THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

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/RESPONDENT P.J. RICHARDSON'S PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Petitioner/Respondent P.J. Richardson ("Richardson") requests rehearing of this Court's January 7, 2015 opinion (Opinion No. 27475) because, as explained below, he respectfully submits that the Court has overlooked or misapprehended several significant points. First, this Court's opinion contradicts its own precedent and places the lower courts in a quandary as to whether they should or should not consider all documents and surrounding facts when interpreting a multi-document transaction. Second, the 2004 Termination Agreement,[1] which this Court held to unambiguously terminate Richardson's right to 7.5% ownership of North American Rescue Products, Inc. ("NARP"), *is* ambiguous because its handwritten

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[1] Throughout this Petition for Rehearing, Richardson relies on this shorthand reference, which was also used in the Court's recent opinion, to refer to the "Agreement of Termination, Settlement and Release" dated November 5, 2004. *See* App. 911-12.

portions unquestionably contradict its printed language. Accordingly, the trial court's and Court of Appeals' resort to parol evidence was permissible. Third, the evidence before this Court supports a ruling that the 2004 Termination Agreement is unenforceable because it was premised on and dependent upon the existence of another agreement, which did not exist and never has materialized. Alternatively, the evidence before this Court supports a ruling that the 2004 Termination Agreement did not apply to the oral agreement in Charleston found by the jury to exist and to be binding. Accordingly, the 2004 Termination Agreement did not terminate the parties' prior agreement as previously modified.

I. This Court's opinion, if not corrected, leaves the lower courts in a quandary when they evaluate multi-document transactions.

This Court's opinion in this suit conflicts with its precedent regarding the analysis and interpretation of multi-document transactions and places the lower courts in an untenable quandary when they confront such suits. If a trial court refuses to consider transaction documents other than the one the plaintiff seeks to enforce, it commits reversible error under this Court's long-standing precedent. But if the trial court *does* consider a related document, it commits reversible error under the *NARP* opinion.

This Court has previously instructed that when interpreting one document in a multi-document transaction, it is appropriate and permissible to examine other documents and interactions relating to the same transaction:

> The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together. The theory is that the instruments are effectively one instrument or contract. Moreover, *where the instruments*

> *have not been executed simultaneously but relate to the same subject matter and have been entered into by the same parties, the transaction comprising the contract will be considered as a whole.* This is true even though the transaction consumed more than one day; the date of the writings constituting such transaction is immaterial. Construing contemporaneous instruments together means simply that if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties *so that the whole agreement as actually made may be effectuated.* 17 Am. Jur. 2d Contracts § 264 (1964).
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> Moreover, it is the general rule that parol evidence is admissible to show the true meaning of an ambiguous written contract. Such a contract is one capable of being understood in more ways than just one, or an agreement unclear in meaning because it expresses its purpose in an indefinite manner. The purpose of all rules of contract construction is to determine the parties' intention. The courts, in attempting to ascertain this intention, will endeavor to determine the situation of the parties, as well as their purposes, at the time the contract was entered into. [] The court should put itself, as best it can, in the same position occupied by the parties when they made the contract. In doing so, *the court is able to avail itself of the same light which the parties possessed when the agreement was entered into* so that it may judge the meaning of the words and the correct application of the language. 17 Am. Jur. 2d Contracts § 272 (1964).

Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88-89, 232 S.E.2d 20, 24 (1977) (emphasis added); *see also Dixon v. Dixon*, 362 S.C. 388, 396, 608 S.E.2d 849, 852-53 (2005) (interpreting one document by looking to other documents executed as part of the same transaction); *Cafe Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 10, 406 S.E.2d 162, 164-65 (1991) ("We hold that the master did not err in reading the Asset Purchase Agreement and the Covenant Not to Compete together. The two agreements are substantially the same, cover the same subject matter, and both were executed during the course of the same transaction by the same parties for the same purpose."); *Moshtaghi v.*

The Citadel, 314 S.C. 316, 321, 443 S.E.2d 915, 918 (Ct. App. 1994) ("Under South Carolina law, two contracts executed at different times relating to the same subject matter, entered into by the same parties, are to be construed as one contract and considered as a whole. . . . Moreover, where one of the contracts explains, amplifies or, limits the other, those provisions will be given effect between the parties so that the whole agreement, as actually contracted by the parties, may be effectuated.") (citations omitted); *Plaza Development Servs. v. Joe Harden Builder, Inc.*, 294 S.C. 430, 433-34, 365 S.E.2d 231, 233 (Ct. App. 1988) ("Where instruments are entered into by the same parties at different times but relate to the same subject matter, the instruments will be construed together to determine the entire agreement between the parties.") (citing *Bishop Realty and Rentals v. Perk, Inc.*, 292 S.C. 182, 355 S.E.2d 298 (Ct. App. 1987)); *Ashe v. Carolina & Nw. Ry. Co.*, 65 S.C. 134, 138, 43 S.E.393, 394 (1903) ("When the written evidence of the contract does not contain all the terms of the transaction between the parties, parol evidence (not contradicting or varying the writing) is admissible for the purpose of showing a contemporaneous independent agreement entered into between the parties.").[2]

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[2] Other jurisdictions follow a similar practice. *See City of Keller v. Wilson*, 168 S.W.3d 802 (Tex. 2005); 17A Am. Jur. 2d Contracts § 379 ("When two instruments are entered into between the same parties concerning the same subject matter, whether made simultaneously or on different days, they may, under some circumstances, be regarded as one contract and construed together. A transaction constituting a contract must be considered as a whole, even though it consumed more than one day, the date of the writings constituting such transaction being immaterial.") (citing *Baltzer v. Raleigh & A.A.L.R. Co.*, 115 U.S. 634 (1885); *Hodges v. U.S. Fidelity & Guaranty Co.*, 91 A.2d 473 (Mun. Ct. App. D.C. 1952); *Smith v. Superior Equipment Co.*, 428 P.2d 998 (Ariz. 1967); *Lynch v. Bank of America Nat. Trust & Sav. Ass'n*, 37 P.2d 716 (Cal. Ct. App. 1934); *J.M. Montgomery Roofing Co. v. Fred Howland, Inc.*, 98 So.2d 484 (Fla. 1957); *Bed v. Fallon*, 12 N.W.2d 396 (Mich. 1943); *Prange v. International Life Ins. Co. of St. Louis*, 46 S.W.2d 523 (Mo. 1931); *Apple v. Edwards*, 16 P.2d 700 (Mont. 1932); *Smith v.*

In contrast to this long-standing and well-established rule regarding the interpretation of multi-part transactions, this Court's *NARP* opinion prevents courts from examining all the documents and interactions surrounding a transaction in order to accurately ascertain the parties' intent. The result is to place trial courts in a precarious position, uncertain whether they should or should not consider the entirety of a multi-part transaction and the parties' entire agreement. Because all parties agreed the 2004 Termination Agreement was but one part of a multiple part overall understanding,[3] all the parts must be considered. This Court's new *NARP* rule improperly precludes this.

II. The 2004 Termination Agreement is ambiguous because its handwritten portions contradict its printed language.

In its recent opinion, this Court held that the 2004 Termination Agreement "unambiguously terminated any right Richardson had to purchase the stock" in NARP. *See* Op. at 2. As explained below, however, the Court's ruling overlooks or misapprehends the ambiguity created by the contradictions between the 2004 Termination Agreement's printed language and its handwritten portions. These contradictions result in ambiguity that warranted the trial court's and the Court of Appeals' reliance on parol evidence and justified those courts' conclusions that the 2004 Termination Agreement did *not* terminate Richardson's right to purchase 7.5% of NARP.

The ambiguity in the 2004 Termination Agreement arises from the inconsistencies and contradictions between its printed and handwritten terms. Specifically, the printed

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Atlantic Joint Stock Land bank of Raleigh, 192 S.E. 866 (N.C. 1937); *Squire v. Goulder*, 2 N.E.2d 2 (Ohio 1936); *Carter v. Prairie Oil & Gas Co.*, 160 P. 319 (Okla. 1915); *Hoosier Condensed Milk Co. v. Doner*, 121 N.E.2d 100 (Ohio Ct. App. 1951); *McLeod v. Despain*, 90 P. 492 (Or. 1907); *Rhoades v. Chesapeake & O. Ry. Co.*, 39 S.E. 209 (W. Va. 1901)).

[3] The parties disagreed as to the components of the multipart transaction and exactly what they were.

language of that agreement refers multiple times, using the *past tense*, to an option agreement that was presumed to have already occurred:

> It is specifically agreed and understood by the parties that the foregoing release is not intended to, and shall not, release any of the parties from that certain, separate Option 15 Dec, Agreement dated 2004 pursuant to which NARP and RAC[4] *have granted* PJR[5] an option to purchase 7.5% of the capital stock of NARP.
>
> * * *
>
> It is specifically agreed and understood by the parties that the foregoing release is not intended to, and shall not, release any of the parties from that certain, separate Option 15 Dec, Agreement dated 2004 pursuant to which NARP and RAC *have granted* PJR an option to purchase 7.5% of the capital stock of NARP.

App. 911, ¶¶ 3-4 (emphasis added). These handwritten dates are also inconsistent with the 2004 Termination Agreement's assumption that the option agreement was previously or simultaneously executed, since that option agreement was to form the bulk of the consideration for the 2004 Termination Agreement. *See* App. 911 (noting the 2004 Termination Agreement was made "in consideration of the promises, agreements and cash payments herein contained and described").

In short, the 2004 Termination Agreement—dated November 5, 2004, and signed by the parties on November 5 and 8, 2004—presumes and refers in its printed language to a *past* agreement in which NARP and Castellani had granted Richardson a stock option; however, the handwritten date contemplates a *future* date for the execution of this stock option agreement. On this basis, the trial court and the Court of Appeals correctly found that the 2004 Termination Agreement was ambiguous. *See N. Am. Rescue Prods., Inc. v.*

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[4] Robert A. Castellani.

[5] P.J. Richardson.

Richardson, 396 S.C. 124, 129-32, 720 S.E.2d 53, 57-58 (Ct. App. 2011) (noting that "no written option agreement dated December 15, 2004 existed at the time of the Termination Agreement," and expressly rejecting NARP's argument that the Termination Agreement "unambiguously and unequivocally terminated all rights and promises under the 2000 agreement"); *see also* App. 420-22, 427-28 (recounting trial counsel's arguments about the past/future discrepancy—including NARP's counsel conceding that "there's two ways you can read this"—and the trial court's denial of directed verdict because "the terms of that contract are absolutely ambiguous").

This Court has previously recognized that when documents relating to the same transaction contain differing dates, that inconsistency results in a "fundamental ambiguity" that requires the court to consider more than just the terms of one document. *See, e.g., Turkett v. Gulf Life Ins. Co.*, 279 S.C. 309, 306 S.E.2d 602 (1983) (holding that where different documents relating to the inception of the same insurance policy contained different effective dates, this was a "fundamental ambiguity as to a single commencement date for this insurance contract in its several parts"). Courts of other jurisdictions have likewise held that the inconsistent use of past tense in a contract created ambiguity such that there was a need for parol evidence. *See Sturgis Savings & Loan Ass'n v. Italian Village, Inc.*, 265 N.W.2d 755 (Mich. Ct. App. 1978); *Leighton's Inc., v. Century Circuit, Inc.*, 95 A.D.2d 681 (N.Y. App. Div. 1983).

In sum, the 2004 Termination Agreement is capable of more than one meaning. It might have been, as this Court held, merely an "agreement to agree." However, it is equally (if not *more*) likely that the prior existence of the option agreement was a condition precedent to the 2004 Termination Agreement; an assumption or condition

belied by the handwritten acknowledgement that no option agreement had yet been executed. Lastly, the past tense may have been a reference—using the word "option," which the parties sometimes used to reference their contractual rights to purchase the other's company stock[6]—to the past Charleston oral agreement (which was found to exist by the jury and also determined by the jury to *not* be terminated by the 2004 Termination Agreement). These multiple plausible interpretations render the 2004 Termination Agreement ambiguous, which in turn warrants reliance on parol evidence. *See Williams v. Gov. Empl. Ins. Co.*, 409 S.C. 586, 595, 762 S.E.2d 705, 710 (2014) ("'A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement.'") (quoting *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 858, 592, 493 S.E.2d 875, 878 (Ct. App. 1997)).

Indeed, in its January 7, 2015 opinion, this Court tacitly acknowledges that reliance on parol evidence is necessary to resolve the "contradiction" contained in the 2004 Termination Agreement. *See* Op. at 6. Specifically, although the opinion recites the rule that parol evidence is permissible "only if the document itself creates an ambiguity," the Court then proceeds to look beyond the four corners of the contract to resolve the inconsistent language by noting that "no option contract dated December 15, 2004 was ever created or executed." *Id.* Stated differently, the only way this Court could explain away this "contradiction" was by looking to and relying on evidence *outside* of the document itself. Having done so, this Court ought not reverse the trial court and the Court

[6] *See* App. 232:19 to 233:3 (Castellani testifying that the parties sometimes referred to the 2000 agreement as an "option agreement"); App. 234:18-19 (same); App. 240:4-6 (same); App. 374:14-18 (Richardson testifying the parties sometimes referred to their prior agreements as "options"); App. 376:19-25 (same).

of Appeals for having done similarly, but rather should acknowledge—as those courts did—that the parol evidence indicates that the 2004 Termination Agreement did not terminate Richardson's right to 7.5% ownership of NARP.

III. Because the 2004 Termination Agreement was premised on the existence of a nonexistent option agreement, it is unenforceable or, at minimum, should be interpreted in light of parol evidence.

In its holding, this Court acknowledged that the 2004 Termination Agreement contained a provision reserving Richardson's right to purchase NARP stock pursuant to terms outlined in a separate option contract. *See* Op. at 2 and 6 (noting this "contradiction" in the agreement's terms). Because there was evidence that this separate option agreement was never executed, the Court discounted this provision as a mere "agreement to agree in the future" and thus "decline[d] to hold that a provision mentioning a nonexistent document can defeat the plain language of an agreement." *Id.* at 6.

However, as explained below, this is not the proper analysis of the contract terms. Assuming the contract terms were a reference to a future agreement, rather than looking at them as a nullity, the Court should have treated the future agreement as a conditional part of the overall, multi-document transaction. Evidence was produced that the 2004 Termination Agreement was premised upon and dependent on the existence and terms of that option agreement, and the fact that option agreement did not (and never did) come to exist means the *2004 Termination Agreement* is unenforceable or, at minimum, should be interpreted in light of parol evidence.

Further, the 2004 Termination Agreement was made "in consideration of the promises, *agreements* and cash payments herein contained and described." *See* App. 911

(emphasis added). The option agreement constituted the most substantial part of the consideration for the 2004 Termination Agreement.[7] That option agreement, however, was not described with any definiteness, and was described on the face of the document in the past tense and also simultaneously in the future tense.

Consideration is an essential term of a contract. *Sauner v. Pub. Serv. Auth. of South Carolina*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003) ("The necessary elements of a contract are an offer, acceptance, and valuable consideration."). Accordingly, the absence of consideration or even the absence of sufficient details regarding consideration renders the contract (*i.e.*, the 2004 Termination Agreement) unenforceable. *See Potomac Leasing Co. v. Otts Market, Inc.*, 292 S.C. 603, 358 S.E.2d 154 (Ct. App. 1987) (holding that where details regarding the consideration were left as blanks on the contract and were not subsequently agreed to, the contract was unenforceable).

Similarly, this Court has held that when a court is interpreting one document in a multi-document transaction and that document was premised on or dependent on the execution of another document that was never executed, the document being interpreted is unenforceable. *See Alexander's Land Co., LLC v. M&M&K Corp.*, 390 S.C. 582, 703 S.E.2d 207 (2010); *see also* 17A Am. Jur. 2d Contracts § 648 ("A failure of consideration exists when a promise has been made to support a contract . . . but that promise has not

[7] The "cash payments" mentioned as consideration, for example, constituted only a $100 payment from Richardson to NARP and Castellani. *See* App. 911 ¶ 2. This Court has previously held that where the consideration for an agreement includes both a de minimis amount of money and some other consideration to be found in another document, the agreement is ambiguous and permits reliance on extrinsic evidence. *See Dixon v. Dixon*, 362 S.C. 388, 396, 608 S.E.2d 849, 852-53 (2005) (noting that "the stated consideration is 'five dollars and other love and consideration,' which we find to be ambiguous," and thus looking to other documents executed as part of the same transaction to determine the intent of the parties and whether other consideration was given).

been performed, and in this situation, the other party is excused from further performing.") (citations omitted).

A failure of consideration (*i.e.,* the option agreement) effectively undoes the Termination Agreement because, as this Court has made clear, "essential and material terms" of an agreement cannot be left for future determination, and in the absence of all such terms, an agreement is unenforceable:

> A valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement. [] Thus, for a contract to be binding, material terms cannot be left for future agreement.
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> "Frequently, agreements are arrived at piecemeal with different terms and items being discussed and agreed upon separately. However, as long as the parties know there is an essential term not yet agreed on, there is no contract. The preliminary agreements on specific items are mere preliminary negotiation building up the terms of the final offer that may or may not be made."

Stevens and Wilkinson of South Carolina, Inc. v. City of Columbia, 409 S.C. 568, 578-82, 762 S.E.2d 696, 701-03 (2014) (emphasis in original) (quoting 1 Corbin on Contracts § 2.8);[8] *see also* 30 S.C. Jur. Contracts § 9 ("[T]here can be no contract so long as, in the contemplation of the parties, something remained to be done to establish contractual

[8] Similarly, our courts have indicated that any "ambiguity or indefiniteness in the essentials" of a contract (such as consideration) indicates there has been no meeting of the minds. *See Time Warner Cable v. Condo Servs., Inc.*, 381 S.C. 275, 285, 672 S.E.2d 816, 820 (Ct. App. 2009) ("'[W]here there is no ambiguity or indefiniteness in the essentials, [the parties] cannot say their minds did not meet.'") (quoting *Parker v. Byrd*, 309 S.C. 189, 193–94, 420 S.E.2d 850, 853 (1992)); *U.S. for Use and Benefit of Williams Elec. Co., Inc. v. Metric Constructors, Inc.*, 325 S.C. 129, 480 S.E.2d 447 (1997) (citing *Arant v. Mack*, 204 S.C. 287, 294, 28 S.E.2d 846, 849 (1944)) (same).

relations. Thus, there can be no contract where the parties never completed their negotiations as to essential terms.") (citations omitted).

Where a contract purports to rely on consideration that is indefinite or non-existent, the contract is ambiguous, and reliance on parol evidence is necessary to determine the parties' intention. *See Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.E. 198, 206, 687 S.E.2d 714, 718-19 (Ct. App. 2009) (noting that where the consideration discussed in an agreement "is indefinite, we hold the trial court erred in ruling the Memorandum was unambiguous and in refusing to consider parol evidence"); *Dixon*, 362 S.C. at 396, 608 S.E.2d at 852-53 (noting that the agreement's ill-defined consideration was ambiguous and thus looking to other documents executed as part of the same transaction to determine the intent of the parties). Here, as this Court acknowledged in its January 7, 2015 opinion, the parol evidence included testimony from multiple witnesses in support of Richardson's argument that "the Termination Agreement was one part of a three-part agreement which was mean to be executed contemporaneously with the others," but which never materialized. *See* Op. at 6. Accordingly, the trial court and the Court of Appeals did not err in concluding that the 2004 Termination Agreement did not terminate Richardson's right to NARP stock as previously agreed upon by the parties.

This Court's opinion, by contrast, sets forth an interpretation of the Termination Agreement wherein the several provisions thereof quoted above are rendered meaningless. This is another departure from this Court's well-established precedent regarding how to construe contracts. *See, e.g., Stevens Aviation, Inc. v. DynCorp Intern. LLC*, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014) ("'[A]n interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the

contract meaningless or superfluous.'") (quoting *Crown Laundry & Dry Cleaners, Inc. v. United States*, 29 Fed. Cl. 506, 515 (1993)); *Hays v. Adair*, 267 S.C. 291, 296, 227 S.E.2d 665, 667-68 (1976) ("[A] construction which gives meaning to all should be preferred over one which renders some provisions meaningless."). The provisions should not have been interpreted as meaningless. Instead, the parties placed two ambiguous provisions regarding an option agreement in the 2004 Termination Agreement. The Court of Appeals and the Trial Court correctly ruled that the only way to understand and attempt to ascertain the intent of the parties respecting these provisions was to look outside the four corners of the Termination Agreement. Once this is done, there was abundant evidence that the language referenced either a conditional, but failed, separate option agreement, or the language referenced a past modified agreement (the orally modified Charleston agreement found to exist by the jury) by using the word "option" to describe such. *See* App. 374:14-18 (Richardson testifying the parties sometimes referred to their prior agreement as an "option"); App. 376:19-25 (same).

This Court first improperly declared the Termination Agreement unambiguous. Next, this Court then improperly looked outside the contract and, focusing on select evidence, chose to interpret the ambiguous "option" language provisions in the contract as an "agreement to agree," whereupon this Court said such language could thus be ignored. In so doing, the Court's opinion stands in contravention of its prior precedent in several regards as set forth herein, and the Court has improperly chosen certain disputed facts and deemed them to be established facts in order to reach its conclusion.

Conclusion

In sum, Richardson respectfully submits that this Court's recent opinion is in error. The Court should grant rehearing and grant the relief requested by Richardson in his Supreme Court briefs, or, failing that, grant rehearing and affirm the Court of Appeals.

Special Request for Relief

As stated, this Court should grant Rehearing. However, if this Court declines to grant rehearing or declines to change its opinion, in the interests of judicial economy it should order that the existing remaining litigation between the parties should be dismissed as moot.

During the oral argument in this matter, the Court was alerted to the fact that Richardson and NARP are also involved with a matter pending before the South Carolina Court of Appeals, and that an additional lawsuit also exists between them (as well as other parties aligned with NARP) in the trial court. During the oral argument, the Chief Justice asked counsel for NARP whether, if NARP were to receive a directed verdict, the litigation between NARP and Richardson would end.[9]

Counsel for NARP responded to the question that yes, the matter pending at the court of appeals "goes away" and the matter "they brought against us in the circuit court goes away."[10] Justice Hearn later asked "what are those matters," and they were subsequently identified to the Court.[11] Finally, counsel for NARP again stated later in the

[9] This question occurs on the video of the oral argument with 8:38 remaining.

[10] This response occurs on the video of the oral argument with 8:27 remaining.

[11] This question occurs on the video of the oral argument with 8:17 remaining.

oral argument that if a directed verdict were granted for NARP "everything else goes away," referencing the other litigation.[12]

These representations should be deemed binding on NARP. *See Widdicombe v. TuckerCales*, 366 S.C. 75, 90 n.5, 620 S.E.2d 333, 341 n.5 (Ct. App. 2005) ("[A] party is generally bound by stipulations made by their counsel."); *State v. Dicapua*, 373 S.C. 452, 456, 646 S.E.2d 150, 152 (Ct. App. 2007) ("It is settled law that when an accused is present in court and represented by competent counsel, he is bound by the actions and concessions of counsel, and that even constitutional rights may be waived in the course of a trial.") (citations omitted); *Smith v. Pearson*, 210 S.C. 524, 530, 43 S.E.2d 479, 481 (1947) (finding appellants bound by statement made by counsel in court regarding which cause of action he intended to pursue); *Hall v. Benefit Ass'n of Ry. Emps.*, 164 S.C. 80, 83, 161 S.E. 867, 868 (1932) ("The parties to a suit are bound by admissions, made by their attorneys of record, in open court, or elsewhere, touching matters looking to the progress of the trial.").

Because the above quoted statements occurred in this Court, Richardson requests that if this Court declines to change its opinion, it makes sense that this Court should order that the remaining litigation between the parties should cease.[13] Such would further represent a cost savings to the litigants and preserve judicial resources.[14] If no return is

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[12] This statement occurs on the video of the oral argument with 7:57 remaining.

[13] Specifically, this litigation consists of Appellate Case No. 2012-212748 at the Court of Appeals and Civil Action No. 2011-CP-23-7518 in the Court of Common Pleas for the Thirteenth Judicial Circuit.

[14] Richardson will endeavor to enforce these representations in the lower courts should this Court decline to issue such an Order.

filed, then Richardson requests that this special relief be granted pursuant to Rule 240(e), SCACR.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

C. Mitchell Brown
SC Bar No. 012872
E-Mail: mitch.brown@nelsonmullins.com
A. Mattison Bogan
SC Bar No. 72629
E-Mail: matt.bogan@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Rivers S. Stilwell
SC Bar No. 002108
E-Mail: rivers.stilwell@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for Respondent P.J. Richardson

February 6th, 2015

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

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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):

Pleadings:

Petition for Rehearing

Counsel Served:

Robert L. Widener, Esquire
McNair Law Firm, PA
Post Office Box 11390
Columbia, SC 29211

Bernie W. Ellis, Esquire
McNair Law Firm, PA
Post Office Box 447
Greenville, SC 29602

Lisa P. Whitehurst
Administrative Assistant

February 16, 2015

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9025
www.nelsonmullins.com

C. Mitchell Brown
Tel: 803.255.9595
Fax: 803.255.9025
mitch.brown@nelsonmullins.com

February 6, 2015

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: North American Rescue Products, Inc. v. P.J. Richardson
Appellate Case No. 2012-208586
Our File No. 30528/01504

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of Petitioner/Respondent's Petition for Rehearing in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier. Also enclosed is our check in the amount of $25.00 as the required filing fee.

By copy of this letter to counsel of record, we are serving them with a copy of this petition.

With kind regards, I remain

Sincerely yours,

C. Mitchell Brown

CMB:lpw
Enclosures
cc: Robert L. Widener, Esquire
Bernie W. Ellis, Esquire