THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2020-CP-42-00055

Appellate Case No. 2024-001239

Dr. Lad Santiago, Appellant.

v.

Stephen N. Garcia, as Attorney for

Oscar Avila Hernandez, et.al., Respondents.

INITIAL BRIEF OF APPELLANT

Dr. Lad Santiago
5041 N. Blackstock Rd.
Spartanburg, SC 29303
Telephone: (864)576-2983
drladsantiago@gmail.com

Pro Se for Appellant

Stephen N. Garcia, Esquire
604 Pettigru Street
Greenville, South Carolina 29601
Telephone: (864)271-7335
stephen@scgarcialaw.com

Attorney for Respondents

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STATEMENT OF THE ISSUES ON APPEAL

1. Whether the circuit court erred in finding that the Appellant's First Amended Verified Complaint was not entitled to Relief on any Theory.
2. Whether the circuit court erred in finding that the Appellant's First Amended Verified Complaint did not meet the "plausibility standard."
3. Whether the circuit court erred in not accepting that the Appellant, Dr. Lad Santiago is the assignee with privity of the Assignment of Benefits Contracts; conveyed to him by the assignor, his wife, the single and only member of the LLC, Upstate Clinical Associates, and is thus the real party in interest.
4. Whether the circuit court erred in finding that the Appellant, Dr. Lad Santiago, was not an intended 3rd party beneficiary with privity, and was not the real party in interest, in both the written and oral agreements (contracts), consummated between Upstate Clinical Associates, LLC, and through his verbal agreement with the Respondents, Oscar Avila Hernandez, et.al., and was not empowered to enforce the collection of benefits owed by the Respondents and their attorney.
5. Whether the circuit court erred in finding that a majority, if not all of Appellant's claims were outside the Statute of Limitations. This decision was based on a false and erroneous schema of the Statute of Limitations fabricated by the Respondents' attorney for the purpose of misrepresenting the facts regarding the Statute of Limitations so that it would appear that the Statute of Limitations had run.
6. Whether the Circuit court erred in finding that there was no failure of fiduciary performance and duty on the part of the Respondents and the Respondents' attorney; and whether the Circuit court erred in finding that it was equitable that Dr. Lad Santiago's claim for unjust enrichment was not applicable.

STATEMENT OF THE CASE

Appellant, Dr. Lad Santiago, filed and served a *Pro Se* Summons and Verified Complaint in the Court of Common Pleas of Spartanburg County for the Seventh Judicial Circuit on January 8, 2020. A First Amended Verified Complaint followed on March 9, 2020, asserting claims for (1) breach of contract, (2) bad faith, (3) unjust enrichment. (Amd.Compl. pgs. 3-6).

All of Dr. Lad Santiago's claims arose from the Respondents seeking healthcare services from him for injuries sustained by the Respondents, **Oscar Avila Hernandez, and Angelica Calderilla (Corona) Hernandez, and ALA (Minor Child), and JA (Minor Child),** as the result of an automobile accident. The complaints were filed by and on behalf of Dr. Lad Santiago. (Amd.Compl. pg. 3).

Pursuant to Rule 12(b)(6), SCRCP, **Oscar Avila Hernandez, and Angelica Calderilla (Corona) Hernandez, and ALA (Minor Child), and JA (Minor Child),** filed a motion to dismiss on February 26, 2020, requesting that the Court of Common Pleas dismiss the aforementioned claims of the Appellant, Dr. Lad Santiago. (Defs.' Mot. to Dismiss 1). Appellant also filed a motion on March 9, 2020, to disqualify opposing counsel, because opposing counsel was the attorney for the Respondents in a personal injury case which produced a settlement that provided direct compensation from the opposing insurance company for injuries sustained by the Respondents. Their attorney, Stephen N. Garcia was to segregate and maintain a portion of the funds in trust as payment to the Appellant through Upstate Clinical Associates, LLC for the healthcare services rendered to the Respondents, which he willfully and purposefully failed to do. Further, he stated that he would surrender said funds directly to the court, which he did not do. There was a definite conflict of interest regarding his role as their personal injury attorney, having gained the monetary proceeds from the settlement of the case, and his role as the custodian of those funds upon a breach of the

contracts, and his failure of fiduciary responsibility to maintain those funds in trust and to properly disperse them. However, it became evident that he assumed the role to represent the Respondents in their breaches of contracts, while being the custodian of the funds. He circumvented his fiduciary duties and acted to defend the Respondents, thus creating a conflict in his dual roles, which ultimately manifested in his and in his clients' gain of unjust enrichment from these unethical actions and roles of representation. This is in violation of Rule 1.15(b) as cited herein: "Rule 1.15 (b) requires that a third party be "entitled" to funds in the lawyer's possession. Although Rule 1.15 (b) does not make the third party a "client" of the lawyer, the lawyer's duty with respect to funds to which the third party is entitled is the same as if the person were a client.[1]" ***See*** Legal Ethics Opinion 1865. It appears that the Respondents' Counsel used his position to defend the Respondents in order to conceal his intent for unjust enrichment. Despite Appellant's pleadings to address and correct this conflict, the Court erred by failing to grant the Appellant's Motion for Disqualification of Respondents' Counsel. The Court's position on this matter only became manifest upon the final ruling issued on November 20, 2023.

In May of 2020, the Honorable Judge J. Derham Cole requested through his law clerk via email, that the parties agree to the Honorable Judge J. Derham Cole hearing the two motions in chambers without the parties being present, because of the prevailing public health contagion, COVID, which was present during this period of time in 2020. However, it took more than three and one-half (3.5) years for the Honorable Judge J. Derham Cole to render an order, which was entered into the court record on November 20, 2023. Meanwhile, from May of 2020 until the rendering of that order, case filings, court actions, and hearings continued, but it appears that they were not given their due consideration for a just and fair resolution of this case.

All of the Court Transcripts and their respective judges' rulings have been submitted to the Appellate Court for their record and review. The Court of Common Pleas entered an order granting the 12(b)(6) Motion to Dismiss with Prejudice on November 20, 2023, which also included a denial of Appellant's Motion to Disqualify Counsel. Appellant, Dr. Lad Santiago, filed under Rule 59, SCRCP, a Motion for a New Trial/Hearing on November 30, 2023. The circuit court denied this motion on July 3, 2024, but Appellant did not receive written notice of this order until July 9, 2024. Dr. Lad Santiago filed and served a timely notice of appeal on July 29, 2024.

STATEMENT OF THE FACTS

The Appellant, Dr. Lad Santiago, delivered healthcare services to the Respondents because of bodily injuries sustained by them due to an automobile accident caused by another driver that occurred on May 20, 2016. Respondents sought healthcare services directly from Appellant and entered into both written and verbal agreements/contracts on June 2, 2016 and June 16, 2016. (Amd.Compl. ¶ 6, 7).

The Respondent, Oscar Avila Hernandez, called the Appellant, Dr. Lad Santiago, in the latter half of May, 2016. He informed him that he and his family had been involved in an automobile accident on May 20, 2016 and that they were injured and suffering with pain. Mr. Avila and his family desired to be examined for these injuries caused by the accident. The Respondents made an initial appointment directly with Dr. Lad Santiago for June 2, 2016, and on June 16, 2016. (Amd.Compl. ¶ 6-7). At these visits, the Respondents consulted with Dr. Lad Santiago about their accident and injuries. During these same visits, Dr. Lad Santiago translated the Informed Consent, signing his portion and obtaining their signatures also. Because of the Respondents concerns regarding how they would make payment, he also

presented and translated the Irrevocable Assignment, Lien and Authorization Insurance Benefits and Attorney Contracts (hereinafter referred to as Contracts or Assignment of Benefits, or Agreements, or AOB). He stressed to them the importance of making payment from their settlement proceeds for the professional healthcare services that he would be delivering to them, utilizing Upstate Clinical Associates, LLC as a conduit for the receipt of their payments, upon their cases being settled. Immediately thereafter, each of the Respondents agreed to these terms, signing and returning these contractual agreements. They also made verbal agreements, to render to Upstate Clinical Associates, as a conduit, payment in full for services that the Appellant would render to the Respondents in this personal injury case, once their cases were settled.

Appellant agreed to defer payment for services being rendered until the Respondents had reached maximum medical and their cases had been resolved with the opposing insurance company, and compensation had been conveyed to their legal representative.

Based upon these written and verbal agreements, the Appellant agreed to deliver healthcare services and the Respondents agreed to pay the Appellant from their settlement proceeds, as a direct and third-party beneficiary for the healthcare services that he would render. (Amd.Compl. ¶ 7, 8, 11).

The Respondents, **Oscar Avila Hernandez, and Angelica Calderilla (Corona) Hernandez, and ALA and JA,** underwent an evaluation consisting of a medical history, a review of systems, and a physical examination performed by the Appellant, Dr. Lad Santiago. Upon completion, Dr. Santiago wrote orders for x-ray images with Piedmont Imaging in Spartanburg, SC. After receipt and evaluation of these x-ray images, coupled with the examination findings for each case by Dr. Lad Santiago, respective diagnoses were reached.

Thereafter, Dr. Lad Santiago began a series of treatments for each of the Respondents. Once the patients/respondents reached maximum medical improvement, Dr. Lad Santiago released them from care. (Amd.Compl. ¶ 6, 7).

Subsequently, the Respondents' attorney, Stephen N. Garcia, was conveyed a complete set of invoices for each of the Respondents under his representation and copies of the written agreements / contracts (Informed Consent and Assignment of Benefits Forms), all of which were verified as having been received, and which were used to substantiate the pain and suffering experienced by the Respondents to the opposing insurance company in obtaining a settlement, which is a common practice used in personal injury cases in order to validate their claims and determine the proper monetary compensation in the settlement of their case. (Amd.Compl. ¶ 8, 10, 11).

The Respondents' personal injury cases were settled on or about January, 2019, and the monetary proceeds of the cases were conveyed to the Respondents' personal injury attorney, Stephen N. Garcia thereafter. (Amd.Compl. ¶ 11).

However, the Respondents and their attorney purposefully chose to disregard their contractual obligations to remit payment to the Appellant through Upstate Clinical Associates, LLC, serving as a conduit for payment. (Amd.Compl. ¶ 7, 14, 25). Suspecting that they were not going to comply with their written and verbal contractual obligations, a certified demand letter was issued through the United States Postal Service on May 9, 2019. This was a final attempt to collect payment from the Respondents. The certified demand letter was returned unclaimed on or about June 15, 2019, which established the date of discovery of the breach of contracts. As a result, Dr. Lad Santiago was consequently assigned the contracts by the

Appellant's wife, the single and only member of Upstate Clinical Associates, LLC. (Amd.Compl. ¶ 6).

The First Amended Verified Complaint asserts that Attorney Stephen N. Garcia and the Respondents chose to disregard their contractual obligations to Upstate Clinical Associates, LLC, and to Dr. Lad Santiago as a direct third-party beneficiary, and that they acted in their own economic interest, in violation of their contractual duties. Dr. Lad Santiago demanded damages from the Respondents and their attorney for their breaches of contractual and fiduciary obligations and duties as equitable recovery. This is, without question, deducible from the facts contained within the complaint. (Amd.Comp. ¶14).

Dr. Lad Santiago was supposed to benefit from the settlement proceeds from this case and not be denied compensation (benefits) for the services that he delivered in good faith to the Respondents. However, he received NO compensation whatsoever at any time, then or now, for any of his services from the proceeds gained by the Respondents and their attorney, making this a clear act of unjust enrichment. (Amd.Compl. ¶ 7, 8, 10, 11, 12, 13, 14).

Additionally, Affidavits of both Dr. Lad Santiago and Elizabeth Santiago were sworn and filed within the court record as testament to the facts of this case. These affidavits further provide documentation that there was an agreement to defer payment until the cases were settled, and further that the single member of the LLC, Upstate Clinica Associates, assigned the contracts to the Appellant, thereby giving the Appellant the right to file suit and also make a claim Quantum Meruit.

STANDARD OF REVIEW

Pursuant to Rule 12(b)(6) of the SCRCP, the defendants have the right to assert in their answer or pre-answer motion to a complaint against the defendants, a defense that alleges that the

complaint fails to state the facts sufficient to constitute a cause of action. However, when reviewing a 12(b)(6) motion, a court is duty bound to view a complaint in the light most favorable to the Appellant and every doubt must be resolved in the Appellant's favor. Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). The court is not permitted to grant a 12(b)(6) motion "if the facts alleged and inferences reasonably deducible therefrom would entitle the Appellant to any relief on any theory of the case." Sloan Constr. Co. v. Southco Grassing Co., 377 S.C. 108, 113, 659 S.E. 2d 158, 161 (2008). Beverly v. Grand Strand Reg'l Med. Ctr., LLC, 435 S.C. 594, 869 S.E.2d 812 (2022). A court may not dismiss a complaint merely because the court doubts the Appellant will prevail. Plyler, 373 S.C. at 645, 647 S.E.2d at 192. A Court of Appeals is compelled to apply the same standard. Dawkins v. Union Hosp. Dist., 408 S.C. 171, 176, 758 S.E.2d 501, 503 (2014). Beverly v. Grand Strand Reg'l Med. Ctr., LLC, 435 S.C. 594, 869 S.E.2d 812 (2022).

ARGUMENT

In this current era where motor vehicles are involved in every aspect of American life, healthcare coverage through general health insurance and automobile insurance is commonplace for injuries sustained as the result of motor vehicle collisions. It is mandatory by statute and the norm nationwide. In 2023, 92% or 305 million American individuals were covered by general health insurance or major medical insurance in the United States, which also covers injuries sustained through automobile accidents. ***See*** Keisler-Starkey, Katherine and Lisa N. Bunch. *Health Insurance Coverage in the United States: 2023. September 10, 2024. Report Number: P60-284.* In 2022, there were nearly 6 million automobile accidents in the U.S. ***See*** Edwards, Sarah, Contributer. Adam Ramirez, JD, Reviewer. *How Many Car Accidents Per Year In U.S. Chart (2025).*

There are approximately 280 million motor vehicles covered by automobile insurance in the Nation. ***See*** Carlier, Mathilde. *U.S. motor vehicle registrations 1990-2022*, Feb 28, 2024. State statutes require insurance coverage of motor vehicles, which includes medical coverage for accident victims: drivers and passengers who have sustained injuries, but who are not responsible for causing the accident. These injured individuals may employ their general health insurance or their automobile insurance coverage or both should such an event occur. In many instances, the insurance companies will subrogate on the issue of responsibility of payment, should both insurance coverages, general and automobile be exercised in such a situation. In the case where the individuals have been injured by an offending party, the injured party has the right to bring a tort action against the offending party (owner) and their insurance company. Upon seeking healthcare for injuries sustained, the injured party may assign benefits from the recovery of any settlement that might occur, as payment for medical services rendered by a healthcare provider.

Since healthcare services tend to be unpredictable throughout the length of care of the injuries sustained, depending on the complexity and development of the healthcare case, in addition to being a costly process, it is common for an assignment of benefits contract to be consummated by the parties involved, namely the healthcare provider and the injured parties (patients). This is especially true in personal injury cases. In other words, due to the high cost of healthcare, it is a common practice to await payment by all interested parties: patient (client), healthcare provider and attorney, until the injured party has reached maximum medical improvement which signifies the point where the patient's condition is stable and may not improve further. It is at this point that settlement of the case is usually negotiated for bodily injuries sustained. In this type of case, the insurance proceeds are assigned in advance by the injured party/patient to a healthcare entity with a third-party interest on the part of the healthcare

provider(s) for protection of their work product; the individual(s) who delivered the healthcare services for the injured parties involved, with the resulting invoices to be employed by the victim's attorney for the purpose of settling the case. This is a common practice in personal injury law. The assigned proceeds are then to be segregated and directed with the intention of making payment for the healthcare services that had been delivered to the injured party(s), but in no way does it nullify a third-party beneficiary interest. "Rule 1.15 (b) requires that a third party be "entitled" to funds in the lawyer's possession. Although Rule 1.15 (b) does not make the third party a "client" of the lawyer, the lawyer's duty with respect to funds to which the third party is entitled is the same as if the person were a client.[1]" ***See*** Legal Ethics Opinion1865. This occurs without necessarily memorializing this provision and stating it in the assignment of benefits contract. "Under South Carolina law, it is well settled that a nonparty may enforce contractual terms that intentionally provide her [him] direct benefits. ***See***, e.g., Kingman v. Nationwide Mut. Ins. Co., 243 S.C. 405, 412, 134 S.E.2d 217, 221 (1964) ("We have held in numerous cases that a contract between two persons, for the benefit of a third, even though such third party be not named therein, can be enforced by such third party."); Jennings v. First of Ga. Underwriters Co., 283 S.C. 455, 457, 322 S.E.2d 694, 695 (Ct. App. 1984) (explaining contracts between two persons for the benefit of a third can be enforced by the third person even though she is not named therein). "The presumption that [a] contract is not enforceable by [a nonparty] may be overcome by showing he was intended to be the direct beneficiary of the contract." Touchberry v. City of Florence, 295 S.C. 47, 48–49, 367 S.E.2d 149, 150 (1988)." ***See*** Beverly v. Grand Strand Reg'l Med. Ctr., LLC, 429 S.C. 502, 839 S.E.2d 468 (Ct. App. 2020), aff'd, 435 S.C. 594, 869 S.E.2d 812 (2022).

The relationship in this type of scenario is seldom strictly between two parties, for example, the patient and the healthcare facility, but may involve a third-party beneficiary, although it may not be necessarily stipulated in a written contract as such, or may or may not have been written or articulated verbally to the injured party (the patient), or, on the other hand, there may be a provision in the contract, which allows for the assignment to a third-party beneficiary to collect the debt for the healthcare services delivered due to the inherence of the third-party beneficiary interest in the outcome, especially when there is a breach of contract in failing to make payment for the healthcare services rendered by him/her. Regardless of the scenario, a third-party beneficiary may exercise an interest in the benefits assigned to a second party, without necessarily being named in the contract. ***See*** Kingman v. Nationwide Mut. Ins. Co., 243 S.C. 405, 134 S.E.2d 217 (1964).

Therefore, the contract relationship is inherently trilateral, especially when injuries are involved and are being claimed by the accident victim. A healthcare provider is trained and licensed to verify when bodily injuries are the result of an accident, which substantiates these injuries for the purpose of a claim. Therefore, the legitimacy of a claim is directly proportional to the type, extent and severity of the injuries sustained, either severally or collectively, which only a healthcare provider can determine, and which is further defined by the cost incurred for the medical services rendered by the healthcare provider; thus, creating the healthcare provider's interest as a third-party beneficiary. This healthcare and the associated costs will determine the compensation sought by the attorney's claim for bodily injuries sustained by the accident victim(s). This is a usual and customary practice in personal injury law, otherwise, a claim by the victim and his/her attorney for recovery (compensation) against the opposing insurance company for the bodily injuries sustained would not be credible or viable. ***See*** Beverly.

As previously mentioned, the provision of payment governing contracts in these situations often only mentions two parties, ie. a patient's contract with the healthcare facility or the healthcare provider extending credit and awaiting payment. However, "[w]hen reimbursement...disputes arise, the participants may find themselves seeking relief from a party with whom they lack contractual privity." ***See*** Beverly, p.4. This is of course unless privity has already been established by the party seeking such through either written and/or verbal agreement. Therefore, "[t]his case asks whether South Carolina contract law and equity principles recognize the core structure of the [automobile] health insurance market by allowing its participants to enforce duties specifically intended to benefit them even when memorialized in someone else's contract." Beverly, p. 4. In answer to this latter question, it has been historically established that "South Carolina contract law recognizes the enforcement rights for intended third-party beneficiaries . . .." Beverly, p. 5.

However, the Court of Common Pleas of Spartanburg County, chose to defy this and to grant the 12(b)(6) Motion to Dismiss with Prejudice to the Respondents, and thereby dismissed Dr. Lad Santiago's complaint and his claims for relief. This was done erroneously concluding that he was not a third party. He has always maintained that he is a party and a beneficiary to the claim. The following facts support this position: (1) He delivered all of the healthcare services: he signed the informed consents with the patients; he performed the medical histories and the review of systems; the physical examinations, determined the diagnoses and medical impressions; delivered a multitude of treatments; and a final prognosis for each of the four patients upon them attaining maximum medical improvement. Therefore, by his actions, he established that he is a third party with a direct beneficiary interest; (2) He agreed to await payment until the cases were settled or adjudicated; (Amd.Compl. ¶ 6, 7) (3) He was assigned by his wife, the sole member of the LLC, Upstate Clinical Associates, all of the contracts as an assignee and as a third-party beneficiary, to

collect the debts, upon the discovery of the breach of contracts. ***See*** Affidavits of Dr. Lad Santiago and Dr. Elizabeth Hughston Santiago, filed on May 29, 2020, and filed on May 23, 2023 in the Spartanburg County Court of Common Pleas. The circuit court's order should be reversed because of the aforementioned facts mentioned herein. This erroneous decision also ignores key provisions in both the written and verbal contracts, the rights of a third-party beneficiary, and the fact that the contracts were assigned. It violates South Carolina law.

1. **Dr. Lad Santiago is entitled to Relief on any Theory.**

The complaint states a claim for breach of the contracts by each of the Respondents in this case: Oscar Avila Hernandez, Angelica Calderilla Cornona (Hernandez), JA and ALA, and for their attorney, Stephen N. Garcia. These funds in escrow were due to Dr. Lad Santiago upon settlement with the opposing insurance company, and a portion thereof was to have been remitted as full payment of their balances to Upstate Clinical Associates, LLC, which was serving as a conduit for the intended beneficiary, Dr. Lad Santiago. As previously stated, when the Respondents were injured and communicated with Dr. Lad Santiago, seeking his assistance with their healthcare needs as a result of their automobile accident injuries, Dr. Santiago obliged, but not before the Respondents understood and agreed to the terms under which they would undergo healthcare by the Appellant. This included a verbal explanation of their responsibilities as patients, their financial responsibility to make payment for these healthcare services at the time of settlement of their cases, the extent and type of services to be delivered to them. This ultimately culminated in their signatures on the Informed Consent Form and the Assignment of Benefits Form, and their verbal understanding and agreement of these requirements. However, because of their inability to pay for the healthcare services to be rendered, a special provision was offered to defer payment(s) during the time that services were being rendered, to extend the time before payment of their debts

were to be made, until they had achieved maximum medical improvement and their cases were settled. This financial arrangement is a common practice with personal injury law. This was understood by them as patients and Dr. Lad Santiago as their healthcare provider and intended beneficiary. It was also understood by their attorney as he was in possession of the assignment of benefits contracts signed by each of the Respondents, as well as other documents pertaining to this case. ***See*** Affidavits.

The spirit and sanctity of this agreement was breached by the Respondents and their attorney: (1) Dr. Lad Santiago conferred on Oscar Avila Hernandez, et.al. a benefit; (2) Oscar Avila Hernandez, et.al. realized the benefit; (3) it is not equitable and just for Oscar Avila Hernandez, et.al. to retain the benefit under any circumstance without making payment in full to Dr. Lad Santiago for the full value of that benefit. The Respondents and their attorney failed to convey payment (benefit) in any form and in any amount.

a. The breach of the agreements by the Respondents, Oscar Avila Hernandez, et.al., is a cause for action and meets the requirement for Relief on Any Theory.

In South Carolina, the legal principle of "Relief on Any Theory" plays a significant role when courts consider motions to dismiss under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, especially in breach of contract matters. "The purpose of a motion under Rule 12(b)(6) is 'to test the formal sufficiency of the statement of the claim for relief; the motion is not a procedure for resolving a contest between the parties about the facts or the substantive merits of the plaintiff's case.' 5B Wright & Miller § 1356. '[I]mportantly, [a Rule 12(b)(6) motion] does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.' *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999)." ***See*** Scott Moïse, *THE SCRIVENER, Get Out of My Life! Part Two Rule 12(b)(4)-(8) motions and motions for judgment on the pleadings, for a more definite statement, and to strike*, (July 2016) at 51.

Therefore, under the doctrine of Relief on Any Theory, a complaint should not be dismissed if, when construing the allegations in the light most favorable to the plaintiff, the plaintiff could be entitled to relief under any viable legal theory. This principle encourages courts to allow claims to proceed if there is any basis for relief, even if the complaint does not perfectly state a claim for a specific cause of action.

In *Lad Santiago Dr vs. Oscar Avila Hernandez, defendant, et al, case #2020CP4200055,* although the claim was articulated clearly and comprehensively to make a claim for a specific cause of action, it was nevertheless denied. "If the 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case,' then the court may not grant a 12(b)(6) motion." ***See*** Sloan Constr. Co. v. Southco Grassing Co., 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008). "When reviewing a 12(b)(6) motion, a court must view a complaint in the light most favorable to the plaintiff and every doubt must be resolved in the plaintiff's favor. ***See*** Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Also, "A court may not dismiss a complaint merely because the court doubts the plaintiff will prevail." ***See*** Plyler, 373 S.C. at 645, 647 S.E.2d at 192.

Although the complaint may not have been "perfectly" articulated, the Appellant has the right to further refine his Complaint. Furthermore, "[i]t is generally recognized that for the purposes of a motion to dismiss, the court shall construe pleadings liberally, and if there is any possibility of relief, the case should not be dismissed." ***See*** Yeitrakis v. Schering-Plough Corp., 804 F. Supp. 238 (D.N.M. 1992). And "As a general proposition, on a motion to dismiss, the court must limit its analysis to the four corners of the complaint and it may dismiss the complaint only if it is clear that the plaintiff can prove no set of facts upon which it would be entitled to relief." ***See*** *Bharucha v. Reuters Holdings PLC*, 810 F. Supp. 37 (E.D.N.Y. 1993). "The granting

of a motion to dismiss is a harsh remedy. It is without dispute that it must be cautiously studied, both to effectuate the spirit of the liberal rules of the pleading and to protect the interest of justice." ***See*** *Carlson v. U.S. ex rel U.S. Postal Service,* 248 F.Supp.2d 1040 (N.D.Okla.2003). Also, "[t]he court held that consideration of matters beyond the complaint is improper in the context of a motion to dismiss." ***See*** *Harvey M. Jasper Retirement Trust v. Ivax Corp.*, 920 F.Supp. 1260 (S.D.Fla.1995). And "[t]o resolve a motion to dismiss, the court must accept as true all factual allegations in the complaint, construe the record in favor of plaintiff, and decide whether as a matter of law, the plaintiff could prove no set of facts which would entitle it to relief." ***See*** *Parker v. Wakelin,* 882 F.Supp. 1131 (D.Me.1995); *Straka v. Francis,* 867 F.Supp. 767 (N.D.Ill.1994); *Bensch v. Metropolitan Dade County,* 855 F.Supp. 351 (S.D.Fla.1994).

As stated in Plaintiff's Motion for a New Trial On a 12(b)(6) Motion to Dismiss, filed on November 30, 2023, "...[p]ursuant to South Carolina Rules of Civil Procedure, Rule 15(a), the plaintiff requests leave to file supplemental pleadings if necessary to address any deficiencies or ambiguities that have not as of yet been identified by the court since the hearing allegedly occurred in closed chamber [deliberated by the Judge solely] allegedly over three years ago, but at some point within the previous three and one-half (3.5) years, but the Order was only recently rendered as of November 20, 2023." (Plaint. Mot. for New Trial ¶ pg. 4). Please note that although this filing was entitled, "...Motion for a New Trial...", the case never went beyond the pleading phase, and there was no hearing before the judge, which was one of the reasons a hearing before the judge was requested with the Motion for a New Trial. However, the presiding judge did not allow a hearing to take place before him, which is one of the reasons why this appeal has been waged.

Moreover, in the matter of Toussaint v. Ham, the Supreme Court of South Carolina reversed and remanded a case wherein a 12(b)(6) Motion to Dismiss was granted by the circuit court. The

Supreme Court of South Carolina found: "1. A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Brown v. Leverette, 291 **S.C.** 364, 353 **S.E.2d** 697 (**1987**). ***See*** also 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1357 (1969). (The question is whether in the light most favorable to plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. The complaint should not be dismissed merely because the court doubts that plaintiff will prevail in the action.) 2. We cannot agree with the lower court's view that appellants' amended complaint fails to allege facts sufficient to state a cause of action.) The circuit court's order granting the Rule 12(b)(6) motion is reversed and the case is remanded." ***See*** Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

Moreover, in a breach of contract case, even though the Plaintiff may not know the precise legal terminology, the complaint is still valid. As long as the facts asserted in the complaint provide a basis for relief the complaint must survive a Rule 12(b)(6) motion, which the Appellant's complaint complied with these requirements. However, the circuit court did precisely the opposite of this in this matter; it granted the 12(b)(6) motion to dismiss with prejudice in this case.

Therefore, the circuit court erred in: 1. Allowing Attorney Stephen N. Garcia to attempt to "try the case" on a 12(b)(6) motion to dismiss; 2. Allowing Attorney Garcia to extend his analysis beyond the four corners of the complaint as is reflected in his pleadings; 3. Disregarding the complaint even though it met the requirements to prove a set of facts upon which relief could be granted; 4. In dismissing the complaint early in the process while in the pleading phase, even though nearly three-and-one-half years had elapsed before a ruling came forth from Judge J. Derham Cole.

The Relief on Any Theory principle is essential in the context of Rule 12(b)(6) motions to dismiss in breach of contract matters. As long as the complaint sets forth facts that could reasonably suggest a right to relief, the courts are duty bound to allow the case to proceed, even if the legal theory is not perfectly articulated, there still exists a plausible basis for relief under any theory. The legitimacy of the Appellant's complaint is clearly evident by examining and analyzing the complaint document. It has the required attributes for its legitimacy to make a claim upon which relief can be granted.

At the circuit court level the Appellant, Dr. Lad Santiago, was not afforded the opportunity to develop his claim further, even though the complaint was reasonably articulated to allow for the denial of the 12(b)(6) Motion to Dismiss. As a result, the Circuit Court erred by dismissing the legitimacy of the complaint both in form and in substance as presented by the Appellant. Consequently, the Circuit Court erred in granting the Respondents the 12(b)(6) Motion to Dismiss with Prejudice.

2. The Appellant's Complaint meets the necessary criteria to qualify as a bona fide legal complaint, while meeting and exceeding the plausibility standard.

In the case of Dr. Lad Santiago v. Oscar Avila Hernandez, et.al., the question is whether the complaint filed for relief met the necessary criteria of plausibility to make it a bona fide complaint entitled to relief. The circuit court erred in not recognizing that the complaint had met the necessary criteria of plausibility, and that in fact, it had exceeded it.

The plausibility standard originated from the U.S. Supreme Court decisions in Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), and Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). In Twombly, the Supreme Court held that a complaint must allege "enough facts to state a claim to relief that is plausible on its

face." Iqbal extended this approach, clarifying that while the court must accept as true all well-pleaded factual allegations, it is not bound to accept legal conclusions as true. Thus, conclusory statements unsupported by factual allegations are insufficient. "Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.' As the Court held in *Twombly,* 550 U. S. 544, the pleading standard Rule 8 does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Id.*, at 555 (citing Papasan v. Allain, 478 U. S. 265, 286 (1986))." ***See*** OPINION OF THE COURT, ASHCROFT V. IQBAL, at IV A.

In the context of a breach of contract action, the "plausibility standard" governs the sufficiency of a complaint, requiring that the allegations within it demonstrate a plausible claim for relief. This standard has been further refined by judicial interpretation, emphasizing that a complaint must contain more than mere legal conclusions or unsupported allegations; rather, it must set forth a claim that is "plausible on its face." ***See*** *Speaker v. U.S. D. H. S, 623 F.3d 1371, 1380 (11th Cir. 2010) ("In Twombly, the Supreme Court distinguished "plausible" claims from allegations that were merely "conceivable," and stated that the Court "[did] not require heightened fact pleading of specifics, but only enough facts to state a' claim to relief that is plausible on its face." Id. at 570, 127 S.Ct. at 1974. The Supreme Court explained that a complaint "does not need detailed factual allegations," but the allegations "must be enough to raise a right to relief above the speculative level." Id. at 555, 127 S.Ct. at 1964-65. Furthermore, "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." Id. at 556, 127 S.Ct. at 1965 (quotation marks omitted).")* ***See*** *Speaker v. U.S. D. H. S, 623 F.3d 1371, 1380 (11th Cir. 2010) ("Subsequently, in Iqbal the*

Supreme Court clarified that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. at 1949; see also Watts v. Fla. Int'l Univ., 495 F.3d 1289, 1295-96 (11th Cir. 2007) ("The Court has instructed us that the rule `does not impose a probability requirement at the pleading stage,' but instead `simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of the necessary element.")(quoting Twombly, 550 U.S. at 556, 127S.Ct.at1965).

In South Carolina, the courts have adopted a similar approach to Twombly and Iqbal regarding the requirement for a well-pleaded complaint. A breach of contract action typically requires the plaintiff to allege (1) the existence of a contract, (2) the defendant's breach of that contract, and (3) damages resulting from the breach. (Amd.Compl. ¶ 6, 7, 8, 10, 11, 12, 13, 14, 21, 22, 23, 24, 25). As noted in the Twombly case cited above, this case has offered a pleading that is fully adorned.

The Appellant's First Amended Verified Complaint addressed the requirements as stated immediately above. It demonstrated that there were verbal and written agreements (contracts), a breach of those agreements, and resulting damages from these breaches. In the matter at hand, a detailed, factually supported narrative was provided in the form of a complaint, stating all of the requirements expected in a complaint. It included sufficient factual details to meet and exceed the plausibility standard making it a Bona fide complaint.

On the other hand, Respondents' Counsel has failed to meet the Twombly-Iqbal Standard wherein he would have to prove that the First Amended Verified Complaint and its claims have not surpassed the bar of conceivability. Obviously, he did not take into account the aforementioned standard and its application to this case. In fact, the First Amended Verified Complaint has

demonstrated on its face that its claims are not only conceivable but have entered the realm of being plausible and even more so, probable. On this basis alone, the 12(b)(6) Motion to Dismiss with Prejudice should not have been granted. The circuit court erred by **not** accepting the complaint and granting the 12(b)(6) Motion to Dismiss with Prejudice to the Respondents.

3. Appellant, Dr. Lad Santiago, is the assignee, with privity, of the Assignment of Benefits Contracts, which were conveyed to him by the assignor, his wife, the single and only member of the LLC, Upstate Clinical Associates, and is thus the real party in interest, which gives him all rights to collect the debts owed by the Respondents for the healthcare services that he provided to them

The circuit court erred in not recognizing and accepting that the Appellant, Dr. Lad Santiago is the assignee with privity of the Assignment of Benefits Contracts, conveyed to him by the assignor, his wife, the single and only member of the LLC, Upstate Clinical Associates and is thus the real party of interest.

The Appellant's wife, the single and only member of Upstate Clinical Associates, LLC, assigned the contracts to the Appellant, which was noted in the pleadings of May 2023, and also in the court hearing before Judge Grace Gilchrist Knie on June 2, 2023.

In the Appellant's circuit court filing dated May 22, 2023, Response In Opposition To Defendants Renewed 12(b)(6) Motion To Dismiss, the following information was conveyed in principle to Judge Grace Gilchrist Knie.

This Plaintiff Response document reflects, as does the First Amended Verified Complaint, that payment to Upstate Clinical Associates, LLC, as is stipulated in the written agreements, and in the verbal agreements between Plaintiff Dr. Lad Santiago and the Defendants, that certain actions would be taken in the event of non-payment. Thus, there was a clear verbal declaration to the Defendants that actions would be taken in the event of a breach of the contracts, including assignment of said contracts to the Plaintiff. This signifies that these

agreements existed and are valid between the parties aforementioned. Meaning that there is an explicit agreement between the Plaintiff and the Defendants, that the Defendants were to make payment for services rendered by the Plaintiff as a beneficiary via Upstate Clinical Associates, LLC, as a conduit, and should the payment not be rendered, Upstate Clinical Associates, LLC would assign the debt for collection to the Plaintiff, which was eventually executed via verbal assignment, on or about June 15, 2019 by the single member (his wife) of the LLC, Upstate Clinical Associates, to the Plaintiff; a standing practice that had traditionally existed and was practiced by Upstate Clinical Associates, LLC through his wife and the Plaintiff.

"An assignment is the act of transferring to another all or part of one's property, interest, or rights. *Black's Law Dictionary* 119 (6th ed. 1992). It includes transfers of all kinds of property, including negotiable instruments. *Id.* The assignment of an account involves the transfer to the assignee the right to have money, when collected, applied to the payment of his debt. *Id.* The interest in the property assigned can be present, future, or contingent; it may represent contract rights to money, property, or performance, or rights to causes of action." 5 S.C. Jur. *Assignments* § 2 (2006). ***See*** Moore v. Weinberg, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007), aff'd, 383 S.C. 583, 681 S.E.2d 875 (2009), at II Assignment.

"Three elements constitute an assignment: (1) an assignor; (2) an assignee; and (3) transfer of control of the thing assigned from the assignor to the assignee. *Donahue v. Multimedia, Inc.*, 362 S.C. 331, 338, 608 S.E.2d 162, 165 (Ct.App.2005) (citing *Leon v. Martinez*, 84 N.Y.2d 83, 614 N.Y.S.2d 972, 638 N.E.2d 511 (1994)). 'An assignment of a right is a manifestation of the assignor's intention to transfer it by virtue of which the assignor's right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance.' Restatement (Second) of Contracts § 317(1) (1981). South Carolina jurisprudence

has long recognized that a chose in action can be validly assigned in either law or equity. *Slater Corp. v. S.C. Tax Comm'n,* 280 S.C. 584, 587, 314 S.E.2d 31, 33 (Ct.App.1984) (citing *Forrest v. Warrington,* 2 S.C.Eq. (2 Des.) 254 (1804)); *see also* S.C. Jur. *Assignments* § 19 (2006) ("A chose in action is the right of proceeding in a court to procure the payment of a sum of money, or the right to recover a personal chattel or a sum of money by action.... In South Carolina a chose or thing in action is statutorily included in one's personal property and is assignable."). ***See*** *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007), aff'd, 383 S.C. 583, 681 S.E.2d 875 (2009).

Therefore, the Appellant in this matter has the right to pursue any and all legal actions to obtain relief for the debts (benefits) owed to him by the Respondents and their attorney. The assignee stands in the shoes of its assignor. ***See*** *Twelfth RMA Partners, L.P. v. National Safe Corp., 335 S.C. 635, 639-40 (S.C. Ct. App. 1999) ("In South Carolina, it is well established that an "assignee . . . stands in the shoes of its assignor . . ." Singletary v. Aetna Cas. Sur. Co., 316 S.C. 199, 201, 447 S.E.2d 869, 870 (Ct.App. 1994). When a contract is assigned, the assignee should have all the same rights and privileges, including the right to sue on the contract, as the assignor. Under the UCC in South Carolina, a "[t]ransfer of an instrument vests in the transferee such rights as the transferor has therein." S.C. Code Ann. § 36-3-201 (1976).")* Also, ***See*** *Hendrix v. Eastern Distribution, Inc., 316 S.C. 34, 38 (S.C. Ct. App. 1994).*

Furthermore, the First Amended Verified Complaint states that neither ". . . Stephen N. Garcia, Esq. nor the defendants conveyed the appropriate and specific portion from the settlement funds, or for that matter, any funds whatsoever to Upstate Clinical Associates LLC that were allegedly being held in his trust account to pay-off the Defendants' outstanding medical invoices." (Amd. Compl. ¶14) The Complaint further clarifies that "[t]he non-conveyance and [non] delivery

of funds to (Upstate Clinical Associates, LLC) was in direct violation of the written and verbal contracts between Dr. Lad Santiago and the Defendants." (Amd. Compl. ¶14) This signifies that there is a direct relationship between the Plaintiff, Dr. Lad Santiago and the Defendants, and that there is a promise to pay by the Defendants for services rendered to the Defendants, utilizing Upstate Clinical Associates, LLC as a conduit, for the direct benefit of the Plaintiff, Dr. Lad Santiago. In the event of a breach on the part of the defendants, The Assignment, Lien and Authorization form signed by the Defendants, stipulates that "I [Defendant] authorize this Office to compromise, settle or otherwise resolve said claim or cause of action as they see fit." This understanding and agreement occurred with each of the defendants; each one being aware of this provision within the contract that they each so executed. Therefore, the single member (the wife of the Plaintiff, Dr. Lad Santiago) of Upstate Clinical Associates, LLC verbally assigned, as the assignor, to the Plaintiff all the contracts, and therefore the right to pursue and enforce collection as an assignee. He is also entitled this right as a third-party beneficiary with privity. Furthermore, the contracts did not contain an exclusionary clause that would preclude the Appellant from being a third-party beneficiary. Therefore, the Appellant has the right to bring an action to enforce the collection of benefits. This stature includes all rights to sue and pursue collection as noted by the previously quoted case laws.

To further support the aforementioned facts, the Appellant offers the following. On November 30, 2023, the Plaintiff filed Plaintiff's Motion for a New Trial on a 12(b)(6) Motion to Dismiss, wherein he states the following, from page 5, paragraph 2: "Defendants' Counsel introduced a Renewed 12(b)(6) Motion to Dismiss on March 20, 2023, which was heard by the Honorable Judge Grace Gilchrist Knie on June 2, 2023, where she asked if the wife of the Plaintiff was the single member of the LLC (Upstate Clinical Associates), to which the Plaintiff

answered in the affirmative. [Court Transcript: pg 20, lines 22-25 through pg 21, lines 1-9]. The Plaintiff also made clear that as the manager of said entity, that she had in fact assigned the contracts that were signed by the Defendants to the Plaintiff for collection; a tacit understanding and practice that had occurred since the entity's inception. Therefore, the Plaintiff held all rights to collect, which he so executed according to law."

The Circuit Court erred in failing to recognize, honor and adhere to the veracity and intention of this legal right and premise of assignor to assignee, which Judge J. Derham Cole totally disregarded, culminating in granting the defendants' 12(b)(6) Motion to Dismiss with Prejudice.

4. **Dr. Lad Santiago is an intended third-party beneficiary with privity and is the real party in interest in both the written and oral agreements (as contracts) consummated between Upstate Clinical Associates, LLC and through his verbal agreement with the Respondents, Oscar Avila Hernandez, et.al. On all counts, he is empowered to enforce the collection of the benefits owed to him by the Respondents for the healthcare services that he rendered to them, but that were denied to him by the Respondents and their attorney.**

The Respondents and their attorney alleged that Upstate Clinical Associates, LLC was an indispensable party, inserting this fallacy in their pleadings for the purpose of undermining the Plaintiff's claim, but the fact is that Upstate Clinical Associates, LLC is a conduit to bill and receive payments for services rendered by the real party of interest, Dr. Lad Santiago. Since the Appellant established his privity as a third-party beneficiary through previously noted multiple interactions (delivering all of the healthcare services and establishing a concrete doctor-patient relationship) with the Respondents as the real party of interest, Upstate Clinical Associates, LLC could not be an indispensable party.

Furthermore, by South Carolina State Statute, Dr. Lad Santiago is the only party who is licensed by the State of South Carolina in this clinical facility, and thereby authorized to perform these healthcare services at this clinic where the Respondents received healthcare. Coupled with

this, he is the only one that also has the authority under which the bills/invoices could have been generated for these cases on behalf of the Respondents. As noted previously, Upstate Clinical Associates, LLC, served as a conduit to carry out the billing and clerical actions, and could have only done so under Dr. Santiago's State granted authority. ***See*** Professions and Occupations, Title 40 - Professions and Occupations, Chapter 1.

By virtue of his standing and stature as was demonstrated earlier in this document, and in this breach of contract matter as a third-party beneficiary with privity, the Appellant is the real party in interest and is vested in making his rightful claim to what is owed to him.

Although the Assignment of Benefits Contracts name only Upstate Clinical Associates, LLC and each of the Respondents, Dr. Lad Santiago is directly benefited by its provisions, as he was the only state licensed healthcare provider at the healthcare clinical facility and the only provider to provide healthcare services at the clinic; to interface, examine and treat each of the Respondents, without which the attorney of record would not have been able to establish a case where injuries were determined, treated and established as being the result of the automobile collision sustained by them. Thus, the benefits awaited by the Appellant were not incidental, but directly related to the healthcare services performed on the Respondents by the Appellant. *Windsor Green Owners Ass'n v. Allied Signal, Inc., 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct.App.2004).*

South Carolina Rules of Civil Procedure (SCRCP) Rule 17(a), states the following: "(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name

of the State. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest."

"In Moore's Federal Practice under the New Federal Rules it is said at pages 2041, 2046, 2049, 2053, 2054, 2055, that "[t]he true meaning of real party in interest is as follows: An action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced. "The primary purpose of the real party in interest provision was to change the common-law rule that an action upon an assigned chose in action had to be prosecuted in the name of the assignor. The effect of the real party in interest provision, in respect to assignments, is that if by the substantive law an interest could be and was transferred by an assignment, a suit on the assigned chose in action must be brought in the name of the transferee. "The federal courts, in construing the real party in interest provisions of various state codes, and all of the state courts, in construing their own provisions, have been in full accord in holding that the unconditional assignee of a complete chose in action is the real party in interest and suit must be brought in his name." ***See*** McWhirter v. Otis Elevator Co., 40 F. Supp. 11 (W.D.S.C. 1941)

Under South Carolina law, it is well-settled that a non-party [to a contract] may enforce contractual terms that intentionally provide [him] direct benefits. "We have held in numerous cases that a contract between two persons, for the benefit of a third, even though such third party be not named therein, can be enforced by such third party. Pharr v. Canal Ins. Co., 233 S.C. 266, 104 S.E.2d 394." ***See*** Kingman v. Nationwide Mut. Ins. Co., 243 S.C. 405, 412, 134 S.E.2d 217, 221 (1964). Determining whether a third-party may enforce a contract is a matter of contract

interpretation. ***See*** Touchberry v. City of Florence, 295 S.C. 47, 49, 367 S.E.2d 149, 150 (1988). As in Beverly, the circuit court incorrectly interpreted the Agreement (Assignment of Benefits Contracts) to exclude Dr. Santiago as a third-party beneficiary based on an erroneous interpretation of the Agreement by both the Respondents' attorney and the Circuit Court, which dismissed his rightful claim and position as a third-party beneficiary. ***See*** Beverly v. Grand Strand Reg'l Med. Ctr., LLC, 435 S.C. 594, 869 S.E.2d 812 (2022).

Dr. Lad Santiago has demonstrated privity with the Respondents through direct interface with them, through services rendered to them, and through multiple layers of exchanges with them, having maintained this position from the onset of the clinical and doctor-patient relationship. He has demonstrated by his actions that he has privity and is a direct third-party beneficiary in these cases.

Furthermore, South Carolina law stipulates that a party does not have to be named in a contract in order to have a third-party interest. ***See*** *Kingman v. Nationwide Mut. Ins. Co.* By simply manifesting the intent, which has heretofore been demonstrated by the actions that occurred between the Appellant and the Respondents, as has been previously noted, and by his clinical and verbal exchange with the Respondents, a third-party interest with privity was established. These actions prove unequivocally that the Appellant, Dr. Lad Santiago is a third-party beneficiary with privity, and furthermore, that he is also an assignee to the contracts, and therefore, he can rightfully exercise his right to collect what he has earned and is owed on the healthcare services that he delivered to the Respondents. Dr. Lad Santiago has a vested right, which is defined as: "a right belonging completely and unconditionally to a person as a property interest which cannot be impaired or taken away (as through retroactive legislation) without the consent of the owner." ***See*** Vest Right, Mirriam-Webster.

Please reference the following from Plaintiff's Response in Opposition to Defendants' Renewed 12(b)(6) Motion To Dismiss, filed May 22, 2023. "Through the First Amended Verified Complaint the question regarding privity has been addressed. In further support of the application of the concept of privity, Plaintiff offers additional commentary: Barron's Law Dictionary by Steven H. Gifis, 1984, defines 'privity' as 'a relationship between parties out of which there arises some mutuality of interest,' pp. 366. It further defines Privity of Contract as, 'the relationship that exists between two or more contracting parties. It is essential to the maintenance of an action on any contract that there should subsist a privity between the plaintiff and defendant in respect to the matter sued on,' " pp. 366. ***See*** *Fabian v. Lindsay, Appellate No. 2012-213726, at *5 (S.C. Oct. 29, 2014) ("Black's Law Dictionary 1394 (10th ed. 2014) (defining "privity" as "[t]he connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property); mutuality of interests"). South Carolina courts have equated privity with standing.")*

"Plaintiff strongly objects to the assertion made by the Defendants' Counsel as to the issue of lack of privity. In fact, the details supporting the opposite position were presented earlier to the Court in Plaintiff's Motion to disqualify opposing counsel, Stephen N. Garcia, Esquire, which was filed with the Court on March 9, 2020. In the aforementioned Motion, Plaintiff explained the actions taken that support the concept of privity by virtue of the doctor-patient relationship, and by specific particulars defining the interactions between the Defendants and the Plaintiff. The applicability of the concept of privity by way of the Informed Consent was further established in the Response in Opposition to Stephen N. Garcia's Motion to Dismiss, filed with the Court on March 9, 2020. The Defendants are obviously misguided to think and state otherwise. The following case law reveals this to be true. ***See e.g.,*** *Fabian v. Lindsay, 765 S.E.2d*

132 (S.C. 2014) "Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third-party is not, as such, recoverable by the plaintiff." Windsor Green Owners Ass'n v. Allied Signal, Inc., 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct.App.2004) *(citation omitted). "However, if a contract is made for the benefit of a third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person." Id. (citation omitted).*

"When the contract is made for the benefit of a third person, namely in this case the Plaintiff, Dr. Lad Santiago, the third person has the right to enforce the contract. ***See*** *Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 445 (S.C. Ct. App. 1997) ("Generally, a third person not in privity of contract with the contracting parties has no right to enforce a contract. However, when the contract is made for the benefit of the third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential benefit to such third person. Bob Hammond Constr. Co. v. Banks Constr. Co.,* 312 S.C. 422, 440 S.E.2d 890 *(Ct.App. 1994).")*"

If the contracts did not intend to create a direct rather than an incidental or consequential benefit to a third-party, namely to Dr. Lad Santiago, then why would the single member of the LLC, his wife, have assigned the contracts to him? She did so because he was vested, and was the direct beneficiary of the contracts, and the onus fell upon him to collect the funds by virtue of assignment in this specific instance.

Now as to the question of privity as regards a third-party beneficiary, it is emphatically clear that the Plaintiff has privity in this case, but even if the Plaintiff lacked privity, the courts have found the following to be true. ***See*** *e.g.,* Wogan v. Kunze, 366 S.C. 583, 604 (S.C. Ct. App.

2005) ("Generally, a third person not in privity of contract with the contracting parties has no right to enforce a contract. However, when the contract is made for the benefit of the third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person.")

Therefore, in the matter at hand, the Appellant, Dr. Lad Santiago has already demonstrated heretofore within this document why he is an intended third-party beneficiary with privity, and as such, is accorded all of the rights and privileges thereto by virtue of this position. As previously referenced, under South Carolina law, it is well-settled that a non-party [to a contract] may enforce contractual terms that intentionally provide [him] direct benefits. ***See*** Kingman. Determining whether a third-party may enforce a contract is a matter of contract interpretation. ***See*** Touchberry. ***See*** Beverly. As in Beverly, the circuit court incorrectly interpreted the Agreement (Assignment of Benefits Contracts) to exclude Dr. Santiago as a third-party beneficiary based on an erroneous interpretation of the Agreement, which dismissed his rightful claim and position as a third-party beneficiary. As a result, the Court erred in its ruling.

Therefore, the Court erred in finding that the Appellant was not the real party in interest, an intended third-party beneficiary with privity, and further, that he was not assigned all of the contracts with the inherent rights to collect on those contracts and on this basis alone, the 12(b)(6) Motion to Dismiss with Prejudice should have been denied.

5. Statute of Limitations: The Amended Verified Complaint states a claim for Breach of Contract by the Respondents within the true and accurate limits of the Statute of Limitations, based upon the Rule of Discovery. However, fabrication of the statute of limitations by the Respondents' attorney was an act committed to derail and undermine the legitimacy of the complaint and also committing fraud upon the court.

The statute of limitations serves a critical function in civil litigation by imposing time

limits on when a party can bring a claim, thereby ensuring fairness and preserving the integrity of the judicial process. When a statute of limitations is improperly invoked or fabricated as grounds for dismissal, significant legal and ethical concerns arise. Such actions can undermine justice and the rule of law.

The Respondents have alleged that the Appellant failed to comply with the Statute of Limitations. This allegation is an absolute fabrication based upon a false representation of the facts. This was accomplished by the Respondents' attorney through a contortion of the truth wherein he fabricated a false schema of the Statute of Limitations, which set the time clock at different points in time from which he claims that the countdown for the Statute of Limitations was to have begun. Pursuant to South Carolina Statute, the statute of limitations begins at the point of discovery by the injured party, the moment when the Plaintiff truly realizes that the breach of the contracts has occurred.

State statute regarding breach of contract, *Code § 15-3-530*, stipulates that an action must be taken *"Within three years:(1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520;"*.

In South Carolina, the Statute of Limitations for a breach of contract is three (3) years, which in this case, occurred when the Defendants failed to respond to the final request to render payment to Upstate Clinical Associates post-settlement, which was on or around June 15, 2019. The Appellant's initial complaint was filed on January 8, 2020, eight months after the breach of contracts were committed by the Respondents, and not long after the Respondents had completed their care, having reached maximum medical improvement, and their cases having been settled with the opposing insurance company, which occurred on or about January, 2019.

"All of the Plaintiffs claims were within the Statute of Limitations, although the Defendants' Attorney has misconstrued and convoluted the facts knowingly, to make it appear otherwise; thereby creating a fabricated misconception contrary to the facts of this case, and contrary to the South Carolina Statute of Limitations regarding Breach of Contract: ***See*** *S.C. Code § 15-3-530 ("Within three years:**(1)** an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520;").*

Furthermore, "[t]he actual beginning date for the Statute of Limitations in this case is the date when the breach of contract was truly realized by the Plaintiff, and not the date when said services were performed as Defendants' Counsel is claiming. Obviously, he willfully employed a count-down date from which to begin and extend the time forward in order to create a false date, a false range, and a false impression upon which the fabricated Statute of Limitations would be based. Contrary to Defendants' attorney's misleading impression that the Statute of Limitations ensued when the services were delivered and as the dates noted on the corresponding invoices (the date upon which they were generated), the actual Statute of Limitations according to South Carolina law, ***See*** *S.C. Code § 15-3-530 ("Within three years,* as previously cited, began at the point where the contractual agreement had been breached, as realized by the Plaintiff. ***See*** *Coastalstates Bank v. Hanover Homes of S.C., LLC, 759 S.E.2d 152, 156 (S.C. Ct. App. 2014) ("An action for breach of contract must be commenced within three years. S.C.Code Ann. § 15–3–530(1) (2005). Under "the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered." Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). "The discovery rule applies to breach of contract actions." Prince v. Liberty Life Ins. Co., 390 S.C. 166, 169, 700 S.E.2d 280, 282 (Ct.App.2010).* (Resp.in Oppos to Def Renewed 12b6, pgs 10-11).

In Defendants' attorney's Memorandum of Law In Support of Defendants' 12(b)(6) Motion To Dismiss, filed on May 6, 2020, Stephen N. Garcia made purposefully false and misleading statements which committed fraud upon the court, and to undermine a legitimate complaint, and to deny the Appellant his rightful claim for the benefits he earned.

In the above referenced document of May 6, 2020, Attorney Stephen N. Garcia stated that his filing of February 26, 2020 cited two separate grounds for this 12(b)(6) Motion to Dismiss: (1) No Privity of Contract, and (2) Expiration of the Statute of Limitations. It must be stated that no privity of contract was ever raised as grounds in this February 26, 2020 Motion to Dismiss document as a basis for dismissal. Only the statute of limitations was raised as grounds for dismissal in this document. However, the Appellant addresses the issue of privity in its appropriate context within this Initial Brief.

As to the Statute of Limitations, the Appellant will hereafter address this matter. First, the attorney makes erroneous conclusions that are based upon a false and contrived schema to fit his own machinations to make it appear that the statute of limitations had expired. Further, when viewing the invoices for each patient, Attorney Stephen N. Garcia claimed that Dr. Lad Santiago and Upstate Clinical Associates, LLC were demanding payment due after each date of service, which was most certainly not the case. He alleged this with no apparent basis for his erroneous conclusions as there is nothing on the invoices to support his allegations. This fabricated impression of the invoices served as the foundation to support the false statute of limitations that he created. This ploy was fabricated to create his machination for deceiving and committing fraud upon the Court with a false statute of limitations.

Invoices for each patient were simply a record of the bills that were incurred, a standard invoice; a form of accrual accounting and were generated for the purpose of the attorney to

employ them in order to settle the cases, which he employed to settle the cases not long thereafter. Nowhere on the face of the invoices does it state that the fees incurred by the Respondents were due to be paid at the time that the services were provided. Therefore, the cause of action could not have accrued when the services were rendered.

Additionally, the first paragraph of the Assignment Form clearly states that Upstate Clinical Associates, LLC was to be protected from "...any settlement, judgement or verdict on my [patient's] behalf as may be necessary to adequately protect said Office." As stated earlier in this document, there was an agreement between all parties (Dr. Lad Santiago, Upstate Clinical Associates, LLC and Oscar Avila Hernandez, et.al.) as is standard in personal injury cases (and as this attorney is well aware of) that an arrangement for payment for services rendered was agreed upon at the inception of their cases, and this payment would only occur after their cases were settled; a usual and customary practice among personal injury attorneys and healthcare providers and injured parties. (Amd.Compl. ¶ 7) This is also supported by the Affidavits of Dr. Lad Santiago and Dr. Elizabeth Hughston Santiago. ***See*** Affidavits.

In contrast to the above, Attorney Garcia never introduced any affidavits from his clients to verify his allegations. Furthermore, it is common knowledge that a Motion to Dismiss that is not supported with an affidavit is insufficient to support granting the motion. ***See*** Trinsey v. Pagliaro, 229 F. Supp. 647, 649 E.D. Pa. 1964). *"The defendants' motion to dismiss for failure to state a claim unsupported by affidavits or depositions is incomplete because it requests this Court to consider facts outside the record which have not been presented in the form required by Rules 12(b)(6) and 56(c). Statements of counsel in their briefs or argument while enlightening to the Court are not sufficient for purposes of granting a motion to dismiss or summary judgment."* In this case, Mr. Stephen N. Garcia, Esq. failed to produce an affidavit by a

competent witness to support his motions. To date, the defendants have failed to support any of their defenses by oath or affirmation.

This begs the question: why would the Appellant have waited until the cases were settled if what Attorney Garcia said was true regarding the bill "due dates?" If what Attorney Garcia said was true with regard to the statute of limitations, then the statute of limitations would have started running after every visit, and then the Appellant would have sued after every visit, but in fact what took place was an execution of a usual and customary practice, policy and agreement between the healthcare provider and/or clinic and the patients, to await payment until their cases were settled by the patients' attorney. Attorney Stephen N. Garcia most certainly knew then and knows now how this works, especially since he attempted to negotiate with the Appellant via telephone around the time of case settlement. He and the Respondents all knew full well that awaiting payment until after settlement was the arrangement that had been made. This means that all of the bills were not due until after their cases were settled, and therefore, there was no breach of contract prior to that time that could have occurred, and there was no statute of limitations that had run since the payment of the bills were not yet due for consideration for payment.

Although Attorney Stephen N. Garcia's involvement in these cases came very late in the legal process of case settlement, he had all of the documents associated with the cases delivered to him, inclusive of the Assignment of Benefits and the Informed Consent forms signed by the Respondents (which were also emailed to him and also delivered by the Respondents to him). He was privy to all of the information contained in them, and understood the terms for his clients' receipt of healthcare benefits and their payments that would be due after settlement for those healthcare services; funds that had already been promised in principle and in practice, to Upstate Clinical Associates, LLC as a conduit for the Appellant, making these pledged funds *no longer*

theirs. "Since the client has the power to validly assign the proceeds, the attorney has the obligation to honor such an assignment, if properly notified. The attorney does not violate the [Rules of Professional Conduct] because the funds in his trust account no longer belong to his client. The funds belong to the assignee of the client and, therefore, the client is not entitled to receive them under RPC 1.15(b)." ***See*** Berkowitz v. Haigood, 256 N.J.Super. 342, 606 A.2d 1157, 1160 (Law Div.1992). Also, "[i]t is well settled under the ethics rules and South Carolina law that an attorney who has knowledge of an assignment cannot dishonor the assignment when disbursing funds if he has knowledge of the assignment. This is true even if his client instructs him to dishonor the assignment and disburse the funds...." ***See*** Moore v. Weinberg, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007), aff'd, 383 S.C. 583, 681 S.E.2d 875 (2009). As immediately noted above, Attorney Stephen N. Garcia had knowledge of the Assignment of Benefits and also had dialogue with the Appellant with regard to the benefits due him which he acknowledged as benefits owed to the Appellant.

Therefore, there was no breach of contract until a final demand for payment letter was mailed certified, registered receipt to the Respondents. However, they failed to sign for this letter, and claim it, and therefore also failed to comply with the payment/benefits due to the Appellant. The receipt of the returned letter and unsigned card was returned unclaimed by the United States Postal Service on or around June 15, 2019. According to South Carolina case law, it is at this point, which is known as the discovery rule, that signifies the point of discovery that the Appellant became aware that the contracts had been breached. ***See*** Dean v. Ruscon Corp.

Attorney Stephen N. Garcia's fabrication of the statute of limitations is an egregious act committed by him, as an officer of the court. This was executed by him with the intention to defraud the court and to undermine the Appellant's actions and quest for a justifiable recovery, and

as such, the Respondents and their attorney would then profit from the unjust enrichment realized by them.

The fabrication of a statute of limitations defense in a 12(b)(6) motion is a flagrant abuse of the judicial process. A fabricated or misapplied statute of limitations undermines the fairness of litigation, potentially depriving a plaintiff of the opportunity to have their claims heard. South Carolina courts have emphasized that statutes of limitations are affirmative defenses that must be properly raised and substantiated by the moving party, which he did not do. When a defendant knowingly asserts a false statute of limitations, it not only violates ethical obligations but also risks sanctions to the perpetrator. ***See*** *SCRCP 8.4 (a)(d)(e)*

If the Circuit Court had <u>not</u> erred by allowing the fraudulent Statute of Limitations fabricated by the Respondents' attorney, the 12(b)(6) Motion to Dismiss with Prejudice would have never been granted, and appropriate disciplinary measures would have been imposed by the Circuit Court to reprimand the attorney involved for his frivolous actions and his attempt to defraud the Court and undermine the Appellant.

6. Failure of fiduciary performance and duty, resulted in unjust enrichment of the Respondents and their attorney by them withholding that portion of the settlement funds which had been promised to the Appellant and to Upstate Clinical Associates, LLC

Based on the laws and rules governing fiduciary responsibility and conduct, the attorney and the Respondents have failed to adhere to the terms agreed upon in this case and as is expected of an officer of the court. The attorney should have unequivocally demonstrated and maintained a fiduciary responsibility and performance at an unimpeachable level. However, both he and the Respondents have violated these principles and have jeopardized the sanctity of the judicial process and have created direct harm to the Appellant.

Case law establishes that there is a fiduciary responsibility of one party to another, specifically, that Stephen N. Garcia, Esquire and the Respondents have a fiduciary responsibility to the Appellant. ***See*** *e,g., Moore v. Moore, 360 S.C. 241, 250-51 (S.C. Ct. App. 2004) ("A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. Ellis v. Davidson, 358 S.C. 509, 519, 595 S.E.2d 817, 822 (Ct.App. 2004); Regions Bank v. Schmauch, 354 S.C. 648, 670, 582 S.E.2d 432, 444 (Ct.App. 2003);Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 476, 581 S.E.2d 496, 505 (Ct.App. 2003). A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. Hendricks v. Clemson Univ., 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003); O'Shea v. Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992); SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 500, 392 S.E.2d 789, 794 (1990); Regions Bank, 354 S.C. at 670, 582 S.E.2d at 444; Steele v. Victory Sav. Bank, 295 S.C. 290, 293, 368 S.E.2d 91, 93 (Ct.App. 1988). A relationship must be more than casual to equal a fiduciary relationship. Ellis, 358 S.C. at 519, 595 S.E.2d at 822; Regions Bank, 354 S.C. at 670, 582 S.E.2d at 444; Steele, 295 S.C. at 293, 368 S.E.2d at 93.")* This relationship, as mentioned above, was more than casual, for it was unmistakenly a fiduciary relationship.

It is abundantly clear that Dr. Lad Santiago, the Appellant, placed a special confidence in Stephen N. Garcia, Esquire and the Respondents, his patients, in equity, good conscience and with the trust that they would act in good faith with regard to the interests (benefits) that were due to the Appellant as to the healthcare services delivered to the Respondents. Instead, the Respondents and their attorney demonstrated bad faith with regard to the interests (benefits) due to the Appellant, and failed to convey any benefits to the Appellant whatsoever.

The fiduciary duties of an attorney who holds settlement proceeds assumes the role of a trustee and must honor the contracts that are part of the case and be in compliance with the South Carolina Rules of Civil Procedure and case law. The settlement proceeds were to have been disbursed according to applicable rules of the SCRCP, SCRPC and case law, and also abide by the terms of the contracts. The attorney and the Respondents failed to comply with the above. The Circuit Court erred in recognizing this violation.

"Stephen N. Garcia, Esquire as a trustee has unclean hands because he has breached his fiduciary duty to promptly deliver the funds to Upstate Clinical Associates, LLC from the trust account. As the trustee of said funds Attorney Stephen N. Garcia should have acted with impartiality [honesty, honorability and transparency] in promptly and completely carrying forth his duty to execute the terms of the signed contracts [and verbal agreements]. (Mot.to Disqual.Oppos Counsel, pg 5).

Attorney Stephen N. Garcia, the Respondents' attorney, has grossly and completely violated his fiduciary responsibility mandate, laws and rules. He has failed to remit any payment whatsoever and submit any accounting to the Appellant and Upstate Clinical Associates, LLC. He has failed to account for the outstanding funds due to the Appellant. There is no record or accounting that has been revealed to verify that all of the funds due and in question are in a separate trust account, intact, and that they have never been tampered with.

Additionally, "It is well settled under the ethics rules and South Carolina law that an attorney who has knowledge of an assignment cannot dishonor the assignment when disbursing funds if he has knowledge of the assignment. This is true even if his client instructs him to dishonor the assignment and disburse the funds...." ***See*** Moore v. Weinberg.

Case law supports this: "Since the client has the power to validly assign the proceeds, the attorney has the obligation to honor such an assignment, if properly notified. The attorney does not violate the [Rules of Professional Conduct] because the funds in his trust account no longer belong to his client. The funds belong to the assignee of the client and, therefore, the client is not entitled to receive them under RPC 1.15(b)." ***See*** *Berkowitz v. Haigood.*

Furthermore, it is not known if Stephen N. Garcia has complied with that aspect of Rule 1.15, that addresses the proper segregation of the funds in question. He most certainly has not provided any accounting or proof of recordkeeping of these funds to the parties of interest, Upstate Clinical Associates, LLC and the Appellant, the assignee of the contracts.

It is clear that the Respondents' attorney has violated those principles that preserve the integrity, loyalty and transparency of the fiduciary process and duties that are mandated by the South Carolina Rules of Civil Procedure and case law.

The Court erred in failing to recognize these violations and transgressions committed directly against the judicial system and the Appellant. Furthermore, the court erred in recognizing and in acting to correct the purposeful violations committed by the Respondents and their attorney of the rules and case law that govern his conduct as an attorney and as an officer of the court, violations which led to the granting of the 12(b)(6) Motion to Dismiss with Prejudice. These facts were presented to the Honorable Court of Common Pleas under Judge J. Derham Cole, but the Court erred in failing to acknowledge and address these valid and truthful filings of the Appellant.

As a direct result of the fiduciary violations noted above, the Respondents and their

attorney were unjustly enriched by that portion of the settlement funds which had been promised to the Appellant and to Upstate Clinical Associates, LLC; a conduit for funds received for the Appellant for the healthcare services delivered by the Appellant to the Respondents.

The South Carolina Supreme Court has explained that quantum meruit is a remedy for unjust enrichment. The Court has recognized quantum meruit as an equitable doctrine to allow recovery for unjust enrichment. Absent an express contract, recovery under quantum meruit is based on certain elements which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. ***See*** *Columbia Wholesale Co. v. Scudder May N.V.,* 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). ***See*** Barnes v. Johnson, 402 S.C. 458, 742 S.E.2d 6 (Ct. App. 2013).

In personal injury cases, settlement proceeds are typically distributed according to contractual agreements. Disputes arise when these agreements are breached or when an attorney or client misappropriates funds. Rule 1.15 of the South Carolina Rules of Professional Conduct requires attorneys to safeguard client and third-party funds and ensure proper disbursement. ***See*** South Carolina Rules of Professional Conduct (SCRPC), Rule 1.15.

The court has affirmed that when funds are wrongfully retained, equity requires restitution to the rightful owner, even where no express contract exists. However, in the matter at hand, valid written and verbal contracts exist. An attorney who knowingly allows a client to retain funds or who himself retains those funds, is also be complicit in unjust enrichment.

A plaintiff seeking restitution must demonstrate that they conferred the benefit in good faith and that retention, or non-compensation for this benefit by the defendants is unjust. In the matter

at hand, the Appellant delivered a benefit to the Respondents in good faith, which the Respondents failed to compensate the Appellant as was agreed upon.

The First Amended Verified Complaint in the Court of Common Pleas (Dr. Lad Santiago v. Oscar Avila Hernandez, et.al.) infers a claim for unjust enrichment, which is not dependent upon a contract between the parties involved in this case. Dr. Lad Santiago has noted and inferred a claim of unjust enrichment in his complaint as an alternative cause of action should the court determine that a valid contract is lacking or that Dr. Lad Santiago lacks standing to enforce the contracts. (Amd.Compl. ¶ 14). The definition of unjust enrichment is as follows: "Unjust enrichment principle in law of contracts by which 'a person who has been unjustly enriched at the expense of another is required to make **restitution** to the other.'....When one receives a benefit, the retention of which would be inequitable, the law will impose a duty to pay compensation in order to prevent unjust enrichment." ***See*** Barron's Law Dictionary, Steven H. Gifis, 1984 ed., pgs. 499-500. It is clear that in the case of Dr. Lad Santiago v. Oscar Avila Hernandez, et.al., that the required attributes for unjust enrichment according to the definition aforementioned, are present. In further support of this, the following case is applicable. ***See*** Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177, 181(Ct. App. 2012). This case demonstrates that a party can allege unjust enrichment as a cause of action in an alternative claim for breach of contract. Therefore, it is appropriate for the Plaintiff to assert a claim quantum meruit. Both claims are the same and require the following: (1) Dr. Lad Santiago conferred on Oscar Avila Hernandez, et.al. a benefit; (2) Oscar Avila Hernandez, et.al. realized the benefit; (3) it is not equitable and just for Oscar Avila Hernandez, et.al. to retain the benefit under any circumstance without making payment in full to Dr. Lad Santiago for the full value of that benefit. ***See*** Gignilliat v. Gignilliat, Savitz & Bettis, 385 S.c. 452, 684 S.E.2d 756 (2009);

Clyde v. Johnson, 402 S.C. 458, 466, 742 S.E.2d 6, 10 (Ct. App. 2013) *("quantum meruit* is a remedy for unjust enrichment").

In the Beverly v. Grand Strand Reg'l Med. Ctr., LLC case, the circumstances of unjust enrichment are different, but from another perspective they are the same in that there is still a benefit rendered that is essentially denied. In the matter at hand, the Plaintiff, Dr. Lad Santiago was denied a benefit in the same manner that Ms. Beverly was denied a benefit in her case. In fact, no form of benefit was rendered to compensate the Plaintiff, Dr. Lad Santiago, while the Defendants and their attorney kept the benefits to the detriment of the Plaintiff. It is unjust for the Defendants and their attorney to keep the funds due to the Plaintiff, and for them to retain those benefits, which is tantamount to unjust enrichment. Quantum meruit is a proper alternative claim to seek remedy in this circumstance. ***See*** Beverly.

It is abundantly clear that the case of Dr. Lad Santiago v. Oscar Avila Hernandez, et., al. has the necessary and required attributes to qualify for unjust enrichment and thus a quantum meriut claim. Therefore, the Court erred in finding that it was equitable that the Appellant's claim for unjust enrichment as stated above was not recognized. It is unjust for Oscar Avila Hernandez, et.al., to retain these funds (Amd. Compl. ¶ 14, 25) and that Dr. Lad Santiago's claim as stated above for unjust enrichment (quantum meriut) is an appropriate claim in the alternative as a remedy for this wrong committed by the Respondents and their attorney.

CONCLUSION

Given the arguments heretofore mentioned, the Appellant, Dr. Lad Santiago respectfully requests this Honorable Court to reverse the Court of Common Pleas Order granting the Respondents' 12(b)(6) Motion to Dismiss. Dr. Lad Santiago is an intended third-party beneficiary

of the contracts with each Respondent: Irrevocable Assignment, Lien, and Authorization Insurance Benefits and Attorney contract, and is thus empowered by South Carolina law to enforce the provisions contained therein.

Should the circuit court's order be allowed to stand, the basic fabric of the doctor-patient relationship and fee-for-service relationship, which function hand-in-hand, will be negatively affected statewide; not allowing thousands of potential participants to undergo the present advantage that this relationship entails, thus negating the ability of those who would potentially partake of an assignment as a means to secure healthcare to be able to do so. It will affect those with the least economic means in covering their healthcare financial obligations incurred. Healthcare providers will no longer extend credit to injured parties who find themselves in need of much-needed healthcare intervention in cases where the injured parties due to accidents can avail themselves of the resource to healthcare with the promise that their healthcare providers will be secure in receiving their just compensation for the services they have rendered to their patients in good faith, and thus be made whole. Healthcare providers will no longer extend credit to their patients if they are not secure that they will be compensated for the services they have rendered.

The Respondents and Attorney Stephen N. Garcia failed to adhere to the terms of the contracts of this case. Furthermore, Attorney Stephen N. Garcia fabricated a deceptive response in his 12(b)(6) Motion to Dismiss, which misled the court and undermined the rightful claim for recovery by the Appellant. He filed a deceptive (frivolous) motion by creating a false schema of the statute of limitations, and also erroneously stated that there was no set of facts to support the claim of the Appellant, which subverted the Court and undermined the legitimacy of the complaint and claim of the Appellant. He made it appear that the Appellant lacked the necessary grounds to make his claim before the court that would have entitled him to relief. Furthermore, the Appellant

has demonstrated that he is entitled to Relief on Any Theory. Moreover, Attorney Stephen N. Garcia failed to demonstrate that the Appellant's complaint did not meet the plausibility standard. The Circuit Court erred by accepting these erroneous conclusions. He further alleged that the Appellant was not a third-party beneficiary, had no privity, and was not the real party in interest when the opposite was true. Here again, the Circuit Court erred in accepting these allegations as being valid.

Moreover, the Respondents and their attorney disregarded the fact that Upstate Clinical Associates, LLC's single member and manager (his wife), had assigned the Appellant the contracts with all the rights accorded to him under the law. The Circuit Court erred in not recognizing that this assignment to the Appellant was valid, bona fide and true.

The Circuit Court further erred in dismissing Dr. Lad Santiago's claim of a breach of fiduciary duty claim. However, should this Honorable Court conclude that Dr. Lad Santiago lacks standing to enforce the contracts heretofore mentioned, the Respondents' act to keep all the benefits is a demonstration of recalcitrance on their part, not to convey the benefits that are rightfully due to the Appellant, Dr. Lad Santiago. Failure to return the benefits to the Appellant would be inequitable, and therefore the funds (benefits) must be returned to the Appellant.

Respectfully submitted,

/s/ Dr. Lad Santiago

Dr. Lad Santiago
5041 N. Blackstock Rd.
Spartanburg, SC 29303
Telephone: (864)576-2983
drladsantiago@gmail.com

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2024-001239

Dr. Lad Santiago, Appellant.

v.

Stephen N. Garcia, as Attorney for
Oscar Avila Hernandez, et.al., Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of January, 2025, he served counsel for the Respondents with a copy of the Appellant's Initial Brief in this matter by mailing a copy of the same by the United States Mail with first class postage prepaid to the following address:

Stephen N. Garcia, Esquire
604 Pettigru Street
Greenville, South Carolina 29601

/s/ Dr. Lad Santiago

Dr. Lad Santiago
5041 N. Blackstock Rd.
Spartanburg, SC 29303

Dr. Lad Santiago
5041 North Blackstock Road
Spartaburg, South Carolina 29303

January 3, 2025

The Honorable Jenny Abbott Kitchings Clerk,
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Dr. Lad Santiago, Appellant v. Oscar Avila Hernandez, et.al., Respondents
Appellate Case No. 2024-001239

VIA: USPS Certified Mail, Return Receipt

Dear Ms. Kitchings:

Attached for filing is the Initial Brief of Appellant and the Designation of Matter to be included in the Record on Appeal.

Also enclosed is the Certificate of Service of filing this same document on the Respondents' attorney, Stephen N. Garcia.

Please confirm receipt of this filing.

Sincerely,

/s/ Dr. Lad Santiago
Dr, Lad Santiago
5041 North Blackstock Road
Spartaburg, South Carolina 29303
drladsantiago@gmail.com
Pro Se for Appellant

cc: Stephen N. Garcia, Esquire
604 Pettigru Street
Greenville, South Carolina 29601
Attorney for Respondents

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