039

Greenville, South Carolina
Dated: February 24 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES,)
)
)
Plaintiff,)
)
vs.)
)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a)
JNJ TRANSPORT, LLC,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE No.: 2022-CP-23-05403

**MOTION FOR NEW TRIAL
IN THE ALTERNATIVE
MOTION TO AMEND /ALTER
JUDGEMENT UNDER SC RCP 59 (a)(2)
and 59 (e)**

Defendant Brockman, by and through his Attorney Brian Smith, moves for the following relief Under SCRCR Rules 59 (a) (2) and 59 (e), petitions the court for a new trial or hearing due to newly discovered evidence. In the Alternative, Defendant moves under SCRCR 59 e to amend the judgement. Ronald Soles held out to the court that he was the owner of car at issue in this law suit. However, the North Carolina Vehicle record shows that Evelyn Soles owns the motor vehicle; with VIN number 124379N587209, at issue in the lawsuit(**Exhibit A**). The Defendant moves for a new trial/ hearing or to alter the judgement against Defendant Brockman to allow Brockman to recover storage fees and close the portion of the case left open for possible damage as the rightful owner is not Ronald Soles.

signature page follows

s/Brian T. Smith
Brian T. Smith, SC Bar #70232
Attorney for Defendant
LAW OFFICE OF BRIAN T. SMITH
714 Pettigru Street
Greenville, SC 29601
Bsmith@btsmithlaw.com
Dated March 1, 2023



Scan or visit verify.add123.com to verify



Verification Code: M9JWSWP

North Carolina Vehicle Record

Retrieved On: Tue February 28, 2023 05:43:12 PM EST

Registration Data	Vehicle Data	Title Data
Tag: NYR7751	VIN: 124379N587209	Title: 000001023350609
Issue Date: 11/16/2001	Year: 1969	Issue Date: 11/29/1976
Exp. Date: 11/30/2002	Make: CHEV	Use: PASS
Co. Res: SCOTL	Body: 2S	Odo Read: 000036000
Category: PRIVATE AUTO	Fuel Type: G	Prev. Issue Date: 11/16/2001
Prev. Tag: NYR7751		
Prev. Exp. Date: 11/30/2002		

STATUS CURRENT TITLE, NOT HELD

Additional Record Data

Stops: COUNTY TAX STOP

Vehicle Interests

Owner 1 EVELYN SOLES 16101 SPRINGS MILL RD LAURINBURG, NC 283528967	
Lienholder PROVIDENT FINANCE CO 1777 S MAIN ST LAURINBURG, NC 283525407	Lien Date: 08/15/1990
Insurance Company NATIONWIDE MUTUAL INSURANCE	Policy: 6132K266236 Expires: 06/27/2002 Policy Status: PLT TURN IN (FS20)

Title History

Status: CURRENT TITLE, NOT HELD	Owner 1: EVELYN SOLES
Title: 000001023350609	Lease: No
Transfer Date: 06/17/1988	
Print Date: 06/17/1988	

Raw Record Data

VQ23 @014 COUNTY TAX STOP 02/28/23 17:43:12

CUST ID 000014961207 124379N587209 FUEL G
 EVELYN SOLES 1969 CHEV 2S
 CUST ID
 16101 SPRINGS MILL RD
 LAURINBURG NC 283528967

SCOTLAND COUNTY APPLIED TAX STOP ON 07/25/2002

PLATE NO NYR7751 ISS DT 111601 EXP DT 113002 CERT DT 111601 CERT TYPE FR2
 WT FHVUT DT CAT PRIVATE AUTO USE PASS DRAFT N
 INS.CO. N11 - NATIONWIDE MUTUAL INSURANCE CO POLICY NO 6132K266236

000100

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES,)
)
Plaintiff,)
)
vs.)
)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a)
JNJ TRANSPORT, LLC,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE No.: 2022-CP-23-05403

**DEFENDANT JASON BROCKMAN'S
MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR NEW
TRIAL OR IN THE ALTERNATIVE
MOTION TO AMEND /ALTER
JUDGEMENT UNDER
SCRCP 59(a)(2) and 59(e)**

TO: PLAINTIFF RONALD SOLES AND HIS ATTORNEY JAMES STONE

CRAVEN:

Defendant JASON BROCKMAN, by and through his Attorney Brian Smith, respectfully submits this Memorandum of Law in Support of Defendant's Motion for a New Trial or in the Alternative Motion to Amend /Alter Judgement under SCRCP 59(a)(2) and 59(e). Defendant Brockman petitions the court for a new trial or hearing due to newly discovered evidence.

BACKGROUND

This matter came before this honorable court on February 24, 2023. The Plaintiff was represented by Attorney Simone Holloway of the Law Office of James Stone Craven. The Defendant was represented by Attorney Brian Smith. The Court ruled in favor of the Plaintiff finding that Plaintiff's Motion for Summary Judgment was granted, and that Defendant Brockman retained possession of **Plaintiff's vehicle** and did not deliver the vehicle as contracted. The Court

ordered that, "Physical possession of **his vehicle**, the 1969 Chevrolet Camaro, to be delivered to him by Defendant at a meeting place facilitated by the parties' attorneys. In return, Plaintiff shall pay Defendant six hundred and fifty dollars (\$650.00) for the redelivery of the vehicle," and "A damages hearing upon the discovery of any damages to the vehicle resulting from Defendant Brockman's improper storage and/ or delivery whereby this court will retain jurisdiction and consider the granting of appropriate relief." Defendant Brockman filed a Motion to Reconsider on February 24, 2023. Defendant's motion was denied on February 28, 2023. The final order granting Summary Judgment in favor of the Plaintiff was filed on March 1, 2023. Defendant Brockman immediately filed Notice of Appeal and a Motion to Set Surety Under S.C. Code Section 18-9-150 and Stay the Enforcement of the Order on March 1, 2023. Shortly thereafter these filings, Defendant discovered new evidence regarding the true ownership of the vehicle at the center of this case. Plaintiff is not the legal owner of the vehicle, as has been presented to this court throughout these proceedings. The true owner of the vehicle is Evelyn Soles. Defendant Brockman immediately filed a motion with this court for a new trial or in the alternative a motion to amend /alter the judgement under SCRCP 59(a)(2) and 59(e) due to newly discovered evidence.

ARGUMENT

- I. **Under SCRCP 59(a)(2), "in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment."**

Defendant Brockman immediately and timely filed a motion with this court for a new trial or in the alternative a motion to amend /alter the judgement under SCRCP 59(a)(2) and 59(e) due to newly discovered evidence. The newly discovered evidence is the legal ownership details for the vehicle at issue in this case which are attached to Defendant Brockman's motion as **EXHIBIT A**. The Plaintiff is not the legal owner of the vehicle for which he seeks possession of and seeks to recover damages if any, from the Defendants. Evelyn Soles is the proper legal owner of the vehicle at issue, and through Plaintiff's admission in his response to this motion is the mother of the Plaintiff. Plaintiff Ronald Soles has no legally established rights to the vehicle or entitlement to award of damages if any, to a vehicle that he does not legally own. Under S.C. Code of Law § 56-3-20(21), "'Owner' means a person who holds the legal title of a vehicle..."

Plaintiff clearly deceived this court in the filing of the Complaint by specifically and repeatedly asserting that the vehicle subject to this action was lawfully his property and sought an award of damages to a vehicle that he does not own. In Plaintiff's complaint he declares ownership to the vehicle in paragraphs 8a, 8b, 12, 13, 14, 16, 18, 32, 39, 40, 43, 44, 45, and implies his ownership of the vehicle in the remaining paragraphs. This is not simply an oversight or an excusable error, it is a deception. Plaintiff has obtained summary judgment in this case by fraud and deceit by never revealing to the Defendant or this Court that he is not the legal owner of the vehicle that he declares as his in the pleadings and intends to receive a monetary award for damages to, if any.

As this case was decided on Plaintiff's Motion for Summary Judgment, discovery in this case had not been completed. Defendant Brockman asserts that this extrinsic fraud prevents him from fully exhibiting and trying his case, and consequently there was never a real contest before the court. Extrinsic fraud is collateral or external to the trial of the case. Fraud may be extrinsic if

the defrauded party did not have access to the disputed information and did not have knowledge of the inaccuracies at the time of trial. Extrinsic fraud induces a person not to present a case or deprives a person of the opportunity to be heard. *Chewing v. Ford Motor Company*, 354 S.C. 81, 579 S.E.2d at 610 (citing *Hilton Head Ctr. of South Carolina v. Public Serv. Comm.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)).

“The decision to allow an amendment is within the sound discretion of the trial court...” *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 153, 723 S.E.2d 835, 840 (Ct. App. 2012). Defendant respectfully prays that this court open the judgment, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

II. Under SCRCP 52(b), “Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.”

Under SCRCP 52(b), Defendant respectfully prays this court amend its findings or make additional findings and may amend the judgment accordingly as this motion is made with a timely motion for a new trial. The findings of fact in this case were made in Summary Judgment tried by this Court without a jury, and “the question of the sufficiency of the evidence to support the

findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.” SCRCP 52(b).

There is no question that the evidence to support the findings in this case was insufficient and the newly discovered evidence, as to the legal ownership of the vehicle at issue in this case, is critical to a proper finding by this Court. Clearly, the sufficiency of the evidence to support the findings of this Court was lacking in critical detail due to the fraudulent misrepresentations made by the Plaintiff that prevented the Defendant from fully exhibiting his case. This court has made an award to the Plaintiff for potential damages to a vehicle that he has no legal financial interest in and is incapable of suffering financial loss for. This judgment in turn, deprives the true owner of their rights and potentially places the Defendant in a position to have the true owner file a subsequent lawsuit alleging the same claims and damages.

Under the Fifth and Fourteenth Amendments to the United States Constitution, both hold firm to the same eleven words, that no citizen shall be “deprive of life, liberty, or property, without due process of law” and under the Fourteenth Amendment, “nor deny to any person within its jurisdiction the equal protection of the laws.” Equitable relief from a judgment is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action. *Bryan v. Bryan*, 220 S.C. 164, 167-68, 66 S.E.2d 609, 610 (1951). Defendant in this case has clearly been deprived of his right to due process and equal protection and prays this court amend its findings, make additional findings, and amend the judgment accordingly as this motion is made with a timely motion for a new trial.

III. SCRPC 60(b)(3) allows a party to make a motion within one year (or as soon as reasonable) to set aside a judgment based on fraud.

The theory behind why the court may grant relief for extrinsic fraud is that such fraud prevents a party from fully exhibiting and trying his case, and consequently there was never a real contest before the court. Extrinsic fraud is collateral or external to the trial of the case. Stated another way, the fraud may be extrinsic if the defrauded party did not have access to the disputed information and did not have knowledge of the inaccuracies at the time of trial. This case was decided prior to discovery taking place and Defendant was deprived of the opportunity to discover the facts that would be necessary to petition this Court for a dismissal.

Plaintiff argues in their response that the Defendant's Motion for New Trial and, in the alternative, Motion to Amend/Alter Judgment under SCRPC 59(a)(2) and 59(e), should be dismissed. Their reasoning is that the Defendant's "contention is irrelevant," in regards to the ownership of the vehicle and that, "Whether the vehicle in question belongs to Plaintiff does not negate the fact that there was a contract between Defendant Jason Brockman and Plaintiff for transporting the said vehicle from Tennessee to South Carolina." The Defendant contends the contract on the face now becomes null and void because of the fraudulent information provided by the Plaintiff to Linus's Broker Services. Paragraph 4 of the contract states, "...you must provide accurate information identifying **your vehicle**," and further states:

By submitting your order, you authorize Linus to provide your contact information and all order details to prospective Carriers and **represent and warrant that you are the registered legal owner of the Vehicle**, or that you have been duly authorized by the legal owner of the Vehicle to enter into this Agreement and acquire service to transport the vehicle.

Defendant has been deprived of the opportunity through discovery and proceedings to determine ownership or authority to enter into a contractual agreement on behalf of the vehicle owner and therefore asserts that Plaintiff's authority to enter into the contract on behalf of the Vehicle owner has not been established before this Court. Additionally, the deception of the Plaintiff has caused the Defendant great difficulty in filing his mechanic's lien, as the Plaintiff presented throughout the entire course of dealings between the parties and throughout these proceedings that he was the legal owner of the vehicle.

IV. Dismissal of the complaint under Rule 12 (b)(6), SRCP.

Defendant further asserts that the new evidence should lead to a dismissal of the complaint under Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure, as Plaintiff has failed to state a claim upon which relief may be granted. Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." *Flateau v. Harrelson*, 355 S.C. 197, 201-02, 584 S.E.2d 413, 415 (Ct. App. 2003) (citations omitted).

V. Sanctions under Rule 11, SCRPC.

Additionally, Defendant pray for the appropriate sanctions be imposed against the Plaintiff in this case.

"A party may be sanctioned under Rule 11, SCRPC, for making frivolous arguments." *Link v. School Dist. Of Pickens*, 302 S.C. 1,7, 393 S.E.2d 176, 179 (1990). "Where 'a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper including a reasonable attorney's fee.'" *Lawson v. Sumter County Sheriff's Office*, 339 S.C. 133, 140, 528

S.E.2d 86, 90 (Ct. App. 2000) (citing Rule 11(a), SCRCP). "If appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith." *Ex parte Gregory*, 378 S.C. 430, 663 S.E. 2d 46, 50 (2008).

IV. Summary Judgment was premature in this case.

Summary Judgment was premature in this case. Clearly, the evidence to support the findings in this case was insufficient and the newly discovered evidence, in this case is critical to the outcome of the case, and the Defendant's ability to defend against the allegations in the Complaint. The Plaintiff's extrinsic fraud has induced the Defendant not to present a case in accordance with the true facts and deprived him of the opportunity to be heard under the guidelines set forth in *Chewning v. Ford Motor Company*.

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Bayle v. South Carolina Dept of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); see also *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002) (On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in

and from the evidence in a light most favorable to the non-moving party below.). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001).

Many South Carolina cases point out summary judgment is a drastic remedy which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Lanham v. Blue Cross & Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002); *Redwend Ltd. Pship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003); *Baril v. Aiken Regl Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); *Trivelas v. South Carolina Dept of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998). Because summary judgment is a drastic remedy, **it must not be granted until the opposing party has had a full and fair opportunity to complete discovery.** *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 334; *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

In accordance with well-established South Carolina case law, Summary Judgment in this case was premature and inappropriate as Defendant did not have a full and fair opportunity to complete discovery and the evidence to support the findings in this case was insufficient. The newly discovered evidence of the Plaintiff's fraudulent misrepresentation of ownership of the

vehicle at issue in this case is critical to the outcome of the case and therefore the Defendant should be granted a New Trial or in the Alternative this Court should Amend /Alter its Judgement.

CONCLUSION

Defendant respectfully prays this Court grant his Motion for a New Trial or in the Alternative Motion to Amend /Alter Judgement under SCRCP 59(a)(2) and 59(e), and for any other such relief this Court deems just an proper.

Should Defendant's Motion for a New Trial or in the Alternative Motion to Amend /Alter Judgement be denied, Defendant prays this Court Set Surety under S.C. Code § 18-9-150 allowing Defendant Brockman to post a reasonable surety and stay enforcement, protecting Defendant Brockman's mechanic lien during the time needed for the Defendant Brockman to file his appeal.

Respectfully submitted,

s/Brian T. Smith

Brian T. Smith

Attorney for the Defendant

714 Pettigru Street

Greenville, SC 29601

bsmith@btsmithlaw.com

Telephone: (864) 239-2007

Facsimile: (864) 239-2039

Greenville, South Carolina

Dated: March 17, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES)
Plaintiff)
v.)
)
)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a,)
JNJ TRANSPORT, LLC,)
Defendants)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-23-05403

**PLAINTIFF’S RESPONSE TO
DEFENDANT’S MOTION FOR
NEW TRIAL IN THE ALTERNATIVE
MOTION TO AMEND/ ALTER JUDGMENT
UNDER SCRPC 59(a)(2) and 59(e)**

Now, therefore, Plaintiff Ronald Soles, by way of their counsel James Stone Craven, respectfully show unto this Honorable Court the following:

1. Plaintiff denies each and every allegation contained in Defendant’s Motion for New Trial in the alternative Motion to Amend/Alter Judgment under SCRPC 59(a)(2) and 59(e) where not hereinafter specifically admitted, modified, controverted, or explained
2. Defendant Jason Brockman through counsel, argues that there should be a new trial due to new evidence that the car in question belongs to Plaintiff’s mother, Evelyn Soles, and not, in fact, Plaintiff. This contention is irrelevant. Whether the vehicle in question belongs to Plaintiff does not negate the fact that there was a contract between Defendant Jason Brockman and Plaintiff for transporting the said vehicle from Tennessee to South Carolina. Defendant Jason Brockman breached that contract and retained possession of the vehicle. This court heard Plaintiff’s Motion for Summary Judgment on February 24, 2023, and Judge Bently Price granted

that motion. Judge Price also ordered that Defendant Jason Brockman return the vehicle to Plaintiff by 5 pm the following day, February 25, 2023. Defendant Jason Brockman did not comply with that order and is still unlawfully in possession of the vehicle. Whether the Plaintiff is the owner of the vehicle is not a question at issue in this case, the issue is whether the parties had a contract and whether that contract was breached. Based upon the finding of the court, those questions were found to be answered affirmatively.

3. The Plaintiff asks that this Court dismiss the Defendant's Motion for New Trial and, in the alternative, Motion to Amend/Alter Judgment under SCRCP 59(a)(2) and 59(e).

WHEREFORE, the Plaintiff, having fully replied to the Motion for New Trial and in the alternative Motion to Amend/Alter Judgment under SCRCP 59(a)(2) and 59(e), prays as follows:

- A. For an Order dismissing the Defendant's Motion for New Trial and in the alternative Motion to Amend/Alter Judgment under SCRCP 59(a)(2) and 59 (e);
and
- B. For such other and further relief as the Court may deem just and proper.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

ATTORNEY FOR PLAINTIFF

s/James Stone Craven

James Stone Craven, Esq.

SC BAR No. 69847

600 East Washington Street, Ste 620.

Greenville, SC 29601

864-729-8722

stoneycraven@stoneycraven.com

March 13, 2023

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 RONALD SOLES,)
 Plaintiff,)
)
)
 -vs-)
)
 IOAN GHERMAN d/b/a)
 USA AUTO TRANSPORT LLC and)
 JASON BROCKMAN d/b/a)
 INJ TRANSPORT, LLC)
 Defendant)
)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL DISTRICT

CASE NO.: 2022-CP-23-05403

**MOTION TO ENFORCE THE
 COURT’S ORDER OF MARCH 23, 2023
 AND TO IMPOSE FURTHER SANCTIONS**

This matter comes on the motion of James Stone Craven, Attorney for the Plaintiff, and would show unto the court as follows:

1. On March 23, 2023, Judge Bentley Price heard Defendant Jason Brockman’s motion for a new trial pursuant to SCRCR Rules 59(a)(2) and 59(e) as well as a Motion to Set Surety and Stay Enforcement of the Order by and through Defendant’s counsel, Brian T. Smith. These motions were heard before the court and were denied. Judge Price found that the motions brought by Defendant Jason Brockman were “frivolous” and “sole for the purpose of delay.” (Copy Attached as Exhibit A). Judge Price then ordered that Defendant Jason Brockman, individually, would pay Plaintiff’s counsel a sum of \$2,500.00 by April 3, 2023. Judge Price also found that Defendant Jason Brockman was in direct violation of the Court’s previous Order dated March 1, 2023, to return the subject vehicle to the owner, the Plaintiff, and was ordered to return the vehicle by April 3, 2023. Judge Price ordered that if the vehicle was not returned by April 3, 2023, the

“Court will entertain any and all motions by the Plaintiff to enforce the Court’s Order and impose further sanctions.”

2. As of April 4, 2023, Defendant Jason Brockman has failed to comply with the Court’s Order dated March 23, 2023. Defendant Jason Brockman has not tendered to Plaintiff’s counsel an amount of \$2,500.00, nor has Defendant Jaason Brockman returned the subject vehicle (1969 Chevrolet Camaro) to its rightful owner, Plaintiff, as ordered by the Court. On March 31, 2023, the South Carolina Court of Appeals denied Defendant Jason Brockman’s Motion to Stay (Copy Attached as Exhibit B). In addition, Defendant Jason Brockman has engaged in inappropriate outrageous behavior of an ex parte attempt to communicate with the SC Supreme Court Justice, Donald Beatty, and has made multiple allegations of impropriety against opposing counsel to circumvent abiding by Judge Price’s Order (Copy Attached as Exhibit C). Every day that the vehicle remains out of Plaintiff’s possession, Plaintiff incurs an unreasonable amount of costs due to Defendant Jason Brockman’s willful and wanton violation of the Court Order. Defendant Jason Brockman, through the advice of his counsel, has engaged in a waste of judicial economy and continues to undercut the authority of this Court.

3. Thus, Plaintiff moves to enforce the Order of the Court dated March 23, 2023, and would ask the Court to impose any and all further sanctions as the Court deems necessary and appropriate. Plaintiff also moves for reasonable attorneys fees for having to further litigate this frivolous action.

Wherefore the Plaintiff would pray as follows:

1. That this Court issues an Order enforcing the Court Order dated March 23, 2023
2. That this Court will impose any and all further sanctions that they deem necessary and appropriate against Defendant Jason Brockman.
3. That this Court will grant Plaintiff reasonable attorneys fees and costs for having to litigate this frivolous action further.
4. And for such other relief as this court would deem just and proper.

/s/James Stone Craven _____
James Stone Craven
Attorney at Law
Bar #: 69847
600 E Washington Street, Suite 612
Greenville, SC 29601
(864) 729-8722

April 4, 2023

000116

Exhibit A

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000117

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2022-CP-23-05403

Ronald Soles,

Plaintiff,

vs.

Joan Gherman d/b/a USA Auto Transport, LLC
and Jason Brockman d/b/a JNJ Transport,
LLC,

Defendants.

**ORDER DENYING THE DEFENDANT,
JASON BROCKMAN'S, MOTION FOR
NEW TRIAL; IN THE ALTERNATIVE,
MOTION TO AMEND/ALTER
JUDGMENT UNDER SCRPC 59(a)(2)
and 59(e); & MOTION TO SET SURETY
AND STAY ENFORCEMENT OF THE
ORDER**

The Defendant, Jason Brockman, filed a Motion for New Trial Pursuant to SCRPC Rules 59(a)(2) and 59(e) dated March 1, 2023, asking this Court to reconsider its February 24, 2023 ruling reflected in its Order signed February 28, 2023 denying Defendant's Motion for Summary Judgment due to newly discovered evidence. In the alternative, Defendant asked this Court to amend its previous judgment. Additionally, the Defendant filed a Motion to Set Surety Under SC Code Section 8-9-130 and Stay Enforcement of the Order on March 1, 2023 asking this Court to allow the Defendant to post a reasonable surety bond for the vehicle at issue in this matter.

STANDARD OF REVIEW

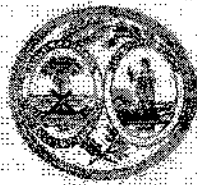
Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.")

available at trial, or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Defendant’s Motions, arguments made during the initial hearing, and consideration of arguments made at a virtual hearing before this Court held on March 23, 2023, the Court hereby DENIES both Defendant’s Motion for New Trial or, in the alternative, Motion to Amend/Alter Judgment and Defendant’s Motion to Set Surety and Stay Enforcement of the Order. Furthermore, the Court finds that the motions brought by the Defendant were frivolous and sole for the purpose of delay and therefore it is ORDERED that the Defendant, Jason Brockman, individually, pay Plaintiff’s counsel \$2,500.00 by Monday, April 3, 2023. The Court finds that the Defendant is in direct violation of this Court’s previous Order to return the car to the owner and if not returned by Monday, April 3, 2023, the Court will entertain any and all motions by the Plaintiff to enforce the Court’s Order and impose further sanctions.

AND IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Ronald Soles vs. Ioan Gherman , defendant, et al

Case Number: 2022CP2305403

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-03-23 15:12:49 page 3 of 3

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Exhibit B

The South Carolina Court of Appeals

Ronald Soles, Respondent,

v.

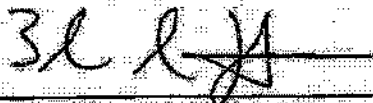
Iona Gherman d/b/a USA Auto Transport LLC and Jason Brockman d/b/a JNJ Transport, LLC, Defendants,

Of whom Jason Brockman d/b/a JNJ Transport, LLC is the Appellant.

Appellate Case No. 2023-000294

ORDER

After careful consideration, Appellant's motion to stay is denied. *See* Rule 241(b)(2), SCACR (providing a notice of appeal does not automatically stay the execution of a judgment "directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150"); S.C. Code Ann. § 18-9-150 ("If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver . . . or unless an undertaking be entered into on the part of the appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal."); Rule 241(c)(2), SCACR ("In determining whether an order [of supersedeas] should issue . . . the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.").



C.J.

FOR THE COURT

FILED
Mar 31 2023

Columbia, South Carolina

cc:

Brian T. Smith, Esquire

James Stone Craven, Esquire

Exhibit C



The Supreme Court of South Carolina

PATRICIA A. HOWARD
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1000
FAX: (803) 734-1469

TO: Mr. Jason Brockman

FROM: Patricia A. Howard, Clerk *PAH*

DATE: April 3, 2023

This responds to your recent correspondence to Chief Justice Beatty. This correspondence is apparently related to the appeal in Appellate Case Number 2023-000294, which is pending before the South Carolina Court of Appeals.

Please be advised that Chief Justice Beatty cannot consider this *ex parte* communication about this appeal. Any concerns you have about this case should be raised to your counsel.

cc: Brian T. Smith, Esquire (with copy of correspondence)
James Stone Craven, Esquire (with copy of correspondence)
The Honorable Jenny Abbott Kitchings (with copy of correspondence)

000125

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RECEIVED

Apr 03 2023

S.C. SUPREME COURT

Dear Chief Justice Beatty,

I would like to begin, by stating that I am not writing this to you, in an effort to receive any kind of "special treatment" or anything of the sort. I am writing to you today, because my rights to a fair and impartial hearing, as well as and perhaps most importantly, my rights to an appeal, are being actively circumvented by a circuit court judge. I am simply seeking to be afforded my rights to an appeal, without being persecuted by a judge upset that his rulings were appealed.

I am writing to you today, truly, because I feel it is my only recourse I have left. I find myself in an incredibly peculiar position, as it appears I am being wrongly persecuted by a circuit court judge, whose behavior towards me and my attorney I have confirmed with other legal parties (Judges and attorneys) to be outside the bounds of normal judicial behavior. I do not type that statement lightly. I would like to state, strenuously, that I am not simply someone who disagrees with a judge's ruling and is seeking to make trouble or complain. Instead, I must insist that I am having my rights not only ignored, but openly referred to as "frivolous" by this judge, on the record! Furthermore, this judge has outright ignored both state and federal statute in my case, and referred to those as "frivolous" as well. I should state, that prior to our case going to court, there were several comments made by the gentleman suing me, to the effect of "knowing a judge can accomplish anything". I obviously ignored those as just talk. However, my attorney was also pulled aside by opposing counsel, and casually threatened with regards to "being the end of his career going against this judge".

It is my understanding that this attorney too, has a questionable past. This attorney being Stoney Craven.

I did lawfully and timely file an appeal in my case, however I was immediately subjected to retribution and admonishment by this judge, for doing so, on more than one occasion. Beginning with my attorneys "motion to reconsider" when several clear and serious issues of the case, were entirely ignored in the judges ruling. This resulted in a financial penalty from the judge, and threats of more to come if we continued to appeal. The ongoing of which, is seeking to circumvent / block my rights to said appeal, with contempt rulings, despite them not being applicable. The Judge I am referring to, is judge Bentley Price.

I don't know how much I am supposed to type in this initial complaint letter, but I'll try to be brief and summarize:

- 1) I am NOT the correct party, or person, that should or could have been sued in my case, I mean that, literally. They LITERALLY sued the wrong party. Yet this was ignored entirely when brought up by my attorney. How can I be ordered to comply with a contract I was never a party to?

000126

- 2) My attorney, also discovered, that the party who sued me, did not even have legal standing to bring the case, as he is not the owner, of the property he is suing the wrong person for. This was also entirely ignored when my attorney brought this up.
- 3) The judge, completely ignored without consideration, federal and state laws that explicitly prevent this very type of suit being brought, regardless of this being the wrong party suing the wrong party, instead ignoring those statutes as well, without providing any explanation except to say every defense my attorney raised was "frivolous"

There are obviously, many many more details that I feel also make the judges rulings in this case clearly inappropriate, but I only wanted to present those three facts, as they are not in dispute by either side in this case, are clearly very serious issues that would invalidate this suit entirely, and yet they were entirely ignored as "frivolous"

Despite this, my attorney and I attempted to lawfully appeal the matter, and as the law allows, supply surety bond for the property in question, pending the results of the appeal. This was also denied, which the law DOES NOT allow for, and I was subsequently penalized by the judge a second time for appealing his ruling, with a threat that the penalties would continue until I complied with his ruling, despite our valid and correctly filed appeal, and our filing to provide for surety as the law allows specifically in these matters. I believe this is referred to as Rule 241, Section 18-9-150.

I feel, and I must repeat I am not alone in this feeling, that this is clear evidence of a judge seeking to block my right to have the matter heard by a higher court. I don't know if it is out of fear of his rulings being overturned, or if there is some deeper impropriety as alleged by the plaintiff themselves, with regards to this attorney and judge, but I feel confident that if my case were to be viewed, by any other legal party, it would quickly become quite clear that what has transpired is entirely wrong. If it were not for Judge Bentley's aggressive and abusive behavior towards my attorney, where he was visibly upset and raised his voice at my attorney for appealing his ruling, combined with his threats to hold me in contempt and institute fines that would increase "every ten days", I would simply wait for this matter to go before the appellate court where I am confident it would be rightly sorted from there. However, it seems Judge Bentley is actively trying to prevent this case from reaching that court. Which is why after calling seemingly every legal entity I could imagine, and seeking advice from current judges and attorneys, the SC BAR, and even SLED, in an effort to ensure I was acting correctly, I truly feel I have no option left but to send you this letter, in the hopes it would land on receptive ears. I am not seeking special treatment, I am not seeking an overturning of anyones ruling or anything of the sort unless you find that appropriate. I am SIMPLY SEEKING to be afforded my rights to an appeal, without being persecuted by a judge upset that his rulings were appealed. It is my hope that sending you this letter, in some way accomplishes that. Regardless of the results, or if I receive even more persecution by this judge as a result of this letter, as I am sure I will, I truly wanted to thank you for your time in reading this.

Jason Brockman

RECEIVED

Apr 03 2023


S.C. SUPREME COURT

From: Jason
To: Supreme Court Filings
Subject: Urgent letter to Judge Beatty
Date: Monday, April 3, 2023 2:06:32 PM
Attachments: Judge Beatty .docx

***** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *****

Jason Brockman
Director of Operations
JnJ Motorsports
JnJ Transport LLC
a JnJ International company
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"JnJ On The Way!"

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ELECTRONICALLY FILED - 2023 Apr 04 3:22 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2305403

000128

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
RONALD SOLES,)
)
)
Plaintiff,)
)
vs.)
)
IOAN GHERMAN d/b/a)
USA AUTO TRANSPORT LLC and)
JASON BROCKMAN d/b/a)
JNJ TRANSPORT, LLC,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE No.: 2022-CP-23-05403

**DEFENDANT JASON BROCKMAN'S
REPLY AND MEMORANDUM
IN OPPOSITION OF MOTION TO
ENFORCE THE COURT'S ORDER OF
MARCH 23, 2023 AND TO IMPOSE
FURTHER SANCTIONS**

TO: PLAINTIFF RONALD SOLES AND HIS ATTORNEY JAMES STONE

CRAVEN:

Defendant JASON BROCKMAN respectfully submits this Reply and Memorandum in Opposition of Plaintiff's Motions to Enforce the Court's Order of March 23, 2023 and to Impose Sanctions.

1. Plaintiff's Motions to Enforce and to Impose Sanctions does not comply with the requirements of Rule 11, SCRPC, stating that:

All motions filed shall contain an affirmation that the movant's counsel **prior to filing the motion** has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held. (*Emphasis added*).

Prior to the filing of this motion, good faith efforts were not made by the Plaintiff to resolve this matter. Rule 11, SCRCP, further states:

If a pleading, motion or other paper is not signed or **does not comply with this Rule, it shall be stricken** unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. (*Emphasis added*).

Defendant Brockman asserts that Plaintiff's motion should be stricken in accordance with Rule 11, SCRCP.

2. At the time of filing of this Reply, Defendant Jason Brockman has made a reasonable settlement offer in this case to resolve this matter fully, that allows the Plaintiff to take possession of the vehicle and has conveyed to counsel for the Plaintiff, Defendant's inability to personally transport the vehicle. There are several circumstances that Defendant asserts prevent him from personally transporting the vehicle.

- a. Defendant Brockman asserts that as he was not the originating broker, he cannot under Federal law move the vehicle as it is interlining.
- b. Defendant Brockman asserts JNJ Transport does not have active operating authority status with the Department of Transportation, as their status is currently inactive and in the process of reinstatement. The process of reinstatement could not be accomplished timely, thus making it legally impossible for JNJ and Defendant Brockman to personally transport the vehicle. Defendant Brockman expects to have his operating authority reinstated by May 2, 2023, at which point he may deliver the vehicle, or the Plaintiff can arrange for pick-up of the vehicle prior to that time.
- c. It is not reasonably or legally possible for Defendant Brockman to contract with another carrier for the transportation of the vehicle on his behalf, as he is not the legal owner of the vehicle requiring transport. Alternate transportation arrangements need to be made by and with the consent of the legal owner of the vehicle.

3. Defendant Jason Brockman has made a good faith settlement offer in this case to resolve this matter fully, allow the Plaintiff to take immediate possession of the vehicle and in the interest of judicial economy, resolve this matter and dismiss the pending appeal. The Defendant's settlement offer allows the Plaintiff to immediately retrieve the vehicle from Defendant's storage facility in Greer, SC.

Additionally, Plaintiff would pay the Six Hundred and Fifty dollars (\$650.00) pursuant to Judge Price's order, the parties would consent to the dismissal the action and of the pending appeals, and both parties would stipulate that the contempt order against Mr. Brockman should be dismissed, with prejudice, with the court making no further findings against the Defendant Brockman. As a consequence of the dismissal, Mr. Brockman would owe no attorney fees or sanctions to Plaintiff Soles. Each party would be responsible for their attorneys' fees and costs, and Judge Bentley would be notified prior to the contempt hearing. Defendant's offer was rejected by Plaintiff Soles by and through his counsel. The counteroffer made by the Plaintiff was that the Plaintiff would be willing to pick up the vehicle but would proceed with the sanctions hearing, and all relief sought. At the time of this filing, Plaintiff's counsel had not accepted offers to further negotiate this matter.

4. Defendant Brockman did in fact send an *ex parte* communication to the South Carolina Supreme Court addressed to Chief Justice Beatty. *See Plaintiff's Exhibit C*. The Supreme Court advised Defendant Brockman that they cannot consider his *ex parte* communication about his appeal.
5. Plaintiff asserts that "Defendant Jason Brockman, through the advice of his counsel, has engaged in a waste of judicial economy and continues to undercut the authority of this Court." Under Rule 1.2, RPC, Rule 407, SCACR, counsel for the Defendant has a duty to his client to take meaningful action. The Court has applied Rule 1.2 to require an attorney to "take meaningful action" in a case and "to provide meaningful

representation" to his client. Matter of Mitchum, 331 SC 43, 501 S.E.2d 733 (1998). Also, under Rule 1.2 (b), RPC, Rule 407, SCACR, "A lawyer's representation of a client, ..., does not constitute an endorsement of the client's political, economic, social or moral views or activities." Under Rule 1.2 (d), RPC, Rule 407, SCACR, counsel for the Defendant has discussed "the legal consequences of any proposed course of conduct with a client" and has counseled and assisted the Defendant "to make a good faith effort to determine the validity, scope, meaning or application of the law."

6. Defendant Brockman resides in Greenville County, SC and works in the transportation industry with his place of business being in Greenville County. Offices of counsel for both the parties are located in Greenville County, and the Plaintiff is believed to reside in upstate South Carolina. This case was initiated in Greenville County and all previous proceedings in this case were held in Greenville County. Defendant respectfully asks that the venue be moved to Greenville County or the Defendant and Defendant's lawyer be allowed to appear via Webex.

CONCLUSION

Defendants Jason Brockman and/or JNJ Transport, LLC, by and through their undersigned attorney, move this Court for:

1. An Order dismissing Plaintiff's Motions to Enforce the Court's Order of March 23, 2023 and to Impose Sanctions in accordance with Rule 11, SCRCF;
2. An incorporation of Defendant Brockman's settlement offer into an Order of this court;

3. The venue to be moved to Greenville County or the Defendant and Defendant 's lawyer be allowed to appear via Webex;
4. and any further relief deemed proper by this Court.

Respectfully submitted,

s/Brian T. Smith
Brian T. Smith
Attorney for the Plaintiff
714 Pettigru Street
Greenville, SC 29601
bsmith@btsmithlaw.com
Telephone: (864) 239-2007
Facsimile: (864) 239-2039

Greenville, South Carolina
Dated: April 18, 2023

State of South Carolina)

County of Greenville)

Circuit Court
2022-CP-23-05403

Ronald Soles)

vs.)

Transcript of Record

Ioan Gherman d/b/a USA Auto)
Transport LLC and Jason)
Brockman d/b/a JNJ Transport)
LLC)

February 24, 2023
Greenville, South Carolina

B E F O R E:

The Honorable Bentley D. Price, Judge.

A P P E A R A N C E S:

James Stone Craven
Simone Holloway
Attorney for the Plaintiff

Brian T. Smith
Attorney for the Defendant Jason Brockman,
d/b/a JNJ Transport LLC

Melida Harris
Transcriber

000135

1 THE COURT: All right. Good morning. What do we have
2 first?

3 MS. HOLLOWAY: Yes, Your Honor. Good morning. Simone
4 Holloway here for the plaintiff, Ronald Soles. I'm an
5 associate of the Law Office of James Stone Craven. As
6 attorney on record, James Stone Craven is also here to appear
7 as well.

8 This morning, we have two motions from the plaintiff's
9 side. First, a motion for default judgment against Ioan
10 Gherman, doing business as USA Auto Transport LLC. He was
11 served notice of today's hearing. I've already submitted an
12 entry of default being an affidavit of service on the eFile
13 website, Your Honor.

14 THE COURT: All right.

15 MS. HOLLOWAY: So on September the 29th of 2022, we filed
16 this action as a breach of contract action, with our
17 plaintiff, Ronald Soles, against two defendants and their
18 businesses. Ioan Gherman, also doing business as USA Auto
19 Transport; and Jason Brockman, also doing business as JNJ
20 Transport LLC. Mr. Brockman's attorney, Mr. Brian Smith, is
21 here before you today as well.

22 We served Mr. Ioan Gherman on 10/6 -- October 6, 2022,
23 and he did not respond or answer the complaint within the
24 thirty days, as stipulated by the statute. He was also served
25 of the notice of our motion -- the interim motion, and also

1 the notice of this hearing, to which we have received no
2 response.

3 So today, we're asking for a default judgment against Mr.
4 Gherman, and for him to be responsible for all of what we are
5 asking for the relief in our complaint, including the actual,
6 punitive, and trouble damagers.

7 THE COURT: All right. What are the actual damages?

8 MS. HOLLOWAY: The actual damages are 65,650 dollars.

9 THE COURT: All right. What are you asking for in
10 punitives?

11 MS. HOLLOWAY: We're asking the Court, to your
12 discretion, what those punitive damages will be.

13 THE COURT: All right.

14 All right, Mr. Smith, would you like to tell me about
15 your client?

16 MR. SMITH: Yes, Your Honor. I'm here to represent JNJ
17 Auto Transport and Jason Brockman. We're here to -- I filed
18 my memo in opposition and through their summary judgment
19 motion, as well as my motion for summary judgment. And we
20 also ask for the plaintiff's case against my client to be
21 dismissed based upon wrongly suing Jason Brockman personally
22 when it's a corporate contract with JNJ Auto Transport. It's
23 a LLC. But we feel that we have sound grounds to have our
24 summary judgement motion granted as well.

25 THE COURT: All right, so is it -- it's cross motions, is

1 what it is?

2 MR. SMITH: Yes, sir, Your Honor.

3 THE COURT: Okay.

4 MR. SMITH: I believe Plaintiff counsel would go first.

5 THE COURT: All right. Little bit of background, please.

6 MS. HOLLOWAY: Yes, Your Honor. On or about July the
7 22th of 2022, the plaintiff entered into a contract with USA
8 Auto Transport in order to have a vehicle transported from
9 Tennessee to South Carolina. There's also a third-party
10 booking agency called Linus Transport LLC (phonetic) that then
11 hired his client, Jason Brockman or JNJ Transport to actually
12 do the service itself.

13 On or about July 22nd of 2022, during the midst of that
14 transport, the parties had the following agreement: our
15 plaintiff -- our client, he'll pay \$125 up front, almost like
16 as a deposit, and then upon delivery of the vehicle, he'll pay
17 the remainder of the balance. However, on July 22nd,
18 Plaintiff and Defendant Jason Brockman, entered into a series
19 of text messages, which we included in part of our complaint.
20 They're Exhibits C, D, and E, where the parties go back and
21 forth in aggressive nature, and his client, Defendant
22 Brockman, refuses to deliver the vehicle to our plaintiff, Mr.
23 Soles.

24 Mr. Soles sent him a text message asking him per their
25 delivery -- I believe there's a time discrepancy -- if he can

1 send the money over and if he can send someone right now to
2 pick up the vehicle. Defendant Brockman refuses to do so, and
3 it says that he's going to retain the vehicle and apply
4 additional storage fees over the course of the next few months
5 or so.

6 Defendant Brockman's actually still in possession of that
7 vehicle that belongs to the plaintiff since July, and we are
8 now in February of 2023, Your Honor. So it's been almost a
9 year that this vehicle has been in Defendant Brockman's
10 possession, and he's refused to return it to our client.

11 The issue for our motion for summary judgment is because
12 we believe that it is clear. The parties had a contract. The
13 contract was a partial payment for a booking or a deposit, and
14 then the remainder to be released upon delivery of the
15 vehicle. The vehicle has not been delivered, and therefore
16 since the vehicle has not been delivered to our client, our
17 client cannot be responsible to pay that remaining balance,
18 since he has not received possession of the vehicle.

19 It is our belief that if the defendant Brockman would
20 have released the vehicle, the parties would've come into
21 contract, and then that contractual relationship would've been
22 fulfilled. Therefore, we believe according to Rule 56, that
23 there is no genuine issue of material fact for the Court
24 turning this case, and we believe that summary judgment will
25 be appropriate on the behalf of our client, Plaintiff Ronald

1 Soles.

2 THE COURT: What did Mr. Gherman have to do with all
3 this?

4 MS. HOLLOWAY: Mr. Gherman is the company that then hired
5 his client. So Mr. Gherman is the owner and partitioner of
6 USA Auto Transport, and when our plaintiff came to contract
7 with the USA Auto Transport, they then through a third-booking
8 agency, placed a subcontractor, which is JNJ Transport. JNJ
9 Transport is the actual service that does the pickup and the
10 delivery of the vehicle, Your Honor.

11 THE COURT: But what were the text messages? I mean, I
12 haven't looked at the complaint.

13 MS. HOLLOWAY: Yes, Your Honor, I've attached the texts
14 --

15 THE COURT: What was the -- what was disagreement about?
16 Did he pay the \$150 deposit?

17 MS. HOLLOWAY: He paid the \$125 deposit.

18 THE COURT: What was the disagreement about?

19 MS. HOLLOWAY: The disagreement was about the location
20 and the time. According to our client -- and the text
21 messages reflect this -- he said that he's on his way, he's
22 twenty minutes away from the drop-off location. His client
23 decides he does not want to wait for him to appear to that
24 drop-off location to pick up the vehicle. He says he's too
25 late, and he instead leaves the delivery location and says now

000140

1 I'm going to retain the vehicle and have it in possession to
2 storage, and you have to pay an additional storage fees per
3 day, and you will also have to pay the remaining balance as
4 well. So there's contention between the parties where it
5 concerns the time of the delivery itself and the pick-up
6 location.

7 There's some text messages as well that you'll be
8 referenced to, Your Honor, where our client asks for a gate
9 code, which is provided. There's discrepancy on the reply
10 back of the text messages. For example -- this is not what is
11 clearly stated here, but we're going to use this for example
12 -- our client will text at 1 p.m., his client would text at
13 1:20 or 1:25, so there's a lag in communication, which will
14 cause there to be some tension between the parties. However,
15 our client made due diligence to -- used due diligence to make
16 sure that he showed up to the delivery location to pick up
17 that vehicle.

18 THE COURT: All right. What would you like to tell me,
19 Mr. Smith?

20 MR. SMITH: Yes, sir, Your Honor. If you don't meet the
21 post office upon a parcel being delivered, you have to go to
22 the actual location and pick up the parcel. If you look at
23 line number 9 of Plaintiff's complaint, it says, "the balance
24 is due when the vehicle is delivered". Defendant Brockman
25 made the delivery. Only through the fault of the plaintiff,

1 sir, did the unusable 1969 Camaro not get delivered. He was
2 supposed to meet Mr. Brockman, JNJ Transport, with payment,
3 upon delivery, personally. He changed -- if you look at the
4 plaintiff's own exhibits he changed the terms of the contract.
5 He wasn't going to meet him personally. And then when my
6 client got there, he did not have payment. Okay?

7 Your Honor, my client is in the transportation business.
8 Time is money. He waited for almost an --

9 THE COURT: When did he get paid?

10 MR. SMITH: He was supposed to meet him with payment.
11 The balance is 400 and --

12 THE COURT: These text messages say, "When I get there,
13 I'll pay you."

14 MR. SMITH: Well, Your Honor, the agreement, if you read
15 the whole of the text messages, it said that he was going to
16 meet him on delivery of the vehicle and not keep my client
17 waiting for an hour, Your Honor.

18 And you know, not only that. Then he texted him and said
19 he talked to John (phonetic) and he would be there in twenty
20 minutes, so he wanted my client to wait an hour and a half
21 upon delivery of a vehicle, and the whole cost of the contract
22 was only \$425. So he violated the material term of the
23 contract. This is a COD contract, cash upon demand -- cash
24 upon delivery. My client should've received payment upon
25 delivery of the vehicle.

1 THE COURT: All right.

2 MR. SMITH: All right. So that is grounds, we believe,
3 under the law to defeat the plaintiff's summary judgment
4 motion. We also feel that that would be grounds to grant this
5 summary judgement.

6 All right. Your Honor, now, I will point out the
7 defendant immediately threatened legal action as opposed to
8 paying my client. That was totally unnecessary. He just
9 wanted to be paid for delivering from Tennessee, and his own
10 pleadings establishes the material terms of the contract.
11 Now, we clearly think that we should be granted our summary
12 judgement motion, and their motion should be denied. We also
13 will point out that the federal -- in my motion -- my memo,
14 sir -- the Federal Motor Carrier Act establishes that the
15 carrier would be due delivery charges and can take the part --
16 the item, the vehicle, if he was not paid upon delivery.

17 Even if you do not grant the summary judgement motion, we
18 argue that the plaintiff wrongfully sued Jason Brockman
19 personally, and not JNJ Transport LLC, in violation of South
20 Carolina Rules of Professional Conduct -- I'm sorry, South
21 Carolina Rules of Civil Procedure 17(a), and South Carolina
22 Code 33.44.201 establishes, except for tax purposes, a single
23 member LLC is a distinct legal entity. Other than that, if it
24 isn't, then why would you LLCs? It's a corporate entity. JNJ
25 should've been on the complaint and instead, it was Jason

1 Brockman. Jason Brockman should not be personally sued, Your
2 Honor. It is JNJ Auto Transport that would've signed the
3 contract and not my client in a personal capacity. So
4 therefore, we feel that we should be granted summary judgment.
5 And if not, in the alternative, the plaintiff's complaint
6 should be dismissed based upon the wrong party being named.
7 Thank you, Your Honor.

8 THE COURT: All right. Are you all seeking summary
9 judgment against both defendants or simply just Mr. Gherman?

10 MS. HOLLOWAY: We're seeking summary judgment simply
11 against defendant Brockman. We're seeking default against Mr.
12 Gherman, and we're seeking summary judgment against Mr.
13 Brockman.

14 THE COURT: All right. All right. Let's --

15 MS. HOLLOWAY: Your Honor, may I respond to --

16 THE COURT: You don't need to. You've already won.
17 Thank you.

18 All right. So where's the car?

19 MR. CRAVEN: It's currently in his client's house --
20 personal house, Mr. Jason Brockman Transports. Sitting in his
21 house.

22 THE COURT: All right. Here's what we're going to do.
23 Where does Mr. Brockman live?

24 MR. SMITH: Greenville, Your Honor.

25 THE COURT: Okay. Where does the plaintiff live?

1 MR. CRAVEN: Florida, Your Honor.

2 MS. HOLLOWAY: Florida.

3 THE COURT: All right. Are you here just for this
4 hearing?

5 THE PLAINTIFF: Yes, sir.

6 THE COURT: How long are you going to stay?

7 THE PLAINTIFF: I was planning on leaving and going back
8 to Florida.

9 THE COURT: What are you going to do about this car?

10 THE PLAINTIFF: I didn't think I'd be getting it today,
11 but I do, I'm going to pick up a U-Haul trailer and pick it
12 up.

13 THE COURT: Well, this whole thing began over a tiff
14 between you being late and him saying that, obviously, he
15 couldn't wait. So how are we going to ensure that doesn't
16 happen again.

17 MR. CRAVEN: We'll make sure it happens.

18 THE PLAINTIFF: We'll make sure it happens.

19 MR. CRAVEN: Your Honor, we'll take every step to make
20 sure that he gets a car transport carrier and we get that car
21 directly from him. We will make sure it happens today.

22 THE COURT: How much was owed to Mr. --

23 MR. SMITH: \$425, Your Honor.

24 THE COURT: All right.

25 MR. CRAVEN: Our worry is this; that car is a vintage

1 Camaro. He's been leaving it sitting out at his house --

2 THE COURT: What can you do about it now? I mean --

3 MR. CRAVEN: We have no idea what the damage to the car
4 has been since it happened --

5 THE COURT: Right. I mean, you're just going to have to
6 bring another suit if there's damagers to the car, but --

7 MR. CRAVEN: Well, Your Honor, we did name that in our
8 suit.

9 THE COURT: All right. Well then, what I'll do is I'm
10 going to grab the motion for default, just get in an order as
11 to that. I'm not going to grant any punitive damages. I'll
12 award the trouble damages of the \$6,500 dollars against Mr.
13 Gherman.

14 As to Mr. Brockman, obviously I'm going to grant the
15 motion for summary judgement here, but I'm going to order that
16 the car be delivered by the end of the day tomorrow, about 5
17 p.m. The arrangement will be made by the attorneys, not by
18 the clients, or Mr. Brockman.

19 So at this point in time, moving forward, if there's any
20 damages, I'll hold this hearing open, and we can always have a
21 damages hearing and I can retain jurisdiction over this
22 portion of it if in fact there are damages.

23 However, Mr. Soles, obviously, for your portion of it,
24 you're going to have to pay \$650, all right? \$200 for trying
25 to facilitate all this stuff, and he's going to get a little

1 extra money because he's going to have to redeliver to you.

2 Okay? Fair enough?

3 MR. CRAVEN: Is it okay if we have a police officer
4 present at the delivery time?

5 THE COURT: 100 percent fine.

6 MR. CRAVEN: Thank you.

7 MR. SMITH: We would prefer that, Your Honor.

8 THE COURT: I think that would be the best interest in
9 everybody.

10 MR. SMITH: Thank you.

11 THE COURT: You're more than welcome.

12 MS. HOLLOWAY: Thank you, Your Honor.

13 MR. CRAVEN: Thank you, Your Honor.

14 MR. SMITH: Thank you, sir.

15 THE COURT: All right. You're more than welcome.

16 MR. CRAVEN: Thank you, Your Honor.

17 (End of Transcript of Record)

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) 2022-CP-23-05403

Ronald Soles,)
)
 Plaintiff,) Transcript of Record
)
 vs.)
) March 23, 2023
 IOAN Gherman d/b/a USA Auto)
 Transport, LLC and Jason)
 Brockman d/b/a JNJ Transport,)
 LLC,)
)
 Defendants.)
)

B E F O R E:

Honorable Bentley Price
Horry County Courthouse
Conway, South Carolina
VIA WEBEX REMOTE HEARING

A P P E A R A N C E S:

Simone Holloway, Esquire
James S. Craven, Esquire
Attorneys for Plaintiff

Brian T. Smith, Esquire
Attorney for Defendant

Sallie Beth Todd
Official Court Reporter

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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(There were no witnesses called during this hearing.)

Certificate of Court Reporter.....	13
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>
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(There were no exhibits marked during this hearing.)

1 **THE COURT:** All right. Can everyone here me?

2 **MR. SMITH:** Yes, sir, Your Honor.

3 **THE COURT:** All right. So I'm not sure -- I've read the
4 motion, but obviously I haven't had any memorandums or
5 anything. Judge Gravely just contacted my office and said
6 that I needed to hear this today, so we've set it up. So what
7 are the motions that we need to have heard today?

8 **MR. SMITH:** We have a motion for a new trial (inaudible)

9 ---

10 **THE COURT:** You have to talk into the camera, I can't
11 hear you. When you lean I can't hear you.

12 **MR. SMITH:** Yes, sir. We have a motion for a new trial
13 or hearing or to amend the judgment. We also have a motion to
14 set surety.

15 **THE COURT:** What's a motion to set surety?

16 **MR. SMITH:** We're just asking that it's (inaudible) 18-9-
17 150 we're just asking that given the fact that -- it's part of
18 my other motion, but we feel like we should have a new
19 hearing. And we also have filed an appeal and we just want
20 to see if we can set surety and allow him to post a reasonable
21 bond for the car, or in the alternative a neutral (inaudible)
22 but we would ask for a surety.

23 **THE COURT:** All right. It's your motion ---

24 **MR. SMITH:** And we can (inaudible) ---

25 **THE COURT:** He's going in and out. Hold on, Mr. Smith,

1 you're going in and out.

2 **MR. CRAVEN:** You're going in and out, Brian.

3 **THE COURT:** All right. Mr. Smith, can you hear us?

4 **MR. CRAVEN:** Yes, sir, I can, Your Honor.

5 **THE COURT:** We lost you at -- the last thing I heard you
6 say was 18-9-150, and then I said okay, they're your motions.

7 **MR. SMITH:** Yes, sir. (Inaudible).

8 **THE COURT:** Go figure it out or just tell them we'll do
9 it another day.

10 (HEARING IS IN RECESS)

11 **THE COURT:** All right. Do we have everybody back?

12 **MR. SMITH:** Yes, sir, Your Honor.

13 **THE COURT:** All right. They're your motions -- they're
14 your motions, I'll be happy to hear from you.

15 **MR. SMITH:** Yes, sir Your Honor. We have new evidence
16 and we have filed a motion for a new trial. Ron Soles is not
17 the legal owner, the owner is Evelyn Soles. That's critical
18 because under South Carolina law the title holder is the
19 owner.

20 Now, I know you said you didn't have time, and I'm sorry
21 that -- thank you for hearing this motion so expeditiously.
22 But on the sixth page of my memo, let me just read this. By
23 submitting your order, you authorize Linus to provide your
24 contact information and all order details to prospective
25 carriers and represent and warrant that you are the registered

1 legal owner of the vehicle, or that you have been duly
2 authorized by the legal owner of the vehicle to enter into
3 this agreement and acquire service to transport the vehicle.
4 That element was never approved at the original hearing, and
5 of course summary judgement was granted, so discovery, you
6 know, we never went through the full process.

7 Now, the reason why we're asking for surety is so that,
8 you know, he can post a bond. You do have an option of a
9 neutral, but we would ask that he would be able to post a bond
10 while this new hearing would be heard. He has instructed me,
11 and I'm only trying to protect the client's rights here, Your
12 Honor, he's instructed me to file a Notice of Appeal and we
13 filed the same similar motion for surety and a Notice of
14 Appeal, but that is held in abeyance until these motions are
15 heard.

16 You can look in the e-file and it will show that the
17 North Carolina vehicle shows Evelyn Soles, and that may very
18 be a grandmother, she's 80 something years old, but we need to
19 -- I'm not allowed to contract on my sister's car unless I
20 have been duly (inaudible) -- that's why we're asking for a
21 new hearing. I think it's only fair. That's kind of where
22 we're at.

23 And by the way, Mr. Craven had asked for proof that the
24 car isn't sold or anything like that. I can understand the
25 plaintiff's worries about that, so I sent Simone yesterday,

1 and she received, timestamped photos of the car being in his
2 storage. So the car does exist, at least as far as that photo
3 says, as far as I know, it's not been sold.

4 **THE COURT:** All right.

5 **MR. CRAVEN:** I'm going to allow Simone to handle this.
6 She did such a good job at the summary judgment motion; I'm
7 going to allow her to take this one too.

8 **THE COURT:** All right. Yes, ma'am.

9 **MS. HOLLOWAY:** Yes, Your Honor. Simone Holloway here for
10 Mr. Soles. In response to the defendant's motion we responded
11 with that the issue in question is not whether or not the
12 vehicle belonged to the plaintiff because the plaintiff
13 entered into a contract with Mr. Brockman and Mr. Brockman
14 breached that contract.

15 And to answer that contention, the vehicle was actually
16 given by the grandmother, Ms. Evelyn Soles, to Mr. Soles. And
17 before the title could be transferred through the DMV he had
18 to have possession of the vehicle. And since the vehicle has
19 not been able to be released back to Mr. Soles, he hasn't been
20 able to transfer the title as required through the DMV.

21 On February 24th, Judge, we were before you and you
22 granted our motion for summary judgment finding that his
23 client was supposed to deliver the vehicle the following day,
24 a Saturday, by 5 P.M. The client has not done that. He has
25 purposely and willfully kept the vehicle and chose not to

1 comply with that order.

2 Also whether or not, like I mentioned before, the vehicle
3 is in Mr. Soles name or his grandmother's name, who was the
4 gift giver in this situation, is moot. The issue before us is
5 a breach of contract. That contract has been breached, and
6 Your Honor, you believed that to be the case because you
7 affirmly (sic) granted the motion. And so our client is
8 still without possession of his vehicle and he's expending
9 money and time away from work to have to appear to these
10 various hearings upon this same issue.

11 We would ask in response to the defendant's surety bond
12 that either he -- the bond is set for \$50,000, which is the
13 value of the car plus all of the time that's spent to -- it's
14 a car that's doing reconstruction and restoration, or he
15 release the vehicle as instructed on the 24th. Thank you, Your
16 Honor.

17 **MR. SMITH:** Your Honor, if I may follow up with a reply?

18 **THE COURT:** Sure.

19 **MR. SMITH:** Okay. First of all, you have to have the
20 contractual capability and capacity. Their argument is that
21 Ron Soles entered into an agreement or a contract with my
22 defendant. However, the very black letter law of the contract
23 I read to you is you have to be the registered owner, or you
24 have to be duly authorized by the legal owner of the vehicle.

25 Now, this is just a motion hearing to reopen the larger

1 hearing. We're not arguing whether it's his grandmother or
2 not, but we at least should be able to have a new hearing
3 heard where Ron Soles can establish that he had -- was duly
4 authorized to have entered into this contract because if he
5 has no contractual capacity, and he has not fixed the title,
6 and that would mean he sued my client without any contractual
7 capacity and wrongfully put down that he was the legal owner
8 of the contract.

9 In addition, Your Honor, my client is unable to put a
10 mechanics lien on the vehicle because of the name he was
11 (inaudible) Ron Soles because he held out in the contract that
12 he was in fact the owner, when in fact he was not, it was
13 Evelyn Soles. And All I'm asking for is we can do a surety
14 bond, you know, in the Judge's discretion and then have a new
15 hearing. I think that would be fair until we can have it
16 established that Ron Soles was duly authorized to enter into
17 this contract, because otherwise we never had that element
18 proved by the plaintiff, and therefore the contract would be
19 null and void. They have no power to sue Mr. Brockman, and I
20 mean that's where we're at, Your Honor.

21 **MR. CRAVEN:** Your Honor, if I may?

22 My client has the title to that car with the
23 grandmother's signature on it. We can provide that title.
24 It's in his name. I'm sorry there's not a DMV record, but
25 that's not required. His grandmother signed that title over

1 on the back of that title as you would with the sale of a car
2 on any title, and he has that in his possession. He is the
3 legal owner of that car.

4 **MR. SMITH:** Your Honor, I think that's a key element that
5 needs to be heard before Your Honor if you could keep
6 jurisdiction. And I have, you know, Exhibit A to my motion to
7 set a new trial showing the North Carolina vehicle record that
8 he is not the owner of that car, it is Evelyn Soles. And my
9 client should have due process rights to know if, you know, if
10 in fact Ron Soles even had the ability to enter into this
11 contract because if he didn't everything is null and void. He
12 had no right to sue my client.

13 **MR. CRAVEN:** Your Honor, I think also this is ---

14 **THE COURT:** Well here's my position is that this is
15 wholly, all of this, is solely frivolous. All of this is on
16 behalf of Mr. Brockman to delay the proceeding, one hundred
17 percent. But the question is why? He's only entitled to
18 \$450. I ordered he be paid the \$450. He would simply accept
19 the \$450 that he is entitled to per the contract, and so what
20 is the benefit of consistently delaying these hearings when I
21 have ordered him to receive what he is legally and rightfully
22 entitled to. This makes absolutely no sense to me. I ordered
23 that he gets his money, so what is Mr. Brockman's position?
24 Why go through all of this? It's not like I'm cheating him
25 out of anything. He had a contract for \$450; I ordered them

1 to pay the \$450. That's it.

2 **MR. SMITH:** May I, Your Honor?

3 **THE COURT:** I'd love to know the reason.

4 **MR. SMITH:** Okay. I -- I, you know, I have to represent
5 my client.

6 **THE COURT:** I understand that. My question is, I'm not
7 asking for attorney/client privileged information, I'm just
8 under -- I'm not getting what is the benefit of him
9 continuously delaying this.

10 **MR. SMITH:** Well he feels that he's entitled to storage
11 fees under the Federal Motor Safety Act and he sent me -- what
12 happened is he feels like he waited for an ---

13 **THE COURT:** But he's storing it illegally in my opinion.
14 He is basically converted that car to his own. I mean he's
15 basically committed conversion.

16 **MR. SMITH:** I mean it's his belief that the Federal Motor
17 Safety Act allows him to store a vehicle for nonpayment, and
18 he also -- just so you know, Your Honor, I'm not trying to cut
19 you off, and I'm not trying to be frivolous, and not trying to
20 be disrespectfully, I'm just trying to represent and do my
21 job. He had to pick a car up in Charlotte, that's why he
22 couldn't wait. That's what I was trying to say in the
23 original hearing, that time is money. He sets a \$50,000 bond,
24 you're so expeditiously kind to hear this hearing so well,
25 there's no prejudice to the plaintiff. We can go through the

1 process, prove that he's duly -- they can prove that Ron Soles
2 had been duly approved by Evelyn Soles, and then after that,
3 that would be it. Now, we do have an appeal standing, but I
4 mean it's held in abeyance until these motions are heard.

5 **THE COURT:** All right.

6 **MR. SMITH:** Nothing's going to happen to the car.

7 **MR. CRAVEN:** Your Honor, he's going to continue to run up
8 these charges on my client. My client even brought a trailer
9 over there and offered him \$450 to get the car on his own, and
10 he wouldn't give it to him.

11 **THE COURT:** Yeah.

12 **MR. CRAVEN:** He's just continuing to run up my client's
13 bills. It's just frivolous, you're correct.

14 **THE COURT:** All right. Here's what I'm going to do, I'm
15 going to deny the motion for a rehearing. I'm going to
16 sanction him the cost of this hearing for everybody in the
17 amount of \$2,500 to be paid within ten days from today's
18 hearing, and my previous order still stands. If you want to
19 appeal that, you can appeal that, but for right now every day
20 that he has not returned that car he is in complete violation
21 of my order and at some time I will redetermine sanctions for
22 him not complying with a court order. So appeal all of that
23 and let me know what they say.

24 **MR. SMITH:** Your Honor, is that for him to pay the \$2,500
25 or am I going to have to pay the \$2,500?

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

IN THE FAMILY COURT
CASE NO.2022CP2305403

3
4 Ronald Soles

5 Plaintiff,

6 -vs-

TRANSCRIPT OF RECORD

7 Jason Brockman

8 Defendant.

9

10

April 20, 2023

11

Charleston, SC

12

BEFORE:

13

The Honorable Bentley Price, Judge.

14

15

APPEARANCES:

16

Simone Holloway

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Attorney for Plaintiff

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Brian T. Smith

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Attorney for Defendant

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Emily H. Walker, CVR

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Court Reporter

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INDEX OF WITNESSES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Argument for Plaintiff by Ms. Holloway	5
Argument for Defendant by Mr. Smith	7
Judge's Ruling	13
Certificate of Reporter	14

1 THE COURT: All right. We're going to get --
2 oh. Ms. Holloway, can you hear us?

3 MS. HOLLOWAY: Yes, Your Honor, I can.

4 THE COURT: All right. Are you going to be
5 conducting the hearing again today?

6 MS. HOLLOWAY: Yes, Your Honor.

7 THE COURT: All right.

8 MR. SMITH: Your Honor, before we start.

9 THE COURT: One second. All right, yes, sir.

10 MR. SMITH: Yes, sir. I was just notified by
11 my client that he would be unable to attend the
12 hearing due to a -- this is what he told me, Your
13 Honor -- a motor vehicle accident. That he was
14 under pain medication and his ride was not
15 available. I asked him the location of the vehicle.
16 He gave me that. Said he could Uber to the office
17 before we start. But -- and I did not know that,
18 Your Honor. I was literally under the Cooper River
19 Bridge worried that I was going to be late. I
20 called your law clerk concerned about the traffic.
21 A little bit heavier traffic than it is in
22 Greenville.

23 THE COURT: All right. So, where is he
24 currently?

25 MR. SMITH: Greenville, Your Honor.

1 THE COURT: Okay. Well, then we have a
2 problem. All right. So where, where does
3 everything currently stand as to this case?
4 Obviously, there has been some confusion as we have
5 moved forward. There's been two court orders on my
6 behalf ordering that the car be returned, and that
7 the monies be exchanged, both of which have been
8 denied. And the last thing that I saw was a letter
9 that the defendant sent pro se to the Supreme Court
10 concerning me and the rulings that I have made in
11 this case. And that's the last that I've had any
12 interaction with the case. So where are we
13 currently, Ms. Holloway?

14 MS. HOLLOWAY: Yes, Your Honor. We are
15 currently where you have just given the history of
16 the case as we move forward. The vehicle has not
17 been returned back to my client. Neither has there
18 been an exchange of monies between the parties. The
19 2500 that you ordered to be exchanged by April 3rd
20 has still not been exchanged from Defendant Brockman
21 to Plaintiff's counsel.

22 We did receive an offer for settlement but that
23 was denied because that offer was for us to pay
24 Defendant Brockman \$650, and for our client to come
25 and pick up the vehicle anytime. And also for both

1 parties to pay their own attorney's fees. Our
2 client has been out for attorney's fees of the total
3 amount of \$8373.14 for this frivolous action. Also,
4 because his client has not complied with any of the
5 previous court orders, and our client is still
6 paying for today's sanctions hearing, we believe it
7 is in our client's best interest, and do not want to
8 take that offer, and proceed forward with this
9 sanctions hearing before the Court today.

10 THE COURT: All right.

11 MS. HOLLOWAY: So, Your Honor, I can present
12 for the motion for sanctions whenever you are ready
13 or (inaudible).

14 THE COURT: No, I'll be happy to hear from you.
15 We just need to make the record clear.

16 MS. HOLLOWAY: Yes, Your Honor.
17 Simone Holloway on behalf of the plaintiff, Ronald
18 Soles. This is a hearing for a motion to enforce
19 the Court's order of March the 23rd, 2023, and to
20 impose further sanctions. Your Honor, we are here
21 today because on March 23rd, 2023 we were before you
22 and you heard Defendant Brockman's motion for a new
23 trial pursuant to the South Carolina Rules of Civil
24 Procedure, Rules 59(a)(2) and 59(e). And both
25 motions said surety is being (inaudible) with the

1 order by Defendant's counsel, Brian Smith. Both of
2 those motions were denied by Your Honor on that
3 March 23rd, 2023 date. You order that this
4 appearance before you was frivolous and the sole
5 purpose for a delay. We have attached a copy of the
6 order as Exhibit A to our prior motion.

7 You we also ordered the defendant, Jason
8 Brockman, would individually pay Plaintiff's counsel
9 the sum of \$2500 by April 3rd, 2023. You also found
10 Defendant Jason Brockman was in direct violation of
11 the Court's previous order dated March 1st. And
12 that he was to return the second vehicle to the
13 owner, as well, by April 3rd, 2023.

14 You ordered that if the vehicle was not
15 returned by that date, that the Court will entertain
16 all -- any and all relief by the plaintiff to
17 enforce the Court's order, and to impose further
18 sanctions. Per my previous testimony before you,
19 none of those things have been done. The vehicle
20 has not been returned by April the 3rd, 2023, per
21 your order. Neither has the defendant, Brockman,
22 paid Plaintiff's counsel additionally \$2500 that you
23 ordered on that March 23rd, 2023 order.

24 So, Your Honor, we are here following the
25 instructions of the Court. And we are asking that

1 you impose any and all further sanctions that are
2 appropriate for this action. We are also asking
3 that Defendant Jason Brockman be re-enforced to pay
4 the \$2500 as previously ordered. And they will pay
5 all of our client's attorney's fees. And that total
6 is \$8370.13.

7 Also, there is a possibility that the vehicle
8 in question has been damaged. And so we are
9 requesting that a special review will be done, and
10 he will be responsible for all damages to that
11 vehicle at the appropriate damages hearing that you
12 ordered on the March the 1st order. And that, Your
13 Honor, this Court will deem whatever sanctions that
14 are necessary and appropriate for this action.

15 THE COURT: All right. Thank you, ma'am. All
16 right. Yes, sir, Mr. Smith.

17 MR. SMITH: Yes, sir, Your Honor. Once, again,
18 apologies to the Court for my client's absence. I
19 want -- I found my return, and we cited Rule 11 that
20 prior to filing a motion that there be a
21 verification that -- in the motion that there was,
22 you know, an attempt by the plaintiff's counsel to
23 work this out. As to my knowledge it was us that
24 made the settlement offer that was rejected.

25 Now we had -- we stated that we made a

1 reasonable settlement offer in this matter, that the
2 plaintiff to take possession of the vehicle, convey
3 to the counsel for the plaintiff -- the defendant
4 asserts to me, Your Honor, that he has an inability
5 to personally transport the vehicle. These are
6 several circumstances that the defendant asserts
7 prevents him from personally transporting this
8 vehicle. Number 1, Defendant Brockman asserts that
9 he was not the originating broker. That he cannot,
10 under federal law, move the vehicle as he claims
11 that is (inaudible). The reason is Lions was the
12 original broker, Your Honor, to U.S. Auto Transport
13 and then, I believe it is called lease on, and he
14 leased on with U.S. Auto Transport.

15 Defendant also asserts that JNJ Transport does
16 not have any operating authority with the Department
17 of Transportation. However, he has restarted it,
18 and he would be able to transport the vehicle by
19 May 2nd.

20 And he said it is not reasonably or legally
21 possible for Defendant Brockman to contract with
22 another carrier as he is not the owner of the car.
23 We feel that Defendant Brockman has made a good
24 faith settlement offer to resolve this matter fully,
25 and allow the plaintiff to take immediate possession

1 of the vehicle.

2 But we didn't -- our offer was rejected and my
3 client's fear -- or what he has asserted to me is
4 that His Honor's order is for him to specifically
5 transport the vehicle, not for the vehicle to be
6 picked up. And he was afraid that he may be in
7 contempt if he was not -- if the offer was not -- if
8 the case was not settled in full and still out
9 there. He didn't want to be in contempt by allowing
10 it, the vehicle, to be picked up.

11 We do understand that my client made an ex
12 parte communication with the Supreme Court, but as
13 you know in the cover letter it clearly states,
14 please be advised -- this response to your recent
15 correspondence to Justice Beatty. Please be advised
16 that Chief Justice Beatty cannot consider this ex
17 parte communication about this appeal. So I will
18 assert that his letter was not even read, and won't
19 have any effect on this matter.

20 Now I want to point out that Rule 1.2 to the
21 comment that Jason, Defendant Brockman, has engaged
22 in wasteful judicial economy. One point two,
23 Rule 407, counsel has a duty -- or the defendant has
24 a duty to his client to take meaningful action. The
25 Court required -- 1.2 required an attorney to take

1 meaningful action in a case, and to provide
2 meaningful representation to his client. I would
3 point out the Matter of Milchem 331 SE 43 SE 2nd 733
4 in 1999 -- in 1998, I'm sorry, Your Honor. Under
5 1.2(b)407 a lawyer's representation of a client does
6 not constitute an endorsement of client's political,
7 economic, social, moral views, and activities. And
8 under 1.2(b) counsel for the defendant is to discuss
9 the legal consequences of any proposed conduct with
10 the client. And has counseled and assisted the good
11 faith effort to determine the validity, scope, and
12 meaning and application of the law.

13 First, we filed a summary judgment to counter
14 their summary judgment. We lost that. Then we
15 filed a motion for reconsideration. Then we filed
16 an appeal. And then we filed a motion to stay in
17 the Court of Common Pleas, and a motion to stay in
18 the common -- I'm sorry, in the appellate court, as
19 we know that stays on personal property, I mean,
20 it's not an automatic stay on personal property.
21 You need the order to do that. And then when it
22 came to light that the owner of the vehicle was
23 different, we filed for, we filed for a new trial.

24 And we point out that my client strongly
25 believes that he has a right to surety, and that he

1 should have been allowed surety as he filed his
2 motion in the Court of Common Appeal -- Pleas.

3 Now, I just want to point out, Your Honor, my
4 defendant resides in Greenville County. Works in
5 the transportation business, with his place of
6 business being Greenville County. Offices of both
7 counsels are in Greenville County, and we believe
8 that Greenville County is the proper venue. As that
9 is also where the defendant, I mean I'm sorry, the
10 plaintiff chose to file the lawsuit. That is where
11 the alleged breach occurred.

12 In addition, you know, we were not -- my client
13 was not served with a summons, but an email. It was
14 not an order from His Honor requesting him to be
15 here, and we feel that my client -- it's equal, you
16 know, equal representation under the law. That we
17 should have been able to appear in Greenville
18 County. And maybe some fairness could have been
19 shown to our side.

20 THE COURT: Mr. Smith, that has, that has no
21 merit to any of this whatsoever. This is my order.
22 This is my sanctions. It's my courtroom. It
23 doesn't matter if I'm sitting in Fairfield County,
24 Horry County, Charleston County, Greenville County.
25 I -- he didn't -- I don't have to send him anything.

1 You are his counsel. You filed a motion to be
2 relieved as his counsel so I don't know if you're
3 still his lawyer to begin with. But with that being
4 said --

5 MR. SMITH: That requires a hearing, Your
6 Honor. I still am.

7 THE COURT: -- I understand. Well, just for
8 the record I want to dispel of any of that issue
9 about him not being here. He is supposed to be
10 here. This is his hearing. Okay?

11 MR. SMITH: Yes, sir, I understand that.

12 THE COURT: Well, quit going down that road.
13 That is a dead-end. All right. I'll be happy to
14 hear from you anything else.

15 MR. SMITH: No, Your Honor. That is our --

16 THE COURT: All right. So yesterday
17 Mr. Brockman -- or either through counsel, or did he
18 email? My law clerk indicated that she received
19 some notice that it was going to be -- oh, yeah.
20 Yeah, you contacted our -- the Court and said that
21 it would be a significant hardship to make the trip.
22 As discussed earlier, my client's in the
23 transportation business, and would incur a hardship.
24 Okay. And now he says he's been in a car wreck.

25 MR. SMITH: I'm only repeating what he told me,

1 Your Honor.

2 THE COURT: All right. All right. I'm going
3 to grant the motion for continued sanctions. I'm
4 going to hold him in contempt, put him in jail for
5 six months. It's compulsory contempt meaning when
6 he lets that car go and the \$250 exchanges, he can
7 get out of jail. Send the sheriff. All right?
8 Anything further?

9 MS. HOLLOWAY: No, Your Honor, thank you.

10 THE COURT: Thank you. Thank you, ma'am.

11 MR. SMITH: Your Honor?

12 THE COURT: You need me for anything?

13 MR. SMITH: Yes, sir, can I ask you a question?

14 THE COURT: Sure.

15 MR. SMITH: Can we allow for pickup? He did --

16 THE COURT: It's got to be by the end of the
17 day, or the sheriff's going to be at his house.

18 MR. SMITH: Yes, sir.

19 END OF TRANSCRIPT OF RECORD

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25

1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF CHARLESTON)

5 I, the undersigned Emily H.
6 Walker, official Court Reporter for the 9th
7 Judicial Circuit of the State of South Carolina, do
8 hereby certify that the foregoing is a true,
9 accurate, and complete transcript of the record of
10 all proceedings had and evidence introduced in the
11 hearing of the captioned case, relative to appeal,
12 in the Court of Common Pleas for Charleston County,
13 South Carolina, on the 20th of April, 2023.

14 I do further certify that I am
15 neither kin, counsel, nor interest to any party
16 hereto.

17 In witness whereof, I have
18 hereunto subscribed my name, this 22nd of May, 2023.

19

20

21

22

23

24

25

Emily H. Walker, CVR
Court Reporter

RECEIVED
Dec 05 2023
SC Court of Appeals

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 theAppellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Record On Appeal complies with Rule 210, SCACR.

Respectfully submitted,

Dated: December 1st, 2023
Greenville, South Carolina

s/Ward Benjamin McClain, Jr.
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