

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

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

v.

P. J. Richardson, Petitioner/Respondent.

Appellate Case No. 2012-208586
Lower Court Case No. 2007-CP-23-3206

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Greenville County
Steven H. John, Circuit Court Judge

Memorandum Opinion No. 2014-MO-009

Submitted February 21, 2014 – Filed March 26, 2014

AFFIRMED IN PART, VACATED IN PART

C. Mitchell Brown, William C. Wood, Jr., and A.
Mattison Bogan, all of Columbia and Rivers S. Stilwell,
all of Nelson Mullins Riley & Scarborough, LLP, of
Greenville, for Petitioner-Respondent.

Bernie Wellington Ellis, of Greenville and Robert L.
Widener, of Columbia, both of McNair Law Firm, PA,
for Respondent-Petitioner.

PER CURIAM: Petitioner-respondent (Richardson) and respondent-petitioner (NARP) each seek a writ of certiorari to review the Court of Appeals' decision in *N. Am. Rescue Prods., Inc. v. Richardson*, 396 S.C. 124, 720 S.E.2d 53 (Ct. App. 2011). We grant the petitions, dispense with further briefing, and affirm the Court of Appeals' opinion in part and vacate in part.

At trial, judgment was found in Richardson's favor on his specific performance claim. In his cross-appeal to the Court of Appeals, Richardson argued NARP misconstrued the amount of the judgment. However, the Court of Appeals construed Richardson's argument as alleging error by the trial court in entering judgment in the amount on the jury verdict form. The Court of Appeals found that argument was preserved for review because Richardson made a motion for a new trial nisi remittitur, challenging the amount of the jury verdict. The Court of Appeals affirmed the jury verdict, finding ample evidence to support the verdict amount.

We find Richardson's argument was not preserved for review by the Court of Appeals. The Court of Appeals misconstrued Richardson's argument as alleging error by the trial court; however, Richardson only alleged error in NARP's interpretation of the judgment. Furthermore, Richardson failed to allege any error in the interpretation of the judgment to the trial court, instead raising the issue for the first time on appeal to the Court of Appeals. *S.C. Dept. of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 641 S.E.2d 903 (2007) (in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge). Richardson's motion for a new trial nisi remittitur did not preserve his argument for review, because that motion concerns whether the verdict was excessive, and not whether the parties properly interpreted the judgment. See *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 638 S.E.2d 667 (2006) (a motion for new trial nisi remittitur asks the trial court to reduce the verdict because the verdict is merely excessive). Regardless, Richardson alleges no error in the trial court's denial of his motion for a new trial nisi remittitur, and it is therefore the law of the case. *Ulmer v. Ulmer*, 369 S.C. 486, 632 S.E.2d 858 (2006) (a portion of a judgment that is not appealed presents no issue for determination by the reviewing court, and constitutes the law of the case).

Accordingly, we vacate the portion of the Court of Appeals' opinion addressing Richardson's cross-appeal. *Id.* (when an appellate court rules on an issue not

preserved for appellate review, the portion of the appellate court's opinion pertaining to the unpreserved issue should be vacated).

AFFIRMED IN PART, VACATED IN PART

**TOAL, C.J.,-PLEICONES, BEATTY, KITTREDGE, AND HEARN, JJ.,
concur.**