

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

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MAR 27 2014

SC Court of Appeals  
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North American Rescue Products, Inc., ..... Appellant,  
v.  
P.J. Richardson, ..... Respondent.

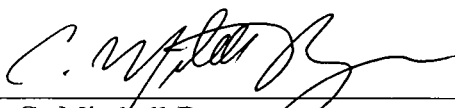
**MOTION TO CONTINUE ORAL ARGUMENT RESULTING FROM NEW  
DEVELOPMENT**

Respondent Richardson moves that this Court continue the oral argument of this case to another term. In the appeal in this matter, Appellant raises three issues in the Statement of Issues from his opening brief: 1) the trial court erred in refusing to require Richardson to post a bond *during the pendency of the appeal*; 2) the trial court erred in refusing to require Richardson to deposit the judgment *during the pendency of the appeal*; and 3) the trial court erred in refusing to restrict Richardson's use of his assets *during the pendency of the appeal*. The "appeal" referenced is a related appeal decided by this Court which is pending before the South Carolina Supreme Court by way of both parties' petitions for writs of certiorari.

The South Carolina Supreme Court has now ruled in the aforementioned related appeal. (see Exhibit A). While there are still rehearing petitions which must be addressed, Respondent respectfully submits it is a waste of resources of this Court and

of the parties for oral argument in this matter to go forward in May, 2014. In other words, the appeal in the instant matter has very nearly been rendered moot by the action of the South Carolina Supreme Court in issuing an opinion. Only rehearing proceedings, if any, remain. Further, as already stated to the Court, Respondent's counsel's client is unavailable in May, and desires to attend any appellate court proceedings.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:   
C. Mitchell Brown  
SC Bar No. 012872  
E-Mail: mitch.brown@nelsonmullins.com  
A. Mattison Bogan  
SC Bar No. 72629  
E-Mail: matt.bogan@nelsonmullins.com  
1320 Main Street / 17th Floor  
Post Office Box 11070 (29211-1070)  
Columbia, SC 29201  
(803) 799-2000

*Attorneys for Respondent P.J. Richardson*

March 27, 2014

# EXHIBIT A

**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

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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

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Memorandum Opinion No. 2014-MO-009

Submitted February 21, 2014 – Filed March 26, 2014

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**AFFIRMED IN PART, VACATED IN PART**

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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.

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**SC Court of Appeals**

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**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.**

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PROOF OF SERVICE

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I, the undersigned Paralegal of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent P.J. Richardson, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Motion to Continue Oral Argument Resulting From New Development

Counsel Served:

Robert L. Widener, Esquire  
McNair Law Firm, PA  
Post Office Box 11390  
Columbia, SC 29211

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**SC Court of Appeals**

Bernie W. Ellis, Esquire  
McNair Law Firm, PA  
Post Office Box 447  
Greenville, SC 29602

Meredith S. Keane  
Meredith S. Keane  
Paralegal

March 27, 2014