THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Robert A. Smoak, Jr., Circuit Court Judge

Case No. 20080CP-02-02090

Ridge Environmental, LLC,

Respondent,

v.

Blue Star Rental & Sales, Inc.,

Appellant.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

(1) Whether the Trial Court erred in finding that a complaint filed in Circuit Court by a non-lawyer officer on behalf of his corporation was a nullity?

(2) Whether the trial court's *sua sponte* dismissal of Blue Star's Complaint after the trial on the merits wherein Blue Star was represented by counsel was an abuse of discretion?

STATEMENT OF THE CASE

On December 19, 2008, Appellant Blue Star Rental & Sales, Inc. ("Blue Star") filed a Complaint against Respondent Ridge Environmental, LLC in the Court of Common Pleas for Aiken County, South Carolina. Blue Star retained Randy Edwards of Cochran & Edwards, LLC as counsel on March 29, 2009. Shortly thereafter, Tucker Player was affiliated as local counsel. Service of the Complaint and Summons was made on April 21, 2009. Mr. Edwards completed his application for *pro hac vice* admission on October 28, 2009. Said application was then sent to local counsel along with a check to the South Carolina Supreme Court.

The trial court received notice of Mr. Edwards' application for admission *pro hac vice* on November 24, 2009. From the filing of the Complaint to the time the trial court received notice of Mr. Edwards' *pro hac vice* application, no action had been taken in the case and no appearances before the court had been made. The trial court mistakenly relied on the date that it received notice of Mr. Edwards' *pro hac vice* application as the date that Blue Star retained counsel. Moreover, as of the beginning of trial, the court had not ruled on Mr. Edwards' *pro hac vice* application.

On November 23, 2009, the court entered a scheduling order consented to and signed by counsel for the parties. Mr. Edwards, as counsel for Blue Star, agreed to and signed a Consent Order for Continuance on May 11, 2010. Also on or around May 11, 2010, Mr. Edwards presented an Order dismissing with prejudice Defendant United Trucker's Service, Inc. Said order was signed by Judge Doyet A. Early, III of the Aiken County Court of Common Pleas on May 11, 2010. On July 13, 2010, Mr. Edwards received a letter from M. Anderson Griffith informing him that the new trial date had been set for September 20, 2010. On September 20, 2010, the instant matter proceeded to trial as scheduled without objection. Mr. Edwards was

permitted to, and did in fact, present evidence during the trial without objection by either opposing counsel or the trial court.

After the conclusion of the trial, both parties submitted post trial briefs. On April 5, 2011, Judge Smoak addressed a letter to counsel for both parties in which he raised *sua sponte* the issue of "improper and unlawful commencement of an action...on behalf of a corporation by an individual (Mr. Chafin) not licenses as an attorney in South Carolina, in contravention of long-standing law prohibiting same...other than the mere subsequent employment of qualified counsel of record by the plaintiff several months after this action was commenced." Mr. Edwards responses to Judge Smoak's letter on April 8, 2011. In his letter, Mr. Edwards cited legal authority supporting Blue Star's position that any error was harmless and constituted a collateral matter with no effect on the merits of this case. Counsel for Respondent failed to submit a timely response to Judge Smoak's letter. Nonetheless, on April 21, 2011, Judge Smoak took it upon himself to grant the relief *he*, not Respondent, sought and summarily dismissed Blue Star's Complaint. For the reasons set forth herein and based upon the following legal authority, Judge Smoak's dismissal constituted an abuse of discretion, was based upon mischaracterizations of the record, and was contrary to the great weight of legal authority from both South Carolina and her sister states.

ARGUMENT AND CITATION TO AUTHORITY

I. THE TRIAL COURT ERRED IN FINDING THAT A COMPLAINT FILED IN CIRCUIT COURT BY AN OFFICER OF A CORPORATION IS A NULLITY NOT SALVAGED BY THE SUBSEQUENT RETENTION OF COUNSEL.

While Blue Star does not dispute the fact that its initial Complaint was not signed by an attorney authorized to practice law in South Carolina, it contends that this was a collateral matter that should not have affected the outcome of the case. Blue Star subsequently retained counsel and was at all times after the filing of the Complaint represented by counsel. Moreover, the issue was not raised until after the conclusion of a trial on the merits. Because the matter went to trial without objection, the fact that the Complaint was signed by a non-attorney should not have otherwise affected the outcome.

In its April 21, 2011 Order, the trial court declined to follow the South Carolina Supreme Court's holding in *The Roof Doctor v. Birchwood Holdings, Ltd.*, 366 S.C. 637, 622 S.E.2d 746 (2005). The trial court mistakenly stated "The actual issue in *The Roof Doctor* case concerned whether a magistrate erred in permitting a non-lawyer to represent the defendant corporation in the magistrate's court in the absence of a written authorization from an appropriate officer of the corporation." Blue Star, however, contends that this interpretation is overly narrow and ignores what was actually at issue in *The Roof Doctor*. As a result, the trial court erred as a matter of law and its *post*-trial Order dismissing Blue Star's Complaint must be vacated.

A. Trial Court Erred as a Matter of Law by Applying the Nullity Rule.

The trial court's order then states that while the Supreme Court did not discuss "the exact ramifications of improper representation by a non-lawyer" in *Renaissance Enterprises*, "in the later case of *Sharon Brown, Administratix [sic] of the Estate of Ronnie Lee Brown v. Suzanne E. Coe* (2005), the court addressed the issue in detail." The order does not provide a citation for

this case. Counsel for Blue Star was nonetheless able to find two cases from the South Carolina Supreme Court that fit the trial court's inadequate citation.

The two cases found by Blue Star's counsel, *Brown v. Coe*, 365 S.C. 137, 616 S.E.2d 705 (July 7, 2005) (*Brown I*) and *Brown v. Coe*, 365 S.C. 664, 620 S.E.2d 323 (2005) ("*Brown II*"), arise out of the same trial court proceedings. In these cases, the respondent moved to dismiss the appellant's appeal on the grounds that the notice of appeal was not filed by a lawyer. Based on the trial court's discussion here, it appears to be referencing *Brown I*. Moreover, the trial court's order does not look as if it relies on *Brown II* at all or even acknowledges its existence. Because the South Carolina Supreme Court's opinion in *Brown II* narrowed *Brown I* significantly, the trial court erred by relying on *Brown I* as the weight of its authority.

1. *Brown I* Does Not Support Dismissal of Blue Star's Complaint.

In *Brown I*, the respondent moved to dismiss the appellant's appeal on the ground that the notice had not been properly filed by an attorney licensed to practice law in South Carolina. While the appellant was the personal representative of the decedent's estate, she was not a lawyer. *Brown I* 365 S.C. at 138. Because the appellant was not a lawyer, the respondent argued that a proper notice of appeal had not been served or filed and, as a result, the appeal was due to be dismissed. *Id.* at 142-143.

Before reaching its decision, the Supreme Court recognized that "there is a split of authority as to whether the unauthorized practice of law renders a proceeding a nullity or merely amounts to an amendable defect." *Id.* at 143. As a matter of first impression, the Court first looked to the law of other jurisdictions on the issue of "whether a nonlawyer executor or personal representative can represent an estate in matters such as [an] appeal." *Id.* at 140. After determining that the filing of a notice of appeal on behalf of an estate and the preparation of

appellate briefs constituted the practice of law, the Court held that appellant was prohibited from taking such actions on behalf of the estate because it was a separate legal entity with interests of its own. *Id.* at 142. The Court then refers to *Kasharian v. Wilentz*, 93 N.J.Super. 479, 226 A.2d 437 (App.Civ. 1967) for the proposition that "the interests of the individuals represented by the personal representative call for giving the personal representative an opportunity to retain counsel rather than summarily dismissing the complaint or appeal." 365 S.C. at 143.

In the end, the Court denied respondent's motion to dismiss the appeal and granted the "appellant a reasonable amount of time to retain counsel to continue with the appeal." *Id.* at 144. The Court then reaffirmed its holding in *Renaissance Enterprises* where it had "remanded the case to the Court of Appeals for further proceedings consistent with its opinion, which presumably included retaining counsel to represent the corporation." *Id.* Consistent with its holding in *Renaissance Enterprises*, the Court "grant[ed] the appellant [in *Brown I*] the same opportunity." *Id.*

2. Supreme Court of South Carolina Rejected the Application of the Nullity Rule in *Brown II*.

The Supreme Court subsequently issued a second opinion in *Brown II* clarifying its previous order.

> The Court noted [in *Brown I*] that it 'has never specifically addressed whether a nonlawyer executor or personal representative can represent an estate in matters such as [an] appeal.' [The Court] addressed that specific question by holding that because the filing of a notice of appeal on behalf of the estate and preparation of briefs that will be required to further perfect this appeal clearly constitutes the practice of law, appellant, who is not admitted to the practice of law, cannot represent the estate on appeal.

Brown II 365 S.C. at 664. The Court then stated that its previous holding "was narrowly tailored to the issue before [it], specifically whether a nonlawyer executor or personal representative can represent an estate on appeal." *Id.* If there is only one thing to be gleaned from the South

Carolina Supreme Court's holding in *Brown I* it is that it unequivocally rejected an opportunity to apply the nullity rule.

In rejecting respondent's arguments based on the nullity rule, *Brown I* appears to base its holding at least in part on *Kasharian*. *Kasharian* involved an action for the wrongful death of the plaintiff's son. Like the appellant in *Brown I*, the plaintiff in *Kasharian* was the personal representative of a decedent's estate, was not an attorney, but yet attempted to bring a *pro se* appeal on behalf of the estate. The Supreme Court of New Jersey initially dismissed the appeal citing violation of the rules of court requiring appeals be maintained by an attorney licensed in New Jersey.

Upon consideration of the plaintiff's motion to vacate, the Supreme Court of New Jersey held that while it had previously ruled correctly that the "action was required to be brought and appealed by an attorney-at-law, the interests of substantial justice to the class of persons represented by plaintiff (which include[d] three individuals besides himself) call[ed] for giving plaintiff an opportunity to retain counsel rather than summarily dismissing the appeal." *Kasharian* 93 N.J. Super. at 481. The Court reasoned that "nominal representatives or even active fiduciaries of the persons in beneficial interest, not themselves lawyers, should not be permitted to conduct legal proceedings in court involving the rights or liabilities of such persons without representation by attorneys duly qualified to practice law." *Id.* at 482. The Court then addressed the policy concerns behind the prohibition against the unauthorized practice of law:

> The harmful consequences of unlicensed law practice in the present context are strikingly demonstrated by the activities of this plaintiff in this and other cases brought by him in connection with the same occurrences complained of where confusion has reigned supreme because of the many unintelligible, untimely and inappropriate documents he had drawn Pro se and served and filed, not to mention the consequent serious prejudice to the substantial rights, if any there may be, of the class of persons having beneficial interest in such cases.

Id. at 483. The Court nevertheless set aside its order of dismissal and granted the plaintiff leave to retain counsel. *Id.*

B. Effect of Non-Lawyer Signing Complaint on Behalf of Corporation is a Matter of First Impression in South Carolina.

Renaissance Enterprises, *Brown I*, *Brown II*, and *Kasharian* all involve the unauthorized practice of law in situations where an appeal is filed by a non-attorney on behalf of another. None of these cases deal with the issue at hand where an individual non-lawyer signs a complaint on behalf of a corporation. Because this appears to be an issue of first impression in South Carolina, important guidance can be gleaned from the jurisprudence of her sister states.

1. Defect was Cured by Subsequent Retention of Counsel.

This exact issue was addressed by the Florida courts in *Szteinbaum v. Kaes Inversiones y Valores, C.A.*, 476 So.2d 247 (Fla. 3d DCA 1985). Specifically, the question on appeal was "whether a complaint filed by a non-attorney on behalf of a corporation may be amended to cure this deficiency." *Szteinbaum* 476 So.2d at 247. In Florida, like in South Carolina, "[i]t is well recognized that a corporation, unlike a natural person, cannot represent itself and cannot appear in a court of law without an attorney." *Id.*

> Since there can be little doubt that the act of filling a complaint constitutes the practice of law..., and the corporate plaintiff, not being an attorney, did thus engage in the unauthorized practice of law, [the court's] inquiry will turn to whether the product of that unauthorized practice – the complaint – must therefore be treated as a nullity.

Id.

In reaching this issue, the Florida court overturned prior precedent holding that a complaint filed by a corporation that was not signed by an attorney resulted in a nullity that could not be saved by a subsequent amendment affixing the attorney's signature. *Id.* at 248-249.

Before reaching its decision, the Court discussed many of the policy reasons behind the rule against the unauthorized practice of law.

> [P]ublic policy dictates that, whenever possible, cases 'should be determined on their merits, instead of upon irrelevant technicalities.' Thus, dismissal...in derogation of this 'welcome policy,' *Puga v. Suave Shoe Corp.*, 417 So.2d [678,] 679 [Fla. 3d DCA 1981], is warranted only if it can be said that treating the defect of the initial complaint as incurable will somehow substantially advance some other more compelling public policy.

Id. at 249. In so stating, the court made a point to recognize that in Florida, like South Carolina, "the 'protection of the public from incompetent, unethical, or irresponsible representation,' *The Florida Bar v. Moses*, 380 So.2d 412, 417 (Fla. 1980), through the prevention of the unauthorized practice of law is a compelling public policy." *Id.* at 249-250. The Court reasoned,

> however, that this latter policy is not served by a rule of law that declares that a complaint filed by a non-attorney on behalf of a corporation cannot be cured by the later appearance of counsel to represent the corporation and, moreover, that such a rule of law disserves the policy that cases should be decided on their merits. Where, as here, the representation of the plaintiff corporation, confined as it was to the filing of the complaint, was brief, minimal and essentially innocuous, the unauthorized practice of law was adequately curtailed by the trial judge's eminently sensible decision to allow an attorney to appear for the corporation and thereby amend the complaint.
>
> ...
>
> [T]he filing of a complaint by a non-lawyer will rarely, if ever, permanently prejudice the plaintiff corporation, since once the corporation has been given leave to obtain counsel, such counsel will likely be permitted to amend the complaint as necessary. Indeed, prohibiting amendment and dismissing as a nullity the complaint would yield the ironic result of prejudicing the constituents of the corporation, the very people sought to be protected by the rule against the unauthorized practice of law.

Id. at 250.

As did the South Carolina Supreme Court, the Florida Court relied on the New Jersey Supreme Court's decision in *Kasharian*. *Szteinbaum* cites *Kasharian* as an example of where "courts have concluded that a dismissal without leave to amend is an unduly harsh result where

the defect of the complaint is that it was filed by a non-attorney on behalf of another." *Id.* The Court also "considered the extent of the non-lawyer's participation in the case and concluded that where a non-lawyer's participation was minimal, the justifications for dismissal are few." *Id.* at 251. The record did not indicate that the corporate plaintiff had proceeded with knowledge of its impropriety and there was no evidence that the other party was prejudiced in any way by the corporation's improper action. *Id.* at 251-252.

In the end, the court held that

> [T]he defect of the complaint herein was curable and indeed cured by the later appearance in the action of the plaintiff corporation's attorney. The draconian sanction of dismissal without leave to amend is unduly harsh in light of the prejudice to the unwary corporate constituents and the total lack of prejudice to the defendant. Nor does such a sanction discourage non-lawyers against whom it is directed from the unauthorized practice of law, since no person who is aware of the impropriety would commit the offense... [D]ismissal without leave to amend contravenes the 'welcome policy' of adjudicating cases on the merits rather than on procedural niceties and advances no countervailing public policy... [Moreover], the filing of a complaint by a non-lawyer will rarely, if ever, permanently harm the plaintiff corporation, since, after being given leave to obtain counsel, such counsel will likely be permitted to amend and correct the original complaint as necessary.
>
> ... [T]he decision of whether to dismiss a complaint without leave to amend should be controlled by considerations of the fault and diligence of the plaintiff corporation and the prejudice to the defendant as they appear in the individual case. In the present case, there is no indication that the errant complaint prejudiced the defendant in any way or that the plaintiff corporation acted with knowledge that it was improper for it, without counsel, to prepare and file the initial complaint. On the other hand, there is strong indication that the plaintiff corporation acted with diligence in immediately obtaining counsel after being given leave to do so.

Id. at 252.

2. Dismissing Complaint as "Nullity" Does Not Promote Public Policy.

The Florida Supreme Court visited the efficacy of the nullity rule again in *Torrey v. Leesburg Regional Medical Center*, 769 So.2d 1040 (Fla. 2000). The issue before the Court in

Torrey was "whether a complaint filed and signed by an attorney not licensed to practice in Florida [was] a nullity or an amendable defect." *Torrey* 769 So.2d at 1041. The complaint in *Torrey* was prepared and signed by a Michigan attorney that was not licensed to practice in Florida. Defendant's counsel filed a motion to disqualify plaintiff's attorney. Plaintiff's counsel responded by admitting that he was not licensed in Florida but that other attorneys at his firm were. He also requested that the trial court deny defendant's motion to disqualify or, in the alternative, enter an order allowing him to appear on behalf of the plaintiff.

The trial court held a hearing at which time it approved the appearance of Florida counsel as co-counsel for the plaintiff. The defendant's counsel then changed its argument from disqualification to dismissal, maintaining that the complaint signed by the Michigan attorney was a nullity. The trial court, concerned with the harshness of a dismissal, asked the plaintiff's attorney to submit evidence, if any, of excusable neglect. *Id.* at 1042.

In accordance with *Szteinbaum*, the Florida Supreme Court again recognized that "the nullity rule is ill-suited to promote the policy served by the rule against the unauthorized practice of law." *Id.* at 1044. The Court then "conclude[d] that there are better suited mechanisms available to discourage the unlicensed practice of law." *Id.* at 1045. For instance, in Florida, like in South Carolina, someone who is engaging in the unauthorized practice of law can be enjoined from making further appearances on behalf of others. *Id.*; See also, *Housing Authority of the City of Charleston v. Key*, 352 S.C. 26, 572 S.E.2d 284 (2002) (Affirming injunction prohibiting a paralegal from engaging in the unauthorized practice of law). The Court held further that "[t]hese mechanisms, unlike the nullity rule, appropriately focus on the misconduct of the offending attorney rather than unduly penalizing litigants with dismissal of their complaints." *Torrey* 769 So.2d at 1045.

While affirming *Szeinbaum*'s rejection of the nullity rule, the Court also held that a finding of excusable neglect was not required. *Id.* Moreover, "the policy of allowing cases to be decided on the merits whenever possible and the protection of litigants from the dangers associated with the unlicensed practice of law are best served by a rule of law that allows amendment of these defective pleadings without requiring the establishment of excusable neglect." *Id.* at 1045-1046. The Court then concluded by holding that "a trial court *must* allow litigants a reasonable amount of time to amend their complaints with the appearance of authorized counsel. A dismissal should only be granted if the party fails to timely amend his or her pleadings." *Id.* at 1046 (Emphasis added).

The Florida Supreme Court addressed this issue again in *Colby Materials, Inc. v. Caldwell Construction, Inc.*, 926 So.2d 1181 (Fla. 2006). In *Colby Materials*, the plaintiff moved to quash the defendant's responsive pleadings because they were improperly filed by a corporate officer rather than by a licensed attorney. Affirming *Szteinbaum*'s rejection of the nullity rule and *Torrey*'s holding that a showing of excusable neglect is not required, the Court held that the trial court erred by striking the defendant's filings and entering a default "rather than giving the offending corporation a reasonable opportunity to correct the defect in its filings as [] mandated in *Torrey*." *Colby Materials* 926 So.2d at 1184.

C. Defect was Cured by Retention of Counsel Before Service of the Complaint.

In neither *Brown I* nor *Renaissance Enterprises* did the South Carolina Supreme Court apply the nullity rule. After its discussion which apparently appears to be based on *Brown I*, the trial court's order returns to *Renaissance Enterprises* stating "the court found that the lack of a ruling by it on the precise issue constituted extenuating circumstances which warranted allowing the corporate petitioner time to employ legal counsel." The order then states that "No such

extenuating circumstances exist in the present case." The order states further that "*Renaissance Enterprises* [] absolutely prohibits a lay person from commencing and prosecuting an action in this court and this court cannot discern from the authorities cited above any leeway to declare that the plaintiff cured the defect by employing counsel eleven months into the proceedings, absent guidance from a higher court." Not only is this an incorrect statement of fact, it is also an incorrect statement of law.

Contrary to the trial court's order, *Renaissance Enterprises* is not a *cart blanche* ban against all *lay persons* commencing and prosecuting an action in circuit court. *Renaissance Enterprises* actually holds that a non-lawyer cannot "represent *a corporation* in circuit or appellate courts" and that "a corporation may appear *pro se* only in magistrate's court." 334 S.C. at 653 (Emphasis added). According to the trial court's interpretation, *Renaissance Enterprises* is an absolute ban against any individual from ever appearing before it as a *pro se* litigant.

The trial court's statement that it "cannot discern from the authorities cited above any leeway to declare that the plaintiff cured the defect" is clearly erroneous. While none of the cases cited in the order apply the nullity rule, the trial court somehow concluded that its application here was the only option. Lastly, the trial court's statement that Blue Star "employ[ed] counsel eleven months into the proceeding" is entirely inaccurate. In fact, as of March 24, 2009, Blue Star had retained counsel. Although the Complaint had already been filed, summons had not been issued. Moreover, the date relied upon by the trial court in making this statement is actually the date that it received notice of Mr. Edwards' application for admission *pro hac vice*. By this date, not only had Blue Star retained Mr. Edwards, it had also retained Tucker S. Player as local counsel.

Both *Renaissance Enterprises* and *Brown I* are distinguished from the instant matter for several important reasons. *Renaissance Enterprises* and *Brown I* both involved appeals. From the facts available, it appears that counsel was not retained at the trial court level in either case. On the other hand, here, counsel was retained after the Complaint was filed, but before service of process. In addition, because the instant case was still at the trial court level at the time the order was entered, it obviously does not involve representation by a non-lawyer at the appellate level.

While the order states that the "court cannot ignore the rule," it does not state to what rule it is referring. The order then goes on to state that while this action seems harsh, South Carolina's "appellate courts, in recently addressing the unauthorized practice of law by non-lawyers handling real estate closings, have imposed similarly harsh penalties." However, once again, the trial court failed to refer to any authority to support this statement. Furthermore, cases where a non-lawyer acts as a lawyer at a real estate closing is an entirely different breed of animal. In fact, this distinction was expressly recognized by this Court in *The Roof Doctor*. 366 S.C. at 643 ("Unlike in *Linder*, the services performed pursuant to the contract in this case are not alleged to involve the unauthorized practice of law. Rather, the alleged unauthorized practice of law occurred during [respondent's] defense of the action on the contract."). In such cases, the non-lawyer actively holds himself out as a lawyer and directly affects the interest of others. While this is the exact sort of thing the unauthorized practice of law statutes are designed to address, these situations are far from analogous to the instant matter.

II. *SUA SPONTE* DISMISSAL OF THE CASE AFTER THE TRIAL ON THE MERITS CONSTITUTES AN ABUSE OF DISCRETION.

A. Filing of the Complaint by a Non-Lawyer had no Effect on the Outcome of the Case.

Contrary to the trial court's assertion, in *The Roof Doctor* this Court "decline[d] to address whether the circuit court erred in finding [that the respondent's employee] was authorized to represent [it] in magistrate's court." 366 S.C. at 643. Rather, the actual issue was what effect, if any, did the unauthorized practice of law have on the outcome of the case. *Id.* Affirming the circuit court, this Court held "that any unauthorized practice of law before the magistrate was a collateral matter not entitling [the appellant] to reversal on appeal." *Id.* Here, like in *The Roof Doctor*, the alleged unauthorized practice of law did not occur pursuant to services provided under a contract. *Id.* at 642. Rather, the alleged unauthorized practice of law occurred during the action on the contract. *Id.*

In *The Roof Doctor*, this Court noted that the South Carolina Supreme Court has not addressed the proper remedy for a corporation who engages in the unauthorized practice of law. *Id.* Looking to other jurisdictions for guidance, this Court first cites *Henry L. Sawyer Co. v. Boyajian*, 296 Mass. 215, 5 N.E.2d 348, 350 (1936) for the proposition that "proceedings in an action, before any objection is made are not vitiated by the unauthorized practice of law." *The Roof Doctor* 366 S.C. at 642. This Court then cites *In re Stroh Brewery Co.*, 116 N.C. App. 178, 447 S.E.2d 803, 806 (1994) wherein it was held that dismissing an "appeal on the ground of unauthorized practice of law was not 'an appropriate remedy'" and that "the issue was a collateral matter, unrelated to the merits of the appeal." *The Roof Doctor* 366 S.C. at 643. Lastly, this Court cites *Alexander v. Robertson*, 882 F.2d 421, 425 (9th Cir. 1989) where it was held that "a judgment rendered in a case where an unauthorized attorney practiced law is neither void nor subject to reversal." *Id.* Based on the authorities relied upon by this Court in *The Roof Doctor*, where, as here, the unauthorized practice of law has no impact on the outcome of the

case, it is considered a collateral matter and is not grounds for dismissal. The trial court, therefore, erred as a matter of law.

In the instant matter, the alleged unauthorized practice of law occurred at the earliest possible stage of the case. Blue Star soon thereafter retained counsel before the complaint was served and was represented by its attorney during all subsequent proceedings before the trial court. The case proceeded to trial on the merits without objection by either opposing counsel or the trial court judge. Then, six months after the trial had concluded, the issue was raised *sua sponte* by the trial court judge. Because this issue was not raised until *after* a trial on the merits had been concluded, it cannot be said to have had any impact on the outcome of the case. Nonetheless, the trial court judge dismissed Blue Star's Complaint has a nullity.

B. In the Absence of an Objection, the Unauthorized Practice of Law Will Not Vitiate the Proceedings.

Henry L. Sawyer Co. was relied upon in *The Roof Doctor* and presents a set of facts similar to those of the instant matter. After the conclusion of the proceedings, the defendant filed a motion to dismiss the complaint based on the plaintiff's unauthorized practice of law. In its motion, the defendant argued, "in substance and effect, that the entire proceedings against him...were rendered void by the manner in which they were instituted, even though there was no objection until after a finding had been made." *Henry L. Sawyer Co.* 296 Mass. at 218.

The Massachusetts Court reasoned that "the right of an attorney to appear for one of the parties is 'a collateral matter having nothing to do with the merits of the case' between the parties." *Id.* "[P]roceedings in an action, before any objection is made to the attorney's right to practice, are not vitiated by attorney's lack of legal authorization." *Id.* Affirming the trial court's denial of the defendant's motion, the Massachusetts Court held "that the defendant's

motion related wholly to proceedings that had been completed at the time the motion was made." *Id.* at 218-219.

The instant matter differs from *Henry L. Sawyer Co.* in that here Respondent did not object or otherwise raise the issue of unauthorized practice law. Rather, the trial court raised this issue *sua sponte*. Nonetheless, *Henry L. Sawyer Co.* is similar in that the issue was raised after the proceedings were concluded. Here, as in *Henry L. Sawyer Co.*, because the issue was raised for the first time after the conclusion of the trial, it had no effect on the merits of the case and is, therefore, a collateral matter. As such, the trial court erred as a matter of law when it dismissed Blue Star's Complaint.

C. Trial Court's Dismissal of Blue Star's Complaint Does Not Promote Public Policy of Protecting Against Incompetent, Unethical, or Irresponsible Representation.

After its renunciation of the South Carolina Court of Appeals opinion in *The Roof Doctor*, the trial court's order then cites *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 515 S.E.2d 257 (1999) for the proposition that the Supreme Court "conclusively held that a non-lawyer may not represent a corporation in circuit or appellate courts." In *Renaissance Enterprises*, the South Carolina Supreme was petitioned pursuant to its original jurisdiction for "a ruling on whether non-lawyers can represent a corporation in circuit or appellate courts." 224 S.C. at 650. Although it did not address any factual issues, the Court recognized that "The goal of the prohibition against the unauthorized practice of law is to protect the public from incompetent, unethical, or irresponsible representation." 334 S.C. at 652. However, this basic policy objective was neither addressed nor advanced by the trial court's order. The Trial Court abused its discretion in *sua sponte* dismissing the case.

CONCLUSION

The trail court abused its discretion by raising the issue of the unauthorized practice of law *sua sponte* after the conclusion of a trial on the merits. Moreover, the public policy concerns contemplated in the unauthorized practice of law statutes were ameliorated when Blue Star hired counsel. Lastly, despite South Carolina's express rejection of the nullity rule, the trial court nevertheless applied it here. Because this application of the nullity rule was in direct violation of established South Carolina precedent, the trial court erred as a matter of law when it dismissed Blue Star's Complaint and must, therefore, be overturned.

WHEREFORE Appellant Blue Star Rental & Sales, Inc. prays upon this Court to vacate the trial court's April 21, 2011 order dismissing its Complaint pursuant to the nullity rule and to remand the case for the entry of a judgment on the merits.

This 30th day of March, 2012.

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