

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

R. Lawton McIntosh, Circuit Court Judge

**RECEIVED**

SEP 09 2015

SC Court of Appeals

---

Circuit Court Civil Action No: 2012-CP-04-00041  
Appellate Case No: 2013-001518

---

Harold P. Threlkeld d/b/a Harold P. Threlkeld, Attorney at Law .....Plaintiff,

v.

Lyman Warehouse, LLC, Lyman Pacific, LLC, Mills Demolition,  
LLC, Susan C. Stanley, Peter M. Stanley and Donald J. McWhirter.....Defendants

Of Whom Lyman Warehouse, LLC is the .....Appellant,

Of Whom Donald J. McWhirter is the..... Respondent.

---

**RETURN TO PETITION FOR REHEARING**

---

J. Christopher Pracht  
THOMASON & PRACHT  
P.O. Box 4025  
Anderson, South Carolina 29622  
Telephone: 864-226-7222  
*Attorneys for the Respondent, McWhirter*

Peter D. Protopapas  
RIKARD & PROTOPAPAS, LLC  
Email: [pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)  
1329 Blanding Street  
Post Office Box 5640 (29250)  
Columbia, South Carolina 29201  
Telephone: 803.978.6111  
Facsimile: 803.978.6112  
*Attorneys for Respondent, McWhirter*

September 9, 2015

## INTRODUCTION

Pursuant to Rules 221 and 240, Respondent McWhirter files this Return to the Petitioner for Rehearing filed by Appellant Lyman Warehouse, LLC. Respectfully, the Court of Appeals did not overlook or misapprehend any matter in affirming the Trial Court Order that Respondent McWhirter is entitled to the return of his funds. Respectfully, the Petition for Rehearing should be denied.

## ARGUMENT

None of the three issues raised by the Appellant point to where this Court overlooked or misapprehended any issue when it issued its Opinion.

### I. THIS COURT PROPERLY AFFIRMED THAT THE RELEASE DRAFTED BY THE APPELLANT SHOULD BE ENFORCED AGAINST THE APPELLANT

As it pertains to the effect of the release, the Court properly cited to *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 649 S.E.2d 494 (Ct. App. 2007) for its holding that releases are mere contracts with contract principles of law. The Court could have pointed to a number of other cases to the same effect. *Bowers v. Dept. of Transp.*, 360 S.C. 149, 156, 600 S.E.2d 543, 546 (Ct. App. 2004) (“In construing [a] release, the court must seek to ascertain and give effect to the intention of the parties.”); *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 428, 626 S.E.2d 19, 22-23 (Ct. App. 2005) (A release is a contract, and the scope of a release is gathered by its terms). Here, the Trial Court found that the release itself reveals the parties' intent: “It being the specific intent of the releasing Parties ...” Lyman Warehouse released all claims to the earnest money in exchange for \$27,500. See ROA 280 DLW Exhibit 5 pp. 4-6.

Furthermore, this Court's Opinion properly pointed to the body of case law finding that the drafter of the document bears responsibility for its verbiage. See *Myrtle Beach Lumber, Co. v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423, 426 (1981). The Release was drafted by the counsel for Appellant Lyman Warehouse on behalf of his client with the knowledge that Respondent McWhirter had a claim to the money in escrow. See ROA 289 DLW Exhibit 7; ROA 105—106 Tr. 38-39 ll 22-7.

Finally, Appellant is incorrect in its analysis of the law when it states: "Respondent does not have standing to assert the terms of the release or rely on that agreement to advance his claims." In *Bowers v. Dept. of Transp.*, the Court of Appeals allowed a non-signatory to a release to enforce its terms: "This language is a clear, explicit, and unequivocal indication of the parties' intent that *all* claims arising from the accident-now and in the future-are barred under the terms of the Release." *Bowers v. Dep't of Transp.*, 360 S.C. 149, 154, 600 S.E.2d 543, 545-46 (Ct. App. 2004). Respectfully, no matter was overlooked or misapprehended.

## **II. THE RELEASE IS DISPOSTIVE OF THE APPELLANT'S ARGUMENT CONCERNING THE CONTRACT AND PROOF OF DAMAGES ARGUMENT**

This Court properly held that there is no need to address any argument regarding damages because the release that Appellant prepared and signed did away with any rights it had under the Contract. Appellant misses the point entirely when Appellant argues that it's "contractually allocated liquidated damages in this case would merely serve to reduce Appellant's proven actual damages." Petition at p. 5. There is no contract claim because any contract claim was released. Respectfully, the Court of Appeals has not misapprehended nor overlooked the issue but rather ruled correctly.

**III. NO MISAPREHENSION OR OTHER MATTER WAS OVERLOOKED  
WHEN THE COURT CONSIDERED THE ISSUE OF UNJUST  
ENRICHMENT**

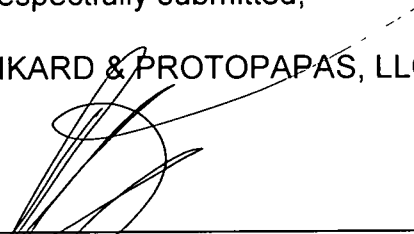
The Court properly cited to *JASDIP Properties SC, LLC v. Estate of Richardson*, 395 S.C. 633, 640, 720 S.E.2d 485, 488 (Ct. App. 2011) and *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 633, 720 S.E.2d 485 (Ct. App. 2011) to affirm the Trial Court's unjust enrichment analysis. Furthermore, the Trial Court properly held Lyman Warehouse did not suffer any damages by selling the Property for \$1,475,000.00; which is greater than the Lyman Warehouse and Lyman Pacific contract of \$1,300,000.00. See ROA 306 DM Exhibit 12 at paragraph 2.

**CONCLUSION**

Respectfully, this Court reached the correct conclusion when it affirmed the Trial Court's Order that Respondent McWhirter is entitled to his money back.

Respectfully submitted,

RIKARD & PROTOPAPAS, LLC



---

Peter D. Protopapas  
1329 Blanding Street (29201)  
P.O. Box 5640  
Columbia, SC 29250  
PH: 803-978-6111  
FAX: 803-978-6112  
EMAIL: [pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

R. Lawton McIntosh, Circuit Court Judge

**RECEIVED**  
SEP 09 2015  
SC Court of Appeals

---

Circuit Court Civil Action No: 2012-CP-04-00041  
Appellate Case No: 2013-001518

---

Harold P. Threlkeld d/b/a Harold P. Threlkeld, Attorney at Law .....Plaintiff,

v.

Lyman Warehouse, LLC, Lyman Pacific, LLC, Mills Demolition,  
LLC, Susan C. Stanley, Peter M. Stanley and Donald J. McWhirter.....Defendants

Of Whom Lyman Warehouse, LLC is the .....Appellant,

Of Whom Donald J. McWhirter is the..... Respondent.

---

**PROOF OF SERVICE**

---

I certify that a true and correct copy of Respondent's Return to Petition for Rehearing has been served upon all parties involved on the 9<sup>th</sup> day of September 2015, by mailing same by regular US Mail to:

Harold P. Threlkeld, 213 E Calhoun St, Anderson, SC 29621  
Fax 864-226-1685; [hptatty@bellsouth.net](mailto:hptatty@bellsouth.net); Attorney for Plaintiff

J. Calhoun Pruitt, Jr., 101 N Murray Avenue, Anderson, SC 29625  
Fax: 864-224-8711; [calhoun@pruittandpruitt.com](mailto:calhoun@pruittandpruitt.com); Attorney for Defendant/Respondent, Lyman Warehouse

and to parties without counsel to their last known address:

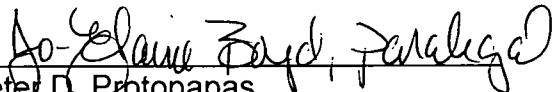
Peter Stanley, 155 River Place, Suite 202, Greenville, SC 29601

Susan Stanley, 155 River Place, Suite 202, Greenville, SC 29601

Mills Demolition, 155 River Place, Suite 202, Greenville, SC 29601

Lyman Pacific, 155 River Place, Suite 202, Greenville, SC 29601

RIKARD & PROTOPAPAS, LLC

*for*   
Peter D. Protopapas  
1329 Blanding Street (29201)  
P.O. Box 5640  
Columbia, SC 29250  
PH: 803-978-6111  
FAX: 803-978-6112  
EMAIL: [pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)



1329 Blanding Street  
Columbia, SC 29201

Post Office Box 5640  
Columbia, SC 29250

tel: 803.978.6111  
fax: 803.978.6112  
web: rlegalgroup.com

## Rikard & Protopapas, LLC

Attorneys and Counselors at Law

ROBERT G. RIKARD  
rgr@rlegalgroup.com

PETER D. PROTOPAPAS  
pdp@rlegalgroup.com

ALLYSON C. RIKARD  
acarbaugh@rlegalgroup.com

CHARLES E. USRY  
cusry@rlegalgroup.com

RECEIVED

SEP 09 2015

SC Court of Appeals

September 9, 2015

### Via Hand Delivery

Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Harold P. Threlkeld d/b/a Harold P. Threlkeld Attorney at Law vs. Lyman Warehouse, LLC, Lyman Pacific, LLC, Mills Demolition, LLC, Susan C. Stanley, Peter M. Stanley, and Donald J. McWhirter  
Appellate Case No: 2013-001518

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Respondent's Return to Petition for Rehearing along with the original and one copy of the Proof of Service on opposing counsel. Please file the originals and return a clocked copy of each to our courier. Thank you for your assistance.

Best regards,

Peter D. Protopapas

PDP/jb  
Encls.

cc: J. Calhoun Pruitt, Esq.