

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
2013-001825

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Appeal from Greenville County  
Court of Common Pleas

Honorable Letitia, H. Verdin, Circuit Court Judge  
Case No. 2011-CP-23-08455

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Oscar Z. Sorcia,

Appellant,

vs.

Brady K. Mathis and  
Palmetto Surety Corporation,

Respondents.

**RECEIVED**

AUG 15 2014

**SC Court of Appeals**

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A P P E L L A N T ' S R E P L Y B R I E F

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- (a). The Respondent's cross motion for summary judgment was not supported by competent evidence, i.e. Affidavits based upon personal knowledge with certified documentation to support the same;
  - (b). The cross motion was untimely, and there existed a genuine issue of material fact in dispute e.g. Whether Appellant is entitled to a refund as a matter of law, or whether by law Respondents are allowed to be unjustly enriched by Appellant's \$10,000; and ..... 1
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**STATEMENT OF ISSUES ON APPEAL**  
**\*\*\*\*\***

- (1). Whether the Circuit Court properly granted Summary Judgment in favor of Brady Mathis and Palmetto Surety Corporation, when their cross motion for summary judgment was not supported by any competent evidence, untimely made and there existed a genuine issue of material fact in dispute?
  
- (2). Whether the Circuit Court properly granted summary judgment in favor of Brady Mathis and Palmetto Surety Corporation, when Mr. Sorcia's motion for summary judgment was fully supported by affidavits, admissions on file, interrogatories and other competent evidence?
  
- (3). Whether it was error of law and abuse of discretion for the Circuit Court to grant summary judgment in favor of Brady Mathis and Palmetto Surety Corporation when the Court's Ruling is lacking specific facts and conclusions of law supported by the record?
  
- (4). Whether it was error of law and abuse of discretion for the Circuit Court to deny Mr. Sorcia's motion to strike and reject appearance of Paul S. Landis, when Mr. Sorcia showed a clear prejudice by Mr. Landis' 11th hour" appearance?
  
- (5). Whether it was error of law and abuse of discretion, when the Circuit Court denied Mr. Sorcia's motion to alter or amend the judgment pursuant to Rule 59(e) (SCRCP), where the Court failed to apply the proper standard of review, and required "new" evidence for the Court to consider said motion?

STATEMENT OF THE CASE

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On December 2, 2011, Oscar Z. Sorcia brought this action Pro-Se in forma pauperis, to recover money had and received by a Bonding Company Agent, insured by Palmetto Surety Corporation, alleging Fraud, Civil Conspiracy and Breach of Contract. ROA at 6

The defendants (Palmetto) and (Mathis) answered the complaint on May 25, 2012, ROA at 10. Simply admitting allegations #'s 1-10 and denying allegations #'s 11-20. On February 13, 2013, Plaintiff filed a motion for summary judgment, ROA at 57.

On April 8, 2013, because the defendants failed to timely respond to the summary judgment motion, filed an order granting summary judgment in favor of plaintiff. ROA at 71. A hearing date was set for May 22, 2013 on plaintiff's motion for summary judgment. ROA at 109. On May 13, 2013 attorney Paul Landis made an appearance on behalf of the defendant(s). ROA at 42. On May 15, the a motion for summary judgment was filed by Mr. Landis. ROA at 42. On May 21, 2013 the clerk rescheduled Plaintiff's summary judgment hearing to allow the defendant's cross motion to be heard at the same time. ROA at 110. On June 19, 2013 a hearing was held on both parties' motion for summary judgment. ROA at 118.

On June 20, 2013 Judge Verdin issued a final order granting summary judgment in favor of defendants and denying plaintiff's summary judgment motion. ROA at 3. On July 2, 2013 Plaintiff filed a timely motion to alter or amend pursuant to Rule 59(e) (SCRCP). ROA at 12. On July 29, 2013, Judge Verdin issued an order denying the 59(e) motion. ROA at 1. A timely notice of appeal was filed August 20, 2013. and this appeal follow.

IN REFERENCE TO ISSUE No. 1:

The Lower Court erred granting summary judgment in favor of Mr. Mathis and Palmetto Surety Corporation. Respondent's cross motion for summary judgment was not supported by competent evidence, i.e. affidavits based upon personal knowledge with certified documentation to support the same.

Appellant reiterate all matter in Appellant's Intital Brief, argument No. (1), Pages 6-20, as if restated verbatim herein as adopted and incorporated by reference herein.

Appellant contends that there are at least four reasons notable, why the lower Court erred in granting summary judgment in favor of Respondents. The Respondents' summary judgment motion was not support by any of the required evidence, i.e. affidavits based on personal knowledge with certified documentation to support the same. See Record on Appeal (ROA) Page 42. Respondents submitted n admission, interrogatories, or discoveries on file. See also Appellant's Initial Brief Page 6-20. Id.

Respondents' motion for summary judgment simply states:

"There are no genuine issue of material fact, and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants are entitled to summary judgment as a matter of law." Id.

The motion continued by stating: "Defendants' motion [will] be supported by citations of law, arguments of counsel and affidavits, and such other material as may be properly submitted in support of Defendants' motion."

No other documents, proof, citations of law or any other competent evidence was submitted to the lower Court. Nor was anything presented at the hearing on the motion. See (ROA P.121-123)

What was presented at the hearing was an affidavit of Appellant in an unrelated case where none of the facts of the present case is relevant to facts of the case filed in Federal Court. Besides information that wasn't available then, became available latter, which prompted the current action. The information relied upon by Appellant in the affidavit submitted by Respondents proved after discovery to be inaccurate, and not a true representation of the facts.

During the hearing on the summary judgment motion counsel argued: "and the reason I submit those, Your Honor, is the Plaintiff has alleged three causes of actions, ~~one for civil~~ conspiracy and one for breach of contract. As an initial matter, Your Honor, I have submitted [a]ffidavits of Scott Willis, Brady Mathis and the Plaintiff in [this] case in support of my motion for summary judgment and in opposition to his motion for summary judgment, and Your Honor, he has submitted nothing." Id at (ROA P.122, L.5-9) (emphases added).

See also Appellant's argument on this issue in Appellant's Initial Brief Pages 6-20. Id.

The Respondents in their initial brief argues: "Mr. Mathis 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." See Respondents' Initial Brief on Appeal Pages 4-6. Id.

Here again the Respondents continues to misrepresent the facts of this case to the Courts, and continues to construe Appellant's claims with an myopic view of the Appellant's [t]rue causes of action, which Appellant have, had and still make abundantly clear, "Restitution to prevent Unjust-Enrichment."

Even now in their initial brief Respondents cannot point to one law which says that Bondsman are allowed to be unjustly enriched from clients who pay them [large] sums of money, and who never get out of jail, even though the Bonding Company post a bond certificate.

Hypothetically, if a client pay a bondsman \$10,000, to secure his release, the judge orders his release and the client reason that it would be safer and more profitable to remain in jail until trial, (basically a change of mind) and never attempts to leave the jail, would he be entitled to a refund of the money paid to the bondsman, minus any administrative cost of processing the bond certificate?

The whole purpose of posting bond is to [s]ecure the defendant's presence in court. If a defendant never get out of jail, there is no need to [secure] his presence, he's in the custody of the state. The same would be true if a person posted property or cash to the clerk of court. Whether they get out or not [all] funds posted would be returned to the individual who posted bond. Also, if the defendant did not get out jail for some other unforeseen reason or another, he would still nonetheless be entitled to a refund.

What makes bondsman any more entitled to keep money had and received when a client have not reaped any benefit from posting a bond certificate, he cannot use, or that in this case served [no] purpose. See Also, Appellant's Arguments in the Initial brief Pages 6-20. Id.

Rule 56(e)(SCRCP):  
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"...When a motion for summary judgment is made and supported as provided in this rule, and adverse party may not rest upon the mere allegations or denials of his pleading, but his [r]esponse, by affidavits or as otherwise provided in this rule, must set forth specific [facts] showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

The Respondents as the moving party in the lower court on their cross motion for summary judgment was required to come forth with some "Law" which indicate or even infer that they were entitled to keep Appellant's \$10,000, otherwise this [genuine] issue is the material fact in dispute which remains unresolved by the lower Court's Ruling, granting summary judgment in favor of Respondents. See Appellant's Initial Brief Pages 6-20. Id.

Rule 56(c)(SCRCP):  
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"... The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, [show] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of [law]."

The genuine issue that remained unresolved by the lower court is, Whether Appellant is entitled to a refund or whether Respondent are allowed to be unjustly-enriched of \$10,000 as a matter of law?

In reference to issue # (1)(c) above: Respondent's arguments "I(b)(i) through (v), is not preserved for review. Nothing in the record supports that these arguments were presented to and ruled upon by the Lower Court, on the merits.

The Respondents raised in their initial brief several issues that are not preserved for appeal. See Initial Brief of Respondents Pages 6-10. Id.

Counsel for Respondents is attempting to introduce evidence of an unnamed defendant's affidavit as proof of facts unsupported by the record and not preserved for review. See Respondent's Brief Page 6 paragraph 1 & 2. Id.

Respondents would have this Court believe that Mr. Scott Willis was declared an expert witness on Federal Immigration Laws, and that his affidavit bore evidence in the case below. There is no indication in the record where the Court relied on anything presented in this affidavit, nor that the Court accepted Mr. Willis as an expert witness. Respondents' argument that Mr. Willis' affidavit "[e]stablishes that from his experience detainees are able to contest federal detainers but must first post bond with the court..." See Respondents' Brief at Page 6(1).Id.

This argument must fail, because it simply is not preserved in the record as "established proof", nor was it raised and ruled upon by the Lower Court as such. The Respondents does not point to anywhere in the record or judgment of the Lower Court, where such facts were established.

The Respondents' remaining arguments in their brief Pages 6-12 is not preserved for review, and is manifestly without merit. Respondents have not referenced anywhere in the record or the Lower Court's ruling, the arguments Respondents presents to this Court. A mere mentioning to the Court that an affidavit was submitted by Mr. Willis does not without more, establish the truthworthiness and trustworthiness of his affidavit. Nor does it confirm any information he may have provided as accurate.

At the hearing on the summary judgment motion(s) Counsel for Respondents stated the following: "As an initial matter, Your Honor, I have submitted affidavits of Scott Willis, Brady Mathis..." No where in the record is there any evidence to support Respondents' theory of Mr. Willis as being qualified as an expert on Federal Immigration Laws. See ROA Page 122, L.6-7.Id.

The only exhibits submitted was an affidavit of Mr. Sorcia and a Discharge Statement. See (ROA P.119, L.17-18). Id. Which have no bearing on Mr. Willis or Mr. Mathis' statements made in their affidavits submitted prior to the hearing.

The Respondents' arguments "(i) - (v)" are not preserved for review. See Respondents' Brief Pages 6-11, and cannot be raised for the first time on appeal. On issue (i) Respondents in their brief rely on as authority cases such as *Schnellmann v. Roettger*, 373 S.C. 379, 645 S.E.2d 239, 241 (2007); *Turner v. Milliman*, 392 S.C. 116, 708 S.E.2d 766 (2011), for the proposition that Appellant failed to prove fraud. No where in the record has this argument or theory of defense have been presented

to either the Court or in any responsive pleadings, and would be prejudicial for this Court to consider it now when the Lower Court's ruling does not support such argument. See Respondents' Brief Pages 6-7, See also, Record of the hearing ROA Page 118. Id.

On the issue (ii) Civil Conspiracy, as the Respondents relied on in their Brief as authority, *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct.App. 2009). Again, this argument was not made in the Lower Court and cannot be made for the first time on appeal. Id. See Respondents' Brief Pages 7-8. See also, Record of Hearing ROA Page 118. Id.

On the issue (iii), the Respondents rely on *Ex Parte Bonds*, 358 S.C. 652, 655 S.E.2d 378, 380 (Ct. App. 2004), none of what Respondents argues is supported by the record, irrelevant to the issues. *Bonds*, is distinguishable in facts and circumstances from Appellant's case, and it is not preserved for review. This argument and theory of defense is being raised for the first time on appeal. Id. See Respondents' Brief Pages 8-9.

On the issue (iv), the Respondents argue against Appellant's claim for exemplary damages, as an authority to support their argument respondent rely on *Sparrow v. Toyota of Florence Inc.*, 302 S.C. 418, 423, 396 S.E.2d 645, 648 (Ct. App. 1990). This argument should have been, but was not made in the Lower Court. Therefore it is not preserved for review, and cannot be raised for the first time on appeal. The issue of damages never came up, in the Lower Court. To argue it now without a Lower Court's

Ruling would be prejudicial to the administration of justice, as well as prejudicial to Appellant's case. See Respondents' Brief Page 10. Id.

On issue (v) (Respondents' Brief P.10), again Respondents makes argument which is not preserved in the record on appeal. The Code of laws cited by Respondents was cited and relied on by Appellant during the hearing on the summary judgment motion and no argument by Respondents to dispute the Appellant's interpretation of the statute. e.g. that he was not prohibited from receiving a refund both Mr. Mathis and Palmetto was the responsible parties. See (ROA P. 120, L.17-24 and P.123, L.18 - P. 124, L.15). Id.

The only reference to any statute made by Respondents was "and finally, Your Honor, all of this is superseded by [the] statute." (emphases added). Id., at (ROA P.123, L.5-6).

The Respondents admit that this argument of theirs' is not preserved for review: "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." See Respondents' Brief P.10-11.

If the Respondents felt that an interpretation of the legislative intent in providing relief or not was of issue, it should have raised it in the Lower Court, or on motion to alter or amend the judgment pursuant to Rule 59(e).

Nothing in the Lower Court's Ruling indicate that South Carolina Code of Laws Ann. §§38-53-10 through 38-53-150 et. seqt., was called into questions as to the legislative intent for this Court to make a ruling where no argument support arguing this issue on appeal where not preserved in the record for review. Again this would be prejudicial to administration of justice and to Appellant's due process rights to a meaningful appeal.

**IN REFERENCE TO ISSUE No. (2) and (3):**  
**\*\*\*\*\***

(2). It was error for the Lower Court to deny Appellant's summary judgment motion [f]ully supported by competent evidence, affidavits, admissions on file and, interrogatories as is required by Rule 56(c)(SCRPC)....

(3). It was error of law and abuse of discretion for the Lower Court to grant summary judgment in favor of the Respondents when there's no factual basis in [Law] to support the same. The record does not support the Lower Court's findings of facts and conclusion of law.

Appellant reiterate all matters in Appellant's Initial Brief argument No. 2, pages 21-30, as if restated verbatim herein, and adopt and incorporate by reference the same.

In the lower court Appellant submitted a sworn affidavit alleging additional facts about the conspiracy to defraud him of \$10,000 (See ROA P.66-70). This affidavit was in support of his motion for summary judgment. Trial Court had this affidavit along with supporting documented Exhibits. Id.

In it, Appellant covers all three causes of action, e.g. Fraud, Conspiracy and Breach of Contract). The Respondents' never submitted counter affidavits disputing the facts of Appellant's affidavit.

The affidavits Respondents submitted in support of their cross motion, does not reasonably dispute the facts of Appellant's affidavit, and if the Lower Court found their affidavits more compelling, the record nor the final order reflect such. (See ROA P.3 and ROA P.118). Id.

Appellant alleged that the Respondent "Mathis knew or reasonably should have known, that the Immigration and Customs Enforcement (ICE) had lodged... warrant for arrest of an alien on May 19, 2009. This is evident by the defendant(s)' answer to the initial complaint..." Appellant support this allegation with certified copies of official documents (See ROA P.67, at (7)),Id.

Appellant further alleged in the aforementioned affidavit that, before, during and after the (ICE) warrant was lodged against him unbeknowing to him, he and his family sought the assistance of a bondsman, and began negotiating payment for the same. At the time payment were being made, neither Mr. Mathis nor anyone from the Bond Company he represented, informed Appellant that he would not be released from custody even if he posted bond. ROA P.67 at (8) & (9)). Id.

Appellant alleged and the Respondents have not disputed nor controverted the facts alleged in the following statement:

"Because by now the warrant fro immigration was already in the Greenville County Detention Center's Records, for two (2) months, before (Mathis) accepted the first payment of any money and it is reasonable to beliebe that all bondsman checks the status of their clients before they post the surety certificate, and (Mathis) signed the agreement and certainly checked the status before he signed the agreement on July 29, 2009. (SEE ROA P.67 at (9)). Id.

Appellant further alleged in the aforementioned affidavit, that Respondents (Mathis and Palmetto) at some point after posting the useless bond certificate, knew that Appellant would not be released. Appellant alleged (Mathis) knew through the normal course of business and (Palmetto) knew by acknowledgment of the same through a letter declaring to surrender of a refund of the premium on the bond certificate's power of attorney. See ROA P.68 at(10-14), and ROA P.69 at (15-17). Id.

This Appellant contends, is indicative of "Conspiracy, Fraud and Breach of Contractual Agreement", and that as a matter of equity and the laws prohibiting unjust enrichment, he is entitled to full refund of the principle \$10,000 and any exemplary (Punitive) damages that can properly be obtained through the same.

Nothing in the Record support any contrary facts alleged by Respondents and any arguments made for the first time to this Court is not preserved by the Record and should be rejected. The Ruling of the Lower Court in its final judgment failed to reflect specific finding of facts and conclusion, of law on the credibility of the evidence and or affidavit submitted with supporting documents, and this Court should reverse and remand the decision of the Lower Court.

To hold otherwise would deprive Appellant of due-process and equal protection of the laws, and to reward Respondents for circumventing the Rules of Civil Procedure, and punish Appellant for following the Rules of Civil Procedures, and for this Court to allow arguments, defenses and authorities not relied upon in the Lower Court.

IN REFERENCE TO ISSUES No. (4) and (5):

(4). It was error of law and abuse of discretion for the Lower Court to deny Mr. Sorcia's motion to strike. Mr. Paul Landis did not obtain permission of the Court to appear in an ongoing litigation, in the 11th hour.

(5). It was error of law and abuse of discretion for the Lower Court to deny Mr. Sorcia's motion to alter or mend the judgment. Mr. Sorcia pointed out several issues the Lower Court overlooked, which either entitled him to relief and/or [d]emonstrated a genuine issue of material fact in dispute.

Appellant reiterate all matters of Appellant's Initial Brief in Argument No's (1)(a) and (3), as if restated verbatim herein, and adopt and incorporate the same by reference.

Appellant contends that these issues raises particular concerns about the Lower Court's ruling and whether the proper standards and applicable law is adequately reflected in the [f]inal judgment to allow for a meaningful appeal process. Appellant submits that, [it] does not. In that, the final judgment and order granting summary judgment failed to disclose sufficient specific findings of facts and conclusions of law to support the judgment of the Lower Court and should be reversed.

Appellant made this contention known to the Lower Court through the motion to alter or amend the judgment pursuant to Rule 59(e) SCRCF. (See ROA P.12 and ROA P.16). Id.

This was an comprehensive motion pointing out specific facts and authorities, principles of law, applicable standards, and conclusions Appellant believed the lower Court overlooked or misapplied to the facts or the Law. The Respondents failed to timely make objections to the 59(e) motion.

The Lower court instead of addressing the specific contentions and exceptions, Ruled that "Plaintiff has failed to allege any [new] facts that would [allow this Court to alter the prior ruling." (See ROA P.1). Id. For this same reasons stated in the Appellant's Initial Brief and the herein mentioned 59(e) motion the ruling of Lower Court is erroneous as a matter of law and should be reversed. Otherwise Appellant's due process rights to a meaningful appeal will be violated.

IN REFERENCE TO ISSUE No. 6:

All issues raised by Mr. Sorcia (Appellant) in this appeal have been raised to and ruled upon by the Lower Court, having been presented through numerous documents as indicated by reference in the record of the hearing, the final order of the Court, and the record on appeal.

Respondents argues in the Initial Brief at Page 12, that Appellant's claim of "Restitution" a Quantum Meruit an action to recover money had and received, to prevent "Unjust-Enrichment" that such claims were not raised prior to June 19, 2013 hearing. The Respondents also argues, frivolously, that the claims "were not even mentioned in Mr. Sorcia's motion to alter or amend", and that they are not preserved for appellate review.

The following references to the Record on Appeal, demonstrates that Respondents are intentionally misleading this Court: See ROA Pages 52-56 (Objection and Motion to strike Defendant's Motion for summary judgment); ROA Page 9 at (20)(complaint); ROA Page 89 at 9, P.90 at 12, 13, &15, P.91 at 19(Defendant Palmetto Surety Cor. Response to Request to admit);

ROA Page 97 at 7 & 9, P.98 at 12-15, and P.99 at 16-19(Defendant Brady Mathis Response to Request to Admit); ROA Page 117(Letter of Refund from Palmetto Surety); ROA Page 120, Lines, 15-24(Hearing on summary judgment motion); ROA P.124, L.8-10(Hearing on summary judgment motion); and finally, where Respondents argues that the issue of Restitution and Unjust-Enrichment was not even mentioned in the Rule 59(e) motion -- See ROA Pages 19-21 and 36-38 (Motion to Alter or Amend the Judgment). Id.

Aside from the fact that Respondents are the ones who are trying to defraud this Court, misrepresenting the facts again. No where will you find any argument by the Respondents defending against the restitution claim or the unjust-enrichment claim. However, the above references indicated by the record on appeal (ROA) clearly support that this issues was clearly made known to the Respondents and the Lower Court.

This issue raised by Respondents is wholly frivolous and without merit, not preserved for appeal and misrepresents the facts of this case, and should not be excused, as it is fraud before the Court, also, an attempt to obstruct justice, subvert the administration justice.

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I N C O N C L U S I O N  
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In light of the foregoing reasons the judgment of the Lower Court granting summary judgment in favor of the Respondents and denying Appellant's motion for summary judgment should be reversed and the case remanded.




CERTIFICATE OF SERVICE

I Oscar Z. Sorcia, do certify that I this day served on the attorney for the Respondents a copy of "Appellant Reply Brief" by depositing the same in the U.S. Mail postage prepaid to the following address:

Paul S. Landis  
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This 12 day of August, 2014.  
At Allendale County, S.C.

S/   
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