THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals
APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable J. Cordell Maddox, Jr., Tenth Judicial Circuit

Case Number:2015-001577

Shou Y. Martin, ... Petitioner,

vs

Wilmer (John) Rife and Barbara Ann Doomey, ... Respondent.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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RULES

Rule 50(e), South Carolina Rules of Civil Procedure 2

Rule 59(e), South Carolina Rules of Civil Procedure 2

Question I

Did the South Carolina Court of Appeals err in affirming the trial judge granting a judgment notwithstanding the verdict on the ground that Shou Martin did not have standing to bring the action because she did not own the property when the record contained evidence that Shou Martin owned the property sold to Wilmer (John) Rife and Barbara Doomey and they both received the benefit of the bargain they sought in the contract they signed with Shou Martin?

The Respondent seems to argue that they were "duped" into signing a contract with Ms. Martin. The record establishes otherwise. The Respondents were provided a copy of the profit and loss statement of Simon's of Anderson, Inc. They knew the business was being operated as a corporation. App. at 67, to 69, ll 1-23. App. at 220-223. The Respondent bargained for and got a release from Mrs. Martin for any claim she may have to the property. The Respondent testified that this is what they wanted. As noted in the opening petition at page 7, the Respondents were not really concerned with who owned the equipment as long as Mrs. Martin agreed to protect them in the event of a claim by a third party. Their main concern was the condition of the equipment. Rec. on App. at 98, ll 9-21.

The Court of Appeals in its decision appeared to ignore the principle in South Carolina that a case should go to the jury if there is a scintilla of evidence to support the position of the plaintiff. *Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 603 S.E.2d 605 (2004). The entire focus of the opinion was on standing. The sole testimony of Ms. Martin that she owned the equipment sold is sufficient to give her standing. That statement created a factual

issue for the jury. But in this case there is more. The Respondents bargained for and received from Ms. Martin a written agreement as to the sell of any and all claims she may have had to the equipment. They bargained for and received a promise from Ms. Martin that she would guarantee the title to the property from any third party. Now the Respondents want to disavow what they bargained for, keep the equipment and not pay Ms. Martin.

The Respondent has not attempted to distinguish *Ebner v. Haverty Furniture Co.*, 128 S.C. 151, 122 S.E. 578 (1924) which holds that to rescind a contract, the Respondent would be required to return the equipment in dispute. In fact in this case, the respondent has never tendered the equipment either in their answer or testimony. The Respondent listed eight defenses in their answer. No defense was in the form of a recession of the contract and an offer to return the equipment. The Respondent simply wants to, as the old adage goes, have their cake and eat it too. The law should not condone such an action.

Question II

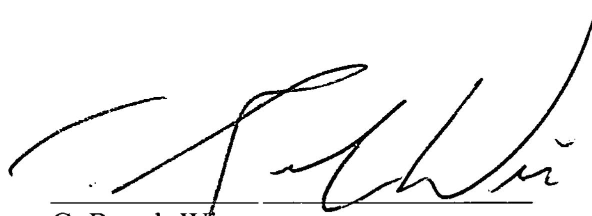
Did the Court of Appeals have subject matter jurisdiction to rule on this case as the Defendant filed a second Rule 59 Motion on the same issues raised in its initial Rule 59 motion and the trial court did not have jurisdiction to rule on the second Rule 59 Motion?

The Petitioner contends that a motion under Rule 50(e) is the functional equivalent of a motion under Rule 59. If this were not so, a losing party could file a Rule 50 motion within ten days and upon losing that motion then file a Rule 59 motion within ten days. The Court of Appeals has ruled such a motion is not proper. "IGT's second post-trial motion was not an appropriate Rule 59(e) motion; instead it was simply a successive motion for JNOV

and new trial. For the reasons set forth in Coward Hund and Quality Trailer, the second post-trial motion did not toll the time for serving the notice of appeal.' *Collins Music Co. v. IGT*, 353 S.C. 559, 566, 579 S.E.2d 524, 527 (Ct. App. 2002). The trial court thus did not have jurisdiction to entertain a second motion.

CONCLUSION

For the foregoing reasons and the reasons in the opening Petition for Writ of Certiorari, this Court should grant the petition and reverse the decision of the South Carolina Court of Appeals.



August 28, 2015

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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on August 28, 2015, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Reply to Return to Petition for Writ of Certiorari in the above case addressed to Michael F. Mullinax, P.O. Box 2665, Anderson, South Carolina, 29622, and to the SC Court of Appeals, P.O. Box 11629, Columbia, South Carolina.

SWORN to and Subscribed

before me this 28 day

of August, 2015.

Mary Jane Harter (L.S.)
Notary Public for South Carolina
My Commission expires: 11/30/22

Sandy Traynham