IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

2013-001825

ORIGINAL

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SC Court of Appeals

Appeal from Greenville County
Court of Common Pleas
Honorable Letitia, H. Verdin, Circuit Court Judge
Case No. 2011-CP-23-08455

Oscar Z. Sorcia, Appellant,

vs.

Brady K. Mathis and
Palmetto Surety Corporation, Respondents.

APPELLANT'S FINAL BRIEF

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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 discertion, 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

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 defendant (Palmetto) and (Mathis) answered the complaint on May 25, 2012, ROA at 10. Simply admitting allegation #'s 1-10 and denying alletations #'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, 2013 the cross 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' motions 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 denyiong 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. Respndents' 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 contends that there are at least four reasons notable, why the Lower Court erred in granting summary judgment in favor of Respondent. The Rrespondents' summary judgment motion was not supported by any of the required ievidence, i.e. Affidavits based upon person knowledge with certified documentation to support the same. See Record on Appeal (ROA) Page 42. Respondents submitted no admissions, interrogatories, or discoveries on file. Respondents' motion for summary judgment simply states:

> "There are no genuine issue of material fact, and pursuant to Rule 56 of the South Caroina 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).

APPLICABLE STANDARD

A Trial Court's order on Summary Judgment [must] set out facts and accompanying legal analysis sufficient to permit meaningful appellate review; such an order [must] include those facts which the Trial Court finds relevant, determinative of the issues, and [u]ndisputed, and Trial Court should provide clear notice to all parties and the reviewing court as to the [r]ationale applied in granting summary judgment. Rules of Civil Procedure Rule 56 (c). Bowen v. Lee Process Systems Co., (S.C. App. 2000), 342 S.C. 232, 536 S.E.2d 86. Summary Judgment is improper where the motion presents a question as the construction of a written contract, and the contract is ambiguous because the intent of the parties cannot be gathered from the four corners of the instrument HK New Plan Exchange Property Owner I, LLC. v. Coker, (S.C. App. 2007) 375 S.C. 18, 649 S.E.2d 181. At the summary judgment stage of litigation the Court [does not] weigh conflicting evidence with respect to a disputed material fact. Rules Civ. Proc. Rule 56(c). Shirley's Iron Works Inc. v. City of Union, (S.C. App. 2010) 378 S.C. 389, 693 S.E.2d 1.

Summary Judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to the conclusion to be drawn from those facts. Rules of Civ. Proc. Rule 56 (c) Gignilliat v. Gignilliat, Savitz & Bettis, LLC, (S.C. 2009), 385 S.C. 452, 684 S.E.2d 756. Summary Judgment is not appropriate when further inquiry into the facts is desirable

to clarify the application of law. Rules Civ. Porc. Rule 56(c). Mcknight v. South Carolina Dept. of Corrections, (S.C. App. 2009),385 S.C. 380, 684 S.E.2d 566. When Ruling on motion for summary judgment trial judge [must] consider [all] of the document and evidence within the record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. Higgins v. Medical University of South Carolina, (S.C. App. 1997) 326 S.C. 592, 486 S.E.2d 269.

LAW / ANALYSIS

Appellant contends that the Lower Court erred by granting Respondents' motion for summary judgment. The Trial Court's order reads as follows:

> "This matter is before the Court on Plaintiff and Defendant's cross motion for summary judgment and Plaintiff's Motion to Strike and Reject Appearance. Upon review of the pleadings, documents presented, and arguments of Counsel, this Court grants Defendants' motion for summary judgment and denies Plaintiff's motions."
>
> "... In support of their Motion, Defendants presented to this Court an affidavit of Mr. Sorcia (filed in a Federal Lawsuit predicated on these same facts) in which the Plaintiff acknowledges that Defendants fully satisfied all of the financial conditions of the contract. It also appears from the documents submitted that Plaintiff was under an Immigration or 'ICE' hold and could not be released even though Defendants posted the agreed upon bond."
>
> "Plaintiff has not presented any evidence to create a genuine issue of material fact. As such, this Court grants defendants' motion for summary judgment." See (ROA Page 3).

Appellant contends that Trial Court misconstrued appellant's complaint. Where at the beginning of the Order Trial Court stated "Plaintiff alleges Fraud, Civil Conspiracy, and Breach of Contract. He claims that the Defendants, whom he contracted

with for services of posting bond, failed to satisfy the fiancial conditions of that bond. He further claims that as a direct result of the alleged failure to satisfy these conditions, he was unjustly incarcerated..." See (ROA Page 3). Id.

Appellant contends that no where in any of Appellant's pleading or documents will anyone find statements or claims where ppellant states or even imply "that as a [d]irect result of the alleged failure to satisfy the financial conditions of the bond, that he was unjustly incarcerated." This is a completely erroneous statement of facts. To the contrary, Appellant does not and never have disputed that respondents posted the required bond certificate.

The Gravamen of Appellant's complaint and cause of action is **"Restitution"** a Quantum Meruit Action to recover money had and received, to prevent **"Unjust-Enrichment"** by the Respondents at the expense of Appellant. As noted by the Trial Court, "it appears that Plaintiff was under an immigration or 'ICE' hold and could not be release even though Defendant's posted the agreed-upon bond." (See ROA Page 3).

This is a clear indication that the issue is not the posting of the bond, but some other matter. Clearly there was and is no dispute about the bond's financial conditions. Therefore, other conditions or obligations to which Appellant complains, must be considered in determining whether either party met its burden of establishing or opposing summary judgment, by demonstrating not creating a genuine issue of material fact in dispute.

In so far as claims of "Fraud, Civil Conspiracy and Breach of Contract" These allegations are alleged in the original complaint, which will be discussed. Infra.

The issues which were presented to And [not] addressed by the Trial Court are: (1) Whether Appellant is entitled to a refund as a result of a failed agreement; and (2) whether, as a matter of law, the Respondnets are entitled to keep Appellant's $10,000. See Plaintiff's Motion for Summary judgment and Affidavit filed in support thereof. See **(ROA Page 58, 69 & 70).** See also, Plaintiff's Motion to Alther or Amend the Judgment and memorandum of law support on file. see **((ROA Page 13, 19 and 20)**

The Respondents filed a cross motion for summary judgment See **(ROA Page 42)**, Ninety (90) days after appellant filed for summary judgment. However, the Respondents never opposed Appellant's motion for summary judgment. There are no previsions in the Rules of Civil Procedures to allow such late responses to a responsive pleading. The standard is within thirty (30) days unless otherwise ordered by the Court. Compare, Rule 12(A), (B) and (C); and Rule 6 (d), (Not later than ten days before the time specified for the hearing...).

In the Respondents' late cross summary judgment motion, in neither addressed nor controverted the issue of a **"Refund"** or whether [by law] they are entitled to retain the benefit of Appellant's $10,000, with no entitlement to a refund. The fact that the law governing actions of Bondsman S.C. Code of Laws §38-53-10 et. seq., [does not] provide that, fees paid

paid to bondsman are Non-refundable", under [any] circumstances. However, it does allude to the fact that agreements between bondsmen and clients are **Quasi-Contracts by operation of law.**

Therefore, this alone creates a genuine issue of material fact in dispute for the Trier of Fact to resolve.

Because there is no Rule of Civil procedure, no statutory law governing these types of litigation, Trial Court should have considered the **Common Law** as controlling; and more specificclly **"Quasi-Contracts, Quatum Meruit, and Implied by law Contracts."**

Now, Common Law, requires a court to apply equitable Principles "According to natural right or natural justice; marked by due consideration for what is fair [u]nbiased, or impartial."

If the respondents' cross motion was to controvert Appellant's motion for summary judgment; then the Respondents was required to plead "Non-Assumpsit" then claim there were no promises to refund Appellant's $10,000, or, at least show that by some law that the fee is non-refundable. However, the Respondents failed to respond to Appellant's motion for summary judgment, and when they did respond late, they still did not address or controvert the restitution or refund issue, which is the Crux of the genuine issue of material fact in dispute.

The Trial Court's order granting the respondents' motion for summary judgment failed to disclose how as a matter of law, the Respondents are entitled to relief. Which is the basis of ruling on Rule 56 Motions. **"As a matter of law."**

Summary Judgment is improper where the motion presents a question as to the construction of a written contract, and the contract is [a]mbiguous because the intent of the parties cannot be gathered from the four corners of the instrument. HK New Plan Exchange Property Owner I, LLC. v. Coker, (S.C. App. 2007) 373 S.C. 18, 649 S.E.2d 181.

In the instant case sub-judice, the agreement between Appellant and Respondents on the surety bond, does not disclose whether or not Appellant is entitled to a refund if he does not get out of jail, despite their efforts of posting the required bond certificate; and unless the Respondents can demonstrate by lw Appellant is not entitled to a refund the issue is open for debate. Summary judgment is inappropriate, because there exist genuine issue of material fact in dispute.

At the Summary Judgment stage of litigation the Court [does not] weigh [c]onflicting evidence with respect to a disputed material fact. Shirley's Iron Works, Inc. v. City of Union, S.C. App. 2010) 338 S.C. 389, 693 S.E.2d 1.

Appellant contends that the Respondents' "Bare Bones" motion for summary judgment fall short of the requirements of Rule 56 (c) and (e), and should not have been granted. The Respondents submitted [no] law that would entitled them to relief; [no] admissions on file; [no] interrogatories; [no] affidavits that conformed to the requirements of paragraph (e) of Rule 56.

The Respondents Cross Motion for summary judgment reads:

"You will please take notice that, on the tenth day following the service of this motion or at such time as this matter may be heard, Defendants Brady K. Mathis and Palmetto Surety Corporation will move for an order granting

summary judgment in their favor in the above-captioned matter. There are no genuine issue of material fact, and pursuant to rule 56 of the South Carolina Rules of Civil Procedure, Defendants' motion will be supported by citations of law, arguments of counsel affidavits, and such other material as may be properly submitted in support of Defendants' motion." **(See ROA Page 42).**

The Respondents did not submit any other documents or evidence in this matter and the above information was the only thing plead, concerning their motion . Although attorney Paul Landis represented to the Court by filing this motion, claiming "Defendants are entitled to summary judgment as a matter of law", That there was some law to support his clients position, [w]as false information, or more commonly known as "Fraud and Misrepresentation to a Court."

This is true because, to this day there are no pleadings, expressions of law, citations of law, implication of law, referencing any law, to support their claim of entitlement to relief.

What was presented at the hearing was an affidavit of Appellant in an unrelated case where non of the facts of the current case is relevant to the facts of the case Appellant filed in Federal Court. Besides information that wasn't available men, became available latter, which prompted the present 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 action, one for fraud, one for civil conspiracy and one for breech 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).

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-Enrinchment."

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 bondsmen $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 nonetheless 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 the bond. Also, if the defendant did not get out of jail for some other unforeseen reason or another. He would still be entitled to a refund.

What makes a bondsman any more entitled to keep money than the a clerk of court, when a client have not reaped any benefit from posting a bond certificate, he cannot use, or that in this case served [no] purpose.

The Respondents as the moving party on their cross motion for summary judgment was required to come forth with some "Law" which would entitled them or at least infer that they were entitled to keep Appellant's $10,000, otherwise this [genuine] issue is the material fact in dispute which requires resolution by this Court.

This genuine issue remains unresolved by the Lower Court, and the record is unclear as the reasoning that the Respondents are allowed to be unjustly-enriched of $10,000 as a matter of law.

The only and sole support of the Respondent's cross motion for summary judgment was an affidavit made by Appellant in an unrelated case. This affidavit is also the [crux] of the Court's Ruling and is the only evidence seemingly to be the basis of The lower Court's Ruling. (See ROA Page 3).

Appellant contends that the respondents and the Trial Court reliance on this document as evidence in this case are greatly misplaced. For one, it is not competent evidence which would be admissible at trial. Second, the affidavit if allowed to be explained, does not indicate that appellant was completely satisfied with the services of the Bonding Company; and/or that, the agreement with the bonding company, was that, there will be no refund of the principle consideration; or that the contractual agreement did not provide for a refund clause; or that Appellant agreed to [not] be refunded the $10,000 even if he did not get out of jail. (See ROA Pp. 84-86).

These necessary elements of the affidavit which the Court and Respondents rely on [must] be established in order to be considered "Competent" evidence to be admitted at trial. The Respondents cannot even lay a proper foundation for the use of this affidavit under the Rules of Evidence. i.e. Rules 401, 403, 613, 803 or 804. (SCRE).

The question to be answered concerning this affidavit is, whether the affidavit standing alone, sufficient to overcome Appellant's summaryjudgment motion; and whether this affidavit standing alone sufficient to warrant granting respondent's summary judgment motion?

Under Rule 56 (e) (SCRCP), the use of affidavits is limited in scope and use, and is governed by specific application: (1) Supporting [and] opposing affidavits [shall] be made on personal knowledge; (2) [shall] set forth such [f]acts as would be admissible in evidence; and (3) [shall] show affirmatively that the affiant is competent to testify to the matters stated therein.

In order for such affidavits to be admissible in inevidence under this Rule, it must bare certain indicia of reliability and have other particularized guarantees of trustworthiness. Therefore, under Rule 56 (e), "Sworn or certified copies of all papers or parts thereof [r]eferrred to in an affidavit [shall] be attached thereto or served therewith." Id. Second Sentence.

The affidavit used by the Respondents of (Oscar Z. Sordia) (ROA Page 84-86), which the Trial Court also relied on in its judgment, is based upon information Appellant had relied upon at the time of the previous litigation. (A Federal Lawsuit).

Upon a close examination of this affidavit, would reveal that the affidavit has no relevance to this action. (See ROA Page 84 Paragraph # 3. "The bonding company satisfied the financial conditions of my bond..." This says nothing to the issue of a refund or entitlement to a refund.

If this is the basis of the Respondent's cross motion for summary judgment; or if it was being presented as evidence to support their motion, it nonetheless lacked or fall short of meeting the requirements of Rule 56(e). In that, it bare no indication that the information in the affidavit is based upon personal knowledge and the fact that paragraph #3, is declaring second and third hand hearsay which are inadmissible in evidence and does not fall within an "Frimly Rooted" hearsay exception, nor does it bare any other particularized guarntees of trustwothiness. Appellant was in jail and declaring facts and information received from someone else, whit no knowledge of it truthfuleness or accuracy.

Besides, Paragraph #3 is merely conjecture, assumption, speculation, an the affidavit was unsupported by sworn or cerfied copies of [all] papers or parts thereof referred to in the affidavit, which Rule 56 (e) mandates should be attached. (See ROA Page 84).

Since the affidavit is the only evidentiary matter submitted by respondents and considered by the Lower Court, This Court should re-examine the facts de-novo.

Whether or not the Respondents satisfied the financial condition of Appellant's bond is not of issue and not the cause of action or why this suit was brought. "Restitution" is and will always be the issue. Whether Appellant is entitled to a refund of his $10,000 due to the fact that he was never released

and did not enjoy the benefit of the bond being posted. Aside from the fact the at the Respondents/ their agents, promised a refund if they couldn't get him out of jail.

In the original complaint the Thrid Cause of Action reads as follow: See **ROA Page 9, Paragraph #19 and #20.**

> #19. The Defendants failed to fulfill the [terms] of the contract between the plaintiff and the Defendants, in that the Plaintiff was never released from the custody and control of the state, and/or United States. In order to assume his life, employment, and dignity within the community which is the overriding, sole purpose of release on bond."
>
> #20. Without [legal] excuse, the Defendants have failed to perform their contractual obligations to the detriment of the Plaintiff's [e]conomic and mental well being, by failing to secure the unfettered release of the Plaintiff, [as] stated by the defendants." **Id.**

No where in these claims will you find a complaint that the Respondents [failed] to fulfill their financial obligation.

If the Respondents had any inability to comprehend the exact nature of Appellant's claims being presented, then their remedy was the Rules of Civil Procedure Rule 12(e) (SCRCP) for a more definite statement. However, the Respondents failed to timely move for any of the affirmative defenses numerated in Rule 12 (SCRCP).

On the other hand Appellant made abundantly clear from the beginning that this action was to recover money had and received by the Respondent/ their agents. Besides, the "terms" of the agreement between appellant and the Bonding Company was, if they failed to secure his release, Appellant would be entitled to a full refund of the **principle consideration** $10,000.

In reference to issue # (1)(c) above:

Respondents' 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 ofr 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 n anything presented in this affidavit, nor that the Court accepted Mr. Willis as an expert witness. Respondent's argument that Mr. Willis's 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 6-10 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, presented to this Court. A mere mentioning to the Court that an affidavit was submitted by Mr. Willis does not establish the truthworthiness and trustworthiness of his affidavit, not 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 Respondent's theory of Mr. Willis is 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 baring on Mr. Willis or Mr. Mathis' statement 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, 382, 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 record has this argument or theory of defense have been

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

On the issue (ii) Civil Conspiracy, as the Respondents relied on 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 raised 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 S.E.2d 378, 380 (Ct. App. 2004), none of what Respndents argues is supported by the record, is irrelevant to the issues, it is distinguishable in facts and circumstances from Appellant's case, and it is not preserved review. The argument and theory of defense is being raised for the first time on appeal. **Id. Respondnets' Brief Pages 8-9.**

On the issue **(iv)**, the Respondents argue against Appellant's claim for exemplary damages, as authority to support their argument Respondents 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) (Respondnets' Brief Page 10)**, again Respondents makes arguments which is not preserved in the Record of Appeal. The Code of Laws cited by Respondents was cited and relied on by Appellant during the hearing on the summary judgment motins and no argument by Respondents to dispute Appellant's interpretation of the statute. e.g. that he was not prohibited from receiving a refund and both Mr. Mathis and Palmetto was not the responsible parties, liable for such refund. **See (ROA Page** P.120, L.17-24 and P. 123, L.18 thru P.124, L.15). Id.

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 by affirmed." See Respondents' Brief Page 10 & 11.** The only reference to any statute made Respondents was, **"and finally, Your Honor, all of this is superseded by [the] statute." Id. at (ROA P.123,L.5-6).**

If the Respondents felt that an interpretation of the statute or the legislative intent was warranted, it should have raised it in the Lower Court, or at least on Motion to Alter or Amend the Judgment pursuant to Rule 59(e).

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) (SCRCP)....**
>
> **#3. It was error of law and abuse of discretion for the Lower Court to grant summary judgment in favor of 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."**

This case was filed **December 2, 2011,** between this time and **February 13, 2013,** sufficient time was allowed for discovery and pleading any affirmative defense, or any other motion or pleadings. i.e. Motion for Summary Judgment. Appellant filed his motion for summary judgment February 13, 2013, and the Respondents failed to or refused to respond to the motion until eight (8) days before the date set for the hearing on Appellant's motion.

From December 2011 until **May 15, 2013.** 17 months, Respondents had an opportunity to plead any defense, file any motion, or obtain any discovery. Had plenty of time to change attorneys. The Respondents waited until 11 days before the hearing on Appellant's summary judgment motion to change attorney or to bring in addition hired guns to try and save face for not responding in a timely fashion.

This is true because, the only issues at that time before the Court was Appellant's summary judgment motion and proposed order granting summary judgment if favor of Appellant. **See ROA Page 109). Id.**

In all fairness and in the interest of justice, if the Respondents failed to defend against this action in the 17 months the case had been pending, they should not have been allowed to at the last minute manipulate the Court, commit fraud before the Court, and misrepresent facts, to gain an unfair advantage over Appellant by legal manuevering; simply because Appellant is Pro-Se and in prison, not to mention, Appellant does not speak very good English.

On **April 29, 2013,** Appellant **wrote** a letter to Judge Verdin, expressing strong objection to any, dilatory practices by the Respondents. The correspondence with Trial Court was served also on counsel of record for. Appellant asked the Court for protection from unfair trial practices and legal maneuvering by the respondents. **See (ROA Page 105).** Obviously to no avail.

Rule 56 (c), Reads: "... The Judgment sought [s]all 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."

Rule 56 (e) mandates that [if] the non-moving party merely rely on general denials and allegations of his pleadings, it is insuficient to overcome a motion. Ibid. "If he does [not] so respond, summary judgment, if appropriate, shall be entered against him."

The following facts are undisputed by the Respondents: The respondents does not dispute that they are amenable to this action. Although the Respondents named other individuals in their response to Appellant's request to admit. **(ROA Page 87 & 89)** that believe to be more or less liable. **See (ROA Page 95 & 96).**

Appellant alleged that he paid **$10,000** to an agent working for Palmetto Surety Corporation (Palmetto) and Brady K. Mathis (Mathis) to secure his release. The Appellant however, was never released. The Respondents does not dispute these facts. **See (ROA Page 7 & 9).**

Appellant alleged and the Respondents have not disputed that (Palmetto) refunded the premium on Appellant's bond after, and as a result of Appellant not getting out of jail on said bond certificate, acknowledging responsibility and accountability in this matter. **See (ROA Page 117).**

The Respondents does not dispute that they knew about the (ICE) Immigration, Customs Enforcement Warrant, prior to accepting any money from Appellant's family. Compare the (ICE) hold and Warrant with the date money was received. **See (ROA Pages 114 thru. 116).**

It is further undisputed that **Title §38-53-10 et. seq.** governs [all] transactions of Bondsmen and that this provision of law does not preclude refunds of fees paid to a bondsman. **Id.** In fact the Respondents have argued against this action being construed as an action in assumpsit to recover money had and received. **See (ROA Pages 121-123).**

Concerning the original complaint and the causes of action the Respondents have not controverted or disputed the claims of Fraud, Civil Conspiracy nor the Breach of Contract claim, insofar as entitlement to a refund is concerned. (See ROA Pages 121-123).

Accordingly, upon the above undisputed facts, there remain only two questions that is controlling to be determined by this Court, which party is entitled to relief as a matter of law? More Specifically upon Appellant's motion for summary judgment: (1) Whether as a matter of law Appellant is entitled to relief on the undisputed facts: or (2) as a matter of law the Respondents have defeated summary judgment by [c]learly demonstrating thaty there exist a [genuine] issue of material fact still in dispute.

In determining a motion for summary judgment whether any triable issue of fact exist, the evidence and all inferences which can be reasonably drawn from the evidenc must be viewed in the light most favorable to the non-moving party. **Bovain v. Cana. Ins..**, 687 S.E.2d 422 (S.C. 2009) (Citing Cases).

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

IN REFERENCE TO ISSUES 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) (SCRCP)....
>
> (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.

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), and (ROA P.118-123). This affidavit was in support of his motion for summary judgment. Trial Court had this affidavit along with supporting documented exhibits. Id.

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 Page 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 fefendant(s)' answer to the initial complaint..." Appellant supported 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 payments were being made, neither Mr. Mathis nor anyone from the Bonding 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 not the warrant for 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 believe that all bondsman checks the status of their clients before they post the surety certificate, and (Mathis) signed the agrement and certainly checked the status before he signed the agreement on July 19, 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 (Palmett) Knew by acknowledgment of the same through a letter declaring to surrender 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 a "Conspiracy, Fraud and a Breach of Contractual agreement", and that as a matter of equity and the laws prohibiting unjust enrichment, he is entitled to ful 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 of the contrary facts alleged by Respondents and any arguments made for the first time ot 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 findings of facts and conclusion, of law on the credibility of the evidence and or affidavits 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. Appellant contends that the only piece of evidence to which inferences could reasonably be drawn from, was the (Affidavit) mentioned above in Issue No. 1. ibid. However, as stated in Issue No. 1, this affidavie is not competent evidence which could be used at trial. This left Trial Court without any evidence to rely on to defeat Appellant's summary judgment motion.

"On a motion for summary judgment, a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders, all other facts innaterial." **Gauld v. O'Shaugness Realty Co.**, 380 S.C. 548, 671 S.E.2d 79 (S.C. App. 2008).

The only other evidence submitted by Respondents was two affidavits of each Respondent. These affidavits contained the exact same information as their answers to admissions already on file and submitted by Appellant as exhibits in his motion for summary judgment.

Neither did the two affidavits of Respondents contain any information to controvert the issue of **"Restitution or Refund"**. Which is the essential elements that they as the non-moving party was required to prove. i.e. that by law Appellant is not entitled to a refund, and therefore, they were not required by law to make restitution. The Respondents failed at this task and could not defeat Appellant's summary judgment motion.

The Lower Court should have rejected all of the affidavits submitted by Respondents as untimely, immaterial and inadmissible as evidence, pursuant to Rule 56(e). Especially because they were submitted for purpose of delay.

"Trial Court did not abuse its discretion in ruling that debtor's affidavit opposing summary judgment would not be considered, where more than two months passed from time that creditor served motion for summary judgment until hearing, debtor did not file affidavit until day of hearing, and debtor failed to present any good cause for failure to timely file affidavit. Rules of Civ. Proc. Rule 56(c). **West v. Gladney**, 341 S.C. 127, 533 S.E.2d 334 (S.C. App. 2000).

With the above mentioned affidavits set to one side the only thing the Respondents had on file was the general answers to the complaint. **See (ROA Page 10).** An adverse party may not rely on the mere allegations in his pleading to withstand a summary judgment motion, but must set forth specific facts showing there is a genuine issue for trial. **Strickland v. Madden**, 323 S.C. 63, 448 S.E.2d 581 (S.C. App. 1994).

Under Rule (56(c) (SCRCP) the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. **Baugham v. American Tel. & Tel. Co.,** 306 S.C. 101, 410 S.E.2d 537, 545 (1991). With respect to an issue upon which the non moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the Trial Court that there is an [a]bsence of evidence to support the non moving party's case. Id. citing **(Celotex Corp. v. Catrett,** 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the moving party carries its initial burden, the "Opposing party must, under Rule 56(e) do more than simply show that there is some metaphysical doubt as to the material facts, but must come forward with [specific] facts showing that there is a genuine issue for trial." Id. (quoting **Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,** 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)). See also, **George v. Empire Fire & Marine Ins. Co.,** 344 S.C. 582, 544 S.E.2d 500 (2001).

In viewing the evidence in the light most favorable to the Respondents this Court will find that, this case is a proper action for recovery under **"Quantum Meruit"** and that the Bond Agreement signed by and/or on behalf of the parties listed in this action, was a **"Quasi-Contract" and "Implied by Law Contract"** subject to an equitable remedy of restitution to prevent unjust entichment. Further, this Court will find that the law governing actions of bondsmen in South Carolina, §38-53-10 et. Seq. (2012), does not prohibit refunds of fees paid to bondsmen.

"Quantum Meruit, Quasi-Contracts" and "Implied by Law Contracts" are equivalent terms for an equitable remedy. See **Williams Carpet Contractors, Inc. v. Kelly,** (S.C. 2012) (2012WL5235420). Implied by Law or Quasi-Contracts are not considered contracts at all, but are akin to restitution which permits recovery of that amount the defendant has benefited at the expense of the Plaintiff in order to preclude unjust entichment. **JASDIP., Properties, S.C. LLC. v. Estate of Richardson** (2011 S.C. App.) (2011WL3803564).

The element to recover for unjust-enrichment based on Quantum Meruit, Quasi-Contract, or Implied by Law Contract, which are equivalent terms for equitable relief, are: (1) a benefit conferred by the plaintiff upon the defendant; (2) realization fo the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value. See **Rigions Bank v. Wingard Properties, Inc..** 715 S.E.2d 348 (S.C. App. 2011).

The elements for obtaining equitable relief are clearly present in the instant case sub judice. (1) Appellant conferred $10,000 on defendants/ their agents. This $10,000 was not a gift, but a fee paid under specific conditions to be met; (2) the Respondents realized the benefit of the $10,000 by issuing the required bond certificate only upon receipt of the $10,000, then the Respondents posted the bond certificate with the clerk of court for Greenville County and Mathis signed a bond agreement acknowledgment of the conditions set by the Court; and (3) Finally,

the Respondents after realizing Appellant didn't get out of jail on their bond, never looked back, never inquired whether Appellant got out in five months prior to his trial. Because, they knew Appellant was not going to be released. On this note, it is presumed that the bonding company intended to deceive Appellant to obtain his $10,000.

It is also presumed that no reasonable prudent person would have paid $10,000 for a bondsman knowing that he would not be released no matter what. The Respondents does not dispute that appellant did not know about the (ICE) Immigration Warrant until after paying Respondents/ their agents $10,000. The Respondents in good conscience cannot deny Appellant is entitled to a refund.

A party may be "unjustly enriched" when it has and retains benefits or "Money" which in justice and equity belong to another. **Dema v. Tenet Physicians Services Hilton Head, Inc.**, 678 S.E.2d 430 (S.C. 2009). See also, **Campbell v. Robinson**, (S.C. App. 2012) (2012WL1618670).

Appellant contends that the Lower Court erred by not granting Appellant's motion for summary judgment where Appellant easily showed that as a matter of law he is entitled to judgment.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. **Harris v. Anderson County Sheriff's Office**, (S.C. 2009) (2009WL294756).

When plain palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. **Moore v. Barnoy House Restaurant, LLC., (S.C. 2009) (2009WL596610).**

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 prior 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 amend the judgment. Mr. Sorcia pointed out several issues that the Lower Court overlooked, which either entitled him to relief and/or [d]emonstrated a genuine issue of material fact in dispute.

Appellant contends that these issues raised particular concerns about the Lower Court's ruling and whether the proper standards and applicable law is adequately reflected is 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 finding 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) (SCRCP). See **(ROA P.12 and ROA P.16). Id.**

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

The Court's ruling on Appellant's Rule 59(e) motion to alter or amend the judgment read as follow:

> **"Plaintiff's motion to alter or amend is denied. Plaintiff has failed to allege any new facts that would allow this Court to change its prior Ruling." (See ROA Page 1).**

It was error for the Lower Court to deny Appellant's motion for "Failure to allege any new facts" because alleging [new] facts would not be a proper reason under the circumstances of Appellant's case unless it is newly and after discovered and could not have been discovered prior to trial then the provision of Rule 59(b) would have been proper. Appellant sought to have the Court consider matters overlooked by the Court under Rule §59(e).

LAW / ANALYSIS

Arguments and theories raised by former foster parents for the first time in a post-trial motion in action to adopt their former foster child were not properly preserved for appellate review. **Michael P. v. Greenville County Dept. of Social Services,** (S.C. App. 2009) 385 S.C. 407, 684 S.E.2d 211.

Mother appealing family Court ruling on child support and custody modification proceedings failed to preserved for appeal claim for retroactive reimbursement of child support, where mother failed to raise claim at trail and presented the argument for the first time during post-trial motions. Rules Civ. Proc. Rules 59, and 60, **Spreeuw v. Barker,** (S.C. App. 2009) 385 S.C. 682 S.E.2d 843.

Appellant rely on the above cases as an analogy that, Trial Court abused its discretion in denying appellant's Rule 59(e) motion, for failure to allege new facts, which was also an error of law, where new matter or new facts are not proper standards of review for 59(e) motions.

Compare -- **Shirley's Iron Works, Inc. v. City of Union,** (S.C. App. 2010) 387 S.C. 389, 693 S.E.2d 1. When an issue or argument has been raised to but not Ruled on by the Trial Court, a party must file a motion to alter or amend the judgment to preserve the issue for appeal. Rules Civ. Proc. Rule 59(e); See also, **Doe v. Doe,** (S.C. App. 1996) 324 S.C. 492, 478 S.E.2d 854. Proper Procedure for correcting factual errors in order, is to file motion to alter or amend pursuant to Rules of Civil Procedure. Rule 59(e).

Appellant raised the following issues in his Rule 59(e) motion, to which he believe the Lower Court overlooked: **See (ROA Pp. 12-13).**

(1). The Court completely misconstrued the Plaintiff's complaint and causes of action;

(2). The Defendants as the moving pasty in their Cross-Motion for Summary Judgment failed to demonstrate an [a]bsence of a genuine issue of material fact. Summary judgment in favor of the Defendants was erroneous as a matter of law;

(3). The Court Completely overlooked the Plaintiff's Motion for Summary Judgment, which was fully supported according to Rule 56(c) (SCRCP), demonstrating entitlement to relief as a matter of law; and

(4). It was error not to consider Plaintiff's Motion to strike appearance, the failure to consider prejudiced the outcome of Plaintiff's case.

These issues presents that the Lower Court overlooked the fact and evidence presented to it, namely: This whole matter arose from Appellant's claim for restitution, an action in assumpsit a Quantum Meruit to recover money had and received by the Respondents to prevent unjust enrichment. This should have been the focus of the Court. However, the Court being improperly influenced by Respondents and their 11th hour attoreny, deceived the Court to examine the case under the premise of a contract that was fully satisfied. This alone should sent up a **"Red Flag"**, to question why would a person complain of something that they are fully satisfied with? If the Court had actually examined Appellant's pleadings, Affidavits, admissions on file and the numerous evidentiary exhibits, including the affidavits of Respondents, the Lower Court would have concluded properly that **"Restitution and/or Refund"** were the proper issues.

For the same reasons stated in this instant appeal, ibid, the remaining Rule 59(e) motion issues need not be Re-addressed here as they are fully addressed above in Appeal issues 1 and 2.

The Lower Court instead of addressing the specific contentions and exceptions, Ruled that "Plaintiff has failed to allege any [new] facts that would [a]llow this Court to alter the prior ruling." **(See ROA P.1). Id.** For the reasons stated above and those mentioned the 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 and right 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 their 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**, demonstrate that Respondents are intentionally misleading this Court: See **ROA Pages 52-56 (Objection and Motion to Strike); ROA Pages 60-65 (Plaintiff'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 these issues were clearly made known to the Respondents and the Lower Court.

This issue raised by the 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, and attempt to obstruct justice, subvert the administration of justice.

Respondents raised issues that are not preserved for appeal they argue matters not preserved in the record, and there is no support in the judgment of the Lower Court supporting the Respondents' arguments. All other contentions made by Respondents is manifestly without merit, and should not be considered by this Court.

I N C O N C L U S I O N

It was error for the Lower Court to grant summary judgment in favor of Respondents, where their 11th hour attorney made an unauthorized appearance, filed frivolous filings, committed fraud and misrepresented facts to Trial Court solely for the purpose to delay ruling on Appellant's motion for summary judgment which was the [only] motion or matter before Trial Court, prior to is unauthorized appearance. The Respondents had failed to respond or otherwise oppose Appellant's motion for summary judgment then resorted to unfair trial tactics and legal maneuvering. Appellant's motion for summary judgment was based upon evidence that he was entitled to a refund as a matter of law according to the Common Law Assumpsit, and action of Quantum Meruit to recover money had and received, to prevent unjust enrichment. This theory of law was fully supported. timely asserted and properly presented for review. The genuine issue indispute was not answered or resolved, because Trial Court's Order does not indicate that the issue of **whether Appellant is entitled to a refund as a matter of law? or Whether Respondents are entitled to keep Appellant's $10,000 as a matter of law?**

For the foregoing reasons and authorities cited Appellant respectfully request this honorable Court to reverse the Lower Court's judgment granting summary judgment in favor of Respondents.

This 20 day of October 2014.
At Allendale County, S.C.

Respectfully Submitted

S/________________

Mr. Oscar Z. Sorcia, 338247
A.C.I. F2-B42
P.O. Box 1151
Fairfax, S.C. 29827

Pro-Se Appellant

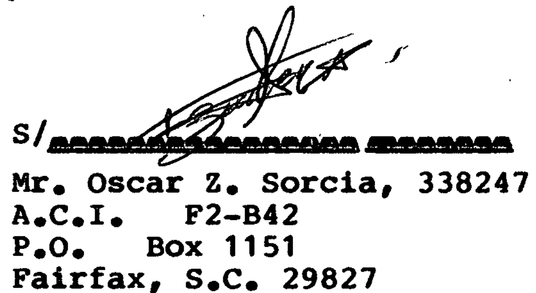
CERTIFICATE OF SERVICE

I Oscar Z. Sorcia, do certify that I have this day served on the attorney for the Respondents a copy of **APPELLANT'S FINAL BRIEF** BY DEPOSITING THE SAME IN THE U.S. Mail postage prepaid to the following address:

Sidney P. Mitchell, Jr.
MITCHELL, RAMSEUR, LLC
217 E. Park Avenue
Greenville, S.C. 29601

Paul S. Landis
FAYSSOUX LAW FIRM, P.A.
209 E. Washington, St.
Greenville, S.C. 29601

This 20 day of October, 2014.
At Allendale County, S.C.



S/

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OCT 31 2014
SC Court of Appeals