THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

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S.C. Supreme Court

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

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

v.

P.J. Richardson, ... Petitioner/Respondent.

PETITIONER'S BRIEF

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Statement of Issues

I. **Did the court of appeals err in imposing additional terms into the parties' contract and in construing the form of the judgment for specific performance?**

Statement of the Case

At the time when Richardson and Bob Castellani, the owner of North American Rescue Products, Inc. ("NARP"), first met, Richardson owned Reeves, an established company, which manufactured various health care and safety products for first responders, homeland security, and some military uses. (App. 130-131; *see generally* 294-653.) Reeves began providing infrastructure and support to NARP, which was by comparison a new company. This included assisting with the nuts and bolts of NARP. For example, Mr. Richardson's wife, Billie Richardson, kept the books and monitored receivables and payables. (App. 132; 588-589.) Castellani used Reeves' plant in Maryland for storage and warehousing. (App. 157-158.) Reeves similarly provided other services to NARP in addition to administrative services, including supplies and selling various NARP products. (App. 313-315.) During this time-frame, the companies also began cross-selling each other's products. (App. 315; 389.)

Due to the shared interests between the two companies and the importance of cross-selling their products between various customers, Castellani (for himself and NARP) and Richardson (for himself and Reeves) executed an agreement on January 1, 2000 ("2000 Agreement"). The 2000 Agreement formalized the ongoing business relationship between the two companies, and allowed Castellani to offset some of his personal risk associated with his fledgling company. (App. 909.) Under the 2000 Agreement, NARP and Reeves agreed to pay each other commissions equal to 25% of the taxable income of their companies for cross-selling each other's respective products. (*Id.*) The parties performed under the 2000 Agreement for four years, cooperatively assisting each other in growing both NARP and Reeves.

On July 29, 2004, Castellani and both Richardsons met in Charleston, South Carolina ("Charleston Meeting"). During this meeting, the parties again affirmed their respective ownership interests but agreed to modify the 2000 Agreement. They agreed to reduce their percentage of ownership from 25% to 7.5%. (App. 238-239.) The agreement was modified because Richardson was about to sell Reeves to DHS (now called EMS). (App. 334-336.) Thus, the parties agreed that Richardson could acquire a 7.5% ownership interest in NARP in exchange for the cash equivalent (of 7.5% of Reeves stock) from proceeds from the pending sale of Reeves. (App. 381; 537; 600-602.) Both Castellani and Richardson acknowledged an agreement was reached. (App. 238-239; 298-299; 311.)

The parties' contract amendment was aimed at making the exchange of ownership shares easier in light of the sale of Reeves. (App. 376; 496-500.) Castellani testified that the meeting in Charleston resulted in a reduction of the percentage of shares from 25% to 7.5%—a "like for like" exchange. (App. 239.) Castellani stated that "[w]e agreed to this in Charleston." (App. 289.) Richardson also agreed that there was a "meeting of the minds in Charleston." (App. 521.)

Richardson remained ready, willing, and able to perform the contract as modified in Charleston in 2004. Richardson stated that "[m]y intention was to carry out and honor this agreement with Bob [Castellani] by paying out with the proceeds of the sale of Reeves. (App. 328-329.) Richardson further stated that "I am bound now to honor that agreement." (App. 522.) Richardson knew he only had to deliver a check to NARP for the proceeds from the sale of Reeves to comply with the amended agreement. (App. 524.) Richardson stated "that's what it was, write him a check." (App. 544.) Richardson

admitted that "we've never hesitated or changed our position of what Bob [Castellani] is entitled to. He was entitled to 7½ percent of what we sold Reeves for . . . ." (App. 528.) Moreover, Richardson testified that the money from the sale of Reeves was in his account and he could "cut a check for that money to Bob [Castellani] today if he would take it"—that is, if Castellani would give Richardson the agreed-upon 7.5% interest in NARP. (App. 545; 526.)

NARP filed suit on May 17, 2007, seeking a declaration that Richardson was not entitled to purchase 7.5% of the stock of NARP. (App. 11.) NARP amended the complaint to assert a claim of breach of fiduciary duty against Richardson for actions he allegedly took as a former member of the NARP board. (App. 23.) Richardson answered and counterclaimed. (App. 39.) In his first counterclaim, Richardson alleged breach of contract and sought specific performance of one of two alternate agreements giving him a 7.5% ownership position in NARP, sought to estop NARP from failing to abide by the parties' contract based on NARP's promises upon which Richardson relied, or alternatively, sought money damages for NARP's failure to honor the agreements. (App. 44-48 at ¶¶ 38-69.)

The matter was tried before a jury on August 25-29, 2008. At the close of the evidence, Richardson amended his pleadings to conform to the evidence presented at trial. (App. 655-663.) Counsel for Richardson presented the motion to amend stating "the claim that we would like to pursue is that the 2000 agreement as modified orally in Charleston." (App. 655-656.) The modification of the agreement in Charleston "changed the amount of the respected [sic] shares from 25 percent . . . to 7.5." (App.

655-656.) Further, the modification of the contract "was done in the context of the pending sale of Reeves." (*Id.*) In his motion, counsel went on to state:

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

(App. 656.) The trial court granted Richardson's motion to amend stating "[i]n looking at the revised amended answer and counterclaim, I'm not sure it's even necessary to grant the motion, it might very well be encompassed in that but I am granting the motion to amend the pleadings to conform to the proof." (App. 663.) This amendment ruling was not challenged on appeal by NARP.

Based on the background and on the evidence outlined above, the matter was submitted to the jury on a special verdict form posing specific fact questions and requiring the jury to give categorical answers. (App. 7.) Neither party objected to the form of the special verdict. The trial court submitted Richardson's specific performance and promissory estoppel claims to the jury.

The jury answered the questions posed. It concluded, among other things, that NARP had given Richardson the right to 7.5% of its stock and that Richardson had, in turn, given NARP the right to 7.5% of the stock of Reeves Manufacturing, Richardson's former company. The jury further concluded that Richardson could fulfill his part of this agreement by giving a cash equivalent, rather than actual Reeves Manufacturing stock, due to the sale of Reeves. The jury found that the parties could perform under the 2000 agreement, as later modified, and that none of the parties' later agreements terminated the right of Richardson to acquire 7.5% of NARP's stock. (App. 8.) Specifically on these items, the Special Verdict Form provided:

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

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

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

(App. 7.) The jury answered each of the above special interrogatories in the affirmative. (*Id.*) Moreover, the special verdict form inquired as to whether any other agreement "end[ed] both parties' rights to acquire 7.5% of the capital stock of each other?" (App. 8 at ¶ 5.) The jury answered "No." (*Id.*) Based on the jury's answers to the special interrogatories, the trial court then entered judgment in favor of Richardson "under the specific performance doctrine." (App. 6.)

In another portion of the jury verdict form that Richardson avers related to Richardson's promissory estoppel claim, the trial court inquired of the jury as to what price Richardson should pay for the percentage share of NARP. The jury wrote $2,936,000. (App. 7.)[1] Richardson's position is that this dollar figure pertained to the cause of action for promissory estoppel that Richardson pled and that the trial court

[1] There was competing evidence at trial introduced respecting the value of NARP shares at the time. (App. 576-577). To the extent Richardson was going to be permitted to purchase NARP stock because of a promise permitting him to do so under a promissory estoppel claim, Richardson maintains the jury weighed the competing evidence on a purchase price and settled on $2,936,000, a figure within the range of that evidence. It should be noted that post judgment, NARP has taken actions which, according to Richardson, have drastically reduced the value of NARP stock to near worthless stock. This action is the subject of subsequent litigation by Richardson against NARP and others. These matters are of public record.

presented to the jury[2]. However, the trial court did not utilize any dollar number in entering the judgment in favor of Richardson for specific performance. (App. 6.) As noted, the parties' Charleston agreement provided a price term—the amount of the proceeds from the sale of Reeves.

Following trial, post-trial motions for judgment notwithstanding the verdict and to alter or amend the verdict were made immediately after the return of the verdict. (App. 848-854.) The trial court denied all such motions. (*Id.*) The trial court prepared the judgment that day and judgment was entered September 2, 2008. (App. 6.)

NARP moved to alter or amend the judgment on September 15, 2008. (App. 51.) Among other things, in its motion NARP claimed that the jury did not find that NARP had breached any contract and that Richardson failed to demonstrate that he was ready to pay for the 7.5% stake in NARP. (*Id.*) However, NARP withdrew its post-trial motion by notice filed September 23, 2008. (App. 54.) Thereafter, NARP served and filed its notice of appeal on October 3, 2008, which was received by Richardson on October 6, 2008. (App. 55.)

In conjunction with its notice of appeal and asserting an incorrect interpretation of the judgment rendered by the trial court, NARP sent to counsel for Richardson a purported tender of NARP stock on October 6, 2008, with a demand that Richardson tender $2,936,300.00 as payment for such stock no later than October 10, 2008, at 4 p.m., supposedly as required by NARP's view of the trial court's judgment for specific performance.[3] (App. 1053.) This demand was rejected by Richardson. Richardson then

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[2] As an alternative claim, Richardson claimed that through promissory estoppel, he had the right to purchase NARP stock based on promises NARP made and relied upon.

[3] Although this letter was not presented to the trial court, it was part of the appellate

cross-appealed on October 13, 2008, to challenge NARP's mischaracterization of the trial court's judgment reflected in the October 6 demand letter, in case for some reason the trial court or the court of appeals were to agree with NARP's counsel's mischaracterization. (App. 56.)

The court of appeals heard NARP's appeal and Richardson's cross-appeal despite NARP's effort to have the cross-appeal dismissed on grounds that Richardson was supposedly not an aggrieved party. (*See* App. 1275.) [4] In its opinion, the court of appeals agreed with Richardson, the trial court, and the jury to the extent that it concluded an enforceable contract existed between the parties. *NARP v. Richardson*, 396 S.C. 124, 720 S.E.2d 53 (2011). Instead of enforcing the valid agreement it found to exist, however, the court of appeals concluded that the parties had not included a price term in their contract and that the number contained on the verdict form should be used for that purpose. *Id.*

Both parties petitioned the court of appeals for rehearing. (App. 1227-1274.) The court of appeals denied both petitions. (App. 1213.) Both parties then filed petitions for writ of certiorari with this Court. This Court originally granted both parties' petitions for certiorari and summarily addressed the issues raised on certiorari in its March 26, 2014, Memorandum Opinion No. 20014-MO-009. Both parties petitioned this Court for rehearing on the Memorandum Opinion. By Order dated May 23, 2014, this Court granted the petitions for rehearing and ordered the parties to brief the issues on certiorari. Accordingly, Richardson's Petitioner's brief is filed pursuant to Rule 242(b), SCACR.

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record because it was attached as an exhibit to NARP's motion for limited remand (which was denied), dated November 19, 2008 and filed in the court of appeals. (App. 58; *see also* App. 61.)

[4] NARP did not seek certiorari review of the court of appeals' denial of its motion to dismiss Richardson's appeal.

Summary of Argument in Favor of Reversal of the Court of Appeals

This case arises out of a judgment in favor of P.J. Richardson, but because of the arguments of the opposing party and the opinion of the court of appeals, P.J. Richardson is continually forced to seek relief from the courts with respect to the interpretation of the trial judgment. At trial, the jury found that an enforceable contract existed between Richardson and NARP. The trial court then entered judgment in favor of Richardson for specific performance on the contract the jury found to be capable of performance. The contract the jury found to be enforceable provided that the parties would exchange either 7.5% of their respective company shares, or Richardson would exchange 7.5% of the value of his company, the Reeves Company, for 7.5% of the shares of NARP. Richardson sold Reeves Company and the value of 7.5% of Reeves Company was thus rendered to a sum certain in light of the sale—$415,988.

Despite the jury finding that the contract existed between the parties and the trial court's judgment in favor of Richardson for specific performance of the contract, NARP took the position, post-trial, that the judgment required Richardson to pay an amount higher than $415,988. More precisely, after trial, NARP contended that Richardson had to pay $2,936,300 for the 7.5% share of NARP. NARP obtains the $2,936,300 figure from the jury's verdict form. NARP has cast the issue before this Court as being how much Richardson must pay for the 7.5% interest in NARP. That is not the issue. The issue is what the trial court's specific performance judgment means, and how should it be enforced. The court of appeals adopted the position of NARP with respect to price by holding that Richardson would need to pay $2,936,300 for 7.5% of the shares of NARP. *NARP v. Richardson*, 396 S.C. at 127-138, 720 S.E.2d at 55-61. The court of appeals'

holding is based upon the flawed reasoning that the parties had not agreed to a price term ("method of payment" as referred to by the court of appeals). This is incorrect.

The court of appeals' decision affects long-standing principles related to the enforcement of private agreements and the prohibition against the courts imposing contractual terms on litigants to which they did not agree. Moreover, the court of appeals' opinion ignores the Rules of Civil Procedure and the prior South Carolina cases which provide that the trial court is empowered to enter the form of the judgment and that an unambiguous judgment must be enforced as written. The opinion of the court of appeals should be reversed in order to correct the misapplication of the law contained therein.

Argument

I. The court of appeals erred in imposing additional terms into the parties' contract and in construing the form of the judgment for specific performance.

Richardson had an enforceable contract. The jury and the trial court found that contract to exist. The trial court ordered specific performance. Only after the entry of judgment did NARP take a position regarding the meaning of the trial court's specific performance judgment, which was adverse to Richardson and his position as a winning party. The trial court did not rule on the meaning of its specific performance judgment. For the first time, the court of appeals ruled on the meaning of that judgment, and it adopted NARP's argument regarding the meaning of the judgment. The court of appeals improperly imposed a price term on Richardson to which he never contracted, and thus did not properly construe the trial court's specific performance judgment. NARP properly cross-appealed and properly contests the court of appeals' ruling respecting its

wrongful interpretation of the judgment. Only this Court is positioned to correct the court of appeals' error in this regard. The court of appeals should be reversed on this point.

A. This Court is empowered to consider the issues Richardson presents.

This Court has the power to review the court of appeals' decision by way of granting petitions for writs of certiorari. It granted Richardson's petition and thus may review, and reverse, the court of appeals' erroneous interpretation of the trial court's judgment. It is proper for an appellate court to interpret a trial court's order. *See, e.g., Wayburn v. Smith*, 263 S.C. 518, 522, 211 S.E.2d 560, 561 (1975) (demonstrating appellate courts may interpret an order of the lower court); *Management Recruiters of Greenville v. R.J.R. Mech., Inc.*, 304 S.C. 399, 401, 404 S.E.2d 908, 909 (Ct. App. 1991) (construing a judgment of the trial court by determining the trial court's intent and carefully reviewing the order); *Petition of White*, 299 S.C. 406, 412, 385 S.E.2d 211, 215 (Ct. App. 1989) (illustrating that an appellate court may interpret a judgment by a trial court by stating "[a]s a general rule, judgments are to be construed like other written instruments. The determinative factor is the intent of the parties or the court, as gathered, not from an isolated part of the contract or judgment but from all its parts").

Further, the law recognizes that despite having been a "winning" party below, a party can be aggrieved by a judgment or order. *State v. Gregorie*, 339 S.C. 2, 4, 528 S.E.2d 77, 78 (2000) (holding appeal was proper when defendant won below but was aggrieved by the circuit court's order remanding the case to the magistrate for a new trial, as the remand implicated double jeopardy); *Cobb v. Benjamin*, 325 S.C. 573, 580, 482

S.E.2d 589, 592 (Ct. App. 1997) (holding party was aggrieved and appeal was proper even though judgment essentially provided the party's requested relief).

Here, the trial court ordered, "[j]udgment for the defendant [Richardson] under specific performance doctrine." (App. 6.) This judgment for specific performance clearly requires the parties to perform under a contract. The parties and this Court need only to look to the record to find the terms of the contract. Despite the ease in finding the terms the parties agreed to as recognized by the jury, NARP has continued to argue that the trial court's award of specific performance incorporated a new essential term—the price—a new amount regarding which there was no meeting of the minds between the parties. NARP effectively desires this Court to order specific performance of a verdict form, not a contract. No support exists in the law for this concept. The fact that the court of appeals adopted NARP's erroneous reading of the judgment demonstrates why Richardson was correct to cross-appeal.

B. South Carolina courts do not rewrite contracts.

The trial court found that a valid agreement existed and ordered it to be performed. Now, however, the court of appeals has imposed a new term on Richardson, one to which he did not agree and one that only arose after judgment in this case. Reversal is necessary on this point—courts do not rewrite contracts.

"The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous." *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003); *see also Charles v. Canal Ins. Co.*, 238 S.C. 600, 608-09, 121 S.E.2d 200, 205 (1961) (holding where a contract's terms are clear, the court's

function is to enforce the terms and not to substitute its own judgment for that of the parties).

The trial court properly entered judgment in favor of Richardson and lawfully ordered NARP to specifically perform its obligations under the parties' 2000 agreement as orally amended following the 2004 meeting in Charleston, South Carolina. The jury found that a contract existed. The terms of the contract are clear. Hence, the court of appeals should have concluded that Richardson is entitled to pay $415,988 for the 7.5 percentage share of NARP. Instead, the court of appeals uses the phrase "method of payment" and states that the parties' contract was silent on this point. *See NARP v. Richardson*, 396 S.C. at 127-128, 720 S.E.2d at 55-56. However, the "method of payment" as agreed was recognized by the jury's findings that the 2000 Agreement, as orally amended in Charleston, was a binding and enforceable contract capable of performance.

The court of appeals rightly recognized that as a matter of fact, the Reeves Company had sold. Therefore, Richardson did not have a company with stock that he could exchange for the equal part ownership share of NARP. Given that Reeves had already sold, it had an identifiable and sum certain value. 7.5% of the identified value of the Reeves Company amounted to $415,988. (App. 381.) Accordingly, 7.5% of the Reeves Company's sale price ***was*** the method of payment respecting the 7.5% share of NARP. Because the court of appeals correctly found the 2000 Agreement capable of being performed, it should have enforced the contract as agreed by the parties instead of imposing a new term relating to value on the parties. Reversal is necessary on this point.

C. The court of appeals ignored the claims submitted to the jury based on the evidence and Richardson's post-trial motions demonstrate the difference in claims.

Richardson had two claims submitted to the jury in this matter. One was for promissory estoppel, which involved asking the jury how much money Richardson would have to pay, pursuant to that theory, for NARP stock. The jury answered that question in the amount of $2,936,300. Richardson also made a claim for specific performance. He also won on that separate claim and the trial court entered judgment on that separate claim. Consideration of the trial court's charge to the jury illustrates the difference in the two claims submitted to the jury. With respect to Richardson's claim that a contract existed and could be specifically performed, the court charged:

> A contract exist[s] when there is an agreement between two or more persons with consideration either to do or not to do some act. . . . For an agreement to be enforceable, the parties must agree by way of an offer to enter into an agreement and acceptance by the other party and under terms which are understood by each party.

(App. 810.) The court further charged on specific performance:

> Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties. In order to have specific performance, you have to find there was clear evidence of a valid agreement.

(App. 829.) The trial court's charge accurately set forth South Carolina law on specific performance and neither party took exception to the charge.

As to Richardson's promissory estoppel claim, the court charged the jury as follows:

> Promissory estoppel is a theory that holds a person is estopped [ ] and it can arise from the making of a promise, even without consideration.

(App. 824.) Thus, the trial court's promissory estoppel charge to the jury was ***in addition to*** the specific performance charge.

The trial court charged the jury on promissory estoppel because Richardson provided ample evidence to survive NARP's directed verdict motion. For example, Mr. Castellani testified at one point in the trial that he agreed to let Richardson acquire NARP stock. (App. 195.) Richardson also presented the testimony of Ms. Billie Richardson on the existence of a promise. Ms. Richardson testified as follows on direct:

> Counsel: Okay. And were any promises made at that meeting?
> . . .
>
> Ms. Richardson: As I said, you know, 7 -- our 7 1/2 for his 7 1/2. You'll always have your 7 1/2.
>
> Counsel: What does that mean, you'll always have your 7 1/2?
> . . .
>
> Ms. Richardson: In -- after the sale of Reeves, there was some pretty, pretty dark moments for me. Bob [Castellani—of NARP] was very reassuring, very comforting. And he said to me, you'll always have your 7 1/2. Simple as that.
>
> Counsel: That was skipping ahead a little bit. I want to go back to Charleston, just to the Charleston meeting. Were any promises made between P. J. and Bob that you saw?
> . . .
>
> Ms. Richardson: Just that, you know, you have 7 1/2 percent ownership of my company and I have 7 1/2 percent ownership in your company. I don't know how -- I mean, it was just that basic to me. That, you know, I promise you this and you promise me that.

(App. 600-601.)

Further, in moving the trial court to amend the pleadings to conform to the evidence presented, Richardson argued with respect to the claims made in the Complaint:

> . . . No sir, Your Honor, that would be an addition, we would be reserving our other claims of promissory estoppel. And also we have alternative claims for specific performances of damages that would apply to this claim as well, Your Honor.

(App. 656.) This colloquy further demonstrates the existence of the claims submitted to the jury: one for promissory estoppel and one for specific performance. Hence, the jury returned a verdict on a special verdict form which would support the alternative claims of specific performance ***and*** promissory estoppel.

Based on the above, Richardson did not need to appeal the trial court's denial of his motion for new trial *nisi*. Richardson did not have to appeal that ruling as the motion for new trial *nisi* only pertained to the promissory estoppel claim—*i.e.*, the amount found by the jury that Richardson was to pay—which was not the claim upon which judgment was entered in his favor. Richardson chose not to appeal the jury's finding in that regard because the judgment entered by the trial court was for specific performance of the contract involved. (App. 6.) Since Richardson prevailed under both theories, when the trial court entered a judgment for specific performance, Richardson was entitled to performance of the contract found by the jury to in fact exist.

Two omissions from the verdict form cloud what Richardson believes to be the correct outcome intended by the trial court but misapprehended by the court of appeals. First, the verdict form did not on its face explicitly state that the amount of the proceeds from the Reeves sale was $415,988. Second, and with respect to the $2,936,300 amount, the verdict form failed to make clear that this amount related only to Richardson's promissory estoppel claim. Richardson submits however, that his interpretation of the judgment is the only logical one in light of the record and the law.

Richardson's accounting expert testified that if NARP were valued at $80 million dollars, Richardson's share of 7.5% of stock in NARP would be worth $3,000,120. (App. 576-577.) The jury logically considered this evidence when arriving at an amount to place on the verdict form for Richardson's promissory estoppel claim. Moreover, the $2,936,300 amount must pertain to Richardson's promissory estoppel claim because on a specific performance claim, neither the jury nor the court are empowered to substitute the amount contractually agreed by the parties ($415,988) with a different contract term.

Moreover, Richardson's motion for new trial *nisi* was made immediately following the discharge of the jury (App. 851-852) but before the trial court fashioned its judgment. Because the dollar amount provided by the jury was unrelated to the specific performance claim entered as judgment, Richardson had no reason to appeal the new trial *nisi* denial. He was satisfied with the specific performance judgment, believing it required him to pay $415,988—as he agreed to with NARP under the contract the jury found to exist.

As detailed herein, shortly after judgment was entered, NARP began misconstruing the judgment as one for specific performance of a contract, not for the payment of $415,988, but purportedly requiring payment of $2,936,300. As stated, this price term was never agreed upon by Richardson as a term of any contract. After NARP appealed, Richardson cross-appealed out of an abundance of caution, fearing the court of appeals might misconstrue the verdict form and take NARP's view as to the meaning of the judgment.

While the case was before the court of appeals, NARP moved to dismiss Richardson's appeal, arguing Richardson was not aggrieved, which was denied. NARP

also moved for a limited remand to the trial court seeking the trial court to interpret Richardson's judgment. (*See* App. 58.) Richardson opposed this request, explaining instead that the judgment was for specific performance, could clearly be interpreted, and that the court of appeals should interpret the judgment. The court of appeals agreed and denied NARP's motion. (*See* App. 61.) NARP did not petition for certiorari to this Court regarding either the denial of its motion to dismiss Richardson's appeal or the denial of its motion to remand.

Unfortunately, after all of this, the court of appeals in the end mistakenly interpreted the judgment for specific performance, thus requiring Richardson to seek certiorari review from this Court. Now that this Court has granted his petition for certiorari, it should reverse the court of appeals' decision.

D. The form of the judgment was proper and should have been enforced in a manner consistent with Richardson's position here.

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

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

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

Following the jury's return of the special verdict, the trial court is charged with preparing the form of the judgment. Rule 58, SCRCP. It is well settled that "[a] judgment is effective only when reduced to writing and entered into the record." *Johnson v. S.C. Dep't of Prob.*, 372 S.C. 279, 284, 641 S.E.2d 895, 898 (2007) (citing Rule 58(a)(2), SCRCP). Rule 58 provides:

> **(a) Entry Upon Verdict or Decision.** Subject to the provisions of Rule 54(b): . . .
> **(2)** upon a decision by the court granting other relief, or ***upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly prepare the form of the judgment***, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, ***and after review and approval by the court, the clerk shall promptly enter it.***
>
> ***Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record.*** Entry of the judgment should not be delayed for the taxing of costs.

Rule 58, SCRCP (emphasis added).

Here, the trial court submitted a special verdict form containing written questions as to factual findings that might be made under the evidence presented at trial. On the special verdict form, the trial court inquired of the jury "[c]an [b]oth parties perform under the 2000 Agreement as amended in Charleston?" (App. 8 at ¶ 3.) The jury responded, "Yes." The trial court also inquired as to whether any other agreement "end[ed] both parties' rights to acquire 7.5% of the capital stock of each other?" (App. 8 at ¶ 5.) To which the jury answered "No." (*Id.*) On the same day the jury answered the special interrogatories, the trial court entered judgment for Richardson under the specific performance doctrine. (App. 6.)

The trial court correctly entered the form of the judgment in favor of Richardson under the doctrine of specific performance. South Carolina recognizes that promissory estoppel and contract enforcement claims are separate and distinct causes of action. *Duke Power Co. v. South Carolina Public Service Com'n*, 284 S.C. 81, 326 S.E.2d 395 (1985). If the jury agreed that a contract existed, which it did, then the trial court could grant the remedy of specific performance. *See Wright v. Patrick*, 262 S.C. 434, 441, 205 S.E.2d 175, 178 (1974) (noting that "[t]he discretionary power of an equity court to decree specific performance can never come into question or be exercised until and unless it first be factually established that there was a contract and that the promisee performed.").

If the jury had concluded that no contract existed, the trial court could still have rendered judgment in Richardson's favor on his claim for promissory estoppel because it is a remedy provided when no contract has been reached but a party has relied on a promise to his detriment. *See Ackerman v. The Money Store*, 728 A.2d 873 (N.J. Sup. Ct. Law Div. 1998) (referring to plaintiff's promissory estoppel "cause of action" and noting that while consideration is required for a breach of contract, a promise is still enforceable pursuant to a claim of promissory estoppel even where consideration is lacking). The trial court did not have to, nor did it, utilize the part of the verdict form containing a price amount for the purchase of NARP's stock. Instead, the jury answered questions that the parties had a contract, and that contract provided for a swap of the percentage ownership of each company's stock. The value of the percentage share of Reeves had been reduced to a sum certain in light of its recent sale—$415,988. Accordingly, the amount provided for by the jury on the verdict form was not needed by the trial court in awarding specific performance.

E. A specific performance judgment does not have to include a price term.

A court need not include the price in the judgment itself when ordering specific performance where the contract provides the price and the record includes the terms of the contract. Trial courts frequently order specific performance without reciting the terms of the contract in their orders—because those terms are already of record. *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 806 (Ct. App. 2009) (stating the master-in-equity ordered the specific performance of an oral contract and looking to the evidence to determine the oral contract and the admissibility of the evidence); *Campbell v. Carr*, 361 S.C. 258, 263-66, 603 S.E.2d 625, 627-29 (Ct. App. 2004) (stating the master-in-equity ordered specific performance of the contract and looking to the contract for the price to determine if the price was adequate). A review of the records on appeal in *Fesmire* and *Campbell* indicates the masters ordered specific performance of the contracts there without setting forth the exact terms of those contracts in their orders, as the contracts were in evidence and already in the record. This is all that occurred here. This Court and the parties simply need to look to the record to determine the terms of the contract. *McMaster v. Strickland*, 322 S.C. 451, 455, 472 S.E.2d 623, 626 (1996) (looking to the record for support for the award of attorneys' fees); *Reese v. Holmes*, 26 S.C. Eq. (5 Rich. Eq.) 531, 549, 1852 WL 2575 *12 (1852) (looking to the record to interpret a judgment in order to give the judgment its intended efficacy).

Following the trial, the jury specifically found the 2000 Agreement entered into by Richardson and NARP could still be performed as modified by the parties during their meeting in Charleston. (App. 7.) This contract was still in place and was not ended by the parties' 2004 termination, settlement and release agreement, as also found by the jury.

(App. 8.) Therefore, the 2000 Agreement as amended in Charleston is the contract to be performed under the trial court's judgment for specific performance. Richardson should thus pay $415,988 for his share of NARP under that contract. The court of appeals ignored the terms of the valid contract that it found to exist. Therefore, this Court should reverse the court of appeals on this issue.

Conclusion

The court of appeals failed to properly enforce and interpret the trial court's judgment in this matter. This has resulted in a misapplication of the law with respect to specific performance. This Court should reverse the court of appeals' imposition of a price term for the NARP stock to which Richardson did not agree. This Court should affirm the remainder of the court of appeals' opinion. Hence, this Court should affirm in part and reverse in part, or affirm as modified, to accomplish this result.

[Signature Page follows]

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Steven H. John, Circuit Court Judge

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

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

v.

P.J. Richardson, ... Petitioner/Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Petitioner/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):

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