THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

DEC 01 2025

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2020-CP-42-00055

Appellate Case No. 2024-001239

Dr. Lad Santiago, Appellant.

v.

Stephen N. Garcia, as Attorney for

Oscar Avila Hernandez, et.al., Respondents.

FINAL REPLY BRIEF OF APPELLANT

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

Pro Se for Appellant

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

Attorney for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case Law

South Carolina

Twelfth RMA Partners, L.P. v. National Safe Corp., 335 S.C. 635, 639-40 (S.C. Ct. App. 1999)

Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)

Wogan v. Kunze, 366 S.C. 583, 604 (S.C. Ct. App. 2005)

Other Jurisdictions

Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)

Berkowitz v. Haigood, 256 N.J. Super. 342, 606 A.2d 1157 (Law. Div. 1992)

Bharucha v. Reuters Holdings PLC, 810 F. Supp. 37 (E.D.N.Y. 1993).

In re Jet 1 Center, Inc., 319 B.R. 11, 14-15 (Bankr. M.D. Fla. 2004)

Opinion of the Court, Ashcroft v. Iqbal, 556 U.S. 662 (2009), Supreme Court of the United States, No. 07-1015, at IV A
https://supreme.justia.com/cases/federal/us/556/662/#:~:text=to%20respondent's%20complaint.-,Under%20Federal%20Rule%20of%20Civil%20Procedure%208(a)(2,but%20it%20demands%20more%20than

Peterson v Atlanta Hous. Auth., 998 F. 2d 904 (11th Cir. 1993)

Pugh v Farmers Home Admin., 846 F. Supp. 60, 61 (MD Fla. 1994)

Tannenbaum v United States, 148 F. 3d 1262, 1263 (11th Cir. 1998)

Trinsey v. Pagliaro, 229 F. Supp. 647, 649 E.D. Pa. 1964).

Yeitrakis v. Schering-Plough Corp., 804 F. Supp. 238 (D.N.M. 1992)

Statutes and Court Rules

Professions and Occupations, Title 40 - Professions and Occupations, Chapter 1.
https://www.scstatehouse.gov/code/t40c001.php

RULE 17(a) PARTIES PLAINTIFF AND DEFENDANT: CAPACITY South Carolina Rules of Civil Procedure (SCRCP), https://www.sccourts.org/resources/judicial-community/court-rules/civil/rule-17/

Rule 1.15 - South Carolina Court Rules: https://www.sccourts.org/resources/judicial-community/court-rules/appellate/rule-407/rule-115/

Rule 8.4: Misconduct. South Carolina Rules of Civil Procedure (SCRCP) https://www.sccourts.org/resources/judicial-community/court-rules/appellate/rule-407/rule-84/

S.C. Code § 15-3-530, https://www.scstatehouse.gov/code/t15c003.php

5 S.C. Jur. *Assignments* § 2 (2006).

S.C. Jur. *Assignments* § 19 (2006)

S.C. Code Ann. § 36-3-201 (1976)

S.C.Code Ann. § 15–3–530(1) (2005).

Secondary Sources

Barron's Law Dictionary, Steven H. Gifis, 1984 ed., pgs. 3-4; 280-281; 366; 499-500.

Legal Ethics Opinion 1865, Obligations of a Lawyer in Handling Settlement Funds When a Third-Party Lien or Claim is Asserted https://www.vacle.org/opinions/1865.htm

Parol Evidence Rule. *https://www.law.cornell.edu/wex/parol_evidence_rule*

Scott Moïse, *The Scrivener Get Out of My Life! Part Two Rule 12(b)(4)-(8) motions and motions for judgment on the pleadings, for a more definite statement, and to strike,* (July 2016) at 51 https://www.nelsonmullins.com/storage/fc4ffdc0821e67cbb3027b748f3db189.pdf

Vested right. Merriam-Webster.com Legal Dictionary, Merriam-Webster, https://www.merriam-webster.com/legal/vested%20right. Accessed 31 Dec. 2024.

PREAMBLE

It appears that the Respondents' Attorney, Stephen N. Garcia, has failed to follow the standard convention of answering the Appellant's Initial Brief, by addressing the Arguments as presented by the Appellant so that it may be easily followed not only by the Appellant in his response brief, but also by this Honorable Court. The Initial Brief of Respondents is riddled with redundancies and disorganization of the written matter that makes it incoherent at times. His Brief appears to be an attempt to re-litigate the case and undermine the integrity and function of this Court. Nonetheless, the Appellant will address each of the issues as presented by the Respondents' Attorney while attempting to maintain a framework of order given the circumstances. It appears also that he did not address some of the Appellant's issues on appeal or if he did address them, he did so out of order to my Statement of the Issues on Appeal. In this regard, I beg respectfully the Court's indulgence and understanding regarding the Appellant's endeavor to communicate clearly and effectively given the above conditions herein noted.

REPLY ARGUMENT

I. THE CIRCUIT COURT ERRED IN GRANTING THE DEFENDANTS / RESPONDENTS' 12(b)(6) MOTION TO DISMISS WITH PREJUDICE

Respondents' Attorney's Initial Reply Brief, Page 10-11: Appellant's Refutation and Answer:

The Contract does not have to specifically name a third-party beneficiary in order for that third-party beneficiary to exercise suit against the Respondents, in which case the concept of promisor and promissee does not apply in order to have that vested interest. Furthermore, as a matter of course and business practice, the contracts were legally assigned by the Appellant's wife, the single and only member of the LLC to the Appellant, with all of the rights and privileges accorded to an assignee, including collection of the debt/benefit, and as a result, the Appellant took action

accordingly. ***See*** *Beverly, Kingman.* (R. Vol. I, pgs. 40-43; R. Vol. I, 44-47; R. Vol. II, pgs. 44-46; R. Vol. II, pgs. 47-48; R. Vol. II, pg. 94, lines 7-25; R. Vol. II, pg. 95, lines 1-20).

The Amended Complaint **does** state a cause of action upon which relief can be granted. (R. Vol. 1, pgs. 78-81, ¶ 6, 7, 14, 25).

In *Lad Santiago Dr vs. Oscar Avila Hernandez, defendant, et al, case #2020CP4200055,* although the claim was articulated clearly and comprehensively to make a claim for a specific cause of action, it was nevertheless denied. "If the 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case,' then the court may not grant a 12(b)(6) motion." ***See*** Sloan Constr. Co. v. Southco Grassing Co., 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008***). See*** *Appell. Init. Brief, pg 16.*

"Furthermore, South Carolina law stipulates that a party does not have to be named in a contract in order to have a third-party interest. ***See*** *Kingman v. Nationwide Mut. Ins. Co.* By simply manifesting the intent, which has heretofore been demonstrated by the actions that occurred between the Appellant and the Respondents, as has been previously noted, and by his clinical and verbal exchange with the Respondents, a third-party interest with privity was established. These actions prove unequivocally that the Appellant, Dr. Lad Santiago is a third-party beneficiary with privity, and furthermore, that he is also an assignee to the contracts, and therefore, he can rightfully exercise his right to collect what he has earned and is owed on the healthcare services that he delivered to the Respondents. Dr. Lad Santiago has a vested right, which is defined as: "a right belonging completely and unconditionally to a person as a property interest which cannot be impaired or taken away (as through retroactive legislation) without the consent of the owner." ***See*** Vest Right, Mirriam-Webster." ***See*** *Appellant's Initial Brief: Pages 29-30.*

"When the contract is made for the benefit of a third person, namely in this case the Plaintiff, Dr. Lad Santiago, the third person has the right to enforce the contract. ***See*** *Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 445 (S.C. Ct. App. 1997)"* ***See*** *Appellant's Initial Brief: Page 31.*

"Now as to the question of privity as regards a third-party beneficiary, it is emphatically clear that the Plaintiff has privity in this case, but even if the Plaintiff lacked privity, the courts have found the following to be true. ***See*** *e.g., Wogan v. Kunze, 366 S.C. 583, 604 (S.C. Ct. App. 2005).* ***See*** *Appellant's Initial Brief: Pages 32.*

"If the contracts did not intend to create a direct rather than an incidental or consequential benefit to a third-party, namely to Dr. Lad Santiago, then why would the single member of the LLC, his wife, have assigned the contracts to him?" ***See*** *Appellant's Initial Brief: Page 32;* ***See*** Affidavits (R. Vol. II, pgs. 44-46; R. Vol. II, pgs. 47-48).

"As in Beverly, the circuit court incorrectly interpreted the Agreement (Assignment of Benefits Contracts) to exclude Dr. Santiago as a third-party beneficiary based on an erroneous interpretation of the Agreement, which dismissed his rightful claim and position as a third-party beneficiary. As a result, the Court erred in its ruling." ***See*** *Appellant's Initial Brief: Pages 32-33.*

"Therefore, the Court erred in finding that the Appellant was not the real party in interest, an intended third-party beneficiary with privity, and further, that he was not assigned all of the contracts with the inherent rights to collect on those contracts and on this basis alone, the 12(b)(6) Motion to Dismiss with Prejudice should have been denied." ***See*** *Appellant's Initial Brief: Page 33.*

Respondents' Attorney's Initial Reply Brief, Page 11: Appellant's Refutation and Answer:
Contrary to and in refutation of the Respondents' Attorney's misunderstanding, there were two written contractual agreements and one verbal agreement. They are: 1) an Informed Consent

Contract, 2) an Assignment of Benefits Contract, and 3) a verbal (oral) contract for each party of Oscar Avila Hernandez, et.al. These agreements functioned in concert with each other. The signature on the Informed Consent contract is a legitimate contractual signature (not a witness signature as Respondents' Attorney continues to insist), which is affixed to the contracts, attesting and thereby confirming the understanding and agreement between the parties who signed the contracts, namely the Appellant, Dr. Lad Santiago and each of the Respondents. As regards the Assignment of Benefits contracts, the Respondents only entered into this contract with Upstate Clinical Associates, LLC, without dismissing or excluding the Appellant as an intended third-party beneficiary. ***See*** *Contracts and Affidavits* (R. Vol. I, pgs. 40-43; R. Vol. I, 44-47; R. Vol. II, pgs. 44-46; R. Vol. II, pgs. 47-48).

Respondents' Attorney has mixed two different concepts, erroneously so, in an attempt to combine them. The parol evidence rule only applies to a verbal agreement. Furthermore, there is no conflict between the Amended Complaint and the attached exhibit (it is assumed that he means all of the contracts), and the verbal agreement. The First Amended Verified Complaint reflects all of the contracts mentioned heretofore with each of the parties reflected concretely within the written contracts mentioned. There is no conflict between the Amended Complaint and the attached exhibits (contracts), and the verbal agreement. Furthermore, under the Collateral Contract Exception, the extrinsic agreement in this case is not distinct and independent from the original written agreements. Furthermore, the extrinsic agreement does not contradict the express or implied provisions contained in the written contracts. It simply elaborates on a particular understanding with regard to transferring the benefits and who the benefits are intended for. There is no contradictory information in the extrinsic agreement and the written agreements. It also embraces the Ambiguity Exception, which would also permit the admissibility of parol evidence.

This would have been clarified if the Circuit Court had granted the Motion for a New Trial (Hearing). ***See*** *https://www.law.cornell.edu/wex/parol_evidence_rule* (R. Vol. I, pgs. 404-412; R. Vol. I, pgs. 413-475-exhibits).

With regard to a privity of contract being created by the verbal agreement, the Respondents were, through verbal (oral) exchange and acknowledgement, made aware that the Appellant would deliver services and expected to be paid by them through UCA as a conduit, and that Appellant would await payment until they reached maximum medical improvement and their cases would be resolved through settlement with the opposing insurance company There is no a conflict between the complaint and the contracts as Respondents' attorney claims. ***See*** *Affidavits*, (R. Vol. II, pgs. 43-46; R. Vol. II, pgs. 47-48); ***See*** *Appell. Init Brief, No.4, pgs. 26-33.*

Respondents' Attorney's Initial Reply Brief, Page 12: Appellant's Refutation and Answer: Please refer to **Plaintiff's "Response in Opposition to Stephen N. Garcia's Motion to Dismiss" filed on March 9, 2020 at 4:56pm**. (R. Vol. I, pgs. 84-88). This document clearly defines Informed Consent and thereby corrects Mr. Garcia's erroneous and continued insistence that Dr. Lad Santiago's signature was a "witness" signature. It was a contractual agreement signature.

Appellant refutes the Respondents' Attorney's statement on privity as categorically untrue. Privity was established between the Appellant, Dr. Lad Santiago and each of the Respondents as evidenced in the Informed Consent for Treatment Contracts, which were signed individually by all Respondents and the Appellant, and as has previously been stated earlier. Privity is also established between the Appellant, Dr. Lad Santiago and the Respondents regarding the Irrevocable Assignment, Lien and Authorization Contracts, as he is and always has been an intended third-party beneficiary, and furthermore, he was assigned these contracts by his wife, the single and only member of Upstate Clinical Associates, LLC.

Therefore, based on these facts, privity is incontrovertibly established, and the Amended Complaint does state a cause of action upon which relief can be granted, as previously stated.

II. PLAINTIFF/APPELLANT HAS MAINTAINED THAT HE HAS ALWAYS HAD PRIVITY WITH THE RESPONDENTS. THE APPELLANT IS AN INTENDED THIRD-PARTY BENEFICIARY AND THE APPELLANT IS ALSO THE ASSIGNEE OF THE CONTRACTS. THE RESPONDENTS' ATTORNEY IS IN ERROR CLAIMING A LEGAL FALLACY AND LACK OF SUPPORTING AUTHORITIES. THERE ARE SUFFICIENT SUPPORTING AUTHORITIES FOR THE INTENDED THIRD-PARTY BENEFICIARIES AND ASSIGNEE OF CONTRACTS.

Respondents' Attorney's Initial Reply Brief, Page 13: Appellant's Refutation and Answer:

As previously stated in this document, there were three contracts, which defies Respondents' Attorney's contention that there was no privity. In fact, this was addressed earlier in this document. Respondents' Attorney is utterly misguided. There is direct privity between the Appellant and each of the Respondents in the Informed Consent Contract, and verbal agreements, and in the relationship between Appellants and Respondents throughout the process of healthcare delivery to them. He does have standing to sue on the contracts as an intended third-party beneficiary, without necessarily being named within the contracts. ***See*** *Beverly, Kingman.*

His contention regarding privity applies solely to privity of contract, but it does not apply to an intended third-party beneficiary who does not have to be named in the contract, but nevertheless is vested in the benefits that he/she expects to derive from the execution of the contract.

When a contract is assigned, the assignee should have all the same rights and privileges, including the right to sue on the contract, as the assignor. ***See*** *Twelfth RMA Partners, L.P. v. National Safe Corp., 335 S.C. 635, 639-40 (S.C. Ct. App. 1999)* ***See*** *Appellants Initial Brief, No. 3, pages 22-26.*

Respondents' Attorney's Initial Reply Brief, Page 13: Appellant's Refutation and Answer:

Respondents' Attorney is incorrect, Upstate Clinical Associates, LLC is NOT a third party, the Appellant is an intended third-party beneficiary.

Respondents' Attorney is purposefully misleading the Court by restating the Respondents' association and obligations and agreements, exclusively so as if the Respondents and Upstate Clinical Associates, LLC were the only parties involved in this transaction, and thus, omitting the substantive significance of the Appellant as a direct and intended third party beneficiary. (***See*** *Appell Init Brief, No.4, pgs. 26-33).*

Respondents' Attorney's Initial Reply Brief, Page 14: Appellant's Refutation and Answer:

Furthermore, Appellant never made a presumption of lack of privity, but rather, he has consistently maintained that he has had privity throughout his relationship with the Respondents. Therefore, the Respondents' Attorney is misguided and does not understand the true concept of privity as stated above.

With regard to his statement regarding presumption, it does not apply in this case because the Appellant **is** an intended third-party beneficiary (even though he does not have to be named therein) and was also named in the two contracts noted above as was previously discussed in prior answers, and he is also an assignee of the contracts. In fact, Oscar Avila Hernandez was a patient of the Appellant prior to his automobile accident, and he returned as a patient for healthcare for the injuries sustained in this case. (***See*** *Appell Init Brief, No. 4, pgs. 26-33).*

Respondents' Attorney's Initial Reply Brief, Page 14: Appellant's Refutation and Answer:

This is a desperate attempt to undermine the legitimacy of the Appellant as an assignee and an extreme act to undermine this Honorable Court and the truth and the Claim of the Appellant. This aspect of Assignor/Assignee was addressed in the Plaintiff/Appellant's Response In

Opposition to Defendant's Renewed 12 (b)(6) Motion To Dismiss that was filed May 22, 2023, that was in direct response to Defendants'/Respondents' Attorney's Renewed 12(b)(6) Motion to Dismiss, where the following was stated: "e. That there is no allegation of assignment to Plaintiff of the contract that Plaintiff alleges as the basis for this action;"

The Appellant was compelled to reply to this statement with his answer in his Response in Opposition to Defendants' Renewed 12(b)(6) Motion to Dismiss, with the following answer: "e. Denied. The previous court hearing under the Honorable H. Steven DeBerry IV did not hear this aspect of the case nor the overwhelming number of aspects noted by Opposing Counsel regarding this case. Contrary to Defendants' Counsel's mistaken statement, there is a verbal assignment of all of the Defendants' contracts that has always existed and has been discussed and noted above and also noted herein below. (R. Vol. I, pgs. 239-240; R. Vol. I, pgs. 223-227).

"In fact, Defendants' Counsel has agreed with this principle as demonstrated by his explicit conduct through his actions with the Plaintiff and thereby agreement. He has consistently chosen to speak with the Plaintiff, Dr. Lad Santiago about any negotiations of fees regarding the debts that were owed and the proceeds that were to be received by the Plaintiff to satisfy the debts prior to the commencement of this civil action. ***See*** Twelfth RMA Partners, L.P. v. National *Safe Corp.*, 335 S.C. 635, 639-40 (S.C. Ct. App. 1999), page 4. ***See*** *Rose Elec., Inc. v. Cooler Erectors of Atl., Inc.*, 418 S.C. 424, 429 (S.C. Ct. App. 2016), page 5." ***See*** *Plaintiff's Response in Opposition to Defendants' Renewed 12(b)(6) Motion to Dismiss, pages 17-18.* (R. Vol. I, Item f., pg. 240).

Furthermore, this is an inapplicable and invalid assertion on the part of the Respondents' Attorney as the Renewed 12(b)(6) Motion To Dismiss presented a continuation of this litigation and thus the Appellant was compelled to note and answer in his response and in the hearing.

There is no significance or relevancy to his assertion that this needed to have been done prior to Respondents' Attorney's Renewed 12(b)(6) Motion to Dismiss, as it was not an issue until he raised it in this filing. This assignment of the Contracts was an internal office policy/procedure implemented (as previously noted), that did not appear to require commentary and revelation during this time. (R. Vol. II, pgs. 45-48).

Appellant stated in his Motion for New Trial: "This was the result of Defendants' Breach of Contract wherein the Defendants signed a contractual agreement to render to Upstate Clinical Associates, which was **subsequently assigned to the Plaintiff**, payment in full for services that the Plaintiff rendered to the Defendants in a personal injury case, once their cases were settled. However, **the Defendants and their attorney failed to remit payment**. Additionally, evidence will show that **this is also a matter of unjust enrichment**, that our invoices were used for the Defendants and their attorney to receive insurance claim proceeds from their automobile accident injuries, for which I provided healthcare services to. Wherefore, I should be reimbursed for my labor as agreed by all parties and their defense attorney." *Emphasis added.* ***See*** *Plaint Mot for New Trial, pgs 3-4.* (R. Vol. I, pgs. 406-407).

But the Court flatly denied his entire Motion for New Trial, thus denying the Appellant the right to not only amend his complaint, but pursue justice in this Breach of Contract matter. (R. Vol. I, pgs. 24-25). One must remember that the issue herein is a Breach of Contract, wherein the Respondents and their Attorney failed to remit funds / benefits to anyone, they received the funds (benefits) and it is assumed that they still have the money (benefits), but there is no evidence to support this. (R. Vol. I, pgs. 95-96).

It must also be noted that the Motion to Amend the Complaint that the Respondents' Attorney mentions at the top of page 15 in his Respondents' Brief is not applicable or germane to

this case; it had nothing to do with anything relevant to the main issue of this case, which is a Breach of Contract. As has been noted, this was due to the Appellant's ex-attorneys' lack of preparation who committed grave errors, and consequently, was dismissed. (R. Vol. I, pgs. 8-11; R. Vol. I, pg. 239 ¶e - pg. 245, ¶1).

Respondents' Attorney's Initial Reply Brief, Page 15: Appellant's Refutation and Answer:

Respondents' Attorney has misapplied his quote in 45, at the bottom of page 15, Williams v. Condon: "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed "to ***233*** state facts sufficient to constitute a cause of action" in the pleadings filed with the court. Rule 12(b)(6), SCRCP." In this instance, the Appellant definitively demonstrated that he did "… state facts sufficient to constitute a cause of action." See Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)

Further, "The question to be considered is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Toussaint v. Ham,* 292 S.C. 415, 357 S.E.2d 8 (1987). The Appellant's Complaint DOES state a valid claim for relief.

Respondents' Attorney's Initial Reply Brief, Page 15: Appellant's Refutation and Answer:

Respondents' Attorney again, misapplies case law from Brown v. Odom, wherein he states: "…a memorandum in support of a motion is not evidence nor should it be considered.46" When reviewing Brown v. Odom it actually states: "A memorandum in support of a motion, such as a motion to alter or set aside the judgment, is not evidence. S.C. R. Civ. P. 59(e)." ***See*** *Brown v. Odom*, 425 S.C. 420, 432, 823 S.E.2d 183, 189 (Ct. App. 2019). This case before the Circuit Court was still in the pleading phase, and this quote only applies to a judgment, not a memorandum in a pleading phase.

Respondents' Attorney's Initial Reply Brief, Page 15: Appellant's Refutation and Answer:

The Defendants' / Respondents' Attorney is misguided and mistaken regarding his comment that the trial court should not have considered a memorandum. It was the Respondents' Attorney who filed a Renewed 12(b)(6) Motion to Dismiss which compelled the Appellant to respond in the form of a Response and Memorandum directly to the aforementioned motion. In responding, the Appellant states that since this was an official proceeding conducted by Judge Knie, that Judge Cole should have taken into account the filings and response as it was relevant to the issues being litigated in the case. Regardless, Appellant filed a Motion for a New Trial (Hearing) on November 30, 2023, which did address this issue of the Assignor/Assignee and was noted within the Motion for a New Trial. However, it was not granted. This is an error committed by the Circuit Court. (***See*** *Plaint Mot for New Trial).* (R. Vol. I, pgs. 406 – 412).

Respondents' Attorney's Initial Reply Brief, Page 15 – 16: Appellant's Refutation and Answer

Appellant refutes Respondents' Attorneys statements on the issue of the Leave to Amend dated March 7, 2022 that had been filed by an ex-attorney for the Plaintiff/Appellant. The ex-attorney was dismissed by Appellant as a result of her total lack of preparation, confusion on the issues, erroneous filings, pleadings and erroneous statements before the Court in a Hearing before Judge DeBerry. This caused great harm to the Appellant. Respondents' Attorney incorporated issues that came from the ex-attorney's Motion to Amend and her other filings and also from the hearing before Judge DeBerry. He most likely wrote this Order, as the language used in the Order is akin to other orders he authored. He then incorporated this erroneous and irrelevant information within his Renewed 12(b)(6) Motion to Dismiss which was filed on March 20, 2023. These issues that arose in the DeBerry Hearing were **not** relevant to the underlying issues of the case. This was

also confirmed by the Honorable Judge Hayes in his ruling of July 24, 2023. Stephen N. Garcia, Esq. purposefully did so in order to confuse and cover up the real issue which is a Breach of Contract. ***See*** *Orders of Judge DeBerry and Judge Hayes.* (R. Vol. I, pg. 1; R. Vol. I, pg. 16, ¶4; R. Vol. I, pg. 239 ¶e - pg. 245, ¶1).

Furthermore, the Respondents' Attorney is attempting to put unrelated issues together (the non-relevant Leave to Amend by the ex-attorney and the issue of assignment before this Court). At best, these statements in Respondents' Attorney's brief are a non sequitur.

Respondents' Attorney's Initial Reply Brief, Page 16: Appellant's Refutation and Answer:

The Appellant vehemently refutes the Respondents' Attorney's allegation that the "…Plaintiff / Appellant blatantly misrepresents to this Court that paragraph 6 of his Complaint contained the allegation of assignment of the contract to him by Upstate Clinical Associates, LLC." There is NO dishonest representation. The reference of (Amd. Compl. ¶ 6) is an honest clerical erratum and should have been noted as (Affidavit of ES, page 1, ¶ 6; and Affidavit of LS, pg 3, last ¶, and has been corrected). For this error, I extend my apologies to this Honorable Court and to the opposing counsel. There was no dishonest representation intended. Please note that this is not a "…last-ditch and entirely dishonest attempt to survive the lower Court's granting of the Motion to Dismiss."

Regardless, the fact remains that there was a valid assignment made that has previously been noted within this document, and further, this issue of assignor/assignee was brought forth in answer to Defendants' Attorney's Renewed 12(b)(6) Motion to Dismiss in Plaintiff/Appellant's Response to Defendants' Renewed 12(b)(6) Motion to Dismiss of May 22, 2023. (R. Vol. I, pg. 202, ¶17,e.f; R. Vol. I, pg. 239 ¶e – pg.240, ¶f.). Therefore, it became part of the case record, and

thus the argument of assignment does not fail on its face because the fact remains that it is a valid assignment.

This case never went beyond the pleading phase, and therefore, it never included a hearing or for that matter, a trial. By the Respondents' Attorney's own admission, in his Defendants' Memorandum in Opposition to Plaintiff's Motion for New Trial, filed December 7, 2023, he states: "...in fact, the parties to this action did not get beyond the pleading stage..." (R. Vol. I, pg. 476, ¶1). Although he further claims that the Plaintiff's Motion for a New Trial (R. Vol. I, pgs. 404-412; Exhibits, pgs. 413-475) was improper, it was not. The Appellant's Motion for a New Trial was proper and was the only recourse available for the Appellant. ***See*** *Appellant's Initial Brief, page 17 regarding Plaintiff's Motion for a New Trial On a 12(b)(6) Motion to Dismiss, filed on November 30, 2023, beginning at 2nd ¶, and page 18, 1st ¶.*

Respondents' Attorney's Initial Reply Brief, Page 17: Appellant Refutes and Answers:

The Appellant refutes the allegation of the "...attempt to cure his clear privity deficiency by also arguing that he is a 3rd party beneficiary to the alleged 'contracts.'" In fact, South Carolina Law is replete with cases where intended third-party beneficiaries have been recognized as having a direct interest in a contract wherein they have not been named or mentioned, but they have brought an action for breach of contract. ***See*** *Beverly, Kingman.*

The Respondents' Attorney is mistaken by saying that the Appellant "...failed to plead the existence of a third-party relationship..." and that he is therefore not entitled to this position. The Appellant has always maintained that he is the real party in interest and is an intended third-party beneficiary, as has been previously stated.

Respondents' Attorney's Initial Reply Brief, Page 17: Appellant Refutes and Answers:

Appellant refutes the contentions of Respondents' Attorney regarding third party beneficiary relationship and assignment. These issues of the Appellant being an intended third-party beneficiary and also being the assignee of the contracts are clearly stated throughout the pleadings in the court case filings in the record. Furthermore, the Order of November 20, 2023 (R. Vol. I, pg. 18) makes note of these two items in addition to the statute of limitations, and other items, were raised in the Court Order and also ruled upon, which makes them appealable. Where else could one appeal the decisions on these issues, if not the Court of Appeals?

Appellant refutes the allegation of Respondents' Attorney regarding intended third-party beneficiary and not being named in the contract, as well as his statement regarding incidental beneficiary and having no privity, which is a flawed statement and a legal fallacy. It is very clear that the Appellant is and always has been an intended third-party beneficiary with privity, as has previously been established and discussed in this document. ***See*** *Beverly, Kingman.* ***See*** *Appell.Init.Brief, pg.13;* ***See*** *Appell.Init.Brief, No. 4, pgs. 26-33.*

Respondents' Attorney's Initial Reply Brief, Page 17: Appellant's Refutation and Answer:

Respondents' Attorney is illogical and absurd in his reasoning regarding his extrapolation that this "…would also open the door for a whole slew of 3rd parties to maintain an action against the Defendants/Respondents…," such as cleaning crew, landlord, etc. This is extremely flawed and a fallacy and without merit. No one can just insert themselves as an intended third-party beneficiary, as he is so asserting. Only an appropriate party like the Appellant who has demonstrated this position. ***See*** *Appellant Init.Brief, No. 4, pgs. 26-33.*

Respondents' Attorney's Initial Reply Brief, Page 18: Appellant's Refutation and Answer:

The Respondents' Attorney's contention that the case law: *Beverly v. Grand Strand Reg'l Med. Ctr., LLC* with various other citations, that the Appellant used to support the Appellant's

position as an intended third-party beneficiary, has been taken out of context. This is categorically untrue. The Respondents' Attorney did not understand the particulars involved nor the facts in the Beverly case. The Circuit Court in Beverly found that Beverly was **not** an intended third-party beneficiary. Respondents' Attorney claims that she was, which is false. Beverly then filed to the South Carolina Court of Appeals. The Court of Appeals reversed this decision of the lower Court, by finding that Beverly **was** an intended third-party beneficiary in a Breach of Contract case. The Beverly case is analogous and akin to Dr. Lad Santiago v. Oscar Avila Hernandez, et.al. In Beverly's case, her contract with Grand Strand had a clause to exclude her as an intended third-party beneficiary, but she overcame this with her case being remanded to the lower Court by the Court of Appeals, noting that she was an intended third-party beneficiary. Although some of the facts are different between the Beverly case and this case, the overall principle of being an intended third-party beneficiary is the same. In the matter at hand, there is no exclusionary clause. Furthermore, all of the other citations that the Respondents' Attorney questions, also support the Appellant's correct position as being an intended third-party beneficiary. Contrary to Respondents' Attorney's statement that the Appellant is creating a workaround for lack of privity with the Respondents, this is absolutely not true and is fallacious. ***See*** *On Writ of Certiori to the Court of Appeals, Appellate Case No. 2020-000710; Beverly v. Grand Strand Regional Medical Center, LLC, 435 S.C. 594 (2022).*

Moreover, Respondents' Attorney makes another false statement by stating that being an assignee or an intended third party beneficiary is an admission that he is not a party to the contracts, which is false logic, as an intended third party beneficiary does not have to be named in the contract and being an assignee, he is standing in the shoes of the assignor as has been substantiated by case

law. ***See*** *Appell. Init. Brief, No. 3, pgs. 22-26, and No. 4, pgs. 26-33;* ***See*** *Twelfth RMA;* ***See*** *Beverly;* ***See*** *Kingman.* The Circuit Court erred in dismissing the Plaintiff/ Appellant's Complaint.

III. PLAINTIFF/APPELLANT'S COMPLAINT DOES SURVIVE RELIEF ON ANY THEORY AND DOES NOW STATE WHAT THE THEORIES ARE. PLAINTIFF/ APPELLANT'S COMPLAINT MEETS AND EXCEEDS THE PLAUSIBILITY STANDARD AND DOES STATE HOW. FURTHER, DEFENDANTS /RESPONDENTS FAILED TO DEMONSTRATE HOW THE APPELLANT'S COMPLAINT DID NOT SURPASS THE CONCEIVABILITY BAR AND FAILED TO ENTER THE RANGE OF PLAUSIBILITY STANDARD

Respondents' Attorney's Initial Reply Brief, Page 19: Appellant's Refutation and Answer:

The Appellant's First Amended Verified Complaint (Breach of Contract) (R. Vol. I, pgs.76-81) notes the necessary elements to make a claim for recovery. 1) Valid agreements between the parties, 2) Failure by one party to perform as required, 3) Harm suffered by the Plaintiff/Appellant as a result of the Breach of Contracts. The facts stated within the First Amended Verified Complaint reflect the aforementioned elements. It has been established that the Appellant is the real party in interest, is an intended third-party beneficiary (who does not have to be named in the contracts, as noted in case law), and is also the Assignee of the contracts. These facts validate the elements required to make a claim upon which relief can be granted. ***See*** *Appell. Init. Brief, Nos. 3 and 4, pgs. 22-33;* ***See*** *Amd.Compl.*(R. Vol. I, pgs.76-81); ***See*** *Beverly;* ***See*** *Kingman.*

In Breach of Contract cases, the Plaintiff/Appellant may assert or rely upon a legal theory or theories such as: 1) Breach of Express Contract, 2) Promissory Estoppel, and 4) Quantum Meruit. The theories named herein apply in this case for relief on any theory and South Carolina case laws illustrate the principles contained in relief on any theory. The Plaintiff/Appellant's case illustrates and relies upon these principles, so Respondents' Attorney has thus made an erroneous statement regarding this issue.

Upon review, the First Amended Verified Complaint is valid because it states facts sufficient to make a claim upon which relief can be granted. The Breach of Contract Claim is valid as well because the Contracts referred to in the Complaint are valid.

As to the Plausibility Standard, the elements contained in the First Amended Verified Complaint clearly demonstrate that the Complaint exceeds the bar of conceivability and meets the Plausibility Standard and enters into the Probability domain, as illustrated in the Appellant's Initial Brief. However, the Respondents' Attorney fails to establish that the Appellant's Complaint has not met the Plausibility Standard and only remains within conceivability. The complaint speaks for itself, no further theories are required. ***See*** *Appellant's Init. Brief, No. 2, pages 19-22.*

"In South Carolina, the courts have adopted a similar approach to Twombly and Iqbal regarding the requirement for a well-pleaded complaint. A breach of contract action typically requires the plaintiff to allege (1) the existence of a contract, (2) the defendant's breach of that contract, and (3) damages resulting from the breach. (Vol. I, pgs. 78-81-Amd.Compl. ¶ 6, 7, 8, 10, 11, 12, 13, 14, 21, 22, 23, 24, 25). As noted in the Twombly case cited above, this case has offered a pleading that is fully adorned." ***See*** *Appellant's Init. Brief, No. 2, pgs. 19-22.*

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

On the other hand, Respondents' Counsel has failed to meet the Twombly-Iqbal Standard wherein he would have to prove that the First Amended Verified Complaint and its claims have

not surpassed the bar of conceivability. The circuit court erred by **not** accepting the complaint and granting the 12(b)(6) Motion to Dismiss with Prejudice. ***See*** *Appellant's Init.Brief, No. 2, Pgs. 19-22.*

IV. PLAINTIFF/APPELLANT BRINGS FORTH ARGUMENTS THAT INDEED HAVE BEEN RULED UPON BY THE LOWER COURT AND HAVE BEEN BROUGHT FORTH IN PLAINTIFF'S/APPELLANT'S MOTION FOR A NEW TRIAL

It is worth noting that the Order issued by Judge J. Derham Cole on November 20, 2023, was written by Attorney Stephen N. Garcia after great objection by the Plaintiff/Appellant due to previous ethical violations committed by Attorney Stephen N. Garcia. The Plaintiff/Appellant pled with the judge to write the order and even assisted in correcting the order written by Stephen N. Garcia and even conveyed it to the judge for consideration, but the judge was silent with no acknowledgement whatsoever. (R. Vol. I, pgs. 18-23; R. Vol. I, pg. 381; R. Vol. I, pgs. 382-398; R. Vol. I, pgs. 399-402).

Respondents' Attorney's Initial Reply Brief, Page 20: Appellant's Refutation and Answer:

Appellant refutes Respondents' Attorney's Brief, item #IV, The Respondents' Attorney is gravely mistaken, the judge did rule on every issue presented in the Motion for A New Trial/Hearing of November 30, 2023, by rendering an Order, albeit seven (7) months later, on July 3, 2024. (Citation of July 3, 2024 Order) (R. Vol. I, pgs. 24-27; R. Vol. I, pgs. 404-412; R. Vol. I, pgs. 413-475). It is highly suspected that the Respondents' Attorney wrote this order as well, as the language is akin to his particular choices of words and sentence structure that he has previously employed. Therefore, every issue has been preserved, and his citation references claiming to support his position are moot and not applicable. Furthermore, please reference the following citation from Plaintiff's Motion for a New Trial (Hearing). In part, it states: "*Furthermore, the draftsmen of the rules found that it was impracticable to enumerate all the grounds for a new trial.*

Thus the rule is stated in broad terms." And it also states: "the general grounds for a new trial are that the verdict is against the weight of the evidence, that the damages are excessive, or that for other reasons the trial was not fair, and that the motion may also raise questions of law arising out of substantial errors in the admission or rejection of evidence or the giving or refusal of instructions. The absence of a listing of specific grounds should not obscure the governing principle. The court has the power and duty to order a new trial whenever, in its judgment, this action is required in order to prevent injustice.")" ***See*** *Plaint. Mot. for New Trial (Hearing)* (R. Vol. I, pgs. 405-406).

Given the fact that the Circuit Court heard and denied the Plaintiff/Appellant's motion for a new hearing/trial, the Appellant had no other recourse than to bring this matter before this honorable Court of Appeals.

As regards the Respondents' Attorney's position regarding Appellant's Issues on Appeal, (***See*** Item number 5, Statute of Limitations, pgs. 33-40 of Appellant's Initial Brief), the Respondents' Attorney stated that the lower court did not rule upon the statute of limitations nor was it called to the attention of the lower court with any specificity by a post-order motion for reconsideration. This is incorrect as this issue was presented early in the pleadings, but it was never addressed by the Circuit Court, nor any other issues, until the Order of November 20, 2023, under the heading of Findings of Fact, item number 4, wherein the Defendants' Attorney states: "4. Defendants' Motion to Dismiss also seeks dismissal of actions against various Defendants because the time for bringing such actions are outside the statute of limitations." This is a false statement because it was not: "outside the statute of limitations," only because the Respondents' Attorney had fabricated a statute of limitations schema to mislead the Court through fraud to sustain his 12(b)(6) Motion

to Dismiss. ***See*** *Order of November 20, 2023,* (R. Vol. I, pg. 20, ¶ 4); ***See*** *Appell. Init. Brief, No. 5. pgs 33-40, on Statute of Limitations.*

Because this was such a gross violation of ethical conduct as just noted above in Appellant's Initial Brief, and an egregious act, the Respondents' Attorney, Stephen N. Garcia states that this was not brought forth in the lower court, when in fact it was. (R. Vol. I, pgs. 136-137; R. Vol. I, pgs. 159-163; R. Vol. II, pgs. 90-92). Additionally, knowing full well of the severity of this transgression, he states in this same Order under "Conclusions of Law … 3. The Court declines to rule on Defendants' Statute of Limitations argument as the issue is moot in light of dismissal under previously stated grounds" (R. Vol. I, pg. 21, ¶ 3). This is untrue and a fabrication. This is also in direct conflict with his prior statement of facts in this order, which is definitely a ruling. (R. Vol. I, pg. 20, ¶ 4). Also, with regard to the statement in the order that there was "…dismissal under previously stated grounds," the Honorable J. Derham Cole, through the Circuit Court is unclear and non-specific with regard to this statement in this Order, which Order was authored by the Respondents' Attorney. It appears that the Respondents' Attorney wrote this ruling in this manner, so that it would evade/circumvent any scrutiny with regard to his egregious act to undermine the Court and commit fraud upon it, as this would eventually be discovered, so he obviously attempted to dismiss it.

The fact that the Order addresses the Statute of Limitations, means that it was an issue preserved for appeal and consideration. Therefore, the issue of the Statute of Limitations was indeed noted and ruled upon in the Order and is therefore preserved for this Court of Appeals case.

Furthermore, when Appellant filed his Motion for New Trial, the resultant order, seven (7) months later, included the record: "*After consideration of the record* [emphasis added], memoranda submitted, and the applicable rules as well as statutory case law, the Court finds that the plaintiff's

"MOTION FOR A NEW TRIAL" pursuant to Rule 59, SCRCP, should be and **IS** therefore **DENIED."** Further, "The motion is determined on briefs filed by the parties without the need for oral argument. Rule 59(f), SCRCP." It is also worth noting that since this was a Motion for a New Trial (Hearing), it is contradictory to make a ruling for a Motion for a NEW TRIAL and have it "...determined on briefs filed by the parties without the need for oral argument." ***See*** *Order of July 3, 2024.* (R. Vol. I, pg. 24, bottom ¶ - pg. 25, top ¶).

Appellant by virtue of his Motion for a New Trial should be granted exactly that, which includes a hearing before the Circuit Court, and not a judicial deliberation based upon briefs without the need for oral argument, and by virtue of the definition of NEW, Appellant motioned for a NEW TRIAL. Appellant did not petition the Court for a duplication of what had already occurred; a judicial deliberation based upon briefs which the Respondents' Attorney advocates. This would be foolhardy. The Circuit Court erred on this point as well, denying the Appellant his inherent rights in his quest for justice. Therefore, the Circuit Court erred by not granting the Plaintiff/Appellant his Motion for a New Trial. (R. Vol. I, pgs. 404-412; R. Vol. I, exhibits, pgs. 413-475).

This case would not have survived had the lower court taken action on the issue of the fabricated Statute of Limitations composed by the Respondents' Attorney; one of the cornerstones for the 12(b)(6) motion to dismiss, and thus, the 12(b)(6) Motion to Dismiss the complaint would not have survived as it would have died on its face because the fabricated statute of limitations schema was baseless, unsubstantiated and without merit.

The Circuit Court failed to respond to the egregious act of fabricating a false schema by the Respondents' Attorney, or for that matter, responding to anything else in the case until the ruling of November 20, 2023; it was essentially a mute Court. The Plaintiff/Appellant had no way

to force the Circuit Court to respond when the judge was mute and essentially absent from this case.

However, on this issue, and also on the issue of failure of fiduciary responsibility **(Unjust Enrichment) (#6)**, the Plaintiff/Appellant offers the following statements of fact. The First Amended Verified Complaint contains the issue #6 as stated in paragraph #14 of the First Amended Verified Complaint, wherein it states and infers a lack of fiduciary duties and unjust enrichment as a result of the breach of contract. ***See*** *App Init Brief, pg. 25, and specifically pg. 25, lines 1-7; also see* (R. Vol. I, pg. 79, ¶14).

Moreover, issue #6 (Unjust Enrichment) of the Issues on Appeal was brought before the Court in the Plaintiff's Motion for a New Trial on a 12(b)(6) Motion to Dismiss on November 30, 2023. ***See*** *Plain.Mot.for New Trial* (R. Vol. I, pg. 406, bottom ¶ - pg. 407, top ¶).

Appellant's refutation and answer to Respondents' Attorney's remarks on the issue of Pro Se litigant and remarks regarding legal representation

Appellant had only one attorney for a very brief period who made grave errors that created direct harm to the Appellant because of her lack of preparation and competence, and was thus dismissed. Contrary to Respondents' Attorney's claim, there was no "open hostility" towards her. He also exaggerated on the Court's advice regarding self-representation; it was simply mentioned by one judge who was Pro Se prejudiced.

It appears that the Respondents' Attorney was being extended greater latitude and favoritism in the Circuit Court due to collegiality. I should have been afforded greater latitude as a Pro Se Litigant as is noted in the following case. ***See*** *"The pleadings of pro se litigants are "liberally construed" and held to a less exacting standard as those complaints drafted by attorneys. Tannenbaum v United States, 148 F. 3d 1262, 1263 (11th Cir. 1998). "However, a pro se litigant must still meet minimal pleading standards." Pugh v Farmers Home Admin., 846 F. Supp. 60, 61*

(MD Fla. 1994) (citation omitted). And the courts are not tasked with drafting or rewriting a complaint to locate a claim. Peterson v Atlanta Hous. Auth., 998 F. 2d 904 (11th Cir. 1993)"

CONCLUSION

All of these issues were raised but were not ruled upon, for the Honorable J. Derham Cole, as the judge, was essentially mute until the ruling of November 20, 2023, giving a ruling to the issues which are named in the Order. Without a ruling, one does not know what issues to appeal.

Once we knew from the Order what the issues were, then the Appellant knew what issues were to be appealed. Given this, and only upon having the Order of November 20, 2023, could the Appellant know specifically the issues requiring appeal.

From the beginning, this case has had significant numerous negative issues emerge that have impacted the integrity of this case, such as:

1. Frivolous 12(b)(6) responses by the Respondents' Attorney with fallacious statements;
2. The Respondents' Attorney including false standards as grounds for his 12(b)(6) motion to dismiss:
    a. A Statute of Limitations, fabricated by the Respondents' Attorney;
    b. An assertion that the Plaintiff/Appellant did not present sufficient facts
    c. And much later, the claim that there was no privity between the Appellant and the Respondents;
3. The Respondents' Attorney's attempt to litigate this case with variations of the 12(b)(6) Motion to Dismiss: ie. a 12(b)(6), an Amended 12(b)(6), a Renewed 12(b)(6);
4. Waiting three-and-one-half years for a decision from the presiding judge;
5. Not having an actual hearing on the case;
6. The Court's failure to render a decision on a Motion for the Disqualification of Attorney Stephen N. Garcia. The Court rendered a ruling 3.5 years later on this Motion in the Final Ruling.

7. The Judge was essentially mute throughout this case until the very end when his law clerk conveyed an email stating that there was a ruling, and only upon the urging of the Respondents' Attorney;

8. The pleadings of the Plaintiff/Appellant were never commented upon by the judge;

9. The Respondents' Attorney wrote the Final Order, even though the Judge had been informed by the Appellant of the attorney's ethical infractions that could potentially be committed again.

The Respondents' Attorney demonstrated malice and used the law maliciously through abuse of process, fabricating a frivolous 12(b)(6) motion to dismiss, and also doing everything in his power through the law to undermine the court and the legitimate claim made by the Appellant. ***See*** *Baron's Law Dictionary, pg. 280-281; 3-4.* This is a waste of the Court's time and resources. And although this was not a trial or a hearing, because it never went beyond the pleading phase, the principles stated above still nevertheless apply.

Although the complaint may not have been "perfectly" articulated, the Appellant has the right to further refine his Complaint. Furthermore, "[i]t is generally recognized that for the purposes of a motion to dismiss, the court shall construe pleadings liberally, and if there is any possibility of relief, the case should not be dismissed." ***See*** Yeitrakis v. Schering-Plough Corp., 804 F. Supp. 238 (D.N.M. 1992).

"Since the Superior Court erred in dismissing this action, it is remanded to that court so the complaint may be amended to reflect that this action was brought by Mr. Fox in his capacity as a general partner of the limited partnership, Country Villa Mobile Park." ***See*** *Fox v. Sackman*, 22 Wn. App. 707, 712 n.5 (Wash. Ct. App. 1979).

See *Bailey, Judge of Probate, v. Cooley*, 153 S.C. 78, 89 (S.C. 1929) (""Litigants of course, must be provided with some remedy to gain relief from an erroneous or unwarranted judgment. And in recognition of such necessity, the law has established appropriate proceedings to which a

judgment party may always resort when he deems himself wronged by the Court's decision. If he so wishes, he may seek relief from the judgment by some timely move in the Court rendering it *or* have recourse to some authorized mode of review by an appellate tribunal, *or under certain circumstances procure a setting aside or annulment of the judgment by a Court of Equity.*"") From Resp to Def Mem to Mot for New Trial (R. Vol. II, pg. 9); (R. Vol. II, pgs. 1-14; R. Vol. II, pgs. 16-22).

"JUSTICE FEW: This is an appeal from an order pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure dismissing Jeanne Beverly's claims against Grand Strand Regional Medical Center, LLC. The primary question before us relates to whether Beverly is a third-party beneficiary who may bring an action to enforce a contract to which she is not a party. The specific question we address is whether a contract clause stating, "This Agreement is not intended to, and shall not be construed to, make any person . . . a third party beneficiary" overrides an otherwise manifestly clear purpose of the contracting parties to provide a direct benefit to non-contracting parties. Mindful that we are reviewing a Rule 12(b)(6) dismissal order—not an order on the merits—we hold it does not. We affirm the court of appeals' opinion reversing the 12(b)(6) dismissal. We remand the case to circuit court for discovery and trial." ***See*** Beverly v. Grand Strand Regional Medical Center, LLC, 435 S.C. 594 (2022); On Writ of Certiori to the Court of Appeals, Appellate Case No. 2020-000710.

What the Respondents and their attorney have committed is an affront to equity. Equity "stands on the very foundations of right and fair dealing, and it considers and weighs conduct of men in their dealings with each other and gives that effect and meaning to their actions which common sense and justice dictate." ***See*** *Kelly v. McCray, 278 S.C. 88, 90,292 S.E.2d 587, 589 1982) (citing Gen. Motors Acceptance Corp. v. Herlong, 248 S.C. 55, 159 S.E.2d 51 (1966)).* A

court should "look beneath the rigid rules of the law" or even search beyond a document's language to resolve a dispute because equity's primary objective is to "seek substantial justice" and to prevent a party from profiting from its own wrongdoing. ***See*** *State ex rel. Daniel v. Strong, 185 S.C. 27, 192 S.E. 671, 681 (1937); Smith v. Todd, 155 S.C. 323, 152 S.E. 506, 509 (1930).*

Therefore, should the South Carolina Court of Appeals affirm this order, the implications could be quite substantial and widespread. This case could be used to nullify any legal complaint that may occur in similar circumstances.

Nothing would stop attorneys from expanding this practice to other clients covered by a widespread of insurers where healthcare providers await reimbursement for healthcare services delivered. Nothing would stop other unscrupulous attorneys from adopting a similar tactic and making it common practice to enrich themselves illegitimately at the expense of others. What the Respondents' attorney is seeking in this case is nothing less than a judicially sanctioned consent to pilfer from healthcare providers who have extended benefits and seek what is justly due to them for the services they have rendered.

Based on the arguments mentioned herein and those in the Initial Brief, the Appellant requests the Court to reverse the circuit court's order in dismissing the Appellant's equitable claim. The Respondents' Attorney and his clients' conduct demonstrate ill will to gain at the expense of the Appellant, Dr. Lad Santiago. The Respondents and their attorney should <u>not</u> be allowed to reap the benefits due the Appellant. Dr. Lad Santiago is directly contemplated and intentionally benefitted by the contracts and the assignment as the real party in interest and as an intended third-party beneficiary. He should be permitted to enforce its provisions. At the very least the Respondents and their attorney should be made to convey the benefits of their inequitable conduct.

To allow this Circuit Court Order to stand will undermine the very principles of justice.

Respectfully submitted,

/s/ Dr. Lad Santiago

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