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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Before the Master In Equity

Charles B. Simmons, Jr., Master In Equity

Case No. 2007-CP-23-3206

RECEIVED
NOV 04 2013
SC Court of Appeals

North American Rescue Products, Inc.,.....Appellant,

v.

P. J. Richardson,.....Respondent.

REDACTED
RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

North American Rescue Products, Inc.,

Plaintiff,

vs.

P.J. Richardson,

Defendant.

BEFORE THE MASTER IN EQUITY

THIRTEENTH JUDICIAL CIRCUIT

Civil Action No. 2007-CP-23-3206

ENTERED COMPLAINT

ORDER
RECEIVED

AUG 17 2012

SC Court of Appeals

2012 JUL -9 P 11 13
CLERK OF COURT
JUDICIAL CIRCUIT
GREENVILLE, SC

This matter is before the Court on Plaintiff North American Rescue Products, Inc.'s Rule to Show Cause pursuant to S.C. Code Ann. § 15-65-10 and Rules 69 and 81 of the South Carolina Rules of Civil Procedure. The matter came before the Court for hearing on January 25, 2012. Plaintiff North American Rescue Products, Inc. ("NARP") was represented by Attorney Bernie W. Ellis of the McNair Law Firm, P.A. Defendant P.J. Richardson was represented by Attorney Rivers Stilwell of Nelson Mullins Riley & Scarborough, LLP.

Plaintiff petitioned the Court for a Rule to Show Cause dated November 28, 2011 related to a judgment on a counterclaim for specific performance entered by Judge Steven John on September 2, 2008. The judgment was appealed by both parties and was affirmed by the South Carolina Court of Appeals by Order dated November 9, 2011. At the time of the hearing on this matter both parties had filed Motions for Reconsideration with the Court of Appeals. Subsequently, both parties have filed Motions or a Writs of Certiorari to the South Carolina Supreme Court.

Plaintiff requested a hearing requiring Defendant to show cause why he had not performed in accord with the judgment under the specific performance doctrine and whether he had the intent and ability to so perform. Plaintiff further requested that Defendant (i) appear and



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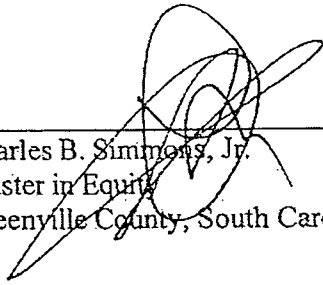
answer questions concerning his ability to perform; (ii) produce documents and records for inspection; (iii) be required to deposit money or a bond pending resolution of the matter; and (iv) be restrained from transferring or removing any assets or records pending conclusion of these proceedings.

At the hearing of the matter Mr. Richardson took the stand and was examined regarding certain financial records and statements. Based on those records and the testimony of Mr. Richardson, it appeared that he has assets in excess of the \$2,936,300.00 amount referenced in the Court of Appeals' decision. Further, there was no evidence tending to show that the Defendant, who resides in Greenville with his wife, had transferred or concealed assets or had any intention to do so or remove them from the jurisdiction. The parties disputed whether post-judgment interest was applicable in this situation. The Court notes that similar limited discovery was allowed to the Defendant during the pendency of the case before the Court of Appeals by Order dated March 24, 2010. The confidentiality provisions of that Order are incorporated herein by reference in regard to the financial information provided by Mr. Richardson at the hearing in January. The Court declines to require Mr. Richardson deposit \$2,936,300.00 plus post-judgment interest with the Court pending a resolution of a matter or to post a bond in a like

A handwritten signature, possibly "JRS", is written over a horizontal line.

amount. Further, the Court declines to restrict Mr. Richardson's control of his assets during the continued pendency of the appeal.

AND IT IS SO ORDERED.



Charles B. Simmons, Jr.
Master in Equity
Greenville County, South Carolina

Dated: 7/6, 2012

STATE OF SOUTH CAROLINA	)	FILED IN THE COURT OF COMMON PLEAS
	)	GREENVILLE CO. S.C.
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 2007-CP-23-3206
	)	2011 DEC -5 A 11: 51
North American Rescue Products, Inc.,	)	
	)	
Plaintiff,	)	RULE TO SHOW CAUSE,
	)	ORDER OF REFERENCE
v.	)	AND RESTRAINING ORDER
	)	
P. J. Richardson,	)	
	)	
Defendant.	)	

Pursuant to a jury verdict rendered at the trial of this case, a judgment of specific performance was entered in favor of the Defendant providing that the Defendant must pay \$2,936,300.00 for 7.5% of the outstanding capital stock of the Plaintiff. The judgment of specific performance was affirmed by the South Carolina Court of Appeals. The Defendant has failed to comply with the order of specific performance and has failed to perform the contract.

Pursuant to S.C. Code Ann. § 15-65-10, et seq., and Rules 69 and 81 of the South Carolina Rules of Civil Procedure, the Plaintiff is entitled to a hearing requiring the Defendant to show cause why he (1) has not performed the contract and whether he has the intent and the ability to perform the contract pursuant to the judgment and (2) should not be required to deposit (a) \$2,936,300.00 and post judgment interest or (b) a bond for like amount with this Court pending the resolution of this matter.

IT IS THEREFORE ORDERED that P.J. Richardson, DO APPEAR before the Master-in-Equity for Greenville County at the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina, in Courtroom 5, on the 25 day of January, 20 12, at 9:30 a.m./p.m. TO SHOW CAUSE why he has not performed pursuant to the

1 RB5

judgment and to fully answer under oath questions concerning his ability to perform, including his income, assets and liabilities and why he should not be required to deposit \$2,936,300.00 plus post judgment interest with this Court pending the resolution of this matter, or a bond in like amount.

IT IS ORDERED that pursuant to Rule 53, SCRPC this matter is hereby referred to the Master-in-Equity, who will entertain and rule upon all motions necessary to dispose of this matter, to include but not limited to, motions to dismiss, and motions to appoint a Receiver. The Master-in-Equity has authority to enter a Final Order, with any appeal directly to the South Carolina Supreme Court.

IT IS FURTHER ORDERED THAT the Defendant is enjoined and restrained from transferring, destroying, concealing or removing from the jurisdiction any assets or records of the Defendant, pending conclusion of the proceedings.

YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING the following:

- a. Copies of all income tax returns and personal property tax returns filed by Defendant personally or jointly with any other person for the calendar years 2007, 2008, 2009, and 2010 together with the names and addresses of all persons participating in the preparation of the returns.
- b. All documents identifying all certificates of stock, bonds, indentures and other securities beneficially held by Defendant either alone or jointly with any other person or persons in any corporation or corporations for the years of 2008, 2009, 2010 and 2011.
- c. Copies of all financial statements in Defendant's possession, custody or control executed or issued by Defendant, or on Defendant's behalf, reflecting Defendant's financial condition during the years of 2008, 2009, 2010 and 2011 whether the same was prepared for Defendant alone or jointly with any other person or persons, corporation or other entity, together with an identification of all items referred to therein.

- d. Copies of all financial statements in Defendant's possession, custody or control executed or issued by Defendant, or on Defendant's behalf, reflecting Defendant's financial condition during the years of 2008, 2009, 2010 and 2011 whether the same was prepared for Defendant alone or jointly with any other person or persons, corporation or other entity, together with an identification of all items referred to therein relating to any corporation, partnership, joint venture or other business entity in which Defendant holds or has held an interest for the years of 2008, 2009, 2010 and 2011.
- e. Any and all bank statements, canceled checks, check stubs, deposit slips and other records and memoranda in Defendant's possession, custody, or control, showing or tending to show all transactions with any bank or banks with which Defendant did business alone or jointly with any other person or persons or has had any signature privileges on during the years 2008, 2009, 2010 and 2011 regardless of whether the accounts are personal or business accounts.
- f. All documents relating to savings accounts, including the passbook, statements and other records of transactions therein, which Defendant has any interest in alone or jointly with any other person or persons or has had any signature privileges on during the years of 2008, 2009, 2010 and 2011 regardless of whether the accounts were personal or business accounts.
- g. All original notes, deeds, title certificates, mortgages, and security instruments of any kind showing or tending to show the existence of debts owed to Defendant or property (real or personal) personally owned by Defendant or property in which Defendant has or has had a security interest during the years of 2008, 2009, 2010 and 2011.
- h. All writings of financial records in Defendant's possession or custody or subject to Defendant's control, showing or tending to show all monies due Defendant, together with any records Defendant may have showing or tending to show all persons who owe Defendant money during the years of 2008, 2009, 2010 and 2011, together with an identification of all items referred to therein.
- i. All insurance policies insuring loss to any property, real or personal which Defendant owns alone or jointly with any other person, or holds for the benefit of any other person, during the years of 2008, 2009, 2010 and 2011 together with an identification of all property referred to therein.
- j. All bills of sale, deeds, contracts or other documents showing transfer of any and all property executed by Defendant personally or jointly with any other person during the past six years.

RBS

- k. All documents relating to any and all interests which Defendant has or has had during the years of 2008, 2009, 2010 and 2011 in any corporation, partnership, joint venture or trust, together with an identification of all property which the corporation, partnership, joint venture or trust has any interest of any kind.
- l. All documents relating in any way to Defendant's business, occupation and employment during the years of 2008, 2009, 2010 and 2011 including Defendant's salary, income, bonuses, commissions, pension plans, insurance and other fringe benefits.
- m. All documents or judgments which have been entered in Defendant's favor or against Defendant that have not been satisfied in full.
- n. All appraisal reports prepared during the years of 2008, 2009, 2010 and 2011 covering any property owned by Defendant, either individually or jointly with any other person or persons, or upon which Defendant holds a mortgage, security interest, pledge or other encumbrance either individually or jointly with any other person or persons or have any other kind of interest in and the status thereof.

IF YOU DO NOT APPEAR AS ORDERED, YOU MAY BE HELD IN CONTEMPT OF COURT, WHICH COULD RESULT IN A FINE and/or JAIL SENTENCE.

s/ Robin B. Stilwell
Circuit Court Judge, Thirteenth Judicial Circuit

Greenville, South Carolina
1 DEC, 2011

2158 / STILWELL

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Before the Master In Equity

Charles B. Simmons, Jr., Master In Equity

Case No. 2007-CP-23-3206

North American Rescue Products, Inc.,.....Appellant,

v.

P. J. Richardson,.....Respondent,

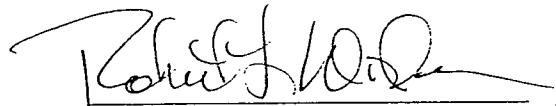
NOTICE OF APPEAL

North American Rescue Products, Inc. appeals the order of the Charles B. Simmons, Jr. Order dated July 6, 2012 and filed July 9, 2012. Appellant received written notice of the order on July 12, 2012.

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AUG 17 2012

SC Court of Appeals



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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2007-CP-23-3206

North American Rescue Products,
Inc.,

Plaintiff,

vs.

P.J. Richardson,

Defendant.

TRANSCRIPT OF TESTIMONY

January 25, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

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

Bernie W. Ellis, Esquire
Attorney for the Plaintiff

Rivers S. Stilwell, Esquire
Attorney for the Defendant

Wanda E. Fudge, CCR
Court Reporter

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1 BY THE COURT: Are we ready to go on record?

2 MR. ELLIS: Yes, Your Honor. We are. A couple of matters
3 very quickly. The last time we were here, the Court entered a
4 confidentiality agreement, and that was with respect to protect
5 primarily my client and I appreciate that. I understand we're
6 going to be asking about sensitive, confidential, personal
7 information of Mr. Richardson today. I've talked with Mr.
8 Stilwell before. We would like to -- we'll still respect that
9 confidentiality agreement. I'll say that for their protection.

10 BY THE COURT: Is that correct, Mr. Stilwell?

11 MR. STILWELL: Yes, sir. Appreciate it.

12 BY THE COURT: Gentlemen, as we discussed back in chambers,
13 I'll allow a thirty minute window of time to examine Mr.
14 Richardson concerning any assets or ability to pay his part of
15 the stock issue.

16 MR. ELLIS: Thank you, Your Honor. Before we get to that, I
17 do want to bring one issue -- it's a point of dispute that has
18 arisen between Mr. Stilwell and me.

19 This Order signed by Judge Stilwell required him to bring
20 several years worth of information, and let me tell you the
21 reason why we asked the Court to ask him to bring that. This
22 Order was entered -- the judgment was entered in 2008. I think
23 it is -- we're entitled to understand if during 2008 and the
24 succeeding times he has had the ability and willingness to pay,
25 basically, \$3 million for the stock. That's a whole lot more, I

1 think, than he thought it was going to be.

2 I don't think I'm limited to just what he has today. I do
3 appreciate they brought information with respect to today, but I
4 think I'm also entitled to know that information because that may
5 give me some ability to go back to the Court and seek some relief
6 and say, "Wait a second. At the time this judgment was entered,
7 you didn't have this money." Now, he may tell me he did, but I
8 think I'm entitled to know if he did because one of the things
9 we're going to get into is some of this is real estate, some of
10 it's securities, and so forth.

11 He was ordered to bring this information and didn't. I am
12 not asking that he be held in contempt. I understand that
13 reasonable people disagree about things, but I do think I'm
14 entitled to the information.

15 BY THE COURT: All right. Mr. Stilwell, you wish to be
16 heard on that?

17 MR. STILWELL: Your Honor, this part about that he didn't
18 have the money then but he would have it now is something I never
19 anticipated coming up because Mr. Richardson and Mrs. Richardson
20 sold their company. They've got less money now than they had
21 then. I think Mr. Ellis is talking about the converse situation
22 where they might have had less money then and more now.

23 In any event, Your Honor, the practicalities of it, this
24 Order -- if you look at the A through N he's asked for to be here
25 and then he's asked you to make us produce it, it's an

1 unbelievable amount of stuff. It's four years of every single
2 thing you ever did with your bank. I think -- and I understand
3 Bernie says he wants it. I think if he asked the questions,
4 you'll see what he had in 2008 and what bank transactions he had
5 in 2008 are going to have nothing to do with this.

6 BY THE COURT: Let's just see what the testimony reveals and
7 we'll address that issue if necessary.

8 MR. ELLIS: I would like to call Mr. Richardson, please.

9 PATRICK JAMES RICHARDSON, BEING FIRST DULY SWORN, TESTIFIED
10 AS FOLLOWS:

11 BY THE COURT: Come around and have a seat, please, sir.
12 (complies) State your full name.

13 THE WITNESS: Patrick James Richardson.

14 DIRECT EXAMINATION BY MR. ELLIS:

15 Q Mr. Richardson, I just want to clarify, you're the Defendant
16 in the lawsuit that's pending before the Court, right?

17 A Yes, I am.

18 Q We've asked you to be here today to answer some questions
19 about your personal financial information. You produced for me
20 several documents, and I want to go through these with you.

21 First is a confidential Financial Statement that you signed?

22 A Yes, it is.

23 Q Cash -- you claim that your [REDACTED]

24 [REDACTED]

25 A If that's what that sheet says. I did it last night. So, it

1 would be current. That's correct.

2 Q Who prepared this?

3 A I did it personally.

4 Q Did you consult with any financial advisors, or accountants,
5 or anything before you did it?

6 A I only consult with my wife.

7 Q I'm sorry?

8 A I consult only with my wife.

9 Q Okay. Do you have a financial planner or advisor who helps
10 you?

11 A Yes, I do.

12 Q Who is that?

13 A It's a [REDACTED]

14 Q Where are they?

15 A In [REDACTED]

16 BY THE COURT: Could you spell that for the record, please,
17 sir?

18 THE WITNESS: [REDACTED]
19 [REDACTED]

20 BY THE COURT: Thank you.

21 THE WITNESS: You're welcome.

22 Q Does Horan oversee all of your financial dealings? I mean,
23 would they have this information provided to me?

24 A Well, those equities, [REDACTED] in fact, if you look further
25 into your pile, you'll find printed sheets of my equities and my

1 [REDACTED] They were given to you this morning from the December
2 2011 statements.

3 Q It says here at the top you have cash in the amount of

4 [REDACTED]

5 A We did as of last night.

6 Q Okay. Is there any reason that would have changed as of
7 this morning?

8 A Cash is always moving. It could move. I mean, if we paid a
9 bill -- I don't know. If it's moved, it's maybe [REDACTED]

10 Q What type of account is this? Where do you have this cash?

11 A In various accounts. It's in savings accounts. It's in our
12 checking accounts.

13 Q Okay. So---

14 A It's been in those same accounts for a very long time.

15 Q But -- well, for example, this is an account you can use to
16 write checks out of to take a vacation, buying property,
17 whatever?

18 A To be honest with you, Bernie, my wife handles the banking.
19 I could tell you the names of the banks. I wouldn't have any
20 idea how much is in each account. I can tell you, though, that I
21 swore to that two years ago that I had the money. That's what's
22 in those accounts as of last night. I don't know where you want
23 to go with that. I'm telling you, that's what was in the
24 accounts as of probably 11:31 last night.

25 Q What I'm trying to establish, and I think we understand, is

1 that this is -- the [REDACTED] does not consist exclusively of cash
2 that is sitting somewhere that is not necessarily going to be
3 touched. This includes monies you use for living, right?

4 A Well, I could live on that for several months. It's just
5 cash. Cash is cash. How far do you want it? C-a-s-h, cash. It
6 flows in and out of our checking accounts. How far down do you
7 want to drill?

8 Q That far. This money flows in and out of your checking
9 accounts.

10 A Fine. Keep drilling.

11 BY THE COURT: Mr. Richardson--

12 THE WITNESS: Yes, sir.

13 BY THE COURT: --you're kind of pushing it a little bit.

14 THE WITNESS: Your Honor, I've been at this---

15 BY THE COURT: No, sir. I don't care what's happened
16 before. You answer the questions and let's move on.

17 Q The cash that you have that are in the accounts, is that in
18 both yours and Mrs. Richardson's names?

19 A Yes, it is.

20 Q So that you can use those and she can use those funds?

21 A Yes, I can.

22 Q Okay. So, if she were to decide to take it and spend it on
23 something, she could do that tomorrow, right?

24 A Not without me knowing it.

25 Q I would assume as well that if, quite sincerely, God forbid,

1 you were to pass away, that all of this money would then become
2 -- the cash would then immediately become her money, to the best
3 of your knowledge, right?

4 A Yes, to the best of my knowledge.

5 Q According to what you provided to me this morning, you have
6 securities in the amount of [REDACTED] is that correct?

7 A If that's what it says, then that's what it was last night.

8 Q It is.

9 A Okay.

10 Q You provided to me this statement from [REDACTED] which
11 is -- let me show you the second page of this document. I'll
12 note for the record that this is a statement period December 1st
13 through 31st, 2011, Patrick Richardson and Billie Richardson,
14 tenancy by the entirety.

15 MR. ELLIS: Your Honor, may I ask an administrative point?
16 Since I just received these just this morning, I would prefer to
17 make these confidential exhibits but these are the only things I
18 have. Can I just note that we'll make exhibits, copies of them?

19 BY THE COURT: Yes, sir.

20 MR. ELLIS: Then what I would like to do is make the
21 confidential Financial Statement Exhibit 1.

22 BY THE COURT: Any objection?

23 MR. STILWELL: No, sir, Your Honor. I'm glad he addressed
24 that. We didn't have any copies. So, that will fix that.

25 MR. ELLIS: We understand it's confidential. And I would

1 like to make this statement Exhibit 2.

2 BY THE COURT: All right.

3 MR. ELLIS: That's the Patrick Richardson and Billie
4 Richardson, tenancy by the entirety.

5 (Financial Statement entered into evidence as Plaintiff's
6 Exhibit No. 1)

7 ([REDACTED] entered into
8 evidence as Plaintiff's Exhibit No. 2)

9 Q It says on the back here that you have securities in the
10 amount of [REDACTED]

11 A That's correct.

12 Q That's as of December 31st. Do you know what they are as of
13 today?

14 A That number I gave you that's on that sheet is my total
15 equities. You're assuming that what's in that account are the
16 only equities that I own.

17 Q No, I'm not assuming anything. I'm asking---

18 A That seemed where you were leading the question.

19 Q Let me show you these documents that you provided as well.
20 This is Patrick Richardson, [REDACTED]

21 [REDACTED] Do you recognize that?

22 A Yeah.

23 MR. ELLIS: We'll mark that as Exhibit 3.

24 [REDACTED] entered into
25 evidence as Plaintiff's Exhibit No. 3)

1 Q We have another document, it's [REDACTED]
2 [REDACTED] and that's statement period [REDACTED]
3 [REDACTED] right?
4 A Yes, it is.
5 MR. ELLIS: We'll mark that as Exhibit 4.
6 [REDACTED] entered into
7 evidence as Plaintiff's Exhibit No. 4)
8 Q In addition to the accounts you have, the [REDACTED]
9 [REDACTED] do you have?
10 A I own some other stocks that are not part of that account.
11 Q That would be, if I'm doing my math correctly, approximately
12 [REDACTED]
13 A That would be accurate.
14 Q What type of stocks are those?
15 A They are publically held companies.
16 Q Since we're marking it as an exhibit, I don't know that I'm
17 going to go entirely through each one of these equities. In the
18 account, the joint account where you have the [REDACTED] worth
19 of equities, are these mostly individual stocks?
20 A Yes, they are.
21 Q Okay. Again, this is an account that you hold with your
22 wife, correct, joint tenancy by the entirety?
23 A Yes, it is.
24 Q So, she has the same rights to it as you have?
25 A Yes, she does.

1 Q Also, once again, at the time -- if you predecease her, then
2 she becomes the sole owner of [REDACTED] Is that your
3 understanding?

4 A Yes, it is.

5 Q Just to note, she's actually not a party to this lawsuit,
6 right?

7 A That's correct.

8 Q Would it be fair to say like most Americans, this account,
9 like the stock accounts of most Americans, this particular
10 account with [REDACTED] has fluctuated pretty wildly in the
11 last three years or so?

12 A That would be an accurate statement.

13 Q Do you know the maximum number it's had, the maximum amount
14 it's had in it?

15 A I would have to go back and look at it. It was
16 significantly higher than that.

17 Q Do you have a minimum amount?

18 A It's never been lower than that.

19 Q It's never been lower than [REDACTED]

20 A No.

21 Q Do you fund this account on a regular basis?

22 A Yes, we do.

23 Q Do you buy new stocks on a regular basis?

24 A I do occasionally but it's mostly capital gains.

25 Q What do you do with this account? Do you get investment

1 income from it and live off of it?

2 A I watch it.

3 Q So, this is mostly sitting there as an account---

4 A I get a monthly check and I live on it, my wife and I live
5 on it--

6 Q Where do you--

7 A And we watch it.

8 Q I'm sorry. Where do you get a monthly check from?

9 A It comes from my [REDACTED]

10 Q So, you get a monthly check from [REDACTED]

11 A I get a monthly check from [REDACTED] I would have to ask my
12 wife. I'm not sure. I don't pay attention. It's direct
13 deposit.

14 Q My question is, though, this account, this [REDACTED] to
15 the best of your knowledge, is this what y'all live on primarily?

16 A Well, you saw our net worth. We have some income streams
17 from various places, but that's the bulk of it.

18 Q Okay. Most of your income that you live off of comes from
19 this [REDACTED]

20 A Correct.

21 Q [REDACTED] is what's on this sheet. Is
22 that just your [REDACTED]

23 A That's two [REDACTED]

24 Q Okay. Is it two [REDACTED] though, that are both in your name?

25 A You have them there in your hand, I think.

1 Q Yes. Let me show you this. This is a Pat Richardson,
2 [REDACTED] Is that two
3 accounts?
4 A One account. That's my account.
5 Q That's your account. What is the other account?
6 A My wife's account.
7 Q Your wife's account is included in this [REDACTED]
8 A That's correct.
9 Q But, once again, she's not a party to the lawsuit.
10 A I was giving your our personal net worth. It's always been
11 the two of us. Everything we do is done by the entirety.
12 Everything we own, we own jointly.
13 Q Okay. Now, [REDACTED] you provided me -- you have [REDACTED]
14 [REDACTED] which you say is valued at [REDACTED] What does that
15 include?
16 A It includes our [REDACTED] here
17 in South Carolina.
18 Q Where is the commercial property? What is it?
19 A It's in Belton, South Carolina.
20 Q What type of commercial property is it?
21 A You mean, what the zoning code or something? I'm not sure.
22 Q I mean, in general---
23 A Could you be more definitive in your question, please?
24 Q Do you own a shopping center?
25 A No, we do not own a shopping center.

1 Q What is this property?

2 A It's a commercial, industrial piece of property.

3 Q Does it produce income?

4 A Yes, it does.

5 Q Could you give me an estimate of what it produces on a
6 monthly basis?

7 A Maybe [REDACTED]

8 Q Okay. The [REDACTED], again, that's jointly owned with you
9 and Billie?

10 A Yes, it is.

11 Q How do you get the value of [REDACTED]

12 A Appraisals.

13 Q By whom?

14 A By professional appraisal companies.

15 Q When was the last time you had it appraised?

16 A Let's see, my house was appraised last week. I would have
17 to defer on the commercial, but I would say the commercial
18 property was appraised within the last year.

19 Q Going on to liabilities, you have a [REDACTED]

20 A That's correct.

21 Q Is that on the house or is that on everything?

22 A That's on everything.

23 Q What's the [REDACTED] Do you know?

24 A I couldn't tell you. [REDACTED]

25 Q You've got another approximately [REDACTED] in [REDACTED]

1 property?

2 A If you want an exact number, I would have to get it for you.

3 Q Well, looking at this -- and I realize you capped all of

4 this out. I mean, I realize you balanced this out, and I

5 appreciate that. But on [REDACTED]

6 [REDACTED] is going to be in the

7 [REDACTED] It's a---

8 A You have the numbers there.

9 Q [REDACTED] What's that?

10 A Personal property.

11 Q Could you tell me what it is? Is it jewelry, art work?

12 A Yes, jewelry, automobiles, clothing, furniture, some art.

13 Q I'm sorry. What's the last thing you said?

14 A Art.

15 Q Okay. How did you come to the conclusion of that value of

16 [REDACTED]

17 A Most of it's insured. You have appraisals done on things.

18 Q [REDACTED] Tell me about that. Is

19 that something that Mrs. Richardson gets if you predecease her?

20 A Life insurance, yes, on me.

21 Q Can you cash it in?

22 A No. It's a term policy.

23 Q You've listed [REDACTED] -- I'm sorry -- not

24 net worth but assets of [REDACTED] What is that?

25 A It's some promissory notes [REDACTED] I

1 didn't say that was her net worth. What it says on there is that
2 there are [REDACTED]

3 [REDACTED]

4 Q Thank you. I misread it. That is exactly what it says.
5 Promissory notes to BH Richardson. Thank you. So, those are
6 notes that Billie has lent to your children?

7 A It's money that we put into their business.

8 Q Okay. Those are due and payable to her, right?

9 A That's correct.

10 Q Okay.

11 Mr. Ellis: I beg the Court's indulgence just one second.

12 BY THE COURT: Yes, sir.

13 Q Mr. Richardson, you also produced your [REDACTED]
14 [REDACTED] I'm just going to ask you a few questions about
15 that. You've got [REDACTED] -- I'll
16 show it to you -- [REDACTED]

17 [REDACTED]
18 -- I'm sorry -- of [REDACTED] Then I want to focus on [REDACTED]
19 you've got a -- [REDACTED]

20 A That's correct.

21 Q What's that from?

22 A Because I'm sitting in this chair talking to you. They are
23 all legal fees.

24 Q Those are legal fees you paid in 2010?

25 A That's correct.

1 Q So, your [REDACTED]
2 [REDACTED] right? It's [REDACTED]
3 A If that's what that says. I don't prepare my own taxes. I
4 use the same accounting firm I've used for years. If that's what
5 that says, then that would be an accurate reflection.
6 MR. ELLIS: Your Honor, I don't have any further questions
7 of Mr. Richardson at this time.
8 BY THE COURT: Mr. Stilwell, any questions?
9 MR. STILWELL: I don't have any, Your Honor.
10 BY THE COURT: Thank you, Mr. Richardson. You can step down.
11 THE WITNESS: Sorry, Your Honor. Thank you. Sorry about my
12 behavior.
13 BY THE COURT: Yes, sir. Mr. Richardson, I can't even
14 begin to tell you I know what you've gone through. I just know
15 litigation, it costs a lot of money and it's got a lot of
16 emotion.
17 THE WITNESS: Yes, it does, Your Honor. I'm better at
18 business than I am at this.
19 (witness excused)
20 MR. ELLIS: Your Honor, if I may, I would ask the Court at
21 this time to ask him to post a bond during the pendency of this
22 case. The reason is this, I don't think that -- I wish I could
23 tell you, "Look, it's very, very clear this is all over with and
24 he needs to buy the stock that he could write us a check for it
25 and be fine." I wish that's what I could -- I wish that's what

1 this looks like, but that's not what this looks like.

2 His primary asset, which is, of course, quite substantial by
3 most people's standards is [REDACTED] in the amount of [REDACTED]
4 [REDACTED] That's what they live off of. Furthermore, it's in his
5 and his wife's name. So that, once again, if something were to
6 happen to him during the course of this -- and I certainly hope
7 it doesn't -- but Billie gets it and she's not a party to the
8 case. And these other assets, for example, [REDACTED] I
9 realize that he says it's worth [REDACTED] It's almost [REDACTED]
10 [REDACTED] But somebody who wants to try to sell real estate these
11 days can tell you it's pretty tough to do.

12 What's underlying all of this is a case called Ingram v.
13 Kasey's Associates. That is a case in which the South Carolina
14 Supreme Court held that in specific performance contracts now
15 means right now. It means in the context of specific performance
16 you don't have the right to have a reasonable time to go raise
17 the money. They actually reversed the Court of Appeals on that
18 point. I knew I had a copy of it right here which I do. I pass
19 it up to the Court. I've highlighted some points that discuss
20 this point.

21 Your Honor, we've been bogged down in litigation on this
22 matter since 2007. I understand a reasonable period of time has
23 to be allowed for the case to go forward, but since then, after
24 the judgment was entered in 2008, we tendered the stock. We
25 said, "If you want the stock, it's \$2,936,000 and it's yours.

1 Bring your money over in five days and it's yours." And he
2 turned it down. Instead, he sat there with his money to do with
3 it what he wants to while we've had this hold up for the
4 potential ownership of this company.

5 I think, at a minimum, it is fair, while the case goes
6 forward, that he be required to post a bond in the amount of the
7 judgment plus post-judgment interest as this case goes forward,
8 and I would ask for that relief.

9 BY THE COURT: Thank you. Mr. Stilwell.

10 MR. STILWELL: Your Honor, this case is so disappointing to
11 me at this stage. This is just absolute grinding the man down.
12 They're talking about a judgment that's our judgment, and now
13 they've got this "gotcha game" going where they want him and his
14 wife to lock down huge chunks of their money. There's no
15 extraordinary circumstance here by which a bond should be issued.
16 They act like they're insecure in our judgment.

17 This game about, put your \$2.9 down, this little thing right
18 here on these sheets that shows how this company was gutted of
19 its money, any reasonable person when they gave you the offer the
20 first time would figure, "I already did that." Now, what we see
21 now is they're saying, "Oh, no, it was all there then but we know
22 now." There's nothing there. They're asking you to bond -- I
23 heard today \$4 million now. It's over \$4 million to buy this
24 worthless piece of paper. Your Honor, there's no fairness in
25 that at all. This is down to the grinding stage with a little

1 heap of humiliation thrown in.

2 BY THE COURT: All right. Mr. Ellis, you're a fine lawyer,
3 fine advocate as is Mr. Stilwell.

4 I just don't feel comfortable issuing a bond for the
5 following reasons. First, it's a 2007 case. It has been
6 grinding on for years and years. There's simply no evidence that
7 I've seen of any kind of misappropriation by Mr. Richardson in
8 this regard. There's simply no extraordinary circumstances that
9 have been presented to the Court.

10 I'm also aware that the matter on both sides -- there's been
11 a motion for rehearing and petitions filed with our appellate
12 courts. Hopefully, this matter will be resolved within the next
13 few months. If the appellate courts at that point say, "Pay it,"
14 then at that point he's got to pay it. I'm also mindful of the
15 companion suit that Mr. Stilwell has brought against the
16 corporation alleging serious misgivings on their part.

17 So, based on the totality of the circumstances, I'm going to
18 decline the motion at this point.

19 MR. ELLIS: Thank you.

20 BY THE COURT: Mr. Stilwell, if you would do a very short
21 Order.

22 MR. STILWELL: Yes, sir.

23 BY THE COURT: Thank you. Thank you. Mr. Richardson,
24 thank you for coming in.

25 MR. RICHARDSON: Yes, sir.

1 BY THE COURT: Yes, sir.

2 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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1 The undersigned, Wanda E. Fudge, Court Reporter, Office of
2 Master in Equity for Greenville County, South Carolina, do hereby
3 certify that the foregoing is a true, accurate and complete
4 Transcript of Record of all of the proceedings had and evidence
5 introduced in the hearing of the captioned case, relative to
6 appeal, before The Honorable Charles B. Simmons, Jr., as Master
7 in Equity for Greenville County, South Carolina on the 25th of
8 January 2012.

9 I do further certify that I am neither of kin, counsel, nor
10 interest to any parties hereto.

11 August 17, 2012

12
13 Wanda E. Fudge

14 Wanda E. Fudge, CCR

15 Certified Court Reporter
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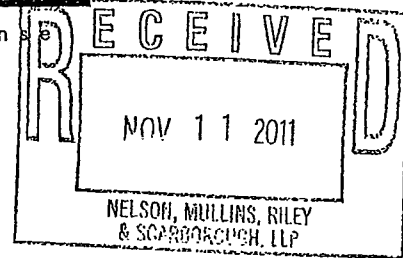
Pages 33-72 of the Record on Appeal have been redacted in their entirety. These pages are the Personal Financial Statement and supporting documents for Respondent and his wife.

30528/1500

STODGHILL Law Firm
CHARTERED
Uncommon Business Sense

11 November 2011

By Hand Delivery
Rivers S. Stillwell, Esquire
Nelson Mullins Riley & Scarborough, LLP
104 South Main Street
Greenville, SC 29601



Reference: North American Rescue Products, Inc. v. P.J. Richardson
Court of Appeals Opinion # 4909 and Affirmation of Judgment
Under Specific Performance Doctrine

Dear Rivers:

By delivery of this letter to you on behalf of your client P.J. Richardson, and in accord with the referenced Court of Appeals decision to "affirm the circuit court's entry of specific performance and hold Richardson *must* pay \$2,936,300 for seven and one-half percent of NARP's stock (emphasis added)", Old NAR, Inc., fka North American Rescue, Incorporated and North American Rescue Products, Inc. (NAR) will tender seven and one-half percent (7.5%) of the outstanding common capital stock of NAR (Stock) to Mr. Richardson at my offices located in the NBSC Building; 201 E. McBee Avenue, Suite 300-A; Greenville, SC 29601; Monday 14 November 2011 at 4:00 p.m. eastern standard time.

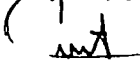
An accurate photo static copy of the unexecuted stock certificate number 38 for 118.97 shares in the name of Mr. Richardson, to be duly issued at or before the time of tender on 14 November 2011, is enclosed with this letter. Please note that this is an increase in the number of shares from the tender previously rejected by Mr. Richardson because additional NAR shares were issued after 2 September 2008. Also enclosed is a New Stockholder Signature Page for Mr. Richardson to become a party to the NAR stockholder agreement, as amended, copies of which you received with the earlier tender.

Please advise Mr. Richardson to tender (i) Two Million Nine Hundred Thirty-Six Thousand Three Hundred Dollars (\$2,936,300) plus post judgment interest of Eight Hundred Forty-One Thousand One Hundred Ten and 13/100 Dollars (\$841,110.13) for a total of Three Million Seven Hundred Seventy-Seven Thousand Four Hundred Ten and 13/100 Dollars (\$3,777,410.13) and (ii) the fully executed and completed Fourth New Stockholder Signature Page, which is included with this letter, by delivery to me of both (i) and (ii) at the designated location and time. If Mr. Richardson intends to pay by check, it must represent collected funds or if he prefers to make a wire transfer, please contact me and I will provide wiring instructions to my trust account.

Please govern yourself accordingly.

With kind regards, I am

Very truly yours,


Curtis Stodghill

C: Robert A. Castellani
Bernie W. Ellis

201 East McBee Avenue, Suite 300 A, Greenville, SC 29601 • P.O. Box 2431, Greenville, SC 29602

Phone: 864.271.0966 • Fax: 864.770.6167 • www.stodghill-law.com

0073

NUMBER
38

SHARES
118.97

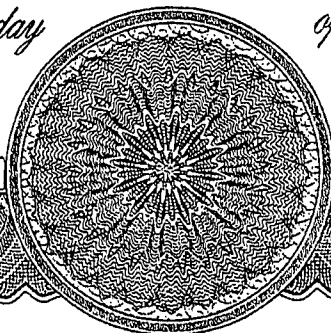
OLD STAR, Inc.

INCORPORATED UNDER LAWS OF THE STATE OF DELAWARE
Authorized Capital Stock 10,000 Shares Without Par Value

This certifies that P.J. Richardson *is the*
registered holder of One Hundred Eighteen and 97/100 *Shares*

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed
this _____ *day* of _____ *A.D. 20* _____



This certificate is not valid unless countersigned by the Secretary or the Treasurer of the Corporation. The securities represented by this certificate are not registered under the Securities Act of 1933 or any state securities laws, and may not be transferred except pursuant to an effective registration statement or an exemption from registration.

FOURTH NEW STOCKHOLDER SIGNATURE PAGE

The undersigned party has executed and become a party to the North American Rescue Products, Inc. Stockholder Agreement dated July 1, 2004, and First Amendment dated September 27, 2007 as a Stockholder first effective November 14, 2011.

P. J. Richardson

Address

Shares Owned 118.97

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
104 South Main Street / Ninth Floor / Greenville, SC 29601
Tel: 864.250.2300 Fax: 864.232.2925
www.nelsonmullins.com

FILE COPY

John M. Campbell, Jr.
Tel: 864.250.2234
john.campbell@nelsonmullins.com

CONFIDENTIAL SETTLEMENT DOCUMENT

October 9, 2008

Hand Delivered

Curtis Stodghill, Esq.
Stodghill Law Firm Chartered
201 East McBee Avenue, Suite 300-A
Greenville, SC 29601

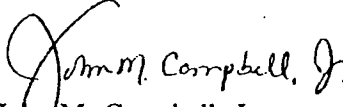
RE: North American Rescue Products, Inc. v. P.J. Richardson
CA No. 2007-CP-23-3206
NMRS File No. 30528/01500

Dear Curt:

I am in receipt of your letter dated October 6, 2008. I appreciate your client's willingness to tender shares to Mr. Richardson, and to offer to withdraw the appeal taken by NARP. I was surprised, however, that you are apparently demanding a transaction closing for October 10, 2008 on any shares to be purchased pursuant to your October 6, 2008 offer. We do not think this is a reasonable time period for our consideration or consummation of any acceptance or partial acceptance of your October 6, 2008 offer.

We hereby offer \$415,988 in return for which NARP would provide my client with shares reflecting 7.5% of NARP, in accordance with my client's specific performance counterclaims, as amended, and in accordance with the judgment entered for specific performance in my client's favor by Judge John. We can tender the actual check for the \$415,988 as soon as you indicate in writing your intent to deliver the shares. I look forward to hearing from you.

Very truly yours,


John M. Campbell, Jr.

JMC:klw

cc: P. J. Richardson
Rivers S. Stilwell, Esq.

The South Carolina Court of Appeals

North American Rescue Products, Inc., Appellant/Respondent,

v.

P. J. Richardson, Respondent/Appellant.

The Honorable Steven H. John
Greenville County
Trial Court Case No. 2007-CP-23-03206

ORDER

Appellant/Respondent North American Rescue Products, Inc. filed a motion for limited remand and to hold appellate timelines in abeyance. After review, the motion is denied. Appellant/Respondent's motion for an extension to file a reply to the motion is granted.

AND IT IS SO ORDERED.

Jasper M. Currier A.S.

Columbia, South Carolina

January 27, 2009

FILED

1/27/09

cc: Bernie Wellington Ellis, Esquire
Robert L. Widener, Esquire

0077

Lane W. Davis, Esquire
Rivers S. Stilwell, Esquire
A. Marvin Quattlebaum, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 22 2009

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas
Steven H. John, Circuit Court Judge

Case No. 07-CP-23-3206

North American Rescue Products, Inc.,.....Appellant-Respondent,

v.

P. J. Richardson,.....Respondent-Appellant.

APPELLANT-RESPONDENT'S MOTION TO DISMISS
APPEAL OF RESPONDENT-APPELLANT

"Only a person aggrieved by a ruling may appeal." *Burns v. Gardner*, 493 S.E.2d 356, 361 (S.C. App. 1997) (emphasis added), *applying* Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence or decision may appeal.") *and* S.C. Code Ann. § 18-1-30 (1976) ("Any party aggrieved may appeal in the cases prescribed in this Title."). Appellant-Respondent (NARP) moves to dismiss the appeal of Respondent-Appellant (PJ) under this fundamental rule of law. PJ "appeals" but he does not allege any error by the trial court, nor does he seek reversal of any ruling by the trial court. Rather, he repeatedly argues this Court should affirm the judgment that he appealed. Accordingly, he does not claim to be aggrieved and, therefore, his appeal must be dismissed.

BACKGROUND FACTS

This case presented the question of whether the Respondent-Appellant (PJ) had the right to purchase 7.5% of Appellant-Respondent's (NARP's) stock and, if so, at what price. The trial court submitted these questions to the jury under a special verdict form with numerous questions. (See Tab A). The jury found that PJ was entitled to purchase 7.5% of NARP's stock and found he should pay \$2,936,300.00 for the stock. (Tab A at p. 4, Question 8). After receiving the jury's answers, the trial court simply attached the verdict form to a Form 4 Judgment Form and wrote thereon: "Judgment for [PJ] under specific performance doctrine." (Tab A). It is thus clear that the trial court ordered specific performance of the contract and price found by the jury. There is no other reasonable reading of the judgment.

Long before either party filed its Initial Brief of Appellant, NARP tendered 7.5% of its stock at \$2,936,300.00 in satisfaction of the appealed judgment. PJ rejected this tender, contending the price was \$415,000.00. NARP moved this Court for a limited remand to make a Rule 60(b) motion before the trial court based on PJ's rejection of the tender. PJ successfully opposed this motion in this Court.

On appeal, PJ treats the appealed judgment as if the trial court ordered NARP to sell 7.5% of its stock to him for \$415,000.00. Based on this reading of the judgment, PJ repeatedly argues in his Brief of Appellant that this Court should affirm the judgment that he appealed. Thus PJ does not claim to be aggrieved by the appealed order, which is the threshold requirement for being an appellant.¹

¹ The only price set forth by the jury in the verdict form is \$2,936,300.00. (Tab A at p. 4, Question 8). PJ never mentions this price in his brief, but he contends the price should be \$415,000.00, which is a price that: (1) can be found only by reference to testimony in the transcript; (2) was disputed at trial by NARP; (3) was never found by the jury or the trial court; and (4) most importantly, is not set forth anywhere in the judgment or verdict form. It is inconceivable that the trial court intended to order specific performance of a sales contract without setting a price in the judgment, and the only price appearing anywhere in the verdict or judgment is \$2,936,300.00.

ARGUMENT

The right to appellate review “is restricted to persons or parties aggrieved by the decision below.” *Bivens v. Knight*, 173 S.E.2d 150, 152 (S.C. 1970) (emphasis added); *accord First Union Nat’l Bank of S.C. v. Soden*, 511 S.E.2d 372, 378 (S.C. App. 1998) and *Burns v. Gardner*, 493 S.E.2d 356, 361 (S.C. App. 1997). Appellate courts have a “duty to reject an appeal that is prosecuted by a party who is not aggrieved in a legal sense by the judgment of the trial court.” *Cisson v. McWhorter*, 177 S.E.2d 603, 605 (S.C. 1970) (emphasis added); *accord Carson v. Adgar*, 486 S.E.2d 3, 6-7 (S.C. 1997). A party is “aggrieved in a legal sense” if the order causes injury to his person or property by denying some personal or property right or by imposing a burden or obligation upon the party. *Bivens v. Knight*, 173 S.E.2d 150, 152 (S.C. 1970), *citing Parker v. Brown*, 10 S.E.2d 625 (S.C. 1940) and *Bowles v. Dannin*, 2 A.2d 892 (R.I. 1938); *accord Powell v. Bank of America*, 665 S.E.2d 237, (S.C. App. 2008).

On appeal, PJ asserts the “trial court correctly and lawfully entered a judgment in [his] favor” and repeatedly argues (9 times) that “this Court should affirm the trial court’s judgment.” (Tab B at 20 & 21, and at 11, 12, 14, 16, 18) (emphasis added). He never argues that the appealed order has caused any harm to his person or property. (Tab B, *passim*). Thus, this Court has a “duty to reject [his] appeal.” *Cisson*, 177 S.E.2d at 605; *accord Carson*, 486 S.E.2d at 6-7.

If an appellant takes a position on appeal that renders him not aggrieved by the appealed order, then he has no right to appeal and the appeal must be dismissed. *Bivens*, 173 S.E.2d at 152. PJ’s position on appeal is that the appealed order should be affirmed, thereby rendering him not aggrieved by the appealed order.

If a reversal of the trial court’s judgment would not benefit or improve the appellant’s position, then the appellant is not aggrieved and cannot appeal. *Cisson v. McWhorter*, 177 S.E.2d

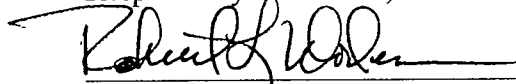
603, 605 (S.C. 1970); accord *Knight v. Autumn*, 245 S.E.2d 602, 604 (S.C. 1978) and *Bivens*, 173 S.E.2d at 152. PJ does not seek reversal; he argues only that this Court should affirm.

PJ admits (9 times) that his dispute with NARP over the meaning of the appealed order is the basis for his appeal. (Tab B at 2, 5 & n.1, 10- 12, 14, 18). This is not the stuff of appeals. As an appellant, PJ's only permissible dispute is with the appealed order, and PJ never argues there is anything wrong with the order. His brief reads like a respondent's brief, but no issue over the meaning of the appealed order is properly before this Court. This issue has never been presented to the trial court, nor has it been raised in NARP's Brief of Appellant (which is limited to questions of whether the trial court erred in denying NARP's directed verdict motions). PJ cannot thrust this issue upon this Court by filing an appellant's brief in which he never claims to be aggrieved by the appealed order.

CONCLUSION

Only an aggrieved party may appeal. PJ does not claim to be aggrieved. Accordingly, this Court has a "duty to reject" PJ's appeal. For this reason, and for the reasons set forth above, it is respectfully submitted that the appeal of Respondent-Appellant should be dismissed.

Respectfully Submitted,



Robert L. Widener
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Bernie W. Ellis
McNair Law Firm, P.A.
Post Office Box 447
Greenville, South Carolina 29602
(864) 271-4940
Attorneys for Appellant-Respondent

December 18, 2009
Columbia, SC

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2007CP2303206

North American Rescue Products Inc vs. P J Richardson

Verified

CHECK ONE:

ENTERED COMPUTER

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

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

Judgment for the Defendant under specific performance doctrine

Dated at Greenville, South Carolina, this

29th day of August, 2008.

Court Reporter: April Herron

PRESIDING JUDGE - Steven H. John

This judgment was entered on the , and a copy mailed first class this, to attorneys of record or to parties (when appearing pro se) as follows:

Bernie Wellington Ellis McNair Law Firm, PA P.O. Box 447
Greenville, SC 29602

A. Marvin Quattlebaum Jr. Nelson Mullins Riley &
Scarborough, LLP P.O. Box 10084 Greenville, SC 29603
Rivers Samuel Stilwell Nelson Mullins Riley & Scarborough,
LLP P.O. Box 10084 Greenville, SC 29603
Lane Whittaker Davis Nelson Mullins Riley & Scarborough
Llp P.O. Box 10084 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

Paul B. Wickensimer - Clerk of Court

VERDICT FORM

1. Did North American Rescue Products, Inc. and P.J. Richardson give each other the right to acquire 7.5% of each other's stock?

☒

Yes

No

ENTERED COMPUTER

2. Do you find that North American Rescue Products agreed to let P.J. Richardson acquire 7.5% of the capital stock of North American Rescue Products, Inc. in exchange for money, rather than the issuance of 7.5% of capital stock?

☒

Yes

No

3. Can Both parties perform under the 2000 Agreement as amended in Charleston?

☒

Yes

No

4. Did the parties (North American Rescue Products, Inc. and P.J. Richardson) enter into a contract, that is the November 2004 Termination, Settlement and Release Agreement?

☒

Yes

No

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
DAVID WICKENS/HFR

2008 SEP -2 A 10:43

5. If the Termination, Settlement and Release Agreement is a contract, does it end both parties' rights to acquire 7.5% of the capital stock of each other?

Yes ~~_____
No~~

- a. If you answer YES, then answer Both i and ii.

- i. Did P.J. Richardson reasonably rely on North American Rescue Products, Inc. to his detriment?

Yes No

- ii. Did North American Rescue Products, Inc. reasonably rely on P.J. Richardson to its detriment.

Yes No

6. Do you find that P.J. Richardson was a Director of North American Rescue Products, Inc. when the Termination, Settlement and Release Agreement was entered into?

~~_____
Yes~~ _____
No

- a. If you answer NO, Skip to Number 8.

7. Did P.J. Richardson owe a fiduciary duty to North American Rescue Products, Inc. when the Termination, Settlement and Release Agreement was entered into?

Yes

No

- a. If you answer NO, skip to Number 8.
- b. If you answer YES, did P.J. Richardson breach a fiduciary duty owed to North American Rescue Products, Inc.?

Yes

No

- i. If you answer NO, skip to Number 8.
- ii. If you answer YES, should P.J. Richardson return all or a portion of the \$50,000 paid to Mr. Richardson as a Director of North American Rescue Products, Inc.?

Yes

No

1. If YES, how much?

\$ _____

IMPORTANT INSTRUCTIONS FOR THE REMAINING QUESTIONS: The Jury must look at both 8 and 9, and then must decide to answer 8 or 9 - not both! After answering 8 or 9, proceed to 9.

8. Is P.J. Richardson entitled to receive 7.5% of the outstanding capital stock of North American Rescue Products, Inc.?

X
Yes

No

- a. If you answer YES, what should P.J. Richardson pay to North American Rescue Products for 7.5% of the common capital stock?

\$ 2,936,300.00

~~Two thousand~~

2,936,300.00

OR;

9. Did the parties enter into an agreement arising from their meeting in Atlanta?

Yes

No

- a. If you answer NO, STOP and notify Bailiff.

- b. If you answer YES:

- i. Did P.J. Richardson offer to perform under the agreement?

Yes

No

1. If NO, STOP and notify Bailiff.

- ii. If YES, Did North American Rescue Products breach the agreement?

Yes

No

1. If you answer YES what damages, if any, should be paid to P.J. Richardson by North American Rescue Products, Inc.?

- a. \$

Charles Varne

Foreman

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2007-CP-23-3206

North American Rescue Products, Inc., ... Appellant/Respondent

v.

P.J. Richardson, ... Respondent/Appellant

INITIAL BRIEF OF RESPONDENT/APPELLANT P.J. RICHARDSON

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Attorneys for P.J. Richardson

Exhibit B

0088

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Statement of Issues

- I. Did the trial court properly order the remedy of specific performance following the jury's determination that a binding and enforceable contract existed between the parties?
- II. Did the trial court properly enter the form of the judgment in this case—specific performance—based on the jury's answers to the interrogatories on the special verdict the trial court submitted to the jury?

Statement of the Case

This case involves a dispute over P.J. Richardson's ("Richardson") entitlement to a 7.5% stock ownership stake in North American Rescue Products, Inc. ("NARP"). The trial court granted Richardson specific performance of the parties' agreement, giving Richardson such an ownership stake. NARP has appealed. Richardson has cross-appealed to contest NARP's attempt to limit and impose conditions upon the judgment granting specific performance.

NARP filed suit on May 17, 2007, seeking a declaration that Richardson was not entitled to purchase 7.5% of the stock of NARP at one cent per share. (Compl.; R. p. ____.) NARP amended the complaint to assert a claim of breach of fiduciary duty against Richardson, a former member of the NARP board. (Amend. Compl.; R. p. ____.)

Richardson answered and counterclaimed. (Rev. Amended Answer & Counterclaim; R. p. ____.) In his first counterclaim, Richardson alleged breach of contract and sought specific performance of one of two alternate agreements giving him a 7.5% ownership position in NARP, or alternatively, money damages for NARP's failure to honor the agreements. (Id. at ¶¶ 38-69; R. p. ____.)

The matter was tried before a jury August 25-29, 2008. At the close of the evidence, Richardson amended his pleadings to conform to the evidence presented at trial. (Tr. pp. 719-727; R. p. ____; R. p. ____.) Counsel for Richardson presented the motion to amend stating "the claim that we would like to pursue is that the 2000 agreement was modified orally in Charleston." (Tr. p. 719-720; R. p. ____.) The modification of the agreement in Charleston "changed the amount of the respected [sic]

shares from 25 percent . . . to 7.5.” (Tr. p. 719-720; R. p. ____.) Further, the modification of the contract “was done in the context of the pending sale of Reeves.”

(Id.) In his motion, counsel went on to state:

And in that context, therefore, Mr. Castellani promised to give seven and a half percent of shares in his—of the shares of his company, however that would be styled, in return for 7.5 percent of the proceeds of the sale of Reeves.

(Tr. p. 720; R. p. ____.) The trial court granted Richardson’s motion to amend stating “[i]n looking at the revised amended answer and counterclaim, I’m not sure it’s even necessary to grant the motion, it might very well be encompassed in that but I am granting the motion to amend the pleadings to conform to the proof.” (Tr. p. 727; R. p. ____.)

The matter was submitted to the jury on a special verdict form posing specific fact questions and requiring the jury to give categorical answers. (Special Verdict Form; R. p. ____.) Neither party objected to the form of the special verdict.

The jury answered the questions posed. It concluded, among other things, that NARP had given Richardson the right to 7.5% of its stock and that Richardson had, in turn, given NARP the right to 7.5% of the stock of Reeves Manufacturing, Richardson’s former company. The jury concluded that Richardson could fulfill his part of this agreement by giving a cash equivalent, rather than actual Reeves Manufacturing stock, due to the sale of Reeves. The jury found that the parties could perform under the 2000 agreement, as later modified, and that none of the parties’ later agreements terminated the right of Richardson to acquire 7.5% of NARP’s stock. (Special Verdict Form; R. p. ____.) Specifically on these items, the Special Verdict Form provided:

1. Did North American Rescue Products, Inc. and P.J. Richardson give each other the right to acquire 7.5% of each other's stock?
2. Do you find that North American Rescue Products agreed to let P.J. Richardson acquire 7.5% of the capital stock of North American Rescue Products, Inc. in exchange for money, rather than the issuance of 7.5% of capital stock?
3. Can both parties perform under the 2000 Agreement as amended in Charleston?
4. Did the parties (North American Rescue Products, Inc. and P.J. Richardson) enter into a contract, that is the November 2004 Termination, Settlement, and Release Agreement?

(Special Verdict Form at ¶ 1-4; R. p. ____.) The jury answered each of the above special interrogatories in the affirmative. (*Id.*) Moreover, the special verdict form inquired as to whether any other agreement “end[ed] both parties’ rights to acquire 7.5% of the capital stock of each other?” (*Id.* at ¶ 5.) The jury answered “No.” (*Id.*) Based on the jury’s answers to the special interrogatories, the trial court then entered judgment in favor of Richardson “under the specific performance doctrine.” (Judgment; R. p. ____.)

Post-trial motions for judgment notwithstanding the verdict and to alter or amend the verdict were made immediately after the return of the verdict. (Tr. pp. 912-18; R. p. ____.) The trial court denied all such motions. (*Id.*) The trial court prepared the judgment that day and judgment was entered September 2, 2008. (Judgment; R. p. ____.)

NARP moved to alter or amend the judgment by motion served and filed September 15, 2008. (NARP Motion to Alter or Amend; R. p. ____.) Among other things, in its motion NARP claimed that the jury did not find that NARP had breached any contract and that Richardson failed to demonstrate that he was ready to pay for the

7.5% stake in NARP. (Id.) However, NARP withdrew the motion by notice filed September 23, 2008. (Notice of Withdrawal of Motion to Alter or Amend; R. p. ____.) NARP served and filed its notice of appeal on October 3, 2008, which was received by Richardson on October 6, 2008. (NARP Notice of Appeal; R. p. ____.)

In conjunction with its notice of appeal and under an incorrect interpretation of the judgment rendered by the trial court, NARP sent to counsel for Richardson a purported tender of NARP stock on October 6, 2008, with a demand that Richardson tender \$2,936,300.00 as payment for such stock no later than October 10, 2008, at 4 p.m., supposedly as required by NARP's view of the trial court's judgment for specific performance.¹ (October 6, 2008 letter from Curtis Stodghill; R. p. ____.) This demand was rejected by Richardson. Richardson cross-appealed on October 13, 2008, to challenge NARP's mischaracterization of the trial court's judgment reflected in the October 6 demand letter out of an abundance of caution, in case for some reason the trial court or this Court were to agree with NARP's counsel's mischaracterization. (Richardson's Notice of Cross-Appeal; R. p. ____.) As shown herein, the judgment in favor of Richardson ordering NARP to specifically perform the contract—the agreement as modified in Charleston giving Richardson a 7.5% stake in NARP and

¹ This demand letter was not presented to the trial court and no motion was ever made by NARP to the trial court asking the trial court to modify its judgment for Richardson “under specific performance doctrine”—all that is stated in the judgment—into a different judgment requiring Richardson to pay \$2,936,300.00 for NARP stock or requiring Richardson to pay for or accept such stock within any arbitrary time limits NARP might choose to impose. Although this letter was not presented to the trial court, it is part of the appellate record because it was attached as an exhibit to NARP's motion for limited remand (which was denied), dated November 19, 2008 and filed in this Court. (Motion for Limited Remand; R. p. ____; Order Denying Motion; R. p. ____.) Hence, NARP's erroneous characterization of the trial court's judgment set forth in this letter is the basis for Richardson's cross appeal.

allowing him to exchange the cash derived from the sale of the Reeves Company for the 7.5% share in NARP—should be affirmed.

Statement of the Facts

NARP sued Richardson seeking to extinguish Richardson's rights in an agreement executed between Robert Castellani ("Castellani") and NARP, on one hand, and Richardson and Reeves Manufacturing, Inc. ("Reeves"), on the other. Richardson and Castellani met in 1994 and quickly became friends. At the time when Richardson and Castellani first met, Richardson owned Reeves, an established company, which manufactured various health care and safety products for first responders, homeland security, and some military uses. (Tr. pp. 116-117; *see generally* Tr. pp. 338-717; R. p. ____.) At the time, NARP was a fledgling business with no infrastructure, no employees, and was being operated out of Castellani's home. (Tr. pp. 143-144; 652-653; Richardson Ex. 1 – Reeves Manufacturing, Inc. Castellani Computation; R. p. ____; R. p. ____.)

As the friendship between Castellani and Richardson grew, so did the business relationship between the friends' two companies. Reeves began providing infrastructure and support to NARP. This included the nuts and bolts of NARP such as Mr. Richardson's wife, Billie Richardson, keeping the books and monitoring receivables and payables. (Tr. pp. 118; 652-653; R. p. ____.) At the same time, Mrs. Richardson was also a full-time employee of Reeves. (Tr. pp. 655-656; R. p. ____.) Castellani used Reeves' plant in Maryland for storage and warehousing. (Tr. pp. 143-144; R. p. ____.) Reeves similarly provided other services to NARP in addition to administrative services, including supplies and selling various NARP products. (Tr.

pp. 357-359; R. p. ____.) During this time-frame, the companies also began cross-selling each other's products. (Tr. pp. 359; 433; R. p. ____.)

a. Richardson and Castellani Exchanged a 25% Interest in Each Other's Companies.

Due to the shared interests between the two companies and the importance of cross-selling their products between various customers, Castellani (for himself and NARP) and Richardson (for himself and Reeves) executed an agreement on January 1, 2000 ("2000 Agreement"). The 2000 Agreement formalized the business relationship between the two companies, and allowed Castellani to offset some of his personal risk associated with his fledgling company. (2000 Agreement; R. p. ____; Tr. p. ____.) Under the 2000 Agreement, NARP and Reeves agreed to pay each other commissions equal to 25% of the taxable income of their companies for cross-selling each other's respective products. (2000 Agreement; R. p. ____; Tr. p. ____.)

In paragraph 7 of the 2000 Agreement, Richardson and Castellani agreed to issue 25% of their companies' respective capital stock to each other. Paragraph 7 states:

7. Restricted Stock: [Reeves] shall issue [Castellani] and NARP shall issue [Reeves] capital stock to 25% (fully diluted) of its issued stock of all classes. Such stock shall be subject to a right by either company to purchase the issued [sic] if the commission arrangement between RMI and RAC or NARP and PJR is terminated. The right shall be exercised by notice to the holder of the stock. In the instance the terminating company shall pay \$100.00 to the person for such stock. If a company exercises its right to purchase the stock and it enters into an agreement to sell or consummate a transaction to sell a material portion of its property other than in the ordinary course of its business or PJR in the case of RMI and RAC in the case of NARP (directly or indirectly through related parties or a series of related transitions) enter into an agreement to sell or otherwise consummate a transaction selling the capital stock they hold in RMI and NARP, respectively, then the

terminated stockholder shall be paid a portion of any consideration received as if they still owned the stock; this provision shall be for a period of the two years from the date of the stock purchased at the \$100.00 price.

(Id.)

The parties performed under the 2000 Agreement for four years, cooperatively assisting each other in growing both NARP and Reeves. No dispute exists that Castellani and Richardson considered each other a 25% owner of the other's company under the 2000 Agreement. (Tr. pp. ____.)

b. Richardson and Castellani Reduced Their Ownership Interests to 7.5% and Amended their Agreement Orally.

On July 29, 2004, Castellani and both Richardsons met in Charleston, South Carolina ("Charleston Meeting"). During this meeting, the parties again affirmed their respective ownership interests but agreed to modify the 2000 Agreement. They agreed to reduce their percentage of ownership from 25% to 7.5%. (Tr. pp. 237-238; R. p. ____.) The agreement was modified because Richardson was about to sell Reeves to DHS (now called EMS). (Tr. pp. 378-380; R. p. ____.) Thus, the parties agreed that Richardson could acquire his 7.5% ownership interest in NARP from proceeds from the pending sale of Reeves. (Tr. pp. 601; 664-666; R. p. ____.) These facts are undisputed and both Castellani and Richardson testified an agreement was reached. (Tr. pp. 237-238; 342-343; 355; R. p. ____.)

The terms of the agreement as modified in Charleston are simple and clear. The parties orally amended their agreement in Charleston to reduce the percentage that each could acquire of the other company from 25% to 7.5%. They further agreed that Richardson could exchange the cash equivalent of the 7.5% interest from the proceeds

from the sale of Reeves. As was testified to at trial, Richardson stated that the 2004 amendment of the agreement modified the percentage share from 25% to 7.5%. (Tr. pp. 355-356; R. p. ____.) The parties' amendment was aimed at making the exchange of ownership shares easier in light of the sale of Reeves. (Tr. p. 420; 540-544 R. p. ____.) At trial, Castellani testified that the meeting in Charleston resulted in a reduction of the percentage of shares from 25% to 7.5%—a “like for like” exchange. (Tr. p. 238; R. p. ____.) Castellani stated that “[w]e agreed to this in Charleston.” (Tr. p. 331; R. p. ____.) Richardson also agreed that there was a “meeting of the minds in Charleston.” (Tr. p. 585; R. p. ____.)

Rather than honor the parties' agreement, Castellani, on behalf of NARP, sued Richardson, alleging various causes of action related to the parties' ongoing relationship, and seeking to extinguish Richardson's rights thereunder. Damages were also sought damages based on the alleged malfeasance of Richardson. (Compl.; R. p. ____.) As a result, Castellani and NARP never performed under the agreement and failed to tender Richardson the shares in exchange for the proceeds from the sale of Reeves (which proceeds amounted to \$415,988). (Tr. pp. 136-139; 344-349; 425-426; 587; Reeves Manufacturing Inc. Castellani Computation; R. p. ____; R. p. ____.)

At trial, Richardson stated that he remained ready, willing, and able to perform the contract as modified. Richardson stated that “[m]y intention was to carry out and honor this agreement with Bob [Castellani] by paying out with the proceeds of the sale of Reeves. (Tr. pp. 372-373; R. p. ____.) Richardson further stated that “I am bound now to honor that agreement.” (Tr. p. 586; R. p. ____.) Richardson knew he only had to deliver a check to NARP for the proceeds from the sale of Reeves to comply with

the amended agreement. (Tr. p. 588; R. p. ____.) Richardson stated “that’s what it was, write him a check.” (Tr. p. 608; R. p. ____.) Richardson admitted that “we’ve never hesitated or changed our position of what Bob [Castellani] is entitled to. He was entitled to 7½ percent of what we sold Reeves for” (Tr. p. 592; R. p. ____). Moreover, Richardson testified that the money from the sale of Reeves was in his account and could he “cut a check for that money to Bob [Castellani] today if he would take it”—that is, if Castellani would give Richardson his 7.5% interest in NARP. (Tr. p. 609; 590; R. p. ____.)

Based on the evidence presented at trial, the jury found that the parties’ could perform under the 2000 agreement as modified in 2004 in Charleston. (Special Verdict Form; R. p. ____.) Based on this finding by the jury, the Court ordered the remedy of specific performance in favor of Richardson. (Judgment; R. p. ____.) Because of the position that NARP has taken as to the meaning of judgment as entered by the Court, Richardson filed this cross-appeal out of an abundance of caution.

Standard of Review

In an action tried by a jury, where the circuit court concurs in the jury’s findings of fact, the appellate court must affirm those findings if there is any evidence reasonably supporting the jury’s conclusions. Thigpen v. Thigpen, 217 S.C. 322, 60 S.E.2d 621 (1950).

Law/Analysis

- I. The trial court properly ordered the remedy of specific performance following the jury's determination that a binding and enforceable contract existed between the parties.

Following the entry of the judgment in this action, NARP took the position that in order for Richardson to obtain his 7.5% interest in NARP, he had to pay \$2,936,300.00 (two million, nine hundred and thirty six thousand and three hundred and 00/100 dollars) for his shares of stock. (October 6, 2008 letter from Curtis Stodghill; R. p. ____.) However, NARP's position ignores the claim for specific performance of the contract between the parties as orally amended in Charleston. As a result of NARP's misapprehension of the judgment in this case, Richardson filed this cross-appeal.

As is shown herein, the trial court properly entered judgment in favor of Richardson and lawfully ordered NARP to specifically perform its obligations under the parties' 2000 agreement as orally amended following the 2004 meeting in Charleston, South Carolina. The jury found that a contract existed. The terms of the contract are clear. The trial court ordered the parties to specifically perform that contract. Therefore, the judgment in favor of Richardson must be affirmed as set forth herein.

In order to award the remedy of specific performance, a party must show: "(1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." Campbell v. Carr, 361 S.C. 258, 264-65, 603 S.E.2d 625, 628 (Ct. App. 2004) (citing Guignard v. Atkins,

282 S.C. 61, 64, 317 S.E.2d 137, 140 (Ct. App. 1984)). “Whether to grant specific performance is a matter committed to ‘sound judicial discretion.’” Ex parte Bland, 380 S.C. 1, 16, 667 S.E.2d 540, 547 (2008) (quoting Summer v. Bankhead, 119 S.C. 78, 111 S.E. 891 (1922)). Absent an abuse of discretion, the trial court’s judgment must be upheld. Id. “An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support.” Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). No such errors exist in this case and the judgment is supported by the evidence. The jury found that a contract existed as orally modified and both parties were capable of performing. The judgment should be affirmed as set forth herein, and not in the manner interpreted by NARP.

A. The Record contains clear evidence of a valid agreement.

The Record contains clear evidence that a valid and enforceable agreement existed. In the year 2004, the parties modified their agreement that was previously identified as the “Outline of the Business Relationship Between North American Rescue Products, Inc. and Reeves Manufacturing.” (Agreement dated January 1, 2000; Tr. p. 206; R. p. ____; R. p. ____.) The modified agreement provided that Richardson could acquire a 7.5% share of NARP in exchange for the proceeds of the sale of Reeves—\$415,988. (Tr. pp. 355-356; 585; 420; 540-544; 238; 331; R. pp. ____.) Richardson presented evidence that this was the agreement of the parties and the jury found that this agreement existed and could be performed. (Special Verdict Form; R. p. ____.) Thus, the position taken by NARP as to their interpretation of the judgment must be rejected and the judgment ordering specific performance affirmed as set forth herein.

In finding a valid contract sufficient to fulfill the first requirement for an award of specific performance as set forth in Campbell v. Carr, South Carolina's courts recognize that "South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.'" Clardy v. Bodolosky, 2009 S.C. App. LEXIS 124, at *6 (Ct. App. May 5, 2009) (quoting Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (emphasis in original)). Thus, "[s]pecific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." Amick v. Hagler, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Ct. App. 1985) (citing McChesney v. Smith, 105 S.C. 171, 176, 89 S.E. 639, 641 (1916)).

The evidence at trial supports the fact that the parties orally amended their agreement in Charleston to reduce the percentage that each could acquire of the other company from 25% to 7.5% and that Richardson could exchange the cash equivalent of the 7.5% interest from the proceeds from the sale of Reeves. As was testified to at trial, Richardson stated that the 2004 amendment of the agreement modified the percentage share from 25% to 7.5%. (Tr. pp. 355-356; R. p. ____.) Richardson also testified that he was seeking to have the court enforce his right to acquire 7.5% of the stock of NARP. (Id.; Tr. p. 585; R. p. ____.) Richardson stated that the amendment was aimed at making the exchange of ownership shares easier in light of the sale of Reeves. (Tr. p. 420; 540-544; R. p. ____.) Castellani, on behalf of NARP, testified that the meeting in Charleston resulted in a reduction of the percentage of shares from 25% to 7.5%—a "like for like" exchange. (Tr. p. 238; R. p. ____.) Castellani also

agreed that the parties “did that deal and then [] hugged and kissed and sealed the deal[.]” (Id.) Later, at trial, Castellani testified that “[w]e agreed to this in Charleston.” (Tr. p. 331; R. p. ____.) Richardson also agreed that there was a “meeting of the minds in Charleston.” (Tr. p. 585; R. p. ____.) Thus, the parties’ agreement was clear and both understood the agreement.

As a result, the record contains ample evidence that the parties had a valid and enforceable agreement that the jury found was capable of being performed. Thus, this Court should reject NARP’s mischaracterization of the judgment and affirm the judgment as entered by the trial court—ordering specific performance of the contract as modified in Charleston under which Richardson has a right to a 7.5% interest share in NARP in exchange for \$415,988.

B. The agreement had been partly carried into execution on one side with the approbation of the other.

Richardson has performed his part of the contract. Richardson sold Reeves Company and has set aside the proceeds from the sale of Reeves which the contract provided he could exchange for a 7.5% share in NARP. (Tr. pp. 355-356; R. p. ____.) However, NARP has failed to perform by not tendering the shares for the proceeds from Reeves. Thus, NARP stands in the way of executing the contract.

The second requirement that must be fulfilled before a court can order specific performance is that the agreement has been partly carried into execution by one party based on the agreement with the other party. Campbell v. Carr, 361 S.C. at 264-65, 603 S.E.2d at 628. In Gibson v. Hryskos, 293 S.C. 8, 358 S.E.2d 173 (Ct. App. 1987), the court granted the request for specific performance finding that certain actions

constituted part performance, which took the contract out of the statute of frauds and satisfied the second element of the specific performance test. Id. at 13-16, 358 S.E.2d at 175-77. Recently, this Court noted in Clardy that “[t]he doctrine of substantial performance was conceived for the case where a plaintiff’s partial performance has already given to a defendant substantially all that he bargained for and is of such a nature that it cannot be returned.” Clardy v. Bodolosky, 2009 S.C. App. LEXIS 124, at *9 (Ct. App. May 5, 2009) (quoting Coastal Seafood Co., Inc. v. Alcoa S.C., Inc., 298 S.C. 466, 467-68, 381 S.E.2d 502, 503 (Ct. App. 1989)) (holding that the Clardys had satisfied the second element by their substantial performance with the consent of the other party).

After the sale of Reeves, Richardson kept the proceeds from the sale in order to pay NARP and Castellani for the 7.5% share in the company. (Tr. p. 590; R. p. ____.) At trial and now, Richardson has the funds ready to pay to NARP and Castellani if the shares are tendered. (Tr. pp. 609; 590; R. p. ____.) Richardson kept those funds in order to perform his obligations under the agreement. (Tr. pp. 435-436; 540-544; R. p. ____.) Richardson’s actions were undertaken as a result of the understanding and agreement reached with Castellani on behalf of NARP. (Tr. pp. 341-344; 608-609; R. p. ____.) Thus, Richards acted on the approval of the agreement by Castellani and had every expectation that NARP and Castellani would perform their part of the agreement. (Tr. pp. 514; 518; 530; R. p. ____.)

As a result, Richardson properly demonstrated that he has performed as envisioned under the parties’ agreement with the approval of NARP after the contract was modified. Further, Richardson’s actions in saving those proceeds and his stated

tender of them in open court to exchange for the stock shares demonstrate that he partly performed his part as envisioned under the agreement. This Court should affirm the trial court's judgment accordingly.

C. The party who comes to compel performance must have performed his or her part, or be and remain able and willing to perform his or her part of the contract.

Richardson demonstrated that he performed under the contract and that he remains ready, willing, and able to perform his part of the contract. Nonetheless, NARP did not tender the 7.5% of stock as required under the agreement. Based on Richardson's demonstration to perform, this Court should affirm the trial court's judgment.

The party seeking specific performance must be able to demonstrate that he was ready and willing to perform his part of the contract. Gibson v. Hryzikos, 293 S.C. at 13-14, 358 S.E.2d at 176. In a case finding that a party failed to meet its burden in requesting the remedy of specific performance, the South Carolina Supreme Court noted that a party requesting specific performance

“must aver that he has performed his part of the contract or that he is willing and ready to perform it, and that he has performed all conditions precedent to the taking effect of the obligation of the defendant, including the payment to be made thereon, or some valid excuse for his failure to perform or offer to perform.”

Ingram v. Kasey's Assocs., 340 S.C. 98, 106-07, 531 S.E.2d 287, 291 (2000) (quoting 71 Am. Jur. 2d Specific Performance § 201 (1973)). Thus, South Carolina courts have found that pleading an ability to immediately tender money to fulfill the terms of a contract is sufficient to demonstrate that a party is “ready, able and willing to perform his part of the contract.” See Elliott v. Dew, 264 S.C. 40, 47-48, 212 S.E.2d 421, 424

(1975) (affirming the recommendation of specific performance and noting that “[i]t was sufficient for the respondent to plead a tender of the purchase money and to offer by his complaint to pay whatever amount of money was necessary to consummate the transaction and to pay that sum when determined by the court.”).

As was shown at trial, Richardson was ready willing and able to perform the contract as modified, and the pleadings were amended to conform with the evidence at trial. Richardson averred that “[m]y intention was to carry out and honor this agreement with Bob [Castellani] by paying out with the proceeds of the sale of Reeves. (Tr. pp. 372-373; R. p. ____.) Richardson further stated that “the only memorialization we had of it was the oral agreement, meaning the 2000 agreement . . . I am bound now to honor that agreement.” (Tr. p. 586; R. p. ____.) Richardson knew he only had to deliver a check to NARP for the proceeds from the sale of Reeves to comply with the amended agreement. (Tr. p. 588; R. p. ____.) Specifically, Richardson testified that “we would write a check for whatever that number was, yet to be determined, and we would pay it.” (Tr. p. 589; R. p. ____.) That was all Richardson had to do to perform—“that’s what it was, write him a check.” (Tr. p. 608; R. p. ____.) Richardson admitted that “we’ve never hesitated or changed our position of what Bob [Castellani] is entitled to. He was entitled to 7½ percent of what we sold Reeves for” (Tr. p. 592; R. p. ____.) Moreover, Richardson testified that the money from the sale of Reeves was in his account and could he “cut a check for that money to Bob [Castellani] today if he would take it” if Castellani would give Richardson his 7.5% interest in NARP. (Tr. p. 609; 590; R. p. ____.)

Accordingly, NARP's position as to the remedy the judge ordered is not consistent with the judgment in this case. When asked "[c]an [b]oth parties perform under the 2000 Agreement as amended in Charleston?" the jury answered "Yes." (Special Verdict Form at ¶ 3; R. p. ____.) Thus, Richardson was willing and remains willing to perform. As a result, he met his burden in demonstrating his entitlement to the remedy of specific performance as to each element under the law. Hence, this Court should affirm the trial court's judgment ordering NARP to specifically perform under the contract as orally modified in Charleston, South Carolina.

II. The trial court properly entered the form of the judgment in this case—specific performance—based on the jury's answers to the interrogatories on the special verdict the trial court submitted to the jury.

As detailed above, the trial court submitted a special verdict form to the jury. (Special Verdict Form; R. p. ____.) That verdict form contained written questions for findings which might properly be made under the pleadings and evidence. (*Id.*) The trial court then entered the form of the judgment based on the jury's answers to the interrogatories contained on the special verdict form. (Judgment; R. p. ____.) Based on the pleadings and the answers to the interrogatories, the trial court entered judgment in favor of Richardson "under the doctrine of specific performance." (*Id.*)

Examining the Rules of Civil Procedure in the context of the actions of the trial court in this case, it is clear that the trial court properly ordered relief—by way of specific performance—in favor of Richardson. The starting point of the examination is Rule 49 of the South Carolina Rules of Civil Procedure which provides in pertinent part:

(a) **Special Verdicts.** The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court *may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence*; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. . . .

Rule 49(a), SCRCP (emphasis added).

Following the jury's return of the special verdict, the trial court is charged with preparing the form of the judgment. Rule 58, SCRCP. It is well settled that "[a] judgment is effective only when reduced to writing and entered into the record."

Johnson v. S.C. Dep't of Prob., 372 S.C. 279, 284, 641 S.E.2d 895, 898 (2007)

(citing Rule 58(a)(2), SCRCP). Rule 58 provides:

(a) **Entry Upon Verdict or Decision.** Subject to the provisions of Rule 54(b): . . .

(2) upon a decision by the court granting other relief, or *upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly prepare the form of the judgment*, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, *and after review and approval by the court, the clerk shall promptly enter it.*

Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record. Entry of the judgment should not be delayed for the taxing of costs.

Rule 58, SCRCP (emphasis added).

Here, the trial court submitted a special verdict form containing written questions as to factual findings that might be made under the evidence presented at trial.

On the special verdict form, the trial court inquired of the jury "[c]an [b]oth parties

perform under the 2000 Agreement as amended in Charleston?” (Special Verdict Form at ¶ 3; R. p. ____.) The jury responded, “Yes.” The trial court also inquired as to whether any other agreement “end[ed] both parties’ rights to acquire 7.5% of the capital stock of each other?” (Id. at ¶ 5.) To which the jury answered “No.” (Id.) On the same day the jury answered the special interrogatories, the trial court entered judgment for Richardson under the specific performance doctrine. (Judgment; R. p. ____.)

The trial court correctly and lawfully entered a judgment in favor of Richardson under the doctrine of specific performance. As shown above, ample evidence existed regarding the contract as modified in Charleston. Moreover, the pleadings and the record clearly indicate that Richardson sought the remedy of specific performance and outlined the contract he wanted to be performed. Specifically, in his amended counterclaim Richardson alleged that he was “entitled to specific performance of the overall agreement and the Option Contract along with money damages accruing during the interim period during which Plaintiff [NARP] failed to perform.” (Rev. Amended Answer & Counterclaim at ¶ 66; R. p. ____.) In addition, Richardson amended his counterclaim at trial to conform to the evidence presented, stating that the modification of the agreement in Charleston “changed the amount of the respected shares from 25 percent . . . to 7.5.” (Tr. p. 720; R. p. ____.) Further, the modification of the contract “was done in the context of the pending sale of Reeves.” (Id.) In his motion, counsel went on to state:

And in that context, therefore, Mr. Castellani promised to give seven and a half percent of shares in his—of the shares of his company, however that would be styled, in return for 7.5 percent of the proceeds of the sale of Reeves.

(Tr. p. 720; R. p. ____.) The trial court granted Richardson's motion to amend. (Tr. p. 727; R. p. ____.)

The evidence and the pleadings support the trial court's decision to enter the form of the judgment it did here—specific performance—based on the jury's answers to the special interrogatories the trial court asked. Hence, this Court should affirm the decision of the trial court to grant Richardson the remedy of specific performance and this Court should not disturb the trial court's sound decision. Ex parte Bland, 380 S.C. 1, 16, 667 S.E.2d 540, 547 (2008) (quoting Summer v. Bankhead, 119 S.C. 78, 111 S.E. 891 (1922)) (stating “[w]hether to grant specific performance is a matter committed to ‘sound judicial discretion.’”)

Conclusion

Accordingly, this Court should affirm the trial court's judgment ordering the parties to specifically perform under the 2000 Agreement as modified at the Charleston meeting. Thus, Richardson has a right to a 7.5% interest share in NARP in exchange for \$415,988—the proceeds from his sale of Reeves Company, and this Court should so rule.

Signatures Attached

Respectfully submitted,

By: A. Mattison Bogan

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William C. Wood, Jr.
A. Mattison Bogan
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Columbia, SC 29201
(803) 799-2000

Rivers S. Stilwell
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Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for P.J. Richardson

September 22, 2009
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 07-CP-23-3206

North American Rescue Products, Inc.,.....Appellant-Respondent,

v.

P. J. Richardson,.....Respondent-Appellant.

RECEIVED

NOV 20 2008

SC Court of Appeals

MOTION FOR LIMITED REMAND AND TO HOLD
APPELLATE TIMELINES IN ABEYANCE PENDING A RULING ON REMAND

Pursuant to Rule 224, SCACR, and Rule 60(b), SCRCP, the Appellant-Respondent (Plaintiff) moves for a limited remand to make a motion under Rule 60(b)(5), SCRCP, to have the judgment marked satisfied. To best serve judicial economy, Plaintiff further requests that the time for perfecting this cross-appeal (except for production of the already ordered trial transcript) be held in abeyance pending a ruling on remand, so that any appeal from any order on remand can be consolidated with this cross-appeal. The grounds for this motion are as follows:

(1) Plaintiff commenced this action against the Respondent-Appellant (Defendant) seeking a declaratory judgment that there was no agreement between the parties for Defendant to own or acquire stock in Plaintiff, and for breach of fiduciary

duty. Defendant answered and counterclaimed for breach of contract and specific performance, demanding a jury trial on his counterclaims.

(2) The case was tried before a jury without objection by Defendant. The trial court submitted the case to the jury under a special verdict form. Defendant did not object to this procedure or to the form or content of the special verdict form.

(3) The jury answered the questions on the special verdict form and found that Defendant was “entitled to receive 7.5% of the outstanding capital stock of [Plaintiff] North American Rescue Products, Inc.” for the price of \$2,936,300.00. (Tab A at 4, Ques. 8). The trial court denied all post-trial motions by both parties.

(4) The trial court entered judgment for Defendant by attaching the Special Verdict Form to a standard judgment form and ordering thereon: “Judgment for the Defendant under specific performance doctrine.” (Tab A). Thus, the trial court granted Defendant specific performance of the contract found by the jury.

(5) Defendant did not make any motions challenging the above-noted entry of judgment on the jury’s special verdict.

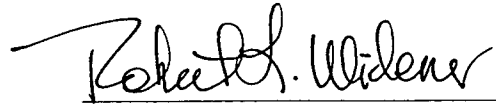
(6) Both parties have appealed. The principal thrust of Plaintiff’s appeal will be that there is no binding contract between the parties and, therefore, Plaintiff is entitled to judgment on all counterclaims by Defendant. It is unknown what issues Defendant will raise in its cross-appeal.

(7) On October 6, 2008, by hand delivery of a letter to Defendant’s Counsel, Plaintiff gave notice that, on October 10, 2008, it would tender performance of the judgment of specific performance entered by the trial court on the jury’s special verdict, to-wit: it would deliver 7.5% of its stock to Defendant in exchange for the \$2,936,300.00

found by the jury and ordered specifically performed by the trial court. (Tab B). On October 9, Defendant rejected the tendered performance, thus making it clear that Defendant is not “ready, willing and able” to perform the contract found by the jury and ordered specifically performed by the trial court.

Based on the foregoing circumstances, Plaintiff seeks leave to move before the trial court under Rule 60(b)(5), SCRCF, to have the judgment marked satisfied. It is likely that the party losing the Rule 60(b)(5) motion will appeal to this Court. In the interest of judicial economy, any such appeal should be consolidated with the current cross-appeal. For this reason, Plaintiff further requests that the timelines for perfecting the currently pending cross-appeal be held in abeyance pending a decision on remand.

Respectfully Submitted,



Robert L. Widener
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
Attorneys for Appellant-Respondent

November 19, 2008
Columbia, SC

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2007CP2303206

North American Rescue Products Inc vs. P J Richardson

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

Judgment for the Defendant under specific performance doctrine

Dated at Greenville, South Carolina, this .

29th day August, 2008.

Court Reporter: April Herron

29th day of Aug, 2008
PRESIDING JUDGE - Steven H. John

added to 324, 2008
This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

✓ Bernie Wellington Ellis McNair Law Firm, PA P.O. Box 447
Greenville, SC 29602

A. Marvin Quattlebaum Jr. Nelson Mullins Riley &
Scarborough, LLP P.O. Box 10084 Greenville, SC 29603
Rivers Samuel Stilwell Nelson Mullins Riley & Scarborough,
LLP P.O. Box 10084 Greenville, SC 29603
Lane Whittaker Davis Nelson Mullins Riley & Scarborough
Llp P.O. Box 10084 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

Paul B. Wickensimer - Clerk of Court

Ex H. 1. b. 1 A

VERDICT FORM

1. Did North American Rescue Products, Inc. and P.J. Richardson give each other the right to acquire 7.5% of each other's stock?

~~_____~~

Yes

No

2. Do you find that North American Rescue Products agreed to let P.J. Richardson acquire 7.5% of the capital stock of North American Rescue Products, Inc. in exchange for money, rather than the issuance of 7.5% of capital stock?

~~_____~~

Yes

No

3. Can Both parties perform under the 2000 Agreement as amended in Charleston?

~~_____~~

Yes

No

4. Did the parties (North American Rescue Products, Inc. and P.J. Richardson) enter into a contract, that is the November 2004 Termination, Settlement and Release Agreement?

~~_____~~

Yes

No

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
DAVE B. WINKELMEIER

2008 SEP -2 A 10:44

5. If the Termination, Settlement and Release Agreement is a contract, does it end both parties' rights to acquire 7.5% of the capital stock of each other?

Yes

~~_____~~
No

- a. If you answer YES, then answer Both i and ii.

- i. Did P.J. Richardson reasonably rely on North American Rescue Products, Inc. to his detriment?

Yes

No

- ii. Did North American Rescue Products, Inc. reasonably rely on P.J. Richardson to its detriment.

Yes

No

6. Do you find that P.J. Richardson was a Director of North American Rescue Products, Inc. when the Termination, Settlement and Release Agreement was entered into?

~~_____~~
Yes

No

- a. If you answer NO, Skip to Number 8.

7. Did P.J. Richardson owe a fiduciary duty to North American Rescue Products, Inc. when the Termination, Settlement and Release Agreement was entered into?

~~Yes~~ No

a. If you answer NO, skip to Number 8.

- b. If you answer YES, did P.J. Richardson breach a fiduciary duty owed to North American Rescue Products, Inc.?

Yes ~~No~~

i. If you answer NO, skip to Number 8.

- ii. If you answer YES, should P.J. Richardson return all or a portion of the \$50,000 paid to Mr. Richardson as a Director of North American Rescue Products, Inc.?

Yes No

1. If YES, how much?

\$ _____

IMPORTANT INSTRUCTIONS FOR THE REMAINING QUESTIONS: The Jury must look at both 8 and 9, and then must decide to answer 8 or 9 - not both! After answering 8 or 9, proceed to 9.

8. Is P.J. Richardson entitled to receive 7.5% of the outstanding capital stock of North American Rescue Products, Inc.?

X Yes No

- a. If you answer YES, what should P.J. Richardson pay to North American Rescue Products for 7.5% of the common capital stock?

\$ 2,936,300.00

OR;

9. Did the parties enter into an agreement arising from their

 Yes No

- a. If you answer NO, STOP and notify Bailiff.

- b. If you answer YES:

- i. Did P.J. Richardson offer to perform under the

 Yes No

1. If NO, STOP and notify Bailiff.

- ii. If YES, Did North American Rescue Products breach the agreement?

 Yes No

1. If you answer YES what damages, if any, should be paid to P.J. Richardson by North American Rescue Products, Inc.?

a. \$

Charles Varner
Foreman

STODGHILL Law Firm
CHARTERED
Uncommon Business Sense

6 October 2008

By Hand Delivery
C/O Rivers S. Stillwell, Esquire
Lane W. Davis, Esquire
A. Marvin Quattlebaum, Esquire
Nelson Mullins
104 South Main Street
Greenville, SC 29601

Reference: North American Rescue Products, Inc. v. P.J. Richardson
Judgment of Specific Performance

Gentlemen:

By delivery of this letter to you on behalf of your client P.J. Richardson, and in accord with the referenced, North American Rescue, Incorporated (NAR) will tender seven and one-half percent (7.5%) of the outstanding common capital stock of NAR (the Stock) to Mr. Richardson at my offices located in the NBSC Building; 201 E. McBee Avenue, Suite 300-A; Greenville, SC 29601; Friday 10 October 2008 at 4:00 p.m. EDT.

An accurate photo static copy of fully executed properly issued stock certificate number 29 for 118.32 shares representing the Stock is enclosed with this letter. Also enclosed is an accurate photo static copy of the North American Rescue Products, Inc. Stockholder Agreement and First Amendment along with Fourth New Stockholder Signature Page.

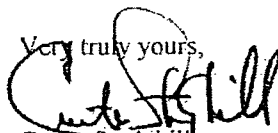
If Mr. Richardson intends to receive the Stock pursuant to the referenced, then he must tender (i) Two Million Nine Hundred Thirty Six Thousand Three Hundred Dollars (\$2,936,300); and (ii) the fully executed and completed Fourth New Stockholder Signature Page, which is included with this letter, by delivery to me of both (i) and (ii) at the designated location and time of NAR's Stock tender. If Mr. Richardson intends to pay by check, it must represent collected funds.

Please note that NAR served its notice of appeal related to the referenced, which will be withdrawn if Mr. Richardson accepts NAR's tender as described herein.

Please govern yourself accordingly.

With kind regards, I am

Very truly yours,


Curtis Stodghill

C: Robert A. Castellani
Bernie W. Ellis

201 East McBee Avenue, Suite 300 A, Greenville, SC 29601 • P.O. Box 2431, Greenville, SC 29602

Phone: 864.271.0966 • Fax: 864.770.6167 • www.stodghill-law.com

Exhibit B

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DEC 08 2008

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2007-CP-23-3206

North American Rescue Products, Inc., ...	Appellant/ Respondent,
v.	
P.J. Richardson, ...	Respondent/ Appellant.

**Respondent/Appellant's Memorandum in Opposition
to the Motion for Limited Remand and
to Hold Appellant Timelines in Abeyance**

Pursuant to Rule 224, SCACR, Respondent/Appellant P.J. Richardson

("Richardson") submits this memorandum in opposition to Appellant/Respondent North American Rescue Products, Inc.'s ("NARP") motion for a limited remand and to hold appellate timelines in abeyance. For the reasons set forth below, NARP's motion should be denied.

I. NARP's Requested Relief is Inconsistent with Its Appeal.

As stated in NARP's motion, its contention on appeal, as was its contention throughout the trial, is "that there is no binding contract between the parties." (NARP Mot. ¶ 6.) The motion presented to the Court, however, rests upon the exact opposite factual contention -- that a valid and enforceable contract exists and the judgment related to that contract should be marked as satisfied. NARP contends, incorrectly, that

the judgment being appealed only established a contractual right to purchase 7.5 % of NARP's stock for \$2,936,000.00 in a lump sum and as a whole (as opposed to a right to purchase stock up to that amount), and upon restrictive, arbitrary timing terms imposed by NARP's counsel in a letter dated October 6, 2008, wholly apart from any language contained anywhere in the judgment or the jury's verdict. (Motion ¶ 7.) NARP argues that because Richardson did not comply with the terms arbitrarily imposed by its counsel upon the contract, which it contends on appeal does not even exist, that it has somehow "satisfied" the judgment.

If NARP is now conceding that some contract exists, it should not have appealed, but it did. NARP should not be allowed to simultaneously assert factually inconsistent positions in the trial court and on appeal. Cf. Cothran v. Brown 357 S.C. 210, 592 S.E.2d 629 (2004) (outlining the elements of judicial estoppel and noting it "is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding").¹ For these reasons, the Court should deny the motion.

II. NARP's Request is Futile as It is Not Entitled to the Relief Requested.

NARP is not entitled to the relief it ultimately seeks in its remand motion; therefore, remand and a stay are futile and should be denied. This is true for two reasons.

First, assuming for sake of argument that NARP's characterization of the judgment as only granting specific performance of a contract to purchase 7.5 % of

¹ Richardson does not assert that counsel for NARP is trying to intentionally mislead the Court, the fourth element of a judicial estoppel claim.

NARP's stock for \$2,390,000.00 is correct, NARP is not entitled to the relief it claims in the remand motion. NARP's claim is not grounded in the language of the judgment or even the jury's verdict. Rather, NARP's argument rests upon arbitrary and unreasonable conditions or terms of its own making that compelled Richardson to act within a time arbitrarily set by NARP. The terms were not stated in the written judgment of the trial court, but imposed by a letter of NARP's counsel dated October 6, 2008. Because the terms are no part of the judgment, any alleged failure by Richardson to comply with the terms cannot constitute a "satisfaction" of the judgment.

Second, NARP's characterization of the judgment entered by the trial court is incorrect. As Richardson will argue more fully on appeal, the judgment of the trial court is plain on its face. It entered a judgment for specific performance in favor of Richardson. It did not enter a judgment requiring Richardson to pay NARP a specific sum for a specific percentage of NARP's stock in an all or nothing deal. The judgment certainly does not state that Richardson had to pay a specific amount by any arbitrary date NARP might happen to set in an entirely separate letter from counsel at an arbitrary place designated by NARP and with a specific form of payment arbitrarily chosen by NARP.

As noted by our supreme court, "[i]t is the settled rule of this Court that an appeal will not lie from a verdict; it must be from a judgment" Hanner v. Hillcrest Land Co., 165 S.C. 298, 163 S.E. 727, 728 (1932). It is the terms of the judgment that control and that judgment is for "specific performance," a cause of action alleged in Richardson's complaint with a request for specific relief, not a contract of

NARP's own imagining which is says it is repudiating on appeal and which it repudiated at trial.

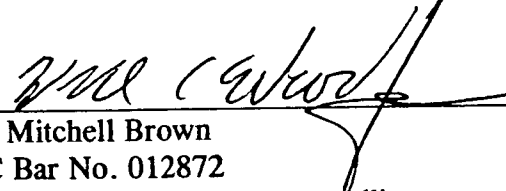
III. Nothing is Pending in the Trial Court Requiring a Remand to that Court.

NARP's motion is procedurally defective in any event and should be denied. Nothing is pending in the trial court upon which the trial court may act should the Court remand the case. Hence, there is no reason for a remand.

Conclusion

For the reasons set forth above, NARP's motion should be denied.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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December 8, 2008

Attorneys for P.J. Richardson

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 07-CP-23-3206

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DEC 31 2008

SC Court of Appeals

North American Rescue Products, Inc.,.....Appellant-Respondent,

v.

P. J. Richardson,.....Respondent-Appellant.

REPLY TO RETURN TO MOTION FOR LIMITED REMAND AND TO HOLD
APPELLATE TIMELINES IN ABEYANCE PENDING A RULING ON REMAND

I. Plaintiff's remand motion is not procedurally defective.

Defendant contends the remand motion should be denied, because there is nothing pending in the trial court. (Ref. at 4, Arg. III). This argument is manifestly without merit. Rule 60(b), SCRCP plainly contemplates a motion *after* commencement of an appeal (as here), and requires the would-be movant to first obtain leave of the appellate court.¹ *A priori*, there is nothing pending in the trial court at that time. The current motion complies precisely with Rule 60(b); the first sentence of the motion "moves for a limited remand *to make a motion* under Rule 60(b)(5), SCRCP." (Motion at 1) (emphasis added).

¹ Rule 60(b), SCRCP provides in pertinent part: "*During the pendency of an appeal*, leave to make the motion must be obtained from the appellate court." (Emphasis added).

II. The trial court entered a judgment of specific performance on the contract found by the jury.

The case was tried to the jury under a special verdict form. The jury found a contract for \$2.9 Million (Motion Tab A at 4). The trial court immediately heard and denied all post-trial motions by Defendant. Thereafter, the trial court entered judgment by attaching the completed verdict form to a Form 4 Judgment and handwriting thereon: “Judgment for the Defendant under specific performance doctrine.” (Motion Tab A at 1).

Defendant contends the judgment is “plain on its face.” (Ret. at 3). Plaintiff agrees. The trial court plainly granted Defendant specific performance on the contract found by the jury. Nothing permits any other conclusion.

Defendant posits alternative “faces” for the judgment, but he never shows that face plainly. First, he suggests the judgment was for “a right to purchase stock *up to that amount*.” (Ret. at 2) (emphasis added). Second, he suggests the judgment was *not* for him “to pay [Plaintiff] a specific sum for a specific percentage of [Plaintiff’s] stock in an *all or nothing deal*.” (Ret. at 3) (emphasis added). These suggestions hint at a judgment for some other sum and/or some other percentage of stock, perhaps at his option to decide the amount or percentage of stock, but he never states this plainly. Nothing in the judgment or the attached jury verdict remotely supports these suggestions.

Third, and perhaps to make his position somewhat more precise, Defendant suggests the specific performance judgment is for “a cause of action alleged in [Defendant’s Counterclaim] with a request for specific relief.” (Ret. at 3). Curiously, Defendant never plainly identifies this

counterclaim/cause of action. More importantly, nothing in the judgment or the attached jury verdict supports this suggestion.²

The only cause of action that fits Defendant's "specific relief" definition is the Eleventh Defense and Counterclaim in his Revised Amended Answer and Counterclaim. (Tab 1 at pp.6-10). There, Defendant alleged alternative contract theories and sought specific performance of them. (Id.).

Defendant demanded a jury trial on his counterclaims. The case was placed on the jury roster, called to trial at a jury term of Common Pleas, and tried before a jury, all without any objection by Defendant. The trial court charged the jury on contract law and submitted all contract issues to the jury, including the question of whether there was a contract and, if so, for how much (again without any objection by Defendant). The jury specifically found that the only contract was for \$2.9 Million. Thus, without any objection by Defendant, the jury considered and rejected the theories upon which Defendant now relies to construe the judgment, which is not subject to construction in any event, because it is "plain on its face."

In short, the only contract for which the trial court could grant specific performance was the \$2.9 Million contract found by the jury in the verdict form attached to the judgment. There is no finding of any other contract for which the trial could have granted specific performance. See *Ingram v. Kasey, Assocs.*, 531 S.E.2d 287, 291 (S.C. 2000) (to order specific performance, the court must find there is an agreement).³

² Though unclear, Defendant may be suggesting or attempting to create some type of ambiguity in the judgment. Any such suggestion or attempt manifestly fails because *inter alia*: (1) the judgment is "plain on its face" and grants specific performance of the \$2.9 Million contract found by the jury; and (2) Defendant waived any "ambiguity" issue by failing to make a post-trial motion on that basis. *Nelums v. Cousins*, 403 S.E.2d 681, 681-682 (S.C. App. 1991) (any contention that order or judgment is unclear must first be raised to the trial court in a Rule 59(e) motion).

³ Quoting *Hanner v. Hillcrest Land Co.*, 163 S.E. 727, 728 (S.C. 1932), Defendant asserts: "[i]t is the settled rule of this Court that an appeal will not lie from a verdict; it must be from a judgment...." (Ret. at 3). The purpose of this assertion/quotation is unclear. *Hanner* plainly and only holds that an appeal cannot be commenced until after judgment has been entered on a verdict. Here, judgment has been entered on the verdict.

III. Plaintiff properly tendered performance of the judgment entered by the court.

At various places throughout his Return, Defendant complains that Plaintiff's tender of judgment was ineffective, because it imposed an "arbitrary" time, place, and form of payment. (Args. I and II at Ret. 2, 2-3).

The tender required any payment by check to be "collected funds," e.g. a certified check. (Motion at Tab B). Any reasonable payor or payee would expect (and even demand) that a check for \$2.9 Million be in "collected funds." There is manifestly nothing arbitrary about this.

The tender identified the Greenville office of Plaintiff's attorney as the place of tender. There is manifestly nothing arbitrary about this. The case was tried in Greenville; Defendant maintains a residence (condominium) in Greenville; and his attorney's office is in Greenville.

There is manifestly nothing arbitrary about the tender's time of performance. To obtain specific performance, the party seeking it must show he "has been *and remains able and willing* to perform [his] part of the contract. *Ingram*, 531 S.E.2d at 291 (emphasis added). The Supreme Court has rejected Defendant's implicit assertion that he is entitled to some "reasonable time" after obtaining the judgment of specific performance to perform his part of the contract. *Id.* at 291, n.1, *rev'g* 493 S.E.2d 856 (S.C. App. 1997).

Defendant has never suggested what would be a reasonable time, place, or form of payment, nor does he do so here. More importantly, he has never said he was or remains "ready, willing, and able" to perform the contract found by the jury under *any* reasonable circumstances, nor does he do so here. The reason is clear. Defendant either cannot or will not pay the \$2.9 Million found by the jury at any reasonable time or place with any commercially reasonable form of payment. This is precisely why the judgment should be marked satisfied.

Plaintiff remains “ready, willing, and able” to perform the contract found by the jury. Plaintiff challenges Defendant to tell this Court that he is “ready, willing, and able” to do so at *any* reasonable time in the very near future, at *any* reasonable place, and with *any* commercially reasonable form of payment. If he does so, Plaintiff will appear and perform at that time and place. If he does not, his complaints about arbitrariness are meaningless and spurious.

IV. There is nothing inconsistent about tendering performance of a judgment during the pendency of an appeal from that judgment.

Plaintiff specifically advised Defendant that it would withdraw the current appeal if he accepted the tendered performance of judgment. There is nothing inconsistent about this. If Defendant accepts the challenge made in Argument III, *supra*, and the parties close thereon, Plaintiff will withdraw the current appeal. There is nothing inconsistent about this either.

Defendant misstates Plaintiffs’ position to create a non-existent inconsistency. Plaintiff continues to assert there is no binding contract with Defendant, but its tender is not based on the contrary or “repudiating” position that a binding contract does exist. (Ret. at 1, 3-4). Rather, its tender is based on the existence of the judgment on the contract found by the jury.

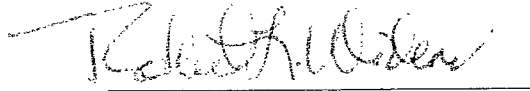
As a party to the judgment, Plaintiff has the absolute right to satisfy it rather than continue the current appeal, even if it believes the judgment is wrong. In like manner, Defendant has the right to accept the tender and forego his appeal, or reject the tender and appeal to establish a different judgment or otherwise reverse it, but the judgment entered on the contract found by the jury must be marked satisfied under either choice by Defendant.⁴

⁴ Defendant seemingly asserts that Plaintiff’s tender is barred by the doctrine of judicial estoppel, because Plaintiff’s appeal is pending before this Court. (Ret. at 2). Judicial estoppel requires a showing *inter alia* of two “totally inconsistent” by the same party, taken in the same proceeding, as part of “an intentional effort to mislead the court.” *Cothran v. Brown*, 592 S.E.2d 629, 632 (S.C. 2004). Defendant concedes there has been no intentional effort to mislead the court (Ret. at 2, n.1), thereby negating any claim for judicial estoppel. Moreover, Plaintiff’s positions are not inconsistent and, in particular, they are not “totally inconsistent.” Rather, they are alternative positions that hinge entirely upon whether Defendant accepts the tender of the judgment he obtained against Plaintiff.

V. Conclusion

For all of the foregoing reasons, and for the reasons set forth in Plaintiff's motion, it is respectfully submitted that this Court should grant the limited remand motion for Plaintiff to make its Rule 60(b)(5), SCRCF motion.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Robert L. Widener", is written over a horizontal line.

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Attorneys for Appellant-Respondent

December ²⁵~~1~~, 2008
Columbia, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
North American Rescue Products, Inc.,	)	Civil Action No. 2007-CP-23-3206
	)	
Plaintiff,	)	
	)	
vs.	)	REVISED AMENDED ANSWER &
	)	COUNTERCLAIM
P.J. Richardson,	)	(Jury Trial Requested)
	)	
Defendant.	)	

2008 JUL 25 P 3 16

Defendant, P.J. Richardson ("Richardson"), answering the First Amended Complaint (treated simply as "Complaint") of Plaintiff would respectfully show as follows:

Unless specifically admitted, all allegations in the Complaint are denied.

FOR A FIRST DEFENSE

1. The allegations contained in Paragraph 1 are admitted.
2. The allegations contained in Paragraph 2 are admitted.
3. In relation to the allegations in Paragraph 3, Richardson admits that he owns a condominium in Greenville County, South Carolina, where he intermittently stays while visiting the area.
4. In relation to the allegations in Paragraph 4, Richardson admits that he owns an option, or otherwise possesses a right to own and/or purchase, shares in Plaintiff, which is headquartered in Greenville County.
5. In relation to the allegations in Paragraph 5, Richardson admits that he has demanded that he be allowed to purchase 7.5% of the stock of Plaintiff at one cent (\$.01) per share. In the alternative, Richardson also admits that he would be entitled to own no less than 7.5% of NARP's stock if the parties' option agreement is deemed unenforceable. To the

Exhibit 1

extent the allegations contained in Paragraph 5 of the Complaint differ from the same, they are denied.

6. In relation to the allegations contained in Paragraph 6, Richardson admits that Plaintiff has wrongfully denied the existence of an agreement between North American Rescue Products, Inc. ("NARP") and Richardson, wherein 7.5% of the stock of Plaintiff would be delivered to Richardson at a price of one cent (\$.01) per share. Alternatively, if the option agreement is deemed unenforceable, Richardson further admits that NARP has wrongfully refused to acknowledge his 7.5% ownership interest in NARP under a prior stock agreement. To the extent the allegations contained in Paragraph 6 differ from the same, they are denied.

7. With respect to the allegations contained in Paragraph 7 of the Complaint, Richardson is informed and believes that no response is necessary. To the extent a response is required, the Paragraph's allegations are denied.

8. The allegations contained in Paragraph 8 of the Complaint are denied.

9. The allegations contained in Paragraph 9 of the Complaint are denied.

10. With respect to the allegations contained in Paragraph 10 of the Complaint, Richardson is informed and believes that no response is necessary. To the extent a response is required, the Paragraph's allegations are denied.

11. With respect to the allegations contained in Paragraph 11 of the Complaint, Richardson admits that he was elected to the board of directors of Plaintiff and was compensated for the same. In relation to the more specific allegations, Richardson craves reference to the applicable business documents that would reflect such information.

12. In response to the allegations contained in Paragraph 12 of the Complaint, Richardson admits that a meeting occurred in Atlanta, Georgia in the fall of 2004 and that legal counsel was present. All remaining allegations in the Paragraph are denied.

13. In response to the allegations contained in Paragraph 13 of the Complaint, Richardson admits that he delivered to Robert Castellani a document entitled, "Agreement of Termination, Settlement and Release." Richardson further admits that the document was consistent with the parties' agreement from Atlanta and was a component part of an overall agreement reached by the parties.

14. In relation to Paragraph 14 of the Complaint, Richardson craves reference to the document cited in the Paragraph. To the extent the Paragraph's allegations differ from the same, they are denied. Richardson would further show that the document cited in the Paragraph was a component part of an overall deal, which he was informed and believed, was reached by the parties.

15. The allegations contained in Paragraph 15 of the Complaint constitute conclusions of law, for which no response is necessary. However, Richardson does acknowledge that, as a member of the Board of Directors of NARP, he owed certain duties and obligations to NARP, which he honored.

16. Richardson denies the allegations contained in Paragraph 16 of the Complaint.

17. Richardson denies the allegations contained in Paragraph 17 of the Complaint.

18. Richardson denies the allegations contained in Paragraph 18 of the Complaint and the Prayer for Relief.

FOR A SECOND DEFENSE
(Failure to State a Claim)

- 19. The preceding paragraphs are incorporated herein by reference.
- 20. Plaintiff's claims for relief fail to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE
(Estoppel)

- 21. The preceding paragraphs are incorporated herein by reference.
- 22. Plaintiff's claims for relief are barred in whole, or in part, by the doctrine of estoppel.

FOR A FOURTH DEFENSE
(Waiver)

- 23. The preceding paragraphs are incorporated herein by reference.
- 24. Plaintiff's claims for relief are barred in whole, or in part, by the doctrine of waiver.

FOR A FIFTH DEFENSE
(Statute of Frauds)

- 25. The preceding paragraphs are incorporated herein by reference.
- 26. Plaintiff's claims for relief are barred in whole, or in part, by the statute of frauds.

FOR A SIXTH DEFENSE
(Ratification)

- 27. The preceding paragraphs are incorporated herein by reference.
- 28. Plaintiff's claims for relief are barred in whole, or in part, by the doctrine of ratification.

FOR A SEVENTH DEFENSE
(Improper Declaratory Relief)

29. The preceding paragraphs are incorporated herein by reference.

30. Under the facts of the instant case, Plaintiff's claims for declaratory relief are improper under the South Carolina Declaratory Judgment Statute as codified at S.C. Code §15-53-10 *et seq.*

IN THE ALTERNATIVE FOR AN EIGHTH DEFENSE
(Mutual Mistake)

31. The preceding paragraphs are incorporated herein by reference.

32. In the alternative, to the extent Plaintiff relies upon the doctrine of mutual mistake, and to the extent a finding of the same is made by the fact-finder in this case, Richardson would be entitled to be restored to his original position of owning no less than 7.5% of the outstanding stock in NARP, because any agreements terminating, superseding, or modifying that ownership interest would be null and void based upon Plaintiff's accepted proof of mutual mistake.

FOR A NINTH DEFENSE
(Statute of Limitations)

33. The preceding paragraphs are incorporated herein by reference.

34. Plaintiff's claim for breach of fiduciary duty is barred by the applicable statute of limitations.

FOR A TENTH DEFENSE
(Laches)

35. The preceding paragraphs are incorporated herein by reference.

36. Plaintiff's claim for breach of fiduciary duty is barred by the doctrine of laches.

FOR AN ELEVENTH DEFENSE & BY WAY OF COUNTERCLAIM
(Breach of Contract & Specific Performance)

37. The preceding paragraphs are incorporated herein by reference.
38. NARP is a Delaware corporation with its principal place of business in Greenville, South Carolina. NARP is owned, in part, by Robert Castellani ("Castellani").
39. Richardson and Castellani first met in 1994. At that time, NARP was in the business of selling stretchers for use by the military.
40. Richardson owned and operated a company named Reeves Manufacturing, Inc. (treated herein as "Reeves").
41. Between 1996 and 2000, Reeves and NARP began doing business with each other.
42. Cross-selling their respective customers became an important aspect of the two companies' business relationship.
43. While each company sold related products, NARP and Reeves often had different customers.
44. Frequently, Reeves' customers would buy from NARP and vice versa.
45. In January of 2000, Richardson (on behalf of Reeves and himself) and Castellani (on behalf of NARP and himself) executed an agreement (treated herein as "2000 Agreement") to formalize their respective companies' business relationship.
46. A copy of the parties' 2000 Agreement is attached hereto as Exhibit A and incorporated herein by reference.

47. Pursuant to the 2000 Agreement, NARP and Reeves agreed to pay each other commissions equal to 25% of the taxable income of their companies for cross-selling each other's respective products. (Exhibit A, p.1, ¶4.)

48. Also according to the 2000 Agreement, Richardson and Castellani each agreed on behalf of Reeves and NARP to issue to each other 25% of the capital stock of their respective companies. (Exhibit A, p. 1, ¶7.) Although this stock was never physically issued and exchanged, it was understood that each held a 25% interest in the other's company.

49. For years the parties operated under the 2000 Agreement and cooperatively assisted each other in growing both companies. Throughout this time, both Richardson and Castellani acknowledged a 25% ownership interest in each other's companies.

50. Several years later, the parties began to rethink the 25% ownership interest in each other's companies.

51. The parties agreed to amend the percentage each owned in the other party's company from a 25% to 7.5% ownership interest. No formal writing was ever executed in relation to the reduction of the parties' ownership interest but both parties agree such a reduction in ownership occurred.

52. Throughout the fall of 2004, the parties discussed treating Richardson's ownership interest as an option to purchase stock. The parties exchanged draft option agreements reflecting their agreement that Richardson owned a 7.5% equity interest in NARP. A copy of these draft option agreements is attached hereto as Exhibit B. The draft option agreements reflected that Richardson would have the right to purchase 7.5% of NARP's stock at \$.01 per share.

53. In October of 2004, the parties met in Atlanta ("Atlanta Meeting") and once again endeavored to restructure their respective ownership interests in each other's companies.

54. Out of this meeting, the parties reached a new agreement. Under the new arrangement, Castellani agreed to release his interest in Reeves Manufacturing ("Reeves") in exchange for 7.5% of the proceeds from the sale of Reeves, which was imminently to occur. Richardson likewise agreed to release his interest in NARP in exchange for an option to purchase 7.5% of the stock in NARP ("Option Agreement"). Each term of the parties' overall agreement was dependent upon the other terms. Under such terms, but only under such terms, Richardson agreed to release his ownership interest in NARP in exchange for an option to purchase 7.5% of NARP's stock for \$.01 per share, as previously discussed by the parties.

55. In November of 2004, the parties executed a companion document entitled: "Termination, Settlement and Release" (treated herein as "Termination Agreement.")

56. A copy of this agreement is attached hereto as Exhibit C and is incorporated herein by reference.

57. Under the terms and conditions of the agreement arising out of the Atlanta Meeting, both parties released each other from obligations owed under the 2000 Agreement as modified. (Exhibit C, p. 1, ¶3.) However, as also contemplated by the parties in Atlanta, the Termination Agreement specifically reserved Richardson's option right to purchase 7.5% of the outstanding NARP stock.

58. For Richardson, the option to purchase 7.5% of the outstanding NARP stock for one cent (\$.01) per share constituted a material term of the overall agreement reached by the parties as arising out of the Atlanta meeting.

59. Richardson would not have executed the Termination Agreement if NARP had not promised to execute the Option Agreement (or some other mutually acceptable means of preserving his 7.5% interest in NARP in exchange for 7.5% of the proceeds of the Reeves sale) and if he did not believe the parties otherwise had a binding agreement embracing all component parts of the overall agreement.

60. NARP and Castellani now contend that Richardson has neither a 7.5% ownership interest in NARP nor an option to purchase 7.5% of NARP's outstanding stock.

61. Richardson has made a demand to purchase 7.5% of NARP's outstanding stock at one cent (\$.01) per share, as previously agreed upon by the parties.

62. The parties' overall agreement arising out of the Atlanta meeting, including Richardson's Option Agreement, constitute valid and binding terms of a contract between the parties.

63. By and through its attorney, NARP has refused to honor Richardson's right to purchase 7.5% of NARP's outstanding stock for one cent (\$.01) per share. However, NARP simultaneously contends (mistakenly) that Richardson has released his interest in NARP.

64. NARP has, therefore, breached the overall agreement including the Option Agreement with Richardson.

65. Through the Option Agreement, Richardson has a right to own 7.5% of the outstanding stock in NARP; such stock constitutes a unique property interest for which money damages may not adequately compensate Richardson.

66. Richardson is entitled to specific performance of the overall agreement and the Option Contract along with money damages accruing during the interim period during which Plaintiff has failed to perform.

67. Alternatively, Richardson is entitled to recoup money damages from NARP in an amount equivalent to the value of his 7.5% option interest of the NARP stock along with any consequential or interim damages.

68. NARP has taken the position that the Option Agreement and the remaining documents memorializing the balance of the components of the overall agreement fail to constitute enforceable agreements. If true, Richardson would revert to his prior ownership interest of 7.5% of NARP. Thus, Richardson is alternatively entitled to specific performance of his prior agreement with NARP wherein he possessed a 7.5% ownership interest of the NARP stock.

69. Alternatively, Richardson would be entitled to money damages in an amount equal to no less than 7.5% of the NARP stock as determined by a jury along with all payments he would have been entitled to but did not receive had the parties not attempted to terminate the 2000 Agreement in the first instance.

FOR A TENTH DEFENSE & BY WAY OF COUNTERCLAIM
(Promissory Estoppel)

70. The preceding paragraphs are incorporated herein by reference.

71. By and through Castellani, Plaintiff made an unambiguous promise that Richardson possessed a 7.5% ownership interest in NARP.

72. By and through Castellani, Plaintiff further made an unambiguous promise to Richardson that he would be able to purchase 7.5% of NARP's stock for one cent (\$.01) per share.

73. Richardson reasonably relied upon Plaintiff and/or Castellani's promise (on Plaintiff's behalf) with respect to his ownership interest in NARP.

74. Richardson reasonably relied upon Plaintiff and/or Castellani's promise (on Plaintiff's behalf) with respect to his ability to purchase 7.5% of NARP's outstanding stock.

75. Richardson's reliance on Plaintiff's/Castellani's promises in both regards was expected and foreseeable by Plaintiff and Castellani.

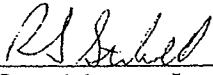
76. Richardson has sustained financial injury as a result of his reliance upon Castellani's/Plaintiff's unambiguous promises.

77. Accordingly, Richardson is entitled to recover damages in an amount that would restore him to the position he would have attained had Plaintiff and Castellani fulfilled their promise.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendant prays
for the following:

- A. A dismissal of Plaintiff's Complaint with prejudice;
- B. The relief of specific performance as requested herein;
- C. Alternatively, damages in an amount determined by the jury;
- D. All other relief this Court deems just and proper.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

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Attorneys for P.J. Richardson

Greenville, South Carolina

July 25, 2008

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2007-CP-23-3206

North American Rescue Products, Inc., ... Appellant/
Respondent,

v.

P.J. Richardson, ... Respondent/
Appellant.

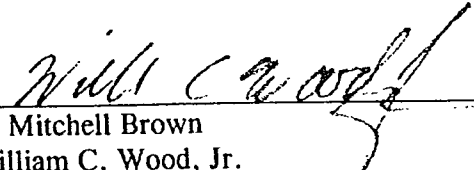
NOTICE OF APPEAL

P.J. Richardson appeals the judgment of the Honorable Steven H. John dated August 29, 2008. Respondent-Appellant received a notice of appeal from Appellant-Respondent on October 6, 2008.

NELSON MULLINS RILEY & SCARBOROUGH LLP

October 13, 2008

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 07-CP-23-3206

RECEIVED

OCT 09 2008

SC Court of Appeals

North American Rescue Products, Inc., ...Appellant,

v.

P. J. Richardson, ...Respondent.

NOTICE OF APPEAL

YOU WILL PLEASE TAKE NOTICE that North American Rescue Products, Inc. hereby appeals from the Jury Verdict and Order entering Judgment of the Honorable Steven H. John signed on 29th day of August, 2008 and filed on September 2, 2008. The Appellant received written notice of the entry of on September 3, 2008.

Robert L. Widener by [signature]
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October 3, 2008
Columbia, South Carolina

ATTORNEYS FOR APPELLANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
North American Rescue Products, Inc.,	)	Civil Action No. 2007-CP-23-3206
	)	
	)	
	)	
	)	
vs.	)	
	)	
P.J. Richardson,	)	PLAINTIFF'S MOTION TO ALTER
	)	OR AMEND THE JUDGMENT
	)	
Defendant.	)	
	)	
	)	

Plaintiff, North American Rescue Products, Inc. ("NARP"), moves this Honorable Court pursuant to Rule 52 and Rule 59, SCRCP, to alter or amend the Order granting specific performance to Defendant, P.J. Richardson ("Richardson") dated August 29, 2008. Plaintiff received written notice of the entry of this Order on September 3, 2008. A copy of the Order is attached as Exhibit A.

The grounds for this motion are that Richardson is not entitled to relief where the jury did not find that a contract had been breached, Richardson's conduct was inequitable, and the Court did not find that Richardson was ready, willing, and able to perform the contract as found by the jury. As Richardson is not entitled to specific performance, judgment should be entered in accordance with the jury verdict.

In order to grant a remedy, a court must first find a corresponding wrong. *See, Page v. Winter*, 126 S.E.2d 570, 574 (S.C. 1962) (Bussey, J. dissenting). In the present case, the jury did not find the existence of a wrong to be remedied. The jury essentially held that no contract had been breached. Therefore, no remedy should have been awarded to Richardson.

The South Carolina Supreme Court recognizes two alternative remedies to a breach of contract: the legal remedy of damages and the equitable remedy of specific performance. *McMaster v. Strickland*, 472 S.E.2d 623 (S.C. 1996). The grant of either remedy, however, must be predicated on a finding that the contract has been breached. "In order to compel specific performance, a court of equity must find (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." *Ingram v. Kasey's Assoc.*, 531 S.E.2d 287, 291 (S.C. 2000) (internal citations omitted).

The jury's findings do not support an order compelling specific performance. First and foremost, the jury did not find that that NARP had breached a contract. ("Specific performance should be granted only if there is no adequate remedy at law and specific performance is equitable between the parties." *Ingram*, 531 S.E.2d at 291.) Accordingly, there is no basis for granting Richardson relief for breach of contract. The jury simply found the existence of a contract giving Richardson the right to receive 7.5 percent of NARP's capital stock for \$2,936,300.00. The jury did not find and the evidence does not support the conclusion that NARP refused to allow Richardson to purchase 7.5 percent of NARP's stock for \$2,936,300.00. The jury did not even find that Richardson ever attempted to purchase 7.5 percent of NARP's stock for \$2,936,300.00.

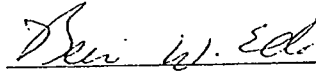
Also, the evidence was clear that Richardson's conduct in this matter was inequitable in failing to disclose to NARP his belief that he had a contractual right to purchase 7.5 percent of the stock of NARP that was clearly at odds with what NARP believed and in seeking to enforce a contract that did not exist.

Additionally, neither the jury nor the court found that Richardson "has been and remains able and willing to perform his...part of the contract," as is required by South Carolina law. *Ingram*, 531 S.E.2d at 291. The jury did not find that Richardson had tendered or was able and willing to pay \$2,936,300.00 for 7.5 percent of the stock of NARP. Thus, Richardson is not entitled to an award of specific performance.

For the above reasons, NARP respectfully requests this Court to amend its Order compelling specific performance and enter judgment in accordance with the jury verdict.

Respectfully submitted

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Attorney for Plaintiff

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September 15, 2008

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

North American Rescue Products, Inc.) A 9:36
SEP 23 2008) Civil Action No. 2007-CP-23-3206

Plaintiff,

vs.

P.J. Richardson,

Defendant.

**NOTICE OF WITHDRAWAL OF
PLAINTIFF'S MOTION TO ALTER
OR AMEND THE JUDGMENT**

Plaintiff, North American Rescue Products, Inc., hereby withdraws its Motion to Alter or Amend the Judgment filed September 15, 2008.

Respectfully submitted

MCNAIR LAW FIRM, P.A.

Bernie W. Ellis
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Attorney for Plaintiff

Greenville, South Carolina
September 23, 2008

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Civil Action No. 2007-CP-23-3206

North American Rescue Products,)
Inc.,)

Plaintiff,)

FIRST AMENDED COMPLAINT
(Declaratory Judgment and
Equitable Relief)

vs.)

P. J. Richardson,)

Defendant.)

The Plaintiff, complaining of the Defendant would allege and show as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment pursuant to S.C. Code Ann. § 15-53-10, et seq. and for equitable relief.

JURISDICTION

2. The Plaintiff is a South Carolina corporation with headquarters in Greenville, South Carolina.
3. The Defendant maintains a residence in South Carolina.
4. Because the subject of this action concerns whether Defendant has a right to purchase shares of stock in Plaintiff which is headquartered in Greenville County, South Carolina, jurisdiction and venue are proper in this Court.

FACTS

5. Defendant has demanded of Plaintiff that he be allowed to purchase 7.5% of the stock of the Plaintiff at \$.01 per share pursuant to an alleged option agreement between Defendant and Plaintiff, or, in the alternative, that if no such option exists, that Defendant be

recognized as the owner of stock of NARP pursuant to a prior agreement among NARP, Reeves Manufacturing, Inc., Robert Castellani, and Defendant.

6. Plaintiff denies that such an option agreement exists, that Defendant has any right to own any of the stock of NARP, or that Defendant has any rights whatsoever with respect to NARP; therefore, an actual case or controversy exists between the parties because Plaintiff needs a determination of whether it has such an obligation as alleged by Defendant.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)**

7. The foregoing paragraphs of this Complaint are incorporated herein.

8. The demand made by Defendant to Plaintiff to purchase or otherwise own an interest in the capital stock of Plaintiff is improper because no right to do so exists.

9. Based upon the foregoing, the Plaintiff seeks a declaratory judgment that Defendant is not entitled to purchase any stock in Plaintiff.

**FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)**

10. The foregoing paragraphs of the Complaint are incorporated herein.

11. In September 2004, Defendant was elected to the board of directors of Plaintiff, and was compensated \$50,000.00 for his service as such.

12. In a meeting held at Atlanta, Georgia in October 2004, Defendant with legal counsel and Plaintiff with legal counsel held discussions regarding Defendant's acquisition of a 7.5% interest in Plaintiff, but no agreement was reached other than that the Defendant would release any claim he had to ownership in Plaintiff, and Robert A. Castellani, president and majority stockholder of Plaintiff, would release any claim to ownership in Defendant's company, Reeves Manufacturing, Inc.

13. On or before November 14, 2004, while serving on Plaintiff's board, Defendant proffered a document to Mr. Castellani titled "Agreement of Termination, Settlement and Release" ("Release"), which Defendant represented was consistent with the agreements of the October 2004 meeting.

14. The provisions of the Release at paragraphs 3 and 4 thereof refer to a separate option for Defendant to purchase 7.5% of the stock of Plaintiff pursuant to the terms of a "separate Option Agreement dated 15 Dec, 2004."

15. As a member of the board of directors of Plaintiff, Defendant owed duties to Plaintiff and its shareholders in accordance with applicable law and with Plaintiff's articles of incorporation including a duty of loyalty and a duty to avoid realizing improper benefits from his relationship to Plaintiff.

16. In breach of those duties, Defendant sought to obtain for himself an option to acquire the stock of NARP without regard to whether the consideration for that stock was adequate and without regard to whether the issuance of such an option was in the best interests of NARP.

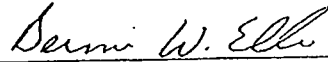
17. Though Defendant's claim to be entitled to acquire or otherwise own stock in Plaintiff is invalid because no option was finally entered into, his attempt to do so in a manner detrimental to the best interests of NARP was a breach of his fiduciary duty.

18. Based upon Defendant's breach of his fiduciary duty, it would be inequitable to allow him to retain the \$50,000.00 fee he was paid, and he should be required to disgorge it.

WHEREFORE, having set forth its claim for declaratory and equitable relief, the Plaintiff prays that the relief sought herein be granted, that the Plaintiff be awarded its costs in bringing

this action, for pre-judgment interest, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,



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Attorney for the Plaintiff

Greenville, SC
June 27, 2008

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Civil Action No.

North American Rescue Products,
Inc.,)

2007-CP-23- 3206

Plaintiff,)

COMPLAINT
(Declaratory Judgment)
(Non-Jury)

vs.)

P. J. Richardson,
Defendant.)

The Plaintiff, complaining of the Defendant would allege and show as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment pursuant to S.C. Code Ann. § 15-53-10, et seq.

JURISDICTION

2. The Plaintiff is a Delaware corporation with headquarters in Greenville, SC.
3. The Defendant maintains a residence in Greenville County, South Carolina.
4. Because the subject of this action concerns whether Defendant has a right to purchase shares of stock in Plaintiff which is headquartered in Greenville County, SC, jurisdiction and venue are proper in this Court.

FACTS

5. Defendant has demanded of Plaintiff that he be allowed to purchase 7.5% of the stock of the Plaintiff at \$.01 per share pursuant to an alleged option agreement between Defendant and Plaintiff.

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6. Plaintiff denies that such an option agreement exists; therefore, an actual case or controversy exists between the parties because Plaintiff needs a determination of whether it has such an obligation as alleged by Defendant.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)**

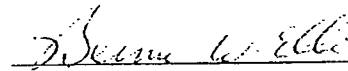
7. The foregoing paragraphs of this Complaint are incorporated herein.

8. The demand made by Defendant to Plaintiff to purchase 7.5% of the stock of Plaintiff is improper because no right to do so exists.

9. Based upon the foregoing, the Plaintiff seeks a declaratory judgment that Defendant is not entitled to purchase any stock in Plaintiff.

WHEREFORE, having set forth its claim for declaratory relief, the Plaintiff prays that the relief sought herein be granted, that the Plaintiff be awarded his costs in bringing this action and for such other and further relief as this Court deems just and proper.

Respectfully submitted,



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Attorneys for the Plaintiff

Greenville, SC
May 17, 2007

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)
2007 AUG 13 11:54 AM JUDICIAL CIRCUIT

North American Rescue Products, Inc.,) Civil Action No. 2007-CP-23-3206

Plaintiff,)
FILED - CLERK OF COURT
GREENVILLE CO. S.C.
2007 AUG 13 11:54 AM

vs.)

ANSWER & COUNTERCLAIM

(Jury Trial Requested)

P.J. Richardson,)

Defendant.)

Defendant, P.J. Richardson ("Richardson"), answering the Complaint of Plaintiff would respectfully show as follows:

Unless specifically admitted, all allegations in the Complaint are denied.

FOR A FIRST DEFENSE

1. The allegations contained in Paragraph 1 are admitted.
2. The allegations contained in Paragraph 2 are admitted.
3. In relation to the allegations in Paragraph 3, Richardson admits that he owns a condominium in Greenville County, South Carolina, where he intermittently stays while visiting the area.
4. In relation to the allegations in Paragraph 4, Richardson admits that he owns an option, or otherwise possesses a right to own and/or purchase, shares in Plaintiff, which is headquartered in Greenville County.
5. In relation to the allegations in Paragraph 5, Richardson admits that he has demanded that he be allowed to purchase 7.5% of the stock of Plaintiff at one cent (\$.01) per share, pursuant to a binding agreement between the parties.

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6. In relation the allegations contained in Paragraph 6, Richardson admits that Plaintiff has wrongfully denied the existence of an agreement between North American Rescue Products, Inc. ("NARP") and Richardson, wherein 7.5% of the stock of Plaintiff would be delivered to Richardson at a price of one cent (\$.01) per share.

7. With respect to the allegations contained in Paragraph 7 of the Complaint, Richardson is informed and believes that no response is necessary. To the extent a response is required, the Paragraph's allegations are denied.

8. The allegations contained in Paragraph 8 of the Complaint are denied.

9. The allegations contained in Paragraph 9 of the Complaint and the Prayer for Relief are denied.

FOR A SECOND DEFENSE
(Failure to State a Claim)

10. The preceding paragraphs are incorporated herein by reference.

11. Plaintiff's claims for declaratory relief fail to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE
(Estoppel)

12. The preceding paragraphs are incorporated herein by reference.

13. Plaintiff's claims for declaratory relief are barred in whole, or in part, by the doctrine of estoppel.

FOR A FOURTH DEFENSE
(Waiver)

14. The preceding paragraphs are incorporated herein by reference.

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15. Plaintiff's claims for declaratory relief are barred in whole, or in part, by the doctrine of waiver.

FOR A FIFTH DEFENSE
(Statute of Frauds)

16. The preceding paragraphs are incorporated herein by reference.

17. Plaintiff's claims for declaratory relief are barred in whole, or in part, by the statute of frauds.

FOR A SIXTH DEFENSE
(Ratification)

18. The preceding paragraphs are incorporated herein by reference.

19. Plaintiff's claims for declaratory relief are barred in whole, or in part, by the doctrine of ratification.

FOR A SEVENTH DEFENSE
(Improper Declaratory Relief)

20. The preceding paragraphs are incorporated herein by reference.

21. Under the facts of the instant case, Plaintiff's claims for declaratory relief are improper under the South Carolina Declaratory Judgment Statute as codified at S.C. Code §15-53-10 *et seq.*

IN THE ALTERNATIVE FOR AN EIGHTH DEFENSE
(Mutual Mistake)

22. The preceding paragraphs are incorporated herein by reference.

23. In the alternative, to the extent Plaintiff relies upon the doctrine of mutual mistake, and to the extent a finding of the same is made by the fact-finder in this case, Richardson would be entitled to be restored to his original position of owning 25% of the outstanding stock in NARP, because any agreements terminating, superseding, or modifying

that ownership interest would be null and void based upon Plaintiff's accepted proof of mutual mistake.

FOR A NINTH DEFENSE & BY WAY OF COUNTERCLAIM
(Breach of Contract & Specific Performance)

24. The preceding paragraphs are incorporated herein by reference.

25. NARP is a Delaware corporation with its principal place of business in Greenville, South Carolina. NARP is owned, in part, by Robert Castellani ("Castellani").

26. Richardson and Castellani first met in 1994. At that time, NARP was in the business of selling stretchers for use by the military.

27. Richardson owned and operated a company named Reeves Manufacturing, Inc. (later renamed as the Reeves Group, Inc. treated collectively herein as "Reeves").

28. Between 1996 and 2000, Reeves and NARP began doing business with each other.

29. Cross-selling their respective customers became an important aspect of the two companies' business relationship.

30. While each company sold related products, NARP and Reeves frequently had different customers.

31. Frequently, Reeves' customers would buy from NARP and vice versa.

32. In January of 2000, Richardson (on behalf of Reeves and himself) and Castellani (on behalf of NARP and himself) executed an agreement (treated herein as "2000 Agreement") to formalize their respective companies' business relationship.

33. A copy of the parties' 2000 Agreement is attached hereto as Exhibit A and incorporated herein by reference.

34. Pursuant to the 2000 Agreement, NARP and Reeves agreed to pay each other commissions equal to 25% of the taxable income of their companies for cross-selling each other's respective products. (Exhibit A, p.1, ¶4.)

35. Also according to the 2000 Agreement, Richardson and Castellani each agreed on behalf of Reeves and NARP to issue to each other 25% of the capital stock of their respective companies. (Exhibit A, p. 1, ¶7.) Although this stock was never physically issued and exchanged, it was understood that each held a 25% interest in the other's company.

36. For years the parties operated under the 2000 Agreement and cooperatively assisted each other in growing both companies.

37. Some time in 2004, the parties began to rethink the 25% share of capital stock in each other's companies.

38. In the Fall of 2004, the parties agreed to amend the percentage each owned in the other party's company from 25% to 7.5% of the common capital stock.

39. The parties reduced the 7.5% interest to writing in a "Stock Option Agreement" (treated herein as "Option Agreement") dated October 4, 2004.

40. The Option Agreement is attached hereto as Exhibit B and incorporated herein by reference.

41. As provided for in the Option Agreement, Richardson obtained an option to purchase 7.5% of the common capital stock in NARP for a price of one cent (\$.01) per share. (Exhibit B, p.1, ¶2.2.)

42. The Option Agreement further stated: "Optionee has been elected as a member of the board of directors of NARP. Because of his experience and skills it is anticipated that

he will make valuable contributions to the management of NARP in the best interest of NARP and its stockholders." (Exhibit B, p. 1, Recital A.)

43. Pursuant to Article 2.1 of the Option Agreement, the term of the option lasted for a period of ten (10) years from the date the agreement was executed. (Exhibit B, p. 1, Art. 2.2.)

44. In November of 2004, the parties executed a companion agreement entitled: "Termination, Settlement and Release" (treated herein as "Termination Agreement.")

45. A copy of this agreement is attached hereto as Exhibit C and is incorporated herein by reference.

46. Under the terms and conditions of the Termination Agreement, both parties released each other from obligations owed under the 2000 Agreement. (Exhibit C, p. 1, ¶3.)

47. However, the Termination Agreement specifically reserved Richardson's option right to purchase 7.5% of the outstanding NARP stock.

48. Richardson's option rights, as conferred by the Option Agreement, were kept fully intact under the Termination Agreement.

49. The option to purchase 7.5% of the outstanding NARP stock for one cent (\$.01) per share constituted a material term of the Termination Agreement for Richardson.

50. Richardson would not have executed the Termination Agreement if it did not specifically contain this provision.

51. Richardson has made a demand to purchase 7.5% of NARP's outstanding stock at one cent (\$.01) per share, as previously agreed upon by the parties.

52. Richardson's Option Agreement from October of 2004 constitutes a valid and binding contract between the parties.

53. By and through its attorney, NARP has refused to honor Richardson's right to purchase 7.5% of NARP's outstanding stock for one cent (\$.01) per share. NARP has, therefore, breached the Option Agreement with Richardson.

54. Through the Option Agreement, Richardson has a right to own 7.5% of the outstanding stock in NARP; such stock constitutes a unique property interest for which money damages may not adequately compensate Richardson.

55. Richardson is entitled to specific performance of the Option Contract along with money damages accruing during the interim period during which Plaintiff has failed to perform.

56. Alternatively, Richardson is entitled to recoup money damages from NARP in an amount equivalent to the value of 7.5% of the NARP stock along with any consequential or interim damages.

57. Alternatively, if the Option Agreement and the Termination Agreement are deemed unenforceable due to a finding of mutual mistake of the parties or other legal grounds, Richardson is entitled to be restored to his original ownership position in NARP under the 2000 Agreement. Under such circumstances, Defendant is entitled to specific performance of the 2000 Agreement with Plaintiff returning to Richardson his 25% interest in the outstanding shares of NARP plus all payments he was entitled to but did not receive from the date of the attempted but failed termination/modification of the 2000 Agreement.

58. Alternatively, Richardson would be entitled to money damages in an amount equal to 25% of the NARP stock as determined by a jury along with all payments he would have been entitled to but did not receive had the parties not attempted to terminate the 2000 Agreement in the first instance.

FOR A TENTH DEFENSE & BY WAY OF COUNTERCLAIM
(Promissory Estoppel)

59. The preceding paragraphs are incorporated herein by reference.

60. By and through Castellani, Plaintiff made an unambiguous promise to Richardson that he would be able to purchase 7.5% of NARP's stock for one cent (\$.01) per share.

61. Richardson reasonably relied upon Plaintiff and/or Castellani's promise with respect to his ability to purchase 7.5% of NARP's outstanding stock.

62. Richardson's reliance on Plaintiff's/Castellani's promise was expected and foreseeable by Plaintiff and Castellani.

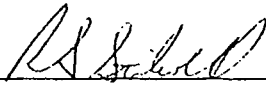
63. Richardson has sustained financial injury as a result of his reliance upon Castellani's/Plaintiff's unambiguous promise.

64. Accordingly, Richardson is entitled to recover damages in an amount that would restore him to the position he would have attained had Plaintiff and Castellani fulfilled their promise.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendant prays for the following:

- A. A dismissal of Plaintiff's Complaint with prejudice;
- B. The relief of specific performance as requested herein;
- C. Alternatively, damages in an amount determined by the jury;
- D. All other relief this Court deems just and proper.

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Attorneys for P.J. Richardson

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Aug 17, 2007

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0017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

NORTH AMERICAN RESCUE PRODUCTS)
INC.

PLAINTIFF)

vs.

P.J. RICHARDSON

DEFENDANT)

COURT OF COMMON PLEAS
2007-CP-23-3206

ORIGINAL

VOLUMN I
TRANSCRIPT OF RECORD

August 25-29, 2008
Greenville, South Carolina

B E F O R E:

THE HONORABLE STEVEN H. JOHN, Judge; and a jury.

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

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Attorneys for the Plaintiff

RIVERS STILLWELL, ESQ.
LANE DAVIS, ESQ.
DOWSE BRAD RUSTIN, IV, ESQ.
Attorneys for the Defendant

APRIL HERRON
Official Court Reporter

1 point, I believe it's been understood that there was no
2 option entered into on the date of December 15th, 2004.
3 No option agreement was executed that had that date.
4 Furthermore, I think, Your Honor, has noted, 15 December,
5 2004 is after the date that this contract was entered
6 into. So this is postdated. The position of the
7 Defendant in this case is, you can't -- you can't see this
8 contract in isolation. You have to see it as part of this
9 oral agreement that -- you have to see it and then you
10 have to see it as part of -- you have to see it as part of
11 this larger contract.

12 Your Honor, I would bring to the Court's attention,
13 one thing in the case that's real clear, number six, the
14 entire agreement. This agreement sets forth the entire
15 agreement and understanding of the parties relating to the
16 subject matter contained herein and merges all prior
17 discussions and agreements, both oral and written, between
18 the parties. The contract that Mr. Richardson drafted --
19 his lawyer drafted and he asked us to sign says there are
20 no other agreements. And yet, they want to introduce that
21 this was part of a larger agreement.

22 Your Honor, I think that the proper resolution of
23 this particular issue is this, this is a clear agreement
24 that terminated the 2000 outline. It settled all claims
25 under the 2000 outline. And if they have an option dated

1 December 15th, 2004, or can prove that that's what it
2 refers to, this agreement doesn't invalidate it. This
3 agreement does not say that the validity of this agreement
4 is contingent upon the existence of an option. It doesn't
5 say that. This merely says it shall not release that
6 certain separate option agreement.

7 So under this agreement, if we come forward and we
8 sued him for -- claiming he owes us money, well, you pull
9 out this and you say no, that's released, can't do that.
10 If he comes forward with an option dated December 15th,
11 2004, you look at this and you say, well, that's not
12 released. That doesn't mean you still don't have to prove
13 your option. You still have to prove your option. This
14 option agreement may be invalid for other reasons. If
15 there's an option agreement, it may be invalid for other
16 reasons. All this says is this agreement, we want to
17 terminate it. It doesn't say that it has to be valid.
18 And what you can see from the handwriting is it was
19 understood that the parties had not yet entered into it.

20 Your Honor, I think there's several cases that play
21 into this. Your Honor, in Crafton vs. Brown, it was a
22 guarantee, the borrower in that case made exactly the same
23 arguments that the Defendant is making here about the
24 written guarantee being a part of a larger agreement. You
25 can't just look at the guarantee, this is part of an

1 overall agreement to lend 20 to 25 million dollars. And
2 what the Court of Appeals said is this is precisely the
3 evidence, the parole evidence rule seeks to bar. That's
4 what you can't put in. The contract he presented to us
5 says there are no other agreements.

6 Your Honor, so the question is well, what about his
7 ability -- what about interpreting this otherwise? Your
8 Honor, in the case of McMaster vs. Strickland -- and I can
9 hand up a highlighted copy to the Court. Your Honor,
10 McMaster vs. Strickland Court of Appeals case in which he
11 purchased some property, bought some land intending to use
12 it for homesites. Once he entered into the contract, he
13 was not able to use the property for homesites because he
14 couldn't get wetlands permits. So the trial court said
15 well, the seller's responsibility was to deliver good and
16 marketable title to the property. And the -- so the trial
17 court had held that the seller didn't deliver good and
18 marketable title.

19 And what the Court of Appeals said is the trial judge
20 confused the concepts of title and marketability with use
21 and value. They went on to say this simply boils down to
22 a case of the purchaser taking a calculated business risk.
23 The fact that he is dissatisfied with the results will not
24 excuse him from the contract without some condition stated
25 in the contract allowing his reputation of the same. I

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1 note again, will not excuse him from the contract without
2 some condition stated in the contract allowing his
3 reputation of the same. The record is clear that all
4 parties, including purchaser, were aware of the wetland
5 nature of the property and successfully obtaining the
6 permit to build the property. Although, the purchaser
7 believed he would be successful obtaining the necessary
8 permits, no exception is placed in the contract.

9 Your Honor, if you go to their most recently amended
10 answer, I think what they allege and I believe it's in
11 paragraph 59 of their answer -- of their revised amended
12 answer and counterclaim, excuse me, they allege Richardson
13 would not have executed the termination agreement if NARP
14 had not promised to execute a document that some of the
15 mutually acceptable means in preserving his 7 1/2 percent
16 interest in NARP in exchange for 7 1/2 percent of the
17 proceeds of the Reeves sale. And he didn't believe the
18 parties had a binding agreement.

19 Your Honor, I think that the reason McMaster vs.
20 Strickland is so on point in this case is that what the
21 Defendant is trying to do is to confuse the terms shall
22 not release that separate option agreement dated
23 December 15th, 2004, which is contingent upon the
24 existence of an option agreement. As we say, Your Honor,
25 what happens to this agreement if an option is entered

1 this contract. This is exactly why Mr. Richardson when he
2 asked us to sign it at a time that he knew there was not a
3 disagreement to this option agreement. The question is,
4 is there an option agreement? Because I don't think there
5 is in any way a valid reading of this contract to say that
6 this contract is not valid unless there is an option
7 agreement. That's simply not what the words say.

8 Well, let's look at the question we had in our motion
9 in limine, can you prove the existence of an option? Your
10 Honor and I won't belabor that because it's in writing in
11 our motion and explains. The answer to that, Your Honor,
12 is no. And the reason is NARP is a Delaware Corporation
13 and under the Internal Affairs Doctrine, which is
14 statutorily adopted in South Carolina, and I think it's
15 the rule pretty much everywhere, Delaware law controls the
16 existence of stock options and how they're carried out.
17 That's a matter of Delaware corporate law. Under Delaware
18 corporate law, a stock options has to meet certain
19 requirements and has to be done in a certain way. It has
20 to be in writing. The terms have to be set forth in the
21 certificate of incorporation or in a resolution, which has
22 to be adopted by -- it has to be set forth or it has to be
23 incorporated by the record. It's a very, very specific,
24 difficult thing to do.

25 Your Honor, as much as these guys are friends of

1 A Yes.

2 Q Okay. And at that point, P. J. was already looking
3 at selling his company, wasn't he?

4 A Yes.

5 Q Okay. And you weren't interested in selling yours,
6 were you?

7 A No.

8 Q Were you interested -- you were interested, weren't
9 you, in reducing P. J.'s ownership share in NARP because
10 you wanted to keep owning NARP?

11 A Well, what was clear is he was backing out of the
12 deal. Not backing out, that's the wrong way to phrase it.
13 They were looking at retiring and 25 percent was a big
14 slug to leave with me. As I had to make this transition
15 more of a traditional type of business. So I didn't want
16 to, as I started bringing employees on, have that much
17 stock owned by someone who didn't have day-to-day dealing
18 in my company. I just didn't have general investors come
19 and give me money. So it was a mutual agreement.

20 Q Okay. A mutual agreement to reduce the 7.5 percent,
21 right?

22 A Correct.

23 Q And part of your emphasis behind that was because you
24 wanted to keep owning the company, right?

25 A Yes.

1 Q Okay.

2 A But just so you know, I would have owned the company
3 with 7 1/2 percent too.

4 Q Right, you just owned less of it?

5 A I would have owned less of it.

6 Q So y'all had mutually agreeable goals in the
7 Charleston meeting?

8 A Correct.

9 Q And it ended up being you'd reduce the 25 percent
10 agreement to 7 1/2, right?

11 A From 25 to 7 1/2, right.

12 Q Okay, 25 to 7 1/2?

13 A Correct.

14 Q Like for like?

15 A Correct.

16 Q And y'all did that deal and then you hugged and
17 kissed and sealed the deal?

18 A Correct.

19 Q And that wasn't just a business meeting, it was a
20 personal meeting, wasn't it?

21 A It was a time to get together and enjoy Charleston
22 and stuff.

23 Q I mean, what I'm saying is it wasn't just money and
24 corporations, there were feelings involved, too, weren't
25 there?

1 correct?

2 A Correct.

3 Q And where it says me, 91.25 percent, that's your
4 share of the company, right?

5 A Yes.

6 Q And the P. J., 7.5 percent, is that P. J.'s
7 percentage of the company?

8 A P. J. didn't own the company at that point. The 7.5
9 percent, again, is me treating him as an actual
10 shareholder. If I shared -- I'm assuming this was the
11 same just like when it was 25. All that number means is
12 if I take \$700,000 out of the company, this could have
13 been bonus, taxes or whatever, the disbursement was just
14 like he was an owner. Again, I was treating him like my
15 brother. That's all I'm doing.

16 Q Okay. And this --

17 A That doesn't say he owns 7 1/2 percent. That means
18 if I'm going to disburse and I did that he would get 7 1/2
19 percent of the proceeds.

20 Q And the 7.5 percent is what y'all agreed to in
21 Charleston, correct?

22 A We agreed to this in Charleston.

23 Q Now, did I hear you say that the Dobson deal, the
24 perfect deal in your words, was a simple matter?

25 A Again, the context, it wasn't the perfect deal from

1 the parties' agreement was dependent upon the other terms.
2 Only under separate such terms would Richardson agree to
3 release his ownership interest in NARP in exchange for an
4 option to purchase 7 1/2 percent of NARP stock for a penny
5 a share.

6 Then it goes on to say that the parties memorialized
7 the 7.5 interest contemplated by this arrangement in a
8 document called a Stock Option Agreement herein dated
9 October 4th, 2004. Once again, what's set forth in this
10 Court document is not correct, is not true, is it, because
11 there was not an option agreement dated October 4th, 2004?

12 A Well, what you're seeing here is discussions that
13 took place at the Atlanta meeting, which we talked about
14 numerous times today. And what we discussed was and what
15 we all left that meeting with was an agreement that we
16 were going to strike -- or, at least, work down on a plan,
17 the two attorneys, Stodghill and Manning, and they would
18 develop a three-part plan to get this done. One part of
19 it was the termination and settlement agreement. The
20 second part of it was the option agreement. And the third
21 part was the payment of the proceeds of Reeves into some
22 charity.

23 Q What I'm focusing on here is that this document, it
24 says you all actually reached a meeting in Atlanta -- let
25 me go back and be sure what it says. This document says

1 Richardson -- during this meeting, Richardson believed
2 that he had reached a new agreement with Castellani and
3 NARP and that an option agreement had been agreed to. And
4 it says the stock option agreement dated October 4th,
5 2004, right?

6 A That's correct.

7 Q So what's in this document, this pleading sets forth
8 your claim, that's actually not true either, is it?

9 A Well, it's not true, I guess, as far as the fact that
10 the stock option agreement was never completely executed.
11 But it is true from the standpoint that we left there with
12 an agreement that it would take three things that would
13 have to be done to make this work. One was the release
14 and termination and settlement agreement. One was the
15 stock option for 7 1/2 percent of the company at one cent
16 a share for ten years and the third was the payment of
17 this money to a charity. And the two attorneys left, as
18 Bob and I did, and they were to work on it.

19 Q They were going to work on it after the Atlanta
20 meeting?

21 A That's correct. But we agreed that's what we wanted
22 to do?

23 Q That's what you wanted to do?

24 A That's correct.

25 Q But I'm just clarifying in this document where I

1 Bob have both testified about this, you all never actually
2 finally entered into an option agreement, right?

3 A That is correct.

4 Q Okay. So, sir, isn't it true that the basis of your
5 belief that you had a right to acquire 7 1/2 percent of
6 the stock of NARP came only from the 2000 agreement, is
7 that correct?

8 A Certainly, I can go back to the 2000 agreement. The
9 2000 agreement clearly states that was a 25 percent
10 ownership. Bob and I both know, based on subsequent needs
11 in our agreement, that it was no longer 25 percent, but
12 was, in fact, 7 1/2 percent.

13 MR. STILLWELL: Your Honor, can we do something with
14 the microphone.

15 THE COURT: Just move just a little bit further away
16 and speak up.

17 THE WITNESS: Is that better?

18 BY MR. ELLIS:

19 Q Yes, sir. Now, just to be sure, we all agree that
20 the 2000 outline that y'all entered into, we all agree
21 that you all knew the percentage of that went from 25
22 percent to 7 1/2 percent, right?

23 A Yes, that's correct.

24 Q And what you're seeking from this Court is an
25 enforcement of a right for you to be able to acquire 7 1/2

1 percent of the stock of North American Rescue Products,
2 right?

3 A That is correct.

4 Q And the right that you're asserting to do that is
5 actually not as is stated in your pleadings in this case,
6 right?

7 A You know, you may have me there because I'm not an
8 attorney. I have counsel that has filed those pleadings
9 and I would say that's -- I have a base what's there, I
10 have a right to 7 1/2 percent of the company.

11 Q Okay. Okay. What is the contract -- let me see if I
12 can dig down, dig down and get to this is a little bit
13 closer. This was North American Rescue Exhibit 2. As far
14 as ownership interest go, this was the only agreement that
15 you and Bob ever had as far as ownership, as far as saying
16 this is what your ownership would be, this isn't the only
17 agreement that you all ever finally had an agreement on,
18 right?

19 A That is correct.

20 Q Because out of Atlanta, at the Atlanta meeting when
21 you all were talking about doing something different,
22 there were still issues up in the air; isn't that correct?

23 A That is correct.

24 Q And those issues were never finally resolved, were
25 they?

1 Q But you can't actually follow the terms of the
2 contract and give him stock in Reeves, right?

3 A I'm not -- actually, I'm not sure. I guess I would
4 seek legal opinion on that.

5 Q Well, I mean --

6 A My intention is I would have honored my agreement.
7 That's what I always have felt.

8 Q If you had given Bob stock in Reeves after you had
9 already told DHS you were the only stockholder, you would
10 have been violating what you had told DHS to be true,
11 right?

12 A That's not what you asked me. If I was going to --
13 if I had, which is a hypothetical because I did not issue
14 stock after I told DHS that I was the sole stockholder.
15 Bob knew that the sale was going to be consummated and
16 that he was going to get his payout.

17 Q Yes, sir. What I'm trying to understand, though, is
18 that -- I think your speaking in terms of carrying out
19 what you understood the intent of the agreement to be.
20 But in order to change an agreement like that, both
21 parties have to intend for it, don't they, based upon your
22 contract experience?

23 A And my response is that I would have to ask -- seek
24 counsel to tell me whether I can do that. My intention
25 was to carry out and honor this agreement with Bob by

1 paying out with proceeds of the sale of Reeves.

2 Q That was your intent of how you wanted to do this,
3 right?

4 A That's correct.

5 Q But in order to change the contract from what it
6 actually says, to still have a contract, the other side's
7 got to agree with that, too, right?

8 A I would assume so.

9 Q Okay. Let's go back to the agreement, the
10 termination, settlement and release. You asked Bob to
11 sign this to help facilitate the DHS sale, right?

12 A That is incorrect.

13 Q Well -- pardon me just a moment. Do you have the
14 deposition transcript?

15 A Yes, I have it right here.

16 Q May see that just a minute?

17 A Sure.

18 Q I'm going to give you -- I'm going to give you the
19 original copy of your deposition if I can get into it.
20 They wrap those things pretty tight. Thank you. Sorry
21 for the mess. That's you, isn't it?

22 A Yes, it is.

23 Q Thank you. Would you turn to page 121 in that
24 document?

25 A Okay.

1 DHS. And I said, Right. And you said, And to make this
2 whole thing just flow a lot easier, although we hadn't
3 pulled the final trigger with our agreement on ownership,
4 it was just going to be easier to have Bob release. So
5 what I'm trying to understand is at that time, I asked you
6 an open-ended question. It wasn't a leading question at
7 all, why was that document prepared? And I think you told
8 me on that day, I did it to help with the DHS sale.
9 Today, you're telling me that the reason this was done was
10 it had -- was that not the main reason. And I'm just
11 trying to understand why there's been a change in your
12 testimony from May 22nd, 2008 to today?

13 A I don't believe there is a change in my testimony. I
14 said that there was a primary reason and it was the fact
15 that Bob signed the release just made it that much easier.

16 Q Okay. What was the primary reason?

17 A The primary reason for this document, this document
18 up here on the screen, was that it was part of a
19 three-part -- a three-part -- I'm trying to get the right
20 words he used to describe it, three-part agreement, which
21 would allow us to resolve the outstanding ownership issue,
22 which included our 7 1/2 percent option agreement at one
23 cent for ten years, the release agreement and the payment
24 to charity, all three of which needed to be done at one
25 time. The fact that -- it's all a timing issue. It

1 should have all been signed and released at -- done at one
2 time. And the fact that Bob gave it to me -- I mean, the
3 fact that it took eight days to get it back to me I think
4 is an indication that I wasn't in any rush to have that
5 document. But it was nice to have and that's what I
6 thought I said to you.

7 Q Mr. Richardson, where in your deposition -- and I
8 certainly don't want to take the Court's time on this, but
9 where in your deposition did you tell me that the purpose
10 of that agreement was anything other than to facilitate
11 the DHS sale? I mean, you're familiar with it?

12 A Yes, I am.

13 Q I asked you why that document was prepared and you're
14 telling me that what you said in your deposition is not
15 inconsistent with what you're saying today and I don't
16 want to beat this too much to death, but I don't
17 understand why you're telling me that you're telling me
18 the same thing today that you did in May?

19 A Well, I'm sorry you feel that way. At that time,
20 that's what I could remember. So I told you that. I
21 don't think what I said to you then is any less consistent
22 than what I'm saying now. That document had -- it had a
23 primary reason. The fact that we had it during -- I mean,
24 you have to understand when -- and you may or may not have
25 gone through closing of companies, there are hundreds of

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1 documents that are coming through by courier, by fax
2 machines, by mail that have to be signed that's got to be
3 left -- you know, cataloged. So, I mean, I'm moving a lot
4 of paper during that period of time.

5 Q Okay. And it is your claim now that you weren't in
6 any particular hurry to get the agreement of termination
7 settlement and release back, that's your testimony now,
8 right?

9 A It's always been my testimony.

10 Q But you said at this point we're getting down to
11 crunch time with DHS, it's just going to be easier to have
12 Bob -- go ahead and have Bob released. Let me ask you to
13 take a look at the agreement. Since your position is this
14 isn't inconsistent with your deposition testimony, I take
15 it that you will stand by your deposition testimony that,
16 at least, a part of having this agreement signed was to
17 facilitate the sale to DHS, correct?

18 A I did not need this document to -- it wasn't a
19 required document. I mean, I guess we're sort of parsing
20 this, but I was not required -- I was not told that I
21 needed to have a release by any of my counsel. This was
22 actually part of another track we were going down. I was
23 never asked to get a release from anyone. This was never
24 a form that was given to DHS as part of a closing package.
25 So it was -- I mean, with the circumstances going on at

1 THE COURT: I appreciate it. I'm going allow him to
2 do so.

3 THE WITNESS: You know, at the beach house, we knew
4 we had not exchanged any stock so it became a matter of --
5 well, at this point in time, is it really worth even
6 going -- getting involved in that. There was so much
7 trust in the relationship that it was just going to be
8 easier to make a simple payment of proceeds when our sale
9 to DHS was completed.

10 BY MR. STILWELL:

11 Q When you sealed that deal at the beach house -- I'm
12 going to try to get you out of the beach house in just a
13 bit, when you sealed the deal at the beach house, was it a
14 handshake or was it more?

15 A Well, it was certainly a handshake. But like in any
16 of our meetings, when we would leave, we would hug, say
17 hey, I love you, man. I mean, just friends, Christian
18 brothers.

19 Q Now, I want to move on and talk about the option
20 stuff. Considering y'all were coming out of the beach
21 house and you still hadn't issued stock, did the term
22 option start coming up? Do you remember Curt mentioning
23 an option deal?

24 A I think the first time that I had heard option deals
25 was either through Bob or from Curt.

1 Q Okay. So Bob never told you that the termination
2 agreement that he was talking to you about at Stax had,
3 actually, been ratified by NARP?

4 A No, he never mentioned that at all.

5 Q Okay. Let me see if I get this stuff out if you'll
6 give me a second. It will probably save some time. Okay.
7 I think you said yesterday that that termination
8 agreement, you just stuck it in your drawer?

9 A That's correct.

10 Q Oh, that was this morning, my days are actually
11 running together. Okay. And that October 4 agreement
12 from Rod and Curt, that was always sitting in your drawer?

13 A Yes, it was.

14 Q Okay. After Atlanta, I want to kind of switch facts
15 on you. Talk about what you were doing on the DHS, okay?
16 Who was doing your computations and stuff on your DHS side
17 for you?

18 A Ed Kidner was the point guy on that.

19 Q Okay. Was he doing anything in that time after this
20 termination agreement had been signed with calculating
21 Bob's share of the Reeves proceeds?

22 A Well, yeah, we were looking at the various scenarios,
23 the various ways depending on the -- what the actual
24 purchase price of Reeves would be, what the tax
25 ramification would be for Billie and I on our federal

1 income tax.

2 Q Okay.

3 A As well as the new company and, you know -- they said
4 for a small transaction, this was very complex.

5 Q Let me look at one. Now, at this point in time, you
6 didn't have -- in December, for instance, before Reeves
7 sold -- Reeves sold when?

8 A We closed on the transaction on the 5th of January of
9 '05.

10 Q I think I actually ran onto another board here. I'm
11 going to put this up, it might help you a little bit from
12 this point forward. I promise you we'll move this board
13 faster. You need some water?

14 A No.

15 Q Okay.

16 A At my age, you don't drink a lot of water in these
17 situations.

18 Q All right. Let me see where we are. Sale of Reeves
19 in January?

20 A Yes, '05.

21 Q Let's look at --

22 MR. STILLWELL: Mandy, this is the January 26 email.
23 You got it? There you go.

24 BY MR. STILLWELL:

25 Q Exhibit 54, P. J. He's better with the numbers than

1 I am now.

2 MR. STILLWELL: Can you blow that up for us, Mandy?

3 BY MR. STILLWELL:

4 Q January 26, P.J., is that after -- that's after the
5 sale of Reeves has already been done, right?

6 A Yes, that's correct.

7 Q And this is you, Ed and Rick and you see Billie
8 there. What are these numbers that you're sending to Ed?

9 A This was in response to a call from Ed, if I can
10 gather the expenses associated with the Reeves
11 transaction.

12 Q So you're sending Ed the figures so he can do the
13 coding, right?

14 A That's correct.

15 Q Right down there at the bottom, it says, There are a
16 couple calculations you will be working on, i.e., our tax
17 exposure and the Castellani computation. What is the
18 Castellani computation?

19 A That would be the computation of what 7 1/2 percent
20 of the transaction was for Bob.

21 Q Okay.

22 MR. STILLWELL: And, Mandy, can you put up Exhibit 1
23 for just a millisecond?

24 BY MR. STILLWELL:

25 Q P.J., right, is that the Castellani computation?

1 A Yes, it is.

2 Q Who did that?

3 A That was done by Ed Kidner.

4 Q Was that done, at least, partly on the numbers you
5 sent him in that previous email?

6 A I would assume that was.

7 Q And that's what it came out to, the 415?

8 A Yes.

9 Q Did you ever hear anything back from them about
10 whether the 415 was the right number or anything, I'm
11 talking about Bob and Curt?

12 A I don't know that there was ever any disagreement on
13 the number.

14 Q Okay. And the Castellani -- the sharing rate of 7
15 1/2 percent, that's the .075 right there?

16 A Yes.

17 Q What is that Castellani share right there, the share
18 of the proceeds?

19 A That's the share -- that would be 7 1/2 percent of
20 the share of the sale. I assume those are the deductions
21 that would have been made.

22 Q I mean, in businessman terms, you are taking it off
23 the bottom line, not the top line, right?

24 A Correct.

25 Q You're not seeing any before tax money?

1 A Right.

2 Q Okay. All right. This money, this 415, still got
3 that money?

4 A Yes, I do.

5 Q Okay. Mr. Ellis asked you a term, did you ever
6 tender the money, which is a legal term. Did you ever
7 offer the cash to Bob Castellani?

8 A Yes, I did.

9 Q When was that?

10 A When it was becoming more and more obvious that we
11 were reaching -- that we had some problems, particularly,
12 with the Dobson Ministry donation. And I said it would
13 just seem to be a lot simpler to write you a check and
14 just pay you this.

15 Q What did Bob say?

16 A No, Bob was stuck on the idea that -- the only option
17 that he had given us that come from his side, first was
18 the charitable, then it was the Dobson Ministry. There
19 was never any other option that we had.

20 Q So you went from the -- I guess the first one was
21 just pay the money, then a charity, then a --

22 A Right.

23 Q Okay. How many lines did he drive in there?

24 A Three.

25 Q Okay. The Dobson deal, let's talk about that.

1 just do the best we can. Sir, the fact of the matter is,
2 though, what you're trying to ask the Court to do is to
3 make Bob Castellani do an agreement the way you want it
4 done?

5 A I do not agree with that.

6 Q Okay. But if Bob doesn't agree to give you an option
7 unless you do the charitable trust component of it, then
8 there's not a three-legged agreement, right?

9 A If Bob would not negotiate further to change from
10 Dobson Ministry and allow us to pay cash, then we have an
11 impasse and I guess that's why we're here.

12 Q So are you here asking the Court and asking the jury
13 to force Bob to continue to negotiate with you?

14 A No. I'm here asking the Court to allow us to get our
15 7 1/2 percent investment in the company.

16 Q Well, yes, sir, but the only final agreement where
17 you and Bob had a meeting of the minds was back in 2000,
18 right?

19 A I don't know that I agree with that either. We had a
20 meeting of the minds in Charleston.

21 Q I apologize. I should have said with respect to the
22 2000 agreement. You're right, y'all did agree to amend it
23 there, right? Let me just show you from page 81 of your
24 deposition.

25 A Thank you.

1 Q Starting at line 15, I ask you, So this is the only
2 signed agreement between you and Bob? This is the only
3 agreement that you guys ever signed between each other as
4 far as any ownership of the company went, right? And you
5 said?

6 A Would you like me read that?

7 Q Yes, sir, line 20.

8 A Yeah, I mean, and other bits and things, but we never
9 got everything completed.

10 Q Going to page -- do you have page 123 there?

11 A Yes, I do.

12 Q Starting at line three, and I'll just read it, you
13 testified there, Bob and I had a separate agreement. We
14 owned 25 percent of each other's company. We then
15 modified it to 7 1/2 percent of each other's company, but
16 we never -- well, you said it to me or you asked me the
17 question, we never exchanged stock. And then you went on
18 to say -- you want to read it from there, line eight?

19 A The only memorialization we had of it was the oral
20 agreement, meaning the 2000 agreement, that just said when
21 or both of us told we would do this. We were then -- and
22 I am bound now to honor that agreement.

23 Q Yes, sir. The agreement that you had, the only
24 agreement that you ever had, when I took your deposition
25 in May, the agreement that you believed you had with Bob

1 Castellani was the 2000 agreement, right?

2 A Correct.

3 Q Okay. That was your position in May, was that what
4 you were enforcing was the 2000 agreement, right?

5 A Correct.

6 Q Okay.

7 A That's what I said. I think I've been very
8 consistent with what I said. This is confusing because I
9 think I'm sort of repeating the same thing that I have
10 been saying all along.

11 Q That you all did not actually come to an agreement
12 about the three-legged stool and what you're asking the
13 jury to do is to enforce the 2000 agreement, right?

14 A What I've said is that we came to an agreement in
15 Atlanta that the three-legged stool approach, whatever you
16 want to call it, there were three pieces that had to be
17 done. And that the only portion of it that was
18 completely -- that was executed was the separation and
19 termination agreement. And the other two pieces, we came
20 to an impasse. We were not able to get them done. Then,
21 eventually, the whole thing was tabled.

22 Q The fact of the matter is, eventually, y'all reached
23 an impasse in your negotiations to try to come to an
24 agreement about the three-part stool, right?

25 A That would be accurate.

1 Q Okay. I just want to point out -- I'll ask you to
2 read from page 134 of your deposition. That's not on it.

3 A Okay. Line?

4 Q Line three, I ask the question, So as of April 8th,
5 2005, there was still not an agreement between you and
6 NARP as to what to do? And you answered?

7 A As it would appear here. |

8 Q Okay. So in your deposition, you also acknowledge
9 that as of April 8th, 2005, there was not an agreement
10 between you and NARP, right?

11 MR. STILLWELL: Your Honor, I believe that's his
12 consistent testimony.

13 THE COURT: Well I appreciate that. If you have some
14 redirect questions, you may do so.

15 MR. STILLWELL: Thank you, Your Honor.

16 BY MR. ELLIS:

17 Q I think you testified a little bit earlier about the
18 2000 agreement. I believe you were questioned and you
19 testified that you believed that you could just deliver
20 the proceeds of your -- if you sold Reeves, you would be
21 in compliance with the 2000 agreement if you just sent the
22 money to Bob, right?

23 A Yes.

24 Q But in order for that to be an agreement, Bob would
25 have to believe that, too, right?

1 take -- that NARP just take cash instead of doing
2 something differently, Mr. Castellani said no, that's not
3 what I want to do, right?

4 A That is correct.

5 Q And as a person who has the privilege to enter into a
6 contract or not enter into a contract, that's a decision
7 he's free to make, right?

8 A Yes, he can make that request.

9 Q Even if that's something you don't agree with, right?

10 A Well, yeah, but, I mean, because the other party
11 makes a decision doesn't mean that it would be finalized
12 on our part. I would have to agree to that.

13 Q Well, yes, sir, if you wanted to do one thing and he
14 didn't want to do it, you all don't have an agreement,
15 right?

16 A That's correct.

17 Q Now, let me talk to you a little bit about the paying
18 of cash to -- about the paying of cash. First of all, you
19 talked about you still have the cash?

20 A Yes, sir.

21 Q How much do you have? I'm talking about when you
22 talked about the 7 1/2 percent. What number is that?

23 A The amount we had up here and whatever interest would
24 have accumulated. I don't know right off hand.

25 Q Have you maintained that in a separate account?

1 A No, it's co-mingled with our funds.

2 Q You just took it and put it in a bank account? You
3 didn't separately set it aside for Bob?

4 A No, sir.

5 Q I think Mr. Stillwell asked you about your company
6 Extol? Is that right?

7 A Yes, he did.

8 Q And Extol, what assets does Extol have?

9 A My wife and I put the proceeds, the assets from the
10 Reeves transaction, the part that went for Reeves?

11 Q And so I think -- I believe Mr. Stillwell asked you
12 if you can give stock in Extol to Bob, right?

13 A Extol has stock options, yes.

14 Q Yes, sir. But the assets that are in Extol are only
15 the parts of the sale that were allocated to Reeves,
16 right?

17 A That's correct.

18 Q So out of the 9.1 million dollars that you sold the
19 entire enterprise for, right, only like three and a half
20 million of that went into Extol, right?

21 A That is correct.

22 Q So if you gave him Extol stock, he wouldn't be
23 getting anywhere close to what 7 1/2 percent of the stock
24 of Reeves would have been in any way, would he?

25 A Well, I think the issue was raised of whether or not

1 Extol had the ability to give stock.

2 Q Yes, sir.

3 A Well, it does have the ability to give stock. The
4 question was wasn't what the stock was worth, the question
5 was, I believe, would we give stock. The assumption that
6 you were making was that Extol didn't have any stock.
7 Well, it does have stock.

8 Q Well, I'm sorry --

9 A Bob is still entitled to his 7 1/2 percent of the
10 sale of Reeves. Not 7 1/2 percent of what's in the Extol
11 account. I don't understand your reasoning there. We've
12 never hesitated or changed our position of what Bob is
13 entitled to. He was entitled to 7 1/2 percent of what we
14 sold Reeves for, the 9.1 million dollars. I'm not sure
15 how you're trying to link the -- what was put into Extol
16 and what the sale of Reeves was.

17 Q Yes, sir, the reason I'm asking you is I'm trying to
18 understand how you and Mr. Stillwell were trying to link
19 that.

20 A I was responding --

21 Q I'm sorry, I mean, believe he brought it up about
22 that you have a company called Extol that has stock and
23 that you can issue stock to Mr. Castellani, just like -- I
24 think he's trying to make it seem like you could issue
25 stock to Mr. Castellani from Extol just like you could

1 risk from you now that you know how the story ends?

2 A No, that's incorrect. I'm not asking that.

3 Q Well, sir --

4 A I'm still obligated under what we agreed to, to pay
5 the 7 1/2 percent that Bob and I agreed to. When we left
6 the Charleston meeting, we knew there was going to be a
7 sale coming. And what muddled this up is we couldn't come
8 to a solution how Bob wanted the money. That didn't stop
9 or prevent -- stop me from still wanting to give him the
10 money.

11 Q Well --

12 A It didn't matter what the outcome of it was. We felt
13 obligated then to make our commitment and honor it, that
14 we had made a commitment and to honor it.

15 Q Well, sir, I think we saw the letter here today from
16 Mr. Stodghill to your lawyer saying what are you all
17 doing? Are you going to propose a plan? What we got back
18 was well, don't assume that we don't want to do anything.
19 We didn't come back and say we've got a contract. We're
20 getting this done. That was not said from the time you
21 sold Reeves in early 2005 all the way through April 2007,
22 was it?

23 A No, it was not.

24 Q And so, basically, what you're doing is Bob was in a
25 situation and you guys had this 2000 deal where he doesn't

1 A Hi, Rivers.

2 Q I want to go to the 2000 agreement in Charleston that
3 y'all modified orally to go to 7 1/2. Was part of that --
4 did you think there that you were going to pay the
5 proceeds to NARP from the Reeves sale?

6 A That's what it was, write him a check.

7 Q Did you think y'all had a meeting of the minds about
8 that, did you think that Bob agreed to it, also?

9 A Yes, I did.

10 Q Okay. This stuff about tax ramifications and
11 whatnot, did that come up later?

12 A Yes, it did.

13 Q Okay. Just a second. Okay. The October 4 option
14 agreement received from Curt, you got that agreement, you
15 got that option agreement from Curt?

16 A Yes, I did.

17 Q Did that make you think that Bob and Curt had agreed
18 to it?

19 A Yes, I did.

20 Q Now, the three-legged stool, I think Mr. Ellis has
21 convinced us what we already agreed to that this was never
22 performed, correct?

23 A Yes.

24 MR. ELLIS: Objection, Your Honor, I think that
25 mischaracterizes my question.

1 THE COURT: I appreciate that. I'll allow him to --
2 Why don't you rephrase the question.

3 MR. STILLWELL: Yes, sir, Your Honor.

4 BY MR. STILLWELL:

5 Q Was the three-legged stool ever performed?

6 A By that, you mean all three pieces were signed, no.

7 Q Okay. And does that change your mind as to whether
8 there was a meeting of the minds agreeing to it or not?

9 A No, it doesn't change my mind.

10 Q The part about the money being in your's and Billie's
11 account, could you cut a check for that money to Bob today
12 if he would take it?

13 A Yes, I could.

14 Q Okay. Would you if he would give you a 7.5 percent
15 interest in NARP?

16 A Yes, absolutely.

17 Q The government money from taxes that Mr. Ellis talked
18 about, is that the same government that buys the military
19 gear from NARP?

20 A Yes.

21 Q When Mr. Ellis asked you about investing in NARP in
22 the spring of '05?

23 A Yes.

24 Q In connection with the Dobson deal, at that point,
25 did you -- do you believe that you already had the right

1 Q Okay. And were any promises made at that meeting?

2 MR. ELLIS: Objection, relevance, goes beyond the
3 pleadings.

4 THE COURT: Overruled.

5 You may proceed.

6 THE WITNESS: As I said, you know, 7 -- our 7 1/2 for
7 his 7 1/2. You'll always have your 7 1/2.

8 BY MR. STILWELL:

9 Q What does that mean, you'll always have your 7 1/2?

10 MR. ELLIS: Same objection, Your Honor.

11 THE COURT: Overruled.

12 You may proceed.

13 THE WITNESS: In -- after the sale of Reeves, there
14 was some pretty, pretty dark moments for me. Bob was very
15 reassuring, very comforting. And he said to me, You'll
16 always have your 7 1/2. Simple as that.

17 BY MR. STILWELL:

18 Q That was skipping ahead a little bit. I want to go
19 back to Charleston, just to the Charleston meeting. Were
20 any promises made between P. J. and Bob that you saw?

21 MR. ELLIS: Objection, relevance.

22 THE COURT: I'm going to overrule that objection.

23 You may proceed, Mr. Stillwell.

24 THE WITNESS: Just that, you know, you have 7 1/2
25 percent ownership of my company and I have 7 1/2 percent

1 ownership in your company. I don't know how -- I mean, it
2 was just that basic to me. That, you know, I promise you
3 this and you promise me that.

4 BY MR. STILWELL:

5 Q And this and that, that's what I was trying to do,
6 how was that going to work if y'all were going to sell the
7 company?

8 MR. ELLIS: Objection, relevance, Your Honor.

9 THE COURT: I'm going to allow it.

10 You may proceed.

11 THE WITNESS: Again, I -- you know, I -- there were
12 greater minds than mine to work out all the details of how
13 this was going to work and that was going to work. You
14 know, I left that to the lawyers and the accountant.

15 BY MR. STILWELL:

16 Q Okay. Did y'all have any idea what you were going to
17 sell Reeves for at that time, did y'all have any prices on
18 the table?

19 A I know that, you know, Rick Kohr had come back with a
20 evaluation of what he thought the business would be worth.
21 And I know that there was several -- there were several
22 offers, at least, two that I can remember. And we decided
23 on -- well, my husband decided, I meant. He certainly
24 kept me in the loop about it, but it was his decision, but
25 he decided to go with DHS.

1 Q Did you have some of those numbers in hand when you
2 were in Charleston?

3 A I'm not sure.

4 MR. ELLIS: Same objection, Your Honor.

5 THE COURT: I'll allow it.

6 BY MR. STILLWELL:

7 Q Do you know if y'all had any of the ballpark numbers
8 when you were in Charleston?

9 A I believe that the evaluation had been done by then.

10 Q Did you talk to Bob during that meeting about what
11 his cut of the Reeves sale would be?

12 MR. ELLIS: Objection, relevance, Your Honor. Beyond
13 the pleadings.

14 THE COURT: I'm going to allow.

15 You may proceed.

16 THE WITNESS: I don't recall that we actually sat
17 down and talked numbers. It was -- you know, I mean,
18 actual numbers. It was 7 1/2 to 7 1/2.

19 BY MR. STILWELL:

20 Q Now were the mechanics going to work?

21 MR. ELLIS: Objection, relevance, Your Honor.

22 THE COURT: Overruled.

23 You may proceed.

24 THE WITNESS: How were the mechanics -- oh, I don't
25 know.

1 confess, Your Honor, I've not actually had to do that, I
2 don't know if you have the right pleadings on how we do
3 that but I understand that that can be made after a
4 judgment even. And so perhaps this isn't even the right
5 time to entertain that motion and back and forth. I don't
6 know how that's going to proceed exactly, Your Honor.

7 THE COURT: Well I'll be glad to hear your motion. I
8 tell you what, first as to your directed verdict motion,
9 Mr. Ellis, as you have pronounced it, I'm going to
10 respectfully decline to grant your motion. Now---

11 MR. ELLIS: Your Honor, I'm sorry, just for the
12 record, I have a directed verdict motion on what's not
13 been proved however in the pleadings.

14 THE COURT: Well I appreciate that. And we haven't
15 gotten into that. You haven't made that argument yet.

16 Now, Mr. Stillwell, as to a motion to amend the
17 pleadings to conform to the proof, what exactly are you
18 asking to do? I mean, that's a generalized motion. What
19 do you want to have happen?

20 MR. STILLWELL: Well the contract claims, Your Honor.
21 It's even hard for me to track where the contract claims
22 are going with the three that were going up there. But
23 the claim that we would like to pursue is that the 2000
24 agreement was modified orally in Charleston. And it
25 changed the amount of the respected shares from 25 percent

1 to 75 -- I mean to 7.5. And further that this was done in
2 the context of the pending sale in Reeves. When the
3 parties had not issued shares and they did not anticipate
4 issuing shares to each other ever. And in that context,
5 therefore, Mr. Castellani promised to give seven and a
6 half percent of shares in his -- of the shares of his
7 company, however that would be styled, in return for 7.5
8 percent of the proceeds of the sale of Reeves.

9 THE COURT: All right, sir. Are you asking to amend
10 your pleadings in any other fashion?

11 MR. STILLWELL: No sir, Your Honor, that would be an
12 addition, we would be reserving our other claims of
13 promissory estoppel. And also we have alternative claims
14 for specific performances of damages that would apply to
15 this claim as well, Your Honor.

16 THE COURT: All right, thank you.

17 All right, Mr. Ellis.

18 MR. ELLIS: Your Honor, I'm opposed to that motion.
19 And it's related to my alternative motion for a directed
20 verdict and here's why. I realize we'll get to that
21 motion in just a minute. I don't know what the Court has
22 available to it, a copy of the revised amended answer and
23 counterclaim. But I'll be happy to hand that up if it
24 will be helpful to you.

25 THE COURT: If you want to hand me one, I'll be happy

1 for you to do so. If you want to hand it to me -- right
2 there will be fine.

3 MR. ELLIS: Your Honor, the claim that Mr. Richardson
4 brought in this case, against North American Rescue
5 Products, was a claim that after the parties had a meeting
6 in Atlanta, that they reached a new agreement. A new
7 agreement was going to happen. In which Mr. Richardson
8 get an option for a penny a share in which Bob Castellani
9 agreed to release his interest in Reeves and except cash
10 for the sale of Reeves. I'm reading from paragraph 54
11 from the revised, amended counterclaim. That was the
12 claim in this case. The claim as we initially brought it
13 was to have it be determined that Mr. Richardson did not
14 have an option to buy the shares. There was an
15 understanding I think of all the parties when this
16 started, that the 2000 agreement had been terminated. And
17 he had believed that he had negotiated an option. That
18 was his initial position. He amended his answer after we
19 took depositions. He amended his answer in July, I think
20 it was July 14th, and said, The parties reached a new
21 agreement in Atlanta and that there was this option
22 agreement that was dated October 4th.

23 As you can probably tell we have a friendly
24 relationship with each other and I picked up the phone and
25 I called them. And I said, You guys cannot put that in

1 the pleadings. It's not true. It's completely
2 inconsistent with what the parties -- with what your
3 client and what the witnesses have testified to. So they
4 amended their pleadings on July 25th to say what that say
5 today. The allegation in the pleadings is that out of the
6 Atlanta meeting, the three-legged agreement that we've
7 heard about was agreed to and entered into. And that
8 there was going to be an option, there was going to be a
9 payment over to Bob and there was going to be termination
10 done.

11 Your Honor, the claim for relief, the prayer for
12 relief for breach of contract in this case is not a breach
13 of contract for the 2000 agreement. That's not what it
14 asks for. And I will tell the Court, when I walked in
15 here on Monday, I thought what I was trying, was supposed
16 to be trying, was this claim that he had an option under
17 the three-legged stool. Because that's what they pled on
18 July 25th. And I don't want to veer over too much into
19 directed verdict motion right now but Mr. Richardson
20 clearly and plainly testified that he understood that he
21 was not supposed to get an option unless he decided to do
22 the Dobson deal. He decided not to do the Dobson deal,
23 therefore, he wasn't supposed to get an option. I'm real,
24 real sure that he clearly testified that this new
25 three-legged stool didn't ever finally come about in very

1 large part because he didn't want to do the Dobson deal.
2 And the Dobson deal is actually even the substitution of
3 what's in here.

4 Your Honor, what they ask for is, Paragraph 67 --
5 paragraph 68 is, if the option agreement and the remaining
6 documents fail to constitute enforceable agreements, if
7 true Richardson would revert to his prior ownership of 7
8 1/2 percent of NARP. Does he alternatively have a
9 specific performance of his prior agreement with NARP
10 where he possessed 7 1/2 percent ownership interest in
11 NARP stock. That's what they asked the Court to do with
12 respect to the 2000 agreement. That's what we came in
13 here Monday to deal with. That's what I prepared for
14 trial for. Because it's in the pleadings. And I'll say
15 once again, on July 25th when I got this, I picked up the
16 phone. I said, Guys this stuff in here is not true.
17 Mr. Richardson testified at his deposition that he never
18 wanted to do the Dobson deal. He didn't believe that.

19 And they said, We're pressing forward.

20 And I will tell you, I know I probably stumbled
21 around a little bit when I had Mr. Richardson on the stand
22 the first time or maybe every time I had him on stand.
23 But the reason was my -- it was hard to get my breathe
24 after this is in the pleadings and he's testifying over
25 and over again that this is not what happened. Well it's

1 the breach of that alleged agreement is what they're here
2 to pursue. And I think it is monumentally unfair to NARP
3 to say, Got ya, switch. Bait and switch. I think that's
4 unfair. I think that's highly prejudicial. I think that
5 any issues that came in with respect to that, I thought I
6 made it very clear yesterday on the record, it's NARP's
7 position that if the 2000 agreement is still in effect, he
8 needs to tender performance under that agreement and let
9 us react to it. Because performance under that agreement
10 is an entirely different kettle of fish than his having an
11 option.

12 We have rights under the 2000 agreement as amended to
13 do certain things which we've never been asked to do under
14 the 2000 agreement. His claim is that if this
15 three-legged agreement I get doesn't work out, then I get
16 to go back to that.

17 Promissory estoppel, once again, By and through
18 Castellani, the plaintiff, made a further unambiguous
19 promise to Richardson that he would be able to purchase 7
20 1/2 percent of NARP's stock for one cent per share. All
21 of the discussions about anything about one cent per share
22 were in terms of this alleged three-legged stool. It is
23 not in their pleadings that they alleged a breach of the
24 2000 agreement. The facts that came in with respect to
25 that are directly relevant to the question of whether

1 Mr. Richardson understood that he was terminating his
2 rights as well by actions that he took.

3 Your Honor, I think in order to amend them under
4 15(b), new issues that are not relevant to issues that are
5 already in the pleadings, have to be tried by express or
6 implied consent. Whether Mr. Richardson maintained the
7 ability to perform under the old agreement, is directly
8 relevant to his intent with respect to the new agreement.
9 Did he enter into this new agreement for the purpose of
10 doing something new and ending the old? That's directly
11 relevant to that. These are not new issues and new facts
12 that weren't on the table before.

13 And, Your Honor, I'll wait just a moment and renew
14 the directed verdict motion but I think it's horribly
15 unfair to allow and amendment to 15(b). Thank you.

16 THE COURT: Mr. Stillwell.

17 MR. STILLWELL: Your Honor, I'll just state here,
18 that's the first time I've ever been accused of baiting
19 and switch in the open courtroom. My good friend, Mr.
20 Ellis, I understand is frustrated. However, his
21 difficulty understanding this case is not my issue, Your
22 Honor. If he is only looking at the pleadings instead of
23 all the multiple depositions we have done, this theory of
24 our case is not that we have not been espousing it. There
25 is abundant evidence before us that they have never been

1 released. Your Honor, in the pre-trial brief, I looked at
2 the paragraph that cited in the -- Mr. Ellis flipped me
3 to, it was in the one that was in the middle. I don't
4 know if he's ever read the paragraph about promissory
5 estoppel where it talks about an unambiguous promise to
6 convey a 7.5 percent interest.

7 Perhaps at this point in the trial, Your Honor, well
8 she's got my board back there, at the bottom of the
9 triangle it does not say the Dobson deal. It says 415.
10 Those cash proceeds are the Castellani computation those
11 are the things they talked about in Charleston. So, Your
12 Honor, let me just come back to my rule book because
13 that's a safe place. I looked through there for the
14 language Mr. Ellis just mentioned, I don't see it
15 anywhere. I see in the first paragraph B, 15(b)
16 Amendment. Amendment to conform to the evidence. Which
17 of course happened in the context of trial. When issues
18 not raised by the pleadings are tried by express or
19 implied consent. He makes a great objection today.
20 However, Mr. Castellani and Mr. Richardson already
21 testified upon hour, upon hour about what they did in
22 Charleston in the context of the pending sale of Reeves.
23 That's implied consent. By express or implied consent of
24 the parties, they shall be treated in all respects as if
25 they had been raised in the pleadings. They should be

1 treated that way. They should be argued to the jury that
2 way. The jury should make the decision. And I think the
3 way we just even amended them like, as I said it, just
4 right out of my mouth, I think it's sufficient. Thank
5 you.

6 THE COURT: All right. Thank you.

7 All right. In looking at the revised amended answer
8 and counterclaim, I'm not sure it's even necessary to
9 grant the motion, it might very well be encompassed in
10 that but I am granting the motion to amend the pleadings
11 to conform to the proof. Thank you, very much.

12 All right, Mr. Ellis.

13 MR. ELLIS: Your Honor, I'll go back on my directed
14 verdict motion. What is alleged in the pleadings in
15 paragraph 54 is out of this meeting the parties reached a
16 new agreement. Under the new arrangement, Castellani
17 agreed to release his interest in Reeves, which is
18 imminently to occur. Richardson likewise agreed to
19 release his interest in NARP for an option to purchase 7
20 1/2 percent of the stock in NARP. That's what's alleged
21 as the breach of contract.

22 I understand that the Court has granted a motion to
23 add to this a -- an allegation that the 2000 agreement is
24 involved in this as a substantive claim as well. I'm not
25 trying to go back over that, I'm just pointing out that

1 MR. STILLWELL: No, sir, Your Honor.

2 THE COURT: Very good.

3 Ladies and gentlemen of the jury, I want to tell you
4 just personally how proud I am of you regarding your work
5 on this particular case. I have been on the bench for a
6 number of years and I will tell you, this is one of the
7 most complicated cases that I've ever presided over that
8 has been presented to a jury for their decision. You
9 worked very hard. You diligently paid attention when
10 times I know it was difficult to do so. And I appreciate
11 very much your hard work in this matter and coming to a
12 resolution in this matter. And by your verdict, you have
13 spoken the truth of this particular matter. I want to
14 thank you for your service. You are now excused. Thank
15 you, very much.

16 (WHEREUPON, the jury left open court at
17 approximately 3:10 p.m.)

18 THE COURT: Motions on behalf of the plaintiff?

19 MR. ELLIS: Your Honor, I would just as an
20 administrative matter, would it be acceptable to have a
21 ten day period---

22 THE COURT: No, sir. I'm going to hear the motions
23 right now. I appreciate it, though. And the reason for
24 that is I'm not trying to be difficult with y'all but the
25 next time I am in Greenville is in November and that's for

1 criminal court. So it just would be too complicated to do
2 otherwise.

3 MR. ELLIS: Your Honor, I would simply reincorporate
4 my arguments from the directed verdict motion the other
5 day. I believe that it is actually clear under the record
6 that there is no right to acquire stock. I believe, if I
7 may, may I just reincorporate those arguments as they are
8 on the record at this time.

9 THE COURT: Yes, sir?

10 MR. ELLIS: And, Your Honor, I'll certainly do that.
11 Your Honor, I would ask the Court, I would ask the---

12 THE COURT: How about let me address that first
13 before you go on to something else, okay?

14 MR. ELLIS: Yes, sir.

15 THE COURT: I would respectfully decline to grant a
16 motion for directed verdict or a new trial in this
17 particular matter. I do find that the issues were
18 properly presented to a jury. It was a jury case as
19 presented. I find that the verdict as rendered by the
20 jury in answering these specific questions is not
21 inconsistent in any manner. And therefore, I respectfully
22 decline to grant your directed verdict or a new trial in
23 this matter.

24 MR. ELLIS: Your Honor, I would -- thank you. I
25 would also just point for the Court, I believe that there

1 was a lack of evidence in the case and would ask the Court
2 to amend the verdict. I don't believe that there was
3 sufficient evidence in the case to find that North
4 American Rescue Products agreed to accept money instead of
5 stock, just make that note.

6 THE COURT: So you're asking me to act as the 13th
7 juror?

8 MR. ELLIS: Yes, sir.

9 THE COURT: All right. I would respectfully decline
10 to do so. Once again, I do find that it was properly
11 submitted to the jury, it was a matter for them to decide
12 and therefore, I respectfully decline to exercise the
13 right as a 13th juror to change their verdict in this
14 matter.

15 MR. ELLIS: Your Honor, I would also ask for a JNOV.
16 I would also -- I'm sorry, I would also ask for the Court
17 to act as a 13th juror with respect to the breach of
18 fiduciary duty claim. I believe that the evidence was
19 strong that a failure to disclose existed and disclosure
20 was not properly made.

21 THE COURT: All right, sir, I would respectfully
22 decline to exercise the authority under the 13th juror
23 doctrine, in this particular matter. Through there
24 certainly was evidence that might support a breach of
25 fiduciary duty. I do find that there was evidence that

1 would be sufficient for the jury and obviously was
2 sufficient in their mind to find that though
3 Mr. Richardson owed a fiduciary duty, he did not breach
4 any duty to North American Rescue Products, Inc. And
5 therefore, respectfully decline to grant your motion in
6 that regard.

7 MR. ELLIS: Thank you, Your Honor.

8 THE COURT: Thank you, very much.

9 From the defense, gentlemen, I'll be glad to hear any
10 motions on behalf of the defense at the time.

11 MR. STILLWELL: Your Honor, frankly, if I could, I
12 need five minutes to discuss it with my client. The
13 import of what the jury has told us in order for us to
14 digest.

15 THE COURT: Okay. And I appreciate that. And I tell
16 you what why don't you just do the best that you can do
17 right now. I'm not going to give y'all additional time
18 but if you would like to, while you're making motions and
19 you have your co-counsel, Mr. Davis, to communicate with
20 the clients, I'll be glad for him to do so.

21 MR. STILLWELL: Your Honor, I guess the only thing I
22 can think of looking at this is we'd ask for a JNOV based
23 on the 13th jury doctrine for the Court to reform the
24 verdict in that the basis for the number is something that
25 I can't see already in evidence.

1 THE COURT: In the amount?

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

3 THE COURT: All right, I would respectfully decline
4 to do so. I do find that there is sufficient evidence in
5 the record which would support the jury's verdicts in the
6 amount set forth based upon the evidence presented. The
7 different dates as far as the evaluation over a period of
8 years that the jury could have used in this particular
9 matter to arrive at that verdict. And I find it's well
10 within their discretion and the facts and evidence in this
11 case. And would respectfully decline to so grant your
12 motion.

13 And if you wanted to, Mr. Stillwell, I'll be glad for
14 you to, as Mr. Ellis did, to reaffirm all of the motions
15 that you made earlier in the case as a basis for a
16 directed verdict motion or judgment NOV if you wish to do
17 so.

18 MR. STILLWELL: I would like to reaffirm my directed
19 verdict motion, although the Court saw the one regarding
20 the fiduciary duty is now mute.

21 THE COURT: I understand that but as to ones
22 applicable to the verdict form and verdict as rendered by
23 the jury, I would respectfully decline to sub-grant those
24 motions, finding again, as I indicated to Mr. Ellis, that
25 there was certainly conflicting testimony in this case

1 that could have supported a verdict different than that as
2 arrived at by the jury. But there was certainly more
3 sufficient evidence presented in this matter whereby the
4 jury could arrive at the verdict that they did render.
5 And Further, I again, reaffirm that I do not find that the
6 answers that they gave to any of the questions to be
7 inconsistent in any fashion. And therefore, respectfully
8 decline to grant your motion.

9 THE COURT: Yes, sir, Mr. Ellis?

10 MR. ELLIS: If it pleases the Court. Your Honor, one
11 question I have, I think we probably need some guidance
12 too is that the question would be, we would need to know,
13 I mean, obviously the right to do this, I don't think that
14 the jury indicated in any way that they would intend for
15 this to stay open for 50 years to have the right to do
16 this.

17 THE COURT: No, sir.

18 MR. ELLIS: I would think some reasonable -- we need
19 to talk about what some reasonable period of time would be
20 or if there is -- what sort of interest rate there would
21 be, how long it would available for them to do that.

22 MR. STILLWELL: We need a tax lawyer to work on that
23 one.

24 THE COURT: Well, it was not suggested to me prior to
25 imposing date on the verdict form. The jury having been

1 discharged in this matter, I would respectfully decline to
2 set forth a date and time. Thank you.

3 MR. ELLIS: Thank you.

4 THE COURT: All right, anything else from the
5 plaintiff?

6 MR. ELLIS: Nothing, Your Honor.

7 THE COURT: Anything further from the defendants?

8 MR. STILLWELL: No, sir, Your Honor.

9 THE COURT: All right, very good. Gentlemen again, I
10 tell you, I appreciate all the hard work. There's much
11 more than obviously I would know in this particular matter
12 but obviously the hard work was evident to me. Thank you,
13 very much.

14 MR. ELLIS: Thank you, Your Honor.

15 MR. STILLWELL: Thank you, Your Honor.

16 (WHEREUPON, the proceedings were concluded.)

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April 17, 2007

Curtis Stodghill, Esq.
The Stodghill Law Firm, Chartered
P.O. Box 2431
Greenville, SC 29602-2431

Re: Richardson/North American Rescue Products, Inc.

Dear Mr. Stodghill:

This letter is a follow-up to my letter to you of January 4, 2006. In that letter, I advised you that we intended to contact you during 2006 to further discuss Mr. Richardson's interest in North American Rescue Products, Inc. ("NARP"). Since that time, Mr. Richardson has been involved in resolving various disputes with DHS Technologies LLC ("DHS") and Reeves Emergency Management Systems, LLC ("EMS") arising out of the sale of the Reeves Manufacturing business to EMS.

As you may be aware, one of the reasons that we have been reluctant to proceed in addressing our interest in NARP was due to non-compete restrictions that Mr. Richardson had entered into with DHS and EMS. As we hope you will appreciate, we were trying, among other things, to protect NARP and Mr. Castellani from becoming involved in any issues with DHS or EMS. As a result of the settlement of all of the claims among Mr. Richardson, Extol Group, Inc., DHS and EMS, Mr. Richardson has now been released entirely from any non-compete obligations to DHS and EMS.

Accordingly, Mr. Richardson now desires to exercise his option to purchase seven and one-half percent (7.5%) of the common stock of NARP. Under the terms of the October 4, 2004 Option Agreement between Mr. Richardson and NARP, Mr. Richardson is entitled to purchase those shares at a price of \$0.01 per share. In order that Mr. Richardson may formally exercise this stock option, we would appreciate receiving information as to the number of shares currently outstanding so that we may calculate the number of shares to which Mr. Richardson is entitled under this option and the purchase price that he is required to tender for the shares.

EXHIBIT

PJR45

500 East Pratt Street • Baltimore, MD 21202-3133 • Phone: (410) 332-8600 • Fax: (410) 332-8862
BALTIMORE CHESTERBROOK HARRISBURG NEWARK PHILADELPHIA PRINCETON WASHINGTON WILMINGTON
A DELAWARE LIMITED LIABILITY PARTNERSHIP

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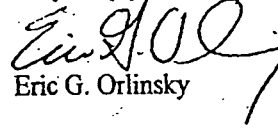
Curtis Stodghill, Esq.

April 17, 2007

Page 2

If you have any questions, please call me. We look forward to your prompt response.

Very truly yours,


Eric G. Orlinsky

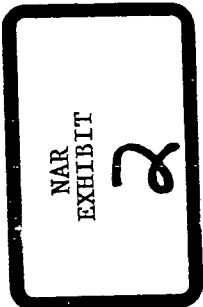
EGO/ap

cc: Mr. P. J. Richardson

OUTLINE OF BUSINESS RELATIONSHIP BETWEEN
NORTH AMERICAN RESCUE PRODUCTS, INC. AND REEVES MANUFACTURING

Parties: NARP - North American Rescue Products, Inc., an S-Corporation, organized in South Carolina.
RMI - Reeves Manufacturing, Inc., a C-Corporation, organized in Maryland.
RAC - Robert A. Castellani
PJR - P.J. Richardson

1. **RMI Business:** RMI is in the business of designing, manufacturing, and selling certain emergency medical and rescue products. (e.g. stretcher, patient immobilization items, decontamination systems, air shelter)
2. **NARP Business:** NARP is in the business of designing, manufacturing, and selling certain emergency medical and rescue products. (e.g. stretcher, patient examination lights, laryngoscopes)
3. **Cross Selling Activities:** NARP and RMI products are related in their use, but many of their customers are different. On some occasions NARP sells RMI products directly and RMI sells products to NARP directly. Additionally, on occasions NARP customers buy directly from RMI and RMI customers buy directly from NARP. The cross selling has become an important part of each company's business, and it would work a hardship on either if it ceased. It is in their best interest for the cross selling to continue.
4. **Commissions:** NARP will pay over to PJR and RMI will pay over to RAC commissions for selling their respective products. The commission amount shall be equal to 25% of the taxable income (taxable income shall have the meaning set forth in 63 of the Internal Revenue Code of 1986 (Code) calculation before the commission payment. The payment shall be made as payment to independent contractors and not wages. Payments shall be made quarterly on or before 30th day following the end of the each calendar quarter, with adjustment according to the company's federal income tax returns to be made in the succeeding year's payments. These payments shall begin for the 4th quarter 1999.
5. **Independence of Management:** RMI and NARP shall be independently managed and neither PJR nor RAC shall have the right to interfere with the business practices of the company paying the commission. RMI and NARP, however, shall engage in reasonable management practices of corporations, the stock of which is traded in the public markets in determining and paying over compensation of their respective employees, capitalization of expenditures, inventory, and expenses.
6. **Termination of Commission:** If either NARP or RMI determines that payment of the commission amounts is not in the best interest of the company then they shall notify RPJ or RAC, as the case may be, of their desire to terminate the commission arrangement. Within 30 days of notice the terminating company shall pay to terminated party an amount equal to 10% of the arithmetic median of such company's annual gross sales (median shall be calculated over the period of commission arrangement outlined above).
7. **Restricted Stock:** RMI shall issue RAC and NARP shall issue PJR capital stock to 25% (fully diluted) of its issued stock of all classes. Such stock shall be subject to a right by either company to purchase the issued if the commission arrangement between RMI and RAC or NARP and PJR is terminated. The right shall be exercised by notice to the holder of the stock. In the instance the terminating company shall pay \$100.00 to the person for such stock. If a company exercises its right to purchase the stock and it enters into an agreement to sell or consummate a transaction to sell a material portion of its property other than in the ordinary course of its business or PJR in the case of RMI and RAC in the case of NARP (directly or indirectly through related parties or a series of related transitions) enter into an agreement to sell or otherwise consummate a



SUBJECT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT OR THE FEDERAL
ARBITRATION ACT

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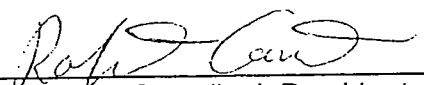
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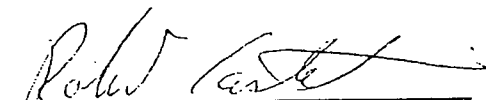
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transaction selling the capital stock they hold in RMI and NA respectively, then the terminated stockholder shall be paid a portion of any consideration received as if they still owned the stock; this provision shall be for a period of the two years from the date of the stock purchased at the \$100.00 price.

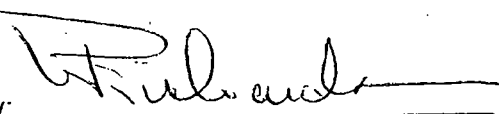
8. **General Stock Rights:** PJR in respect to NARP and RAC in respect to RMI shall not transfer their stock without first offering it for purchase at the same price and terms. If the stockholders of RMI or NARP sell or enter into an agreement to sell more than 50% of the issued of the company, their PJR in respect to NARP and RAC in respect to RMI shall receive a prorated amount of the consideration for such sales (e.g. a sale of 50% of a company's stock for \$1,000 would trigger a right to payment of \$250 to the stockholder holding restricted under the agreement). The holder of restricted stock shall take no action to adversely affect any tax election made by the company which stock he holds.
9. **Arbitration of Disputes:** Any dispute shall be mediated and if not resolved referred to arbitration before only one arbitrator (an experienced commercial lawyer) to the exclusion of the courts. Any arbitration shall proceed in accordance with the current CPR Non-Administered Arbitration Rules in effect on the date of this agreement. The place of arbitration shall be Pickens County, South Carolina. The prevailing parties in arbitration shall be entitled to receive from the other arbitration expenses, including reasonable attorney's fees. This provision shall also apply to the extent of any action taken in a court of law. Judgment upon an arbitrator's decision may be entered by any court having jurisdiction over the affected party.

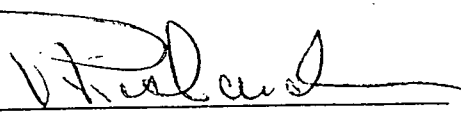
Date: 1-1-00
Approved:
North American Rescue Products, Inc.

By: 
Robert A. Castellani, President

By: 
Robert A. Castellani

Date: 1-1-00
Approved:
Reeves Manufacturing, Inc.

By: 
P.J. Richardson, President

By: 
P.J. Richardson

SUBJECT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT OR THE FEDERAL
ARBITRATION ACT

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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Before the Master In Equity

Charles B. Simmons, Jr., Master In Equity

Case No. 2007-CP-23-3206
Appellate Case No. 2012-212748

RA
NOV 04 2013
SC Court of Appeals
ED

North American Rescue Products, Inc.,.....Appellant,

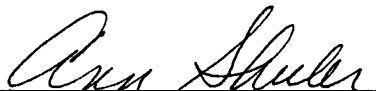
v.

P. J. Richardson,.....Respondent.

CERTIFICATE OF SERVICE

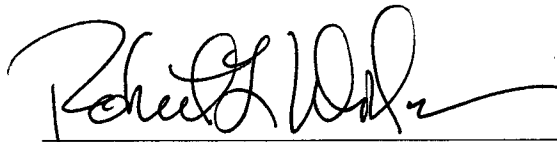
I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Redacted Record on Appeal and Non-Redacted, Sealed Record on Appeal by depositing copies of each in the United States Mail, postage prepaid, on November 4, 2013 addressed to the attorneys of record, as follows:

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Ann Shuler

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material. I also certify that this Record is in compliance with the August 13, 2007 order of the South Carolina Supreme Court.



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November 4, 2013