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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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 REPLY BRIEF

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Introduction

Rather than substantively addressing the issues raised to this Court, North American Rescue Products, Inc. ("NARP") accuses P.J. Richardson ("Richardson") of misrepresenting the facts, the Record, the law, and contends he has not followed the appellate court rules. Over half of NARP's Respondent's brief is devoted to blurring the sole issue this Court accepted certiorari on in this cross-appeal—did the court of appeals err in imposing a price term not found in the only contract the jury found to be capable of performance given the trial court's judgment in favor of Richardson for specific performance?

Richardson has properly provided citations to the statements in his briefing before this Court. Further, Richardson complied with the appellate court rules in cross-appealing and the court of appeals agreed in this regard. NARP's unwarranted attacks again demonstrate the weakness in its legal positions. Simply put, NARP wishes to have the South Carolina court system provide it better contractual terms than those it agreed to in the course of dealings with Richardson fourteen years ago.[1]

The context in which this cross-appeal arises must be considered. Post-trial, after withdrawing its motion to alter or amend, NARP for the first time adopted the position that the judgment in Richardson's favor for specific performance required Richardson to pay $2,936,300 for his 7.5% interest in NARP. No contract providing for such an amount exists. Instead, the only contract the jury found to exist is one whereby

[1] As detailed in Richardson's Respondent's brief, the court of appeals correctly ruled against NARP on its arguments that it is entitled to a directed verdict on Richardson's claim on the oral contract as amended and on his claim for promissory estoppel. The trial court properly submitted special verdict questions to the jury regarding both claims, and the trial court, based on the jury's answers, ordered specific performance of the contract.

Richardson would pay NARP the cash equivalent of 7.5% from the sale of his company (formerly known as Reeves) in exchange for 7.5% of the stock of NARP. This amended agreement was reached in 2004 in Charleston, South Carolina. NARP and its owner, Bob Castellani contend that the parties' rights under the 2000 amended agreement ended in 2004 based upon a document containing a "termination" provision. This is refuted by NARP's own evidence, among other evidence. (*See e.g.*, App. 1043, 2005 email from Castellani referring to his then still existing share of the Reeves sale [after the alleged execution of the "termination" agreement.") The trial court submitted the special verdict questions to the jury based on the competing trial testimony and evidence presented.

NARP's entire theory of the case depends upon whether the 2004 document with the "termination" provision ended the parties' rights under the 2000 amended agreement. It did not. After hearing the competing evidence, the jury found the 2004 termination, settlement and release agreement did ***not*** end the parties' rights under the 2000 amended agreement. (App. 8.) Thus, the jury found Richardson had the right to purchase 7.5% of the stock of NARP for money (App. 7.) NARP did not challenge the verdict form utilized by the trial court posing these questions to the jury.

As a result of NARP's post-trial and after-the-fact positions and maneuvers, Richardson cross-appealed. The court of appeals was faced with interpreting the meaning of the trial court's judgment, and Richardson knew there was a possibility of an adverse interpretation, so Richardson cross-appealed to protect himself. The court of appeals in fact decided to interpret the trial court's judgment, rejecting NARP's request to have the trial court make such an interpretation. The court of appeals adopted NARP's erroneous post-trial position and price theory. Richardson is an aggrieved party. The

idea that Richardson is not aggrieved by NARP's position and the court of appeals' opinion strains credulity. Richardson is facing potentially paying $2.5 million more for the NARP stock than he contractually agreed to. This un-bargained for result is the quintessential reason courts do not re-write contracts.

Based on the jury's conclusion that the parties did have a contract and that no subsequent agreement ended that contract, the trial court entered judgment for Richardson based on specific performance. The judgment said nothing more. No contract price was provided—the trial court did not have to provide a price term as the contract contained one.

Argument

I. This Court has jurisdiction over Richardson's cross-appeal.

The issue of whether the court of appeals erred in imposing a price term onto Richardson and into the judgment for specific performance is properly before this Court.

A. The Court accepted certiorari.

This Court has the power to review the court of appeals' final decision by way of granting petitions for writs of certiorari. *See* Rule 242(a), SCACR (authorizing this Court to issue a writ of certiorari "to review a final decision of the Court of Appeals.") The Court granted Richardson's petition on his cross-appeal and is empowered to review, and reverse or modify, the court of appeals' opinion. Rule 220(a), SCACR.

The law recognizes that 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); *Keeter v. Alpine Towers Int'l, Inc.*, 399 S.C. 179, 202, 730 S.E.2d 890, 902 (Ct. App. 2012)

(interpreting the trial court's judgment and instructing the trial court on the amount to enter upon remand); *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).

Despite the above, NARP contends that Richardson's argument relating to the purpose of the dollar amount contained on the verdict form is not preserved for review by this Court. This is incorrect. Richardson argued this issue to the court of appeals both in the initial appeal and in his rehearing petition. Oral argument about the meaning of the dollar amount on the verdict sheet was also undertaken before the court of appeals—literally "raising the issue in the court of appeals." Moreover, NARP moved to dismiss Richardson's appeal before the court of appeals based on the contention that Richardson was not an aggrieved party. (App. 1275.) NARP's motion to dismiss argued that Richardson must pay $2,936,000 for the 7.5% of NARP stock. Richardson opposed the motion for the same reasons he now presents to this Court, and the court of appeals denied NARP's motion[2]. (App. 1313; 1416.) The court of appeals also addressed the issue in its opinion. *NARP v. Richardson*, 396 S.C. 124, 134, 720 S.E.2d 53, 59 (Ct. App. 2011). Now, this Court has granted certiorari and is entitled to review the decision of the court of appeals on this point.

B. Richardson is aggrieved.

A "winning" party below 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

[2] NARP failed to seek certiorari regarding the court of appeals' ruling denying NARP's motion to dismiss. NARP is thus foreclosed from further contesting the point.

to the magistrate for a new trial, as the remand implicated double jeopardy); *see also 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). Prevailing parties are permitted to appeal "where the order of judgment in question is apparently favorable but is actually adverse." 5 Am. Jur. 2d *Appellate Review* § 243 (2007).

Richardson unquestionably falls within the definition of an aggrieved party, which is "[a] party whose personal, pecuniary, or property rights have been adversely affected *by another person's actions* or by a court's decree or judgment." BLACK'S LAW DICTIONARY 1144 (7th ed. 1999) (emphasis added). Following this definition, "our [C]ourt is concerned with correcting errors that have practically wronged the appealing party." *Cisson v. McWhorter*, 255 S.C. 174, 177-78, 177 S.E.2d 603, 605 (1970). The grievance must be "a denial of some personal or property right, or the imposition on a party of a burden or obligation." *Id.* If the appellant's position cannot be "benefit[ed] or improve[d]" through an appeal, then the appellant is not aggrieved. *Id.* at 178, 177 S.E.2d at 605. Significantly, the failure of an aggrieved party to cross-appeal, despite being the "winning" party, has been recognized as a bar to raising the issues on appeal. *See Winters v. Fiddie*, 394 S.C. 629, 648 n.6, 716 S.E.2d, 316, 326 n. 6 (Ct. App. 2011) (noting that the failure to file a cross-appeal resulted in the issue not being preserved for appellate review).[3]

[3] If this Court believes NARP to be correct, which Richardson does not concede it should, then as the non-aggrieved, "winning party," the Court can rule for Richardson on these issues as an additional sustaining grounds and modify the court of appeals' ruling while still affirming. One or the other has to be true—Richardson is aggrieved or the Court can address the issues appearing in the Record as an additional sustaining ground.

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. NARP later construed the judgment to mean something else. (App. 1067.) NARP undertook efforts to have Richardson's judgment marked satisfied, which the court of appeals denied. (App. 53.) NARP's actions demonstrate how Richardson has been aggrieved as does the court of appeals' opinion imposing a new price term into the contract. The fact that the court of appeals adopted NARP's erroneous reading of the judgment, coupled with the analysis contained in *Winters,* demonstrate why Richardson was correct to cross-appeal. Richardson is clearly aggrieved and his position can improve from the adjudication of the issues he raises on cross-appeal.

See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review."); *cf.*, *Winters v. Fiddie*, 394 S.C. at 653, 716 S.E.2d 316 at 328-29 (Few, C.J., dissenting) (noting the harshness of the majority's ruling that the issue was not preserved for the winning party due to the failure to file a cross-appeal). No other mechanism exists pursuant to which Richardson was able to challenge the post-trial position NARP took. Richardson did not have to appeal from the trial court's denial of his new trial *nisi* motion which related to his promissory estoppel claim because after the filing of that motion, the trial court entered a judgment for specific performance in Richardson's favor. *See* Section II.2.C., *infra*. Nor did Richardson have to challenge the trial court's judgment for specific performance in his favor. NARP withdrew its post-trial motions and resorted to an extra-judicial assault upon Richardson whereby NARP claimed the judgment required something not actually stated on the judgment. (App. 1067.) Only then did this issue arise. To adopt the position of NARP would leave no means whatsoever for a party to challenge another's wrongheaded post-trial interpretation of a judgment on appeal.

II. The judgment is for specific performance.

A. The judgment is plain on its face and a specific performance judgment is not required to provide a price term.

For a court to order specific performance there must be a valid agreement. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). "'South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.'" *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) (quoting *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989). The power of a 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." *Wright v. Patrick*, 262 S.C. 434, 441, 205 S.E.2d 175, 178 (1974). Thus, "[s]pecific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." *Amick v. Hagler*, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Ct. App. 1985) (citing *McChesney v. Smith*, 105 S.C. 171, 176, 89 S.E. 639, 641 (1916)). Therefore, it is manifestly without merit for NARP to argue that the trial court intended to remove an essential term from the valid agreement and replace it with a new price, to which there was no meeting of the minds between the parties.

Because the above statements of law are true, the trial court did not need to include a price in the judgment itself when ordering specific performance. *See, e.g., Mullins v. Benton*, 309 S.C. 85, 90, 419 S.E.2d 838, 840-41 (Ct. App. 1992) (finding that a lack of a price term was not fatal to a decree of specific performance because the contract provided a method to determine the price). 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); *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 actual contract for the price to determine if the price was adequate). A review of the records on appeal in *Fesmire* and *Campbell* demonstrate trial courts ordering specific performance of contracts 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 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 or modify the court of appeals' opinion on this issue.

B. The verdict form is not part of the judgment.

NARP relies upon the special verdict form for its contention that the judgment means Richardson has to pay $2,936,300 for the NARP stock. NARP admits this amount does not appear on the face of the trial judge's judgment. Despite this admission, NARP asks this Court to uphold the court of appeals' opinion which effectively orders specific performance of the verdict form, not the contract. No support exists in the law for this concept. Instead NARP blissfully proceeds as if the verdict form is part of the judgment. The judgment and the rules of civil procedure contradict NARP's position.

First, on the judgment form, the trial court did not check any of the boxes available on the Form 4 Judgment in a Civil Case. (App. 6.) Available to the trial court were boxes providing that:

> □ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

(*Id.*) The Form 4 also provided:

> **IT IS ORDERED AND ADJUDGED**: □ See attached order; □ Statement of Judgment by the Court;

(*Id.*)

Rather than utilize any of the above options, the trial court wrote "[j]udgment for the Defendant [Richardson] under specific performance doctrine[.] The intent from the face of the judgment is clear, the trial court was not relying upon the amount reflected on the jury's special verdict form in entering its judgment. Had the trial court intended to rely on the amount in the verdict form, it could have checked any number of boxes provided to refer the parties to the verdict form.

Second, consistent with the trial court's judgment, the rules provide that a judgment is a separate document. *See* Rule 58(a)(2), SCRCP (stating "[e]very judgment shall be set forth on a separate document."). Rule 54 provides the definition of a judgment stating that a: "[j]udgment as used in these rules includes any decree or order which . . . finally determines the rights of any party." Rule 54(a), SCRCP. This rule goes on to state that "[a] judgment need not contain a recital of pleadings, the report of a master, or the record of prior proceedings." *Id.*

The trial court, after submitting the special verdict form with the written questions to the jury, properly entered the form of the judgment in accordance with the Rules of Civil Procedure. Consistent with the provisions of Rule 49, SCRCP, the trial court asked 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.) The jury answered "No." (*Id.*) On the same day the jury answered the special interrogatories, the trial court entered its one page judgment for Richardson under the specific performance doctrine as envisioned by Rules 54 and 58. (App. 6.) The trial court's act of selecting the remedy of specific performance has significance in the context of the case submitted to the jury, given the distinction between specific performance and promissory estoppel. *See* Section II.C., *infra*.

C. *To the extent the Court goes beyond the face of the judgment, then the claims submitted to the jury, the jury's answers to the interrogatories on the special verdict form, and the evidence demonstrate Richardson is correct.*

If one looks beyond the face of the Form 4 Judgment to interpret its meaning, this Court need merely look to the record to determine the terms of the contract, and thus what the trial court meant when it ordered specific performance. *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); *Campbell v. Carr*, 361 S.C. at 263-66, 603 S.E.2d at 627-29 (ordering specific performance and looking at the terms of the parties' contract). The Record also reveals the different claims of Richardson submitted against NARP, and provides the context for the special verdict answers of the jury.

1. Specific performance and promissory estoppel were distinct claims asserted by Richardson.

South Carolina recognizes that promissory estoppel and contract enforcement claims are separate and distinct causes of action. *See Duke Power Co. v. South Carolina Public Service Com'n*, 284 S.C. 81, 326 S.E.2d 395 (1985) (distinguishing between promissory estoppel and a contract that can be performed). If the jury agreed that a contract existed, which it did, then the trial court could order the remedy of specific performance. *See Wright v. Patrick*, 262 S.C. at 441, 205 S.E.2d at 178 (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. . . ."). In contrast, 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.

Duke Power Co. v. South Carolina Public Service Com'n, 284 S.C. at 101, 326 S.E.2d at 406 (providing that "[t]he principle of promissory estoppel is viewed as a substitute for, or an equivalent of, consideration."); *see also 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 dollar amount. The jury answered the trial court's questions affirmatively finding that the parties had a contract—the 2000 Agreement as amended in Charleston. (App. 7.) Accordingly, the amount provided for by the jury on the verdict form was not needed by the trial court in awarding specific performance as the parties' contract provided the price term—$415,988.

2. In the context of this action, the amount reflected on the verdict form related to the issue of promissory estoppel.

The trial court submitted Richardson's claims for specific performance of the contract ***and*** for promissory estoppel based upon special interrogatories posed to the jury. The trial court also inquired as to whether any subsequent agreement terminated this right.

The trial court's jury charge provides context for the distinction between the claims submitted to the jury. On specific performance, the court charged:

> 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) (emphasis added). Neither party took exception to the charge and it represents an accurate statement of the law. By comparison, on the promissory estoppel claim, the court charged:

> 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) (emphasis added). This too is a correct statement of the law that neither party challenged.

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 Castellani's promise on the exchange of the respective shares of the companies. (App. 600-601.) Castellani also continued to recognize the existence of this agreement into 2005 after the sale of Reeves and noting his share in the sale. (App. 1043.) Further, in moving the trial court to amend the pleadings to conform to the evidence presented at the close of the evidence, Richardson argued "we would be reserving our other claims of promissory estoppel. And also we have alternative claims for specific performance[]." (App. 656.)

Hence, the jury returned a verdict on a special verdict form which would support the alternative claims of specific performance ***and*** promissory estoppel. Because of the claims and the charges submitted to the jury, Richardson did not need to appeal the trial court's denial of his motion for new trial *nisi* as it 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'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. Richardson chose not to appeal the jury's findings on promissory estoppel because the judgment entered by the trial court was for specific performance of the contract involved and no question existed as to how much Richardson would pay based on the judgment or contract (or so Richardson thought at the time; NARP subsequently acted as it did as outlined above). (App. 6.) Richardson prevailed under both theories, but then the trial court adjudged Richardson to be entitled to specific performance of the only contract found by the jury to in fact exist. Richardson rightfully believed the specific performance judgment meant he would pay $415,988.

Richardson has not and does not challenge the special verdict form. NARP, however, has seized upon two information gaps in the form to create its post-trial price theory. First, the verdict form did not on its face explicitly state that the amount of the proceeds from the Reeves sale was $415,988. The form only referred to the 2000 Agreement as amended in Charleston. (App. 7 at ¶ 3.) Second, and as to the part of the form containing 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 plausible one in light of the Record and the law. NARP's position requires this Court to ignore:

- the jury's findings on the unchallenged verdict form;
- the plain language of the judgment for specific performance;
- and overturn the many cases holding that courts are prohibited from rewriting contracts and that for the remedy of specific performance to lie, a valid and enforceable contract between the parties must exist.

Third, the Record also provides an explanation for how the $2,936,300 amount came into existence. 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 utilized this expert testimony when arriving at an amount to place on the verdict form in relation to Richardson's promissory estoppel claim.

When viewed in the proper context, without the blinders NARP attempts to place on the Record before the Court, the judgment of the trial court is clear, but the court of appeals erroneously added a new price term onto the judgment and the parties' 2000 Agreement as amended in Charleston.

III. Courts cannot impose contractual terms upon parties.

The trial court ordered the contract to be specifically 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 based on NARP's "tender" letter. (App. 1067.) Reversal or modification on this point is necessary because courts do not rewrite contracts. The court of appeals attempted to unlawfully blue-pencil the parties' contract.

A. Courts are barred from rewriting contracts.

Under South Carolina law, courts may not rewrite a contract between parties. *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 579 S.E.2d 132 (2003). Similarly, "[c]ourts only have the authority to specifically enforce contracts that the parties themselves have made." *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 410, 656 S.E.2d 775, 781 (Ct. App. 2008). "Succinctly stated, a court has

no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction." *Id.* at 411, 656 S.E.2d at 781. As a result, if a court orders specific performance, it may only do so on a contract already agreed upon by the parties, and may not add or change any terms of that contract. *See E. Bus. Forms, Inc. v. Kistler*, 258 S.C. 429, 434, 189 S.E.2d 22, 24 (1972) ("We cannot make a new agreement for the parties into which they did not voluntarily enter."); *White v. Felkel*, 222 S.C. 313, 324, 72 S.E.2d 531, 536 (1952) ("The Courts have no power to make contracts and then require their performance. They can only require parties to contracts to specifically perform such contracts as they themselves make."); *see also Amick v. Hagler,* 286 S.C. at 485, 334 S.E.2d at 527 (finding that trial court erred in requiring one party to offer financing to the other as part of a grant of specific performance because it would be reforming or adding a term to the contract).

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% share of NARP. Instead, the court of appeals used the phrase "method of payment" and stated 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 (*i.e.*, stock for money from the sale of Reeves).

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 or modification is necessary on this point.

B. The court of appeals' opinion represents an improper blue-penciling of the parties' contract.

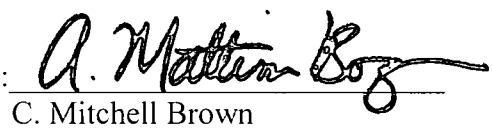
By imposing a price term on the parties, the court of appeals has improperly engaged in blue-penciling the parties' contract. This Court has held that South Carolina will not "blue-pencil" contracts to add or replace terms. *Poynter Invs. v. Century Builders of Piedmont*, 387 S.C. 583, 587-88, 694 S.E.2d 15, 17-18 (2010); *see also Stonhard, Inc. v. Carolina Flooring Specialists, Inc.*, 366 S.C. 156, 160, 621 S.E.2d 352, 354 (2005). Thus, as this Court held in *Stonhard*, South Carolina courts are not permitted to write terms into a contract because "[t]o add and enforce such a term requires this Court to bind these parties to a term that does not reflect the parties' original intention." *Stonhard*, 366 S.C. at 160, 621 S.E.2d at 354. That is precisely what the court of appeals' opinion does in this case.

Conclusion

The court of appeals erred in failing to adhere to the trial court's judgment as written. The courts cannot rewrite contracts and a judgment for specific performance necessarily recognizes the existence of a fully enforceable contract. This Court should reverse the court of appeals' imposition of a price term upon Richardson and specifically hold that Richardson can pay $415,988 for the 7.5% interest in NARP. 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.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: 

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August 25, 2014
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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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Petitioner's Reply Brief

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