

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No 2011-CP-23-08455

Oscar Sorcia, Appellant,

v.

Brady K. Mathis and Palmetto Surety Corporation, Respondents.

INITIAL BRIEF OF RESPONDENTS

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July 8, 2014,

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STATEMENT OF ISSUES ON APPEAL

- I DID THE CIRCUIT COURT PROPERLY GRANT SUMMARY JUDGMENT IN FAVOR OF BRADY MATHIS AND PALMETTO SURETY CORPORATION WHEN MR. SORCIA CONCEDED THAT MR. MATHIS AND PALMETTO SURETY CORPORATION SATISFIED THE FINACIAL CONDITIONS OF HIS BOND?
- II DID THE CIRCUIT COURT PROPERLY GRANT SUMMARY JUDGMENT IN FAVOR OF MR. MATHIS AND PALMETTO SURETY CORPORATION WHEN MR. SORCIA FAILED TO SUBMIT ANY AFFIDAVITS OR OTHER MATERIALS WHICH ESTABLISH A GENIUNE ISSUE OF MATERIAL FACT?
- III. DID THE CIRCUIT COURT PROPERLY DENY MR. SORCIA'S MOTION TO STRIKE AND REJECT APPEARANCE WHEN MR. MATHIS'S AND PALMETTO SURETY CORPORATION'S UNDERSIGNED COUNSEL, PAUL S. LANDIS, DID NOT SUBSTITUTE AS COUNSEL FOR SIDNEY P. MITCHELL, JR. BUT MERELY MADE AN APPEARANCE IN THIS ACTION WITH MR MITCHELL, AND WHEN MR SORCIA HAS MADE NO SHOWING OF PREJUDICE?

STATEMENT OF THE CASE

On December 13, 2011, the Plaintiff-Appellant, Oscar Z Sorcia ("Mr Sorcia"), filed a Summons and Complaint in the Court of Common Pleas for Greenville County, South Carolina. In this action, Mr. Sorcia alleged that his family paid Defendant-Appellants Brady Mathis ("Mr Mathis") and Palmetto Surety Corporation ("Palmetto Surety") a fee of \$10,000 in exchange for a surety bond in the amount of \$100,000 which would satisfy the conditions of his bail bond for charges of armed robbery, criminal conspiracy, and possession of a weapon in the commission of a violent crime. Mr Sorcia alleged that the final installment for the bond was paid to the bonding company on July 19, 2009, and on July 20, 2009 the bonding company posted a surety bond of \$100,000 on Mr Sorcia's behalf. Due to a hold that was placed by United States Immigration and Customs Enforcement ("ICE"), Mr. Sorcia was not released from the Greenville County Detention Center where he was held while awaiting trial. (Complaint, pp. 1-2).

On or about December 2, 2009, Mr. Sorcia pled guilty to armed robbery and criminal conspiracy. Following the plea, the Hon. Edward W Miller, Circuit Court Judge, sentenced Mr Sorcia to ten years imprisonment on the armed robbery charge and five years imprisonment on the conspiracy charge. Mr. Sorcia has been incarcerated in the South Carolina Department of Corrections since that time. (Complaint, p. 2).

On November 3, 2010, Mr. Sorcia filed an action in the United States District Court for the District of South Carolina against employees of the Greenville County Detention Center, pursuant to 28 U.S.C. § 1983. In that action, Mr. Sorcia alleged that the defendants violated Mr. Sorcia's rights by refusing to release him on bail after bail

was paid. The defendants' Motion for Summary Judgment was granted, and on November 22, 2011, Mr. Sorcia's case was dismissed with prejudice.

Subsequent to the dismissal of Mr. Sorcia's federal court action, Mr. Sorcia filed the instant case seeking a refund of the fee paid to the bonding company along with damages for pain, suffering, and mental anguish in an amount no less than \$150,000.00. (Complaint, p. 4). Mr. Mathis and Palmetto Surety filed and served an Answer denying Mr. Sorcia's claims. On February 23, 2013, Mr. Sorcia filed a Motion for Summary Judgment. On May 15, 2013, Mr. Mathis and Palmetto Surety filed a Cross Motion for Summary Judgment. On June 10, 2013, Mr. Sorcia filed a Motion to Strike and Reject Appearance by Paul S. Landis as counsel for Mr. Mathis and Palmetto Surety. A hearing on all motions was held before the Hon. Letitia Verdin on June 19, 2013. Mr. Sorcia was provided a translator at the hearing and presented oral arguments. Mr. Mathis and Palmetto Surety were represented at the hearing by the undersigned counsel. On June 20, 2013, Judge Verdin issued an Order granting Mr. Mathis's and Palmetto Surety's Cross Motion for Summary Judgment and denying Mr. Sorcia's motions. On July 29, 2013, Mr. Sorcia filed a Motion to Alter or Amend the Order, and said motion was denied by Order dated July 29, 2013. Mr. Sorcia filed a Notice of Appeal on August 20, 2013.

ARGUMENT

I THE CIRCUIT COURT PROPERLY GRANTED MR. MATHIS'S AND PALMETTO SURETY CORPORATION'S MOTION FOR SUMMARY JUDGMENT AND DENIED MR. SORCIA'S MOTION FOR SUMMARY JUDGMENT

A. Standard of Review

“When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRPC. Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment.” Turner v. Milliman, 392 S C 116, 121-22, 708 S.E.2d 766, 769 (2011) (citations omitted)

B. Mr. Mathis's and Palmetto Surety's Motion for Summary Judgment was Properly Granted when Mr. Sorcia Failed to Submit any Affidavits or Materials Sufficient to Create a Genuine Issue of Material Fact and Conceded that the Financial Conditions of Plaintiff's Bond were Satisfied

In his Complaint, Mr. Sorcia alleged causes of action for Fraud, Civil Conspiracy, and Breach of Contract but failed to introduce any evidence into the record that demonstrates a genuine issue of material fact. The undisputed facts submitted in the form of affidavits and other documents establish that Mr. Sorcia is unable to survive summary

judgment on any claims asserted in his Complaint. In fact, in opposition to a Motion for Summary Judgment in the aforementioned federal court action, Mr. Sorcia submitted an Affidavit stating that “[o]n July 20, 2009, the bond company satisfied the financial conditions of my bond, and the magistrate judge ordered my release. However, the Greenville County Detention Center refused to release me, in violation of the Magistrate’s Order.” (Affidavit of Oscar Sorcia in Federal Ct. Action, p 1) Mr. Sorcia also concedes in his brief in this action that “Appellant does not and never have [sic] disputed that respondents posted the required bond certificate.” (Initial Brief of Appellant, p 7)

In support of Mr. Mathis’s and Palmetto Surety’s Motion for Summary Judgment and in opposition to Mr. Sorcia’s Motion for Summary Judgment, Mr. Mathis and Palmetto Surety submitted the Affidavit of Brady K. Mathis, Affidavit of Scott B Willis, Affidavit of Oscar Sorcia in the federal court action, and a Discharge confirming that a surety bond in the amount of \$100,000 was posted on July 20, 2009 for the offenses for which Aces High Bail Bonding agreed to post bond

Mr. Mathis’s Affidavit establishes, in pertinent part, that he executed a bond for Oscar Sorcia in the amount of \$100,000 but he did not have any contact with Mr. Sorcia, his family, or representatives of Mr. Sorcia related to Aces High’s agreement to post bond for Mr Sorcia. Furthermore, Mr. Mathis’s Affidavit establishes that he did not make any representations to Mr. Sorcia, his family, or representatives of Mr. Sorcia relevant to his incarceration, posting bond, his release, his charges, or any other matter relevant to his detention or release. According to his affidavit, Mr. Mathis’s sole involvement in the matter was executing a bond on behalf of Aces High Bail Bonds,

which he understood was no longer in business as of May 15, 2013. (Mathis Affidavit, pp. 1-2).

Mr. Willis's Affidavit establishes that he was, at all relevant times, CEO of Palmetto Surety Corporation and that he was familiar with the bond posted by Aces High for Mr. Sorcia. Mr. Willis's Affidavit further establishes that, from his experience, detainees are able to contest federal detainers but must first post bond with the Court of General Sessions or Magistrate's Court, as the case may be. Mr. Willis further testified in his Affidavit that Palmetto Surety was never notified of federal detainer issues pertaining to Mr. Sorcia and that Palmetto Surety was never asked and never offered to get involved in any federal custody issues pertaining to Mr. Sorcia. Furthermore, Mr. Willis testified in his Affidavit that no employee of Palmetto Surety had any contact with Mr. Sorcia, his family, or representatives of Mr. Sorcia or made any representations to the same (Willis Affidavit, pp. 1-2).

Although Mr. Sorcia filed his own affidavit in the Circuit Court, nothing presented by Mr. Sorcia refutes Mr. Mathis's or Palmetto Surety's claims or otherwise provides evidence to support the causes of action alleged. Accordingly, Mr. Sorcia has failed to present a scintilla of evidence necessary to survive summary judgment, and the Circuit Court's Order should be affirmed.

1. Mr. Sorcia has Failed to Introduce any Evidence in the Record to Support a Cause of Action for Fraud.

"To establish a cause of action for fraud, the following elements must be proven by clear, cogent, and convincing evidence: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon, (6) the hearer's ignorance of its

falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. The failure to prove any element of fraud or misrepresentation is fatal to the claim.” Schnellmann v. Roettger, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007) (citations omitted). Furthermore, at the summary judgment stage, a plaintiff alleging a cause of action for fraud must present more than a mere scintilla of evidence to survive summary judgment. See Turner, 392 S.C. 116, 708 S.E.2d 766 (2011).

In the instant case, Mr. Sorcia submitted his own affidavit and submitted nothing else in opposition to Defendants’ Motion for Summary Judgment. Mr. Sorcia’s affidavit failed to produce evidence sufficient to satisfy the elements of a cause of action for fraud. In fact, Mr. Sorcia has failed to introduce any evidence in the record that Defendants Palmetto Surety or Brady Mathis even had the *opportunity* to mislead Mr. Sorcia or those acting on his behalf. The uncontroverted evidence shows that Aces High Bail Bonding, which is not a party to this action, was the bonding company that dealt with Mr. Sorcia’s family. Based upon the evidence in the record, neither Palmetto Surety nor Brady Mathis had any communication whatsoever with Defendant or anyone acting on his behalf.

Accordingly, Mr. Mathis’s and Palmetto Surety’s Motion for Summary Judgment was properly granted, and the Circuit Court’s Order should be affirmed as to Mr. Sorcia’s cause of action for fraud.

11. Mr. Sorcia has Failed to Introduce any Evidence in the Record to Sustain a Cause of Action for Civil Conspiracy

Mr. Sorcia has failed to introduce any evidence in the record to demonstrate civil conspiracy on the part of Mr. Mathis or Palmetto Surety. Furthermore, Mr. Sorcia has failed to show special damages.

“The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage” Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (citations omitted). “A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint. Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action” Id. (citations omitted).

Nothing in the record provides evidence to support a claim for civil conspiracy or special damages resulting from the same. The damages claimed by Mr. Sorcia on the civil conspiracy claim are ostensibly the same as those which Mr. Sorcia seeks to recover through the other causes of action. Accordingly, Mr. Mathis and Palmetto Surety are entitled to summary judgment on Mr. Sorcia’s cause of action for civil conspiracy, and the Circuit Court’s Order should be affirmed

111. Mr. Sorcia has Failed to Introduce any Evidence in the Record to Sustain a Cause of Action for Breach of Contract

Mr. Sorcia alleges that Mr. Mathis and Palmetto Surety breached a contract, but Mr. Sorcia has failed to submit any affidavits or other materials that would support his allegation. In fact, the uncontroverted evidence shows that Aces High Bail Bonding was paid to post a bond and that Mr. Mathis (acting on behalf of Aces High) promptly posted bond on all charges for which Aces High was required to post bond. There is no evidence to the contrary.

Ostensibly, Mr. Sorcia is taking the position that Mr. Mathis and Palmetto Surety had an unfettered obligation to guarantee his release. (Complaint, p. 4). However, it is

undisputed that Mr. Sorcia was not released due to his failure to satisfy conditions of his bond which were unrelated to the financial condition. As Mr. Sorcia admits, the financial conditions of his bond were satisfied. Accordingly, Aces High, and therefore Mr. Mathis and Palmetto Surety, cannot be accused of breaching a contract. The South Carolina Court of Appeals case Ex parte Bonds, 358 S.C. 652, 655, 596 S.E.2d 378, 380 (Ct. App. 2004) lends further support to Mr. Mathis's and Palmetto Surety's position. In Ex parte Bonds, the Court of Appeals reversed the trial court when the trial judge ordered the bonding company to refund a portion of a defendant's bond premium as a condition for the bonding company being relieved of its obligations under the bond. The Court of Appeals specifically held that that the statute governing bail bonds "does not authorize the circuit court to require a bonding company to pay any portion of the fee back to the defendant or his guarantor in order to be released from a bond." Id. In other words, the circuit court does not have authority to order that a bonding company refund a client a premium in full or in part depending on the degree of benefit the defendant derived from the same.

In summary, Mr. Sorcia (or someone on his behalf) paid a fee to have Aces High satisfy the financial conditions of his bond, and Aces High did so – and did so promptly. By posting bond through the bonding company, Mr. Sorcia satisfied the financial condition of the circuit court's order for bail. The bonding company did not agree to secure Mr. Sorcia's unfettered release from jail and could not have agreed to do so. Any such agreement would have required the bonding company to practice law, which it would not be authorized to do. There is no evidence to the contrary, and therefore Mr. Sorcia's claim for breach of contract must fail.

iv. Mr. Sorcia's Claim for Damages Resulting from Emotional Distress Fails as a Matter of Law

Mr. Sorcia alleges that he suffered emotional distress, but such damages are not available in the instant case. "Mental suffering, emotional shock, inconvenience, or embarrassment are not elements of damage in a fraud case." Sparrow v. Toyota of Florence, Inc., 302 S.C. 418, 423, 396 S.E.2d 645, 648 (Ct. App. 1990). Likewise, Mr Mathis and Palmetto Surety are unaware of any South Carolina precedent that would allow for the recovery of damages resulting from emotional distress under causes of action for breach of contract or civil conspiracy. Accordingly, Mr. Sorcia's claim for non-economic damages must fail as a matter of law, and the Circuit Court's Order should be affirmed.

v. Mr. Sorcia's Claims are Preempted by Statute

In the instant case, Mr Sorcia does not argue that Mr. Mathis or Palmetto Surety Corporation failed to post bond as agreed or that they caused delay in doing so. Mr. Sorcia merely alleges that he was not released from the Greenville County Detention Center. The Court of Appeals' decision in Ex parte Bonds establishes that a defendant is not entitled to a refund of the fee paid for a surety bond depending on the degree of benefit a defendant derives from the bond. Although Ex Parte Bonds was decided in the context of a defendant's motion to be relieved as surety on a bond, the relevant statutes speak to the circuit court's authority. S C. Code Ann. §§ 38-53-10, et seq provides a comprehensive statutory scheme governing sureties on criminal bonds. Presumably if the legislature intended to provide for the relief sought by Mr. Sorcia, it would have done so. Although not expressly addressed by the Circuit Court, this Court should find, as an

additional sustaining ground, that Mr. Sorcia's claims are preempted by statute, and the Circuit Court's Order should be affirmed

II. THE CIRCUIT COURT PROPERLY DENIED MR. SORCIA'S MOTION TO STRIKE AND REJECT APPEARANCE

Mr. Sorcia argues that the Court erred by denying his Motion to Strike and Reject Appearance of Paul S. Landis. However, Mr. Sorcia's motion to strike appearance was based upon an argument that Defendants could not *substitute* counsel without a proper order. There was no *substitution* of counsel in this case. The undersigned counsel merely made an appearance in this action to serve as co-counsel with Sidney P. Mitchell, Jr. The undersigned counsel is a member in good standing of the South Carolina Bar and is licensed to practice before all South Carolina courts. There is nothing within the South Carolina Rules of Civil Procedure that allows Mr. Sorcia to object to the undersigned counsel making an appearance in this case.

Mr. Sorcia further alleges that the undersigned counsel's appearance "prejudiced the outcome of plaintiff's case." Because Mr. Sorcia's Motion to Strike Appearance is wholly without merit, this Court should not reach the issue of prejudice. However, even if the Court considers Mr. Sorcia's argument, Mr. Sorcia has offered nothing in support of his assertion. In fact, there is no conceivable basis upon which Mr. Sorcia could allege that the undersigned counsel arguing the motions in this case instead of Mr. Mitchell is somehow prejudicial to him.

Mr. Sorcia's Motion to Strike and Reject Appearance is wholly without merit, and the Circuit Court's Order denying the same should be affirmed.

III THE CIRCUIT COURT PROPERLY DENIED MR. SORCIA'S MOTION TO ALTER OR AMEND

Mr. Sorcia filed a Motion to Alter or Amend, through which he requested that the Circuit Court "reconsider its judgment granting summary judgment in favor of the defendants, re-examine the facts and evidence presented by plaintiff in plaintiff's motion for summary judgment; and alter or amend the judgment accordingly." (Motion to Alter or Amend, p. 3). For the same reasons that the Circuit Court properly granted Mr. Mathis's and Palmetto Surety's Motion for Summary Judgment and denied Mr. Sorcia's motions, the Circuit Court properly denied Mr. Sorcia's Motion to Alter or Amend. Accordingly, the Circuit Court's Order denying Mr. Sorcia's Motion to Alter or Amend should be affirmed.

IV. ALL REMAINING ARGUMENTS PROPOUNDED BY MR. SORCIA ARE WITHOUT MERIT OR OTHERWISE NOT PRESERVED FOR REVIEW

A Mr. Sorcia Raised New Claims Following the Circuit Court's June 20, 2013 Order which Are Not Preserved for Review

"It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved." Pye v Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006). Mr. Sorcia argues in his appellate brief that "[t]he gravamen of Appellant's complaint and cause of action is 'Restitution' a Quantum Meruit Action to recovery money had and received, to prevent 'Unjust Enrichment' by the Respondents at the expense of appellant." (Initial Brief of Appellant, p. 7). No such claims were raised in Mr. Sorcia's Complaint, and leave to amend was never requested prior to or at the June 19, 2013 hearing on the parties' cross motions for summary judgment. Furthermore, although new issues could not be properly argued in a motion to alter or amend, the new claims were not even mentioned in Mr.

Sorcia's Motion to Alter or Amend pursuant to Rule 59(e), SCRCP. Accordingly, Mr. Sorcia's new claims were not raised or ruled upon in the trial court and therefore are not preserved for appellate review. As an additional matter, even assuming *arguendo* that such claims were properly raised, Palmetto Surety refunded the \$1,000 portion of the fee paid for the bond and therefore could have no further exposure under any equitable theory. Presumably the rest of the bond fee was received by Aces High, which is not a party, and neither Mr Mathis nor Palmetto Surety can be held liable for the same.

Mr. Sorcia also argues for the first time on appeal that the parties' contract was ambiguous. Such an argument was never raised or ruled upon in the trial court and therefore is not preserved for appellate review.

No arguments other than those related to Mr. Sorcia's causes of action for fraud, civil conspiracy, and breach of contract were properly presented to the trial court, and therefore no other claims may be considered on appeal. For the reasons set forth above, the Circuit Court's Orders should be affirmed.

B. Any Remaining Arguments Raised by Mr. Sorcia are Without Merit

Any remaining allegations or arguments presented by Mr Sorcia on appeal are manifestly false or wholly without merit. Accordingly, such allegations or arguments should be disregarded by the Court, and the Circuit Court's Orders should be affirmed.

CONCLUSION

For the reasons set forth above and for any other reasons appearing in the record pursuant to Rule 220(c) of the South Carolina Appellate Court Rules, the Circuit Court's Orders granting Brady Mathis's and Palmetto Surety Corporation's Motion for summary

Judgment and denying Mr. Sorcia's Motion for Summary Judgment, Motion to Strike Appearance, and Motion to Alter or Amend should be AFFIRMED



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July 8, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-23-08455

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SC Court of Appeals

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v.

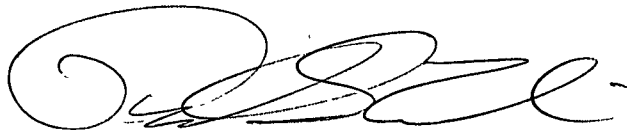
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PROOF OF SERVICE

I certify that I have, this 8th day of July, 2014, served the Initial Brief of Respondents and Designation of Matter To Be Included in the Record on Appeal on Appellant by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows:

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Re Oscar Sorcia v. Brady K. Mathis and Palmetto Surety Corporation
C.A. No : 2011-CP-23-08455

Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of the Initial Brief of Respondents and original and one copy of the Designation of Matter to be Included in the Record on Appeal, along with an original and two (2) copies of the Proof of Service. I have provided a self-addressed envelope for return of one filed copy of the Brief, Designation of Matter and Proof of Service.

Please do not hesitate to contact me should you have any questions.

With kindest regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul S. Landis". The signature is fluid and cursive.

Paul S. Landis

PSL/pw

Enclosures (as stated)

cc: Oscar Sorcia
Sidney P. Mitchell, Jr., Esq

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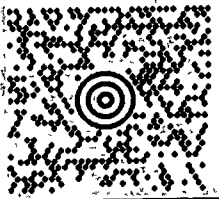
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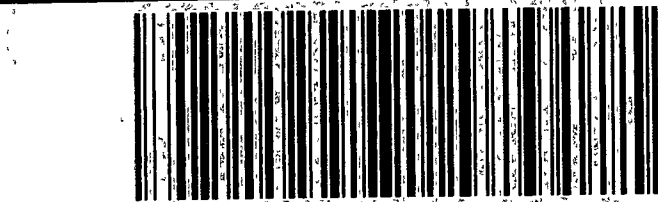
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