

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM DARLINTON COUNTY **S.C. Supreme Court**  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Opinion No. 2015-UP-402

Case No.2013-002356

Fritz Allen Timmons

*Petitioner*  
~~Appellant.~~

v.

SCESC and Browns a/s RV and Campers

Respondent

APPENDIX

Attorney for Respondents

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30049 Hwy 151,  
McBee. SC 29101  
(Abandoned)

Fritz A. Timmons, Pro Se  
P. O. Box 367  
Hartsville, SC 29551

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DARLINTON COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

\_\_\_\_\_

Case No.2013-002356

\_\_\_\_\_

Fritz Allen Timmons

Appellant.

v.

SCESC and Browns a/s RV and Campers

Respondent

\_\_\_\_\_

RECORD ON APPEAL

\_\_\_\_\_

Fritz A. Timmons Pro Se  
P. O. Box 367  
Hartsville, SC 29551

Derrick McFarland  
P. O. Box 8597  
Columbia, SC 29202  
Attorney for Respondent

Browns A/S RV and  
Campers, Inc. (Pro Se)  
30049 Hwy 151  
McBee SC 29101

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STATE OF SOUTH CAROLINA  
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS

62

4

Fritz Immens  
PLAINTIFF(S)

ORDER

C.A. NO. 09 CP-16 540

-VS  
Brown's A/S RV's et al  
DEFENDANT(S)

I. IT IS ORDERED THAT THE BELOW MOTION (S) BE STRUCK FROM THE ACTIVE MOTION CALENDAR FOR THE FOLLOWING REASON:

1. PLAINTIFF (S) MOTION \_\_\_\_\_

HEARD ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
S.C.C.S.C.

2. DEFENDANT(S) MOTION to dismiss

HEARD ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

3. RULINGS OF THE ABOVE MOTION(S) Has Been Denied. SCESC did not appear, was present.

2009 NOV -4 PM 1:33  
KOTT B SUGGS  
CLERK OF COURT  
DARLINGTON COUNTY, S.C.

FILED

4. OTHER \_\_\_\_\_

II. IT IS ORDERED THAT THE WITHIN ENTITLED CASE / MOTION (S) RULE BE:

1. TRANSFERRED TO THE JURY/ NON JURY CALENDAR \_\_\_\_\_

2. REFERRED TO SPECIAL REFEREE \_\_\_\_\_

3. CONTINUED UPON REQUEST OF PLAINTIFF AND/OR DEFENDANT BEYOND THE \_\_\_\_\_  
TERM . REASON FOR CONTINUANCE: \_\_\_\_\_

4. OTHER: \_\_\_\_\_

DARLINGTON, S.C.

Nov. 4 2009

PRESIDING JUDGE

[Signature]

11/5/09

STATE OF SOUTH CAROLINA  
COUNTY OF DARLINGTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2009CP1600540

FILED

2011 MAY 25 PH 3:42

CLERK OF COURT  
DARLINGTON COUNTY, S.C.

**Fritz Timmons vs. Browns A/s Rv's Etal**

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

*On Motion Under Adversement.*

Dated at Darlington, South Carolina, this .

Court Reporter:



**PRESIDING JUDGE - THE HONORABLE PAUL M. BURCH**

This judgment was entered on the MAY 25, 2011, and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Pro Se Fritz Timmons P O Box 367 Hartsville, SC 295500000

Pro Se Brown's A/s 30049 Hwy 151 McBee, SC 291010000

Romi Yolanda Robinson SC Dept. of Employment & Workforce P.O. Box 995 Columbia, SC 29202  
Rv's & Campers Inc Etal , 000000000

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

TRUE CERTIFIED COPY,

*Scott B. Suggs*  
CLERK OF COURT/BAC  
DARLINGTON COUNTY, SC

286

IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-16-0546

Fritz Timmons  
Petitioner

SCESC and Browns A/SRV  
and Campers, Inc.  
Respondent(s)

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRP (Vol. Non-suit);  Rule 43(k), SCRPC (Settled);  Other - \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  Other - \_\_\_\_\_

SEP 11 11 08 AM '13  
CLERK OF COURT  
DARLINGTON COUNTY, SC

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

*Petitioner's motion to amend is denied based on case of Purple v. Buller's Transport (381 SE2d 731). Note: This order replaces original order which was signed in May 2011 and was lost in mailing.*

Dated at Darlington, South Carolina, this 6th day of September, 2013.  
[Signature]  
PRESIDING JUDGE

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and a copy mailed first class this day of \_\_\_\_\_, \_\_\_\_\_, to attorneys of record or to parties (when appearing pro se) as follows:

Fritz Timmons, pro se.

Roni Yolanda Robinson  
at ESC.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

TRUE CERTIFIED  
CLERK OF COURT  
DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA  
COUNTY OF DARLINGTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2009CP1600540

**Fritz Timmons vs. Browns A/S RV And Campers Inc**

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;  Reversed;  Remanded;
  - Other: \_\_\_\_\_

2013 OCT -18 PM 4:09  
 FILED  
 SCOTT B. SUGGS  
 CLERK OF COURT/RMC  
 DARLINGTON COUNTY, S.C.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

*Appeal from decision of SCSA denied. Court affirms Agency finding of Voluntary quit per 41-35-120 (1). Also, Dated at Darlington, South Carolina, this failure to properly file appeal.*

Court Reporter: **Bonnie H. Kelly**

PRESIDING JUDGE - J. Michael Baxley 2013

This judgment was entered on the 7th day of October, 2013, and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Fritz Timmons Pro se P O Box 367 Hartsville, SC 29550-0000

Browns A/S RV And Campers Inc Pro Se 30049 Hwy 151 Mcbee, SC 29101-0000  
Romi Yolanda Robinson PO Box 995 Columbia,

TRUE CERTIFIED COPY.

CLERK OF COURT/RMC  
 DARLINGTON COUNTY, S.C.

CPFORM4M  
SCCA SCRPC Form 4 Revised 06/2008

SC 29202

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Scott B. Suggs - Clerk of Court

CPFORM4M  
SOCA SCRCP Form 4 Revised 06/2008

TRUE CERTIFIED COPY,  
*Scott B. Suggs*  
CLERK OF COURT/RMC  
DARLINGTON COUNTY, SC.

**July 2, 2009**

**SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION  
Columbia, South Carolina**

**LETTER OF TRANSMITTAL OF COMMISSION DECISION**

Attached is a copy of the Commission Decision in your case. If you have questions about the effect of the decision, you may consult an agency representative at the local Employment Security Commission Office or at the Benefits Division at the Central Office in Columbia, S.C.

If you wish to obtain judicial review of the decision, you must comply with the requirements of S.C. Code Ann. §41-35-750 and Rule 74, South Carolina Rules of Civil Procedure.

The law requires that a Petition for Judicial Review must be filed and served within thirty (30) days after the agency's final decision (**see the mailing date above**).

The Petition must be filed in the Court of Common Pleas of the county in South Carolina where the claimant resides or last worked. The Commission and any other party in the case must be named as defendants in the action and must be served with a clocked-in copy of the Petition for Judicial Review at the following address:

**Legal Department  
South Carolina Employment Security Commission  
Post Office Box 995  
Columbia, SC 29202**

The Clerk of Court may require a filing fee. For assistance or guidance in filing an appeal to circuit court, you should consult an attorney licensed to practice in South Carolina.

Form App-115  
Rev. 8/25/06

TRUE CERTIFIED COPY,  
*Scott B. Suggs*  
CLERK OF COURT/RMC  
DARLINGTON COUNTY, SC

SCOTT B. SUGGS  
CLERK OF COURT/R.M.C.  
DARLINGTON COUNTY, S.C.

2009 AUG 26 AM 9:44

FILED

Decision No: 09-C- 1233  
Appeal No: 06675-090951

**SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION**  
**Columbia, South Carolina**

IN THE MATTER OF THE CLAIM OF:

Fritz Timmons )  
P.O. Box 367 )  
Hartsville, SC 29550 )  
Claimant SSN: 308-70-5327 )  
Browns A/S Rvs & Campers, Inc. )  
30049 Hwy 151 )  
McBee, SC 29101 )  
Liable Employer )

**BEFORE THE**  
**COMMISSION**

SCOTT B. SUGGS  
CLERK OF COURT/RMC  
DARLINGTON COUNTY, S.C.

2009 AUG 26 AM 9:44

FILED

Appellant: Claimant

The claimant appealed to the Commission from Appeal Tribunal Decision Number 2009-A-6453 holding the claimant indefinitely disqualified from benefits effective March 15, 2009, upon a finding the claimant voluntarily quit without good cause connected with the work. This decision affirmed the claims adjudicator's determination.

The Commission notified the parties of its hearing to consider this appeal.

**DECISION**

The Appeal Tribunal decision is affirmed. The claimant is indefinitely disqualified from benefits effective March 15, 2009, for having voluntarily quit without good cause connected with the work.

The claimant worked for the employer from June 1998, through March 4, 2009, most recently as a technician. The claimant testified that he and his employer could not agree to a change in the terms of his employment. The claimant stated that his employer proposed a change in the pay scale from \$13 per hour to \$18 per hour depending upon the length of the job. The claimant submitted a list of conditions to the employer. The employer did not accept the majority of them. The claimant quit instead of accepting the new pay scale.

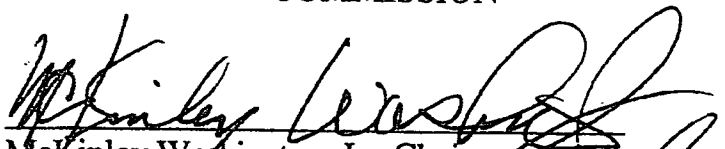
TRUE CERTIFIED COPY,  
*Scott B. Suggs*  
CLERK OF COURT/RMC  
DARLINGTON COUNTY, SC

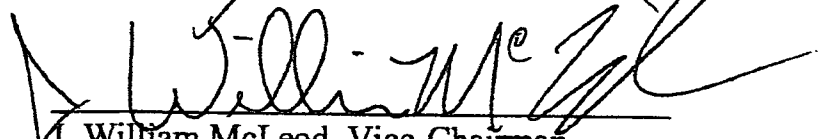
The employer's general manager testified that the new pay scale was more of an incentive than a pay decrease. He asserted that his employees were actually earning more under the new scale. He provided his employees three weeks notice of the change but would not agree to all of the claimant's terms.

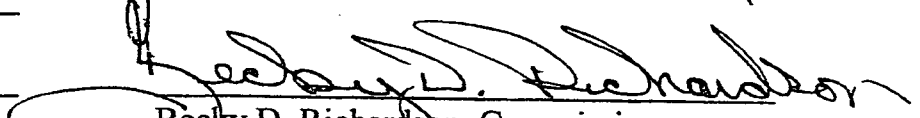
Section 41-35-120 (1) provides for an indefinite disqualification from benefits if a claimant is found to have voluntarily quit without good cause attributable to the work. The disqualification continues until the claimant returns to work and earns eight times his/her weekly benefit amount.

We find that the claimant quit because he did not want to accept a change to a flat rate of pay. However, the general manager testified that the claimant would not have made less money and had the opportunity to earn more. Further, the change was not so substantial as to justify the claimant's quitting his employment. Therefore, the Appeal Tribunal decision is affirmed. The claimant is indefinitely disqualified from benefits effective March 15, 2009, for having voluntarily quit without good cause connected with the work.

SOUTH CAROLINA EMPLOYMENT  
SECURITY COMMISSION

  
McKinley Washington, Jr., Chairman

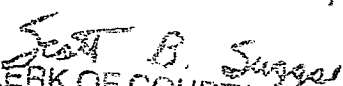
  
J. William McLeod, Vice-Chairman

  
Becky D. Richardson, Commissioner

Hearing Date: 7-1-09

Date Mailed: 7-2-09

Mailed By: \_\_\_\_\_

TRUE CERTIFIED COPY,  
  
CLERK OF COURT/RMC  
DARLINGTON COUNTY, SC

1 why you believe their decision is wrong. And then we'll  
2 take it from there.

3 A Okay. They informed me that they denied my benefits  
4 because I quit without cause.

5 Well, what happened is Browns RVs decided to change  
6 the way they pay their RV technician's, from a hourly pay  
7 to a commission-based pay; and -- in which if you did not  
8 agree to the new way they pay it, then you no longer work  
9 for them.

10 So under Title 41 -- states that employment is a  
11 contract, written or oral, and by terminating the contract  
12 -- which I was under for hourly -- to work by commission;  
13 therefore, I was terminated and I did not quit.

14 Q And did you have a written contract, Mr. Timmons?

15 A For?

16 Q For your hourly wage?

17 A (No audible response.)

18 Q In other words, did you work for them pursuant to a  
19 written document that was a contract between y'all, or was  
20 this a spoken agreement?

21 A It was both. Now, during the -- the pay raise, you  
22 had to sign a paper saying that you're getting a pay raise  
23 and stuff. I don't know if that would be considered part  
24 of the contract or not.

25 Q All right, sir. And do you have anything else you

1 wish to tell me?

2 A But the part that -- you'd have to sign the contract  
3 when they changed over to the commission part, which  
4 clearly stated that they do not pay overtime, which is a  
5 clear violation of federal law. And which they're not  
6 immune to that like an automotive mechanic would be,  
7 because RV technicians also include carpenters,  
8 electricians, plumbing, and all that.

9 So I basically was terminated and not fired.

10 Q All right. Were there other persons that were  
11 similarly situated to you, or -- or were you the only  
12 person who left employment when this decision to go to  
13 commission rate of pay was decided?

14 A I was the only one that refused the new terms. The  
15 other ones stayed.

16 Q All right, sir.

17 A I guess afraid of not finding another job and stuff.

18 Q All right, sir. I'll let you -- and tell me again,  
19 are -- are you working elsewhere? Where -- where are you  
20 working now?

21 A I'm self-employed right now.

22 THE COURT: All right, sir. I'm going to let you be  
23 seated. Let me -- let me review what -- what we have, and  
24 I'll be back with you in just a moment.

25 MR. TIMMONS: Okay.

1 (Mr. Timmons complies.)

2 (Brief pause.)

3 THE COURT: All right. Just one moment, please.

4 (Brief pause continues.)

5 THE COURT: All right. Mr. Timmons, I'm -- I'm  
6 prepared to rule.

7 I realize that you tell me you were dissatisfied with  
8 the decision the -- made by the company, to change their  
9 rate of pay from an hourly rate to a new -- they call it  
10 "incentive plan" -- but to a commission-based setting.

11 South Carolina law says that an employment contract,  
12 unless it is a actual written contract, is a -- South  
13 Carolina is an at-will employment. That is, if you work  
14 for someone, you're at-will unless you have a written  
15 contract of employment, with specific and definite terms;  
16 and you've not produced one of those today.

17 The Commission found that you could actually have made  
18 more money -- this is their finding -- had you worked  
19 under the new incentive plan.

20 You advised me that no one else quit, but that you  
21 did. It's unfortunate, because you'd been working there  
22 almost 11 years, I think, at the time.

23 But I do not find any basis to set aside the decision  
24 of the Commission, because I do find that you did  
25 voluntarily quit because you refused to accept the new

1 employment terms. And as an at-will employer, and you  
2 being an at-will employee, the company had the right to do  
3 that.

4 I don't find a violation of federal law, which you  
5 have talked about, for overtime -- failure to pay  
6 overtime; nor do I find any other violation of state law.

7 And I'm going to respectfully deny your appeal, Mr.  
8 Timmons. And that is the decision of the Court.

9 Now, of course, you have the right to appeal this as  
10 well. I'll let you discuss that with an attorney, but I  
11 don't find any basis to set aside the ruling of the  
12 Commission.

13 All right, sir. Have a good day.

14

15 -- END OF TRANSCRIPT RECORD --

1 HEARING OFFICER: And March the 4<sup>th</sup>, was your last day? Is that correct?

2 CLAIMANT: Yes.

3 HEARING OFFICER: On March 4, 2009, did you voluntarily quit your job or  
4 were you discharged?

5 CLAIMANT: I was discharged.

6 HEARING OFFICER: Who discharged you?

7 CLAIMANT: I was no longer paid my salary.

8 HEARING OFFICER: Okay. Did someone tell you that you were discharged?

9 CLAIMANT: They said [UNCLEAR] when they changed the  
10 flat rate, hourly pay would no longer be paid.

11 HEARING OFFICER: Okay. But did they tell you that you were being  
12 discharged or that they were just changing your pay?

13 CLAIMANT: They said they was changing the flat rate from  
14 hourly over to flat rate and which I would not accept their flat rate under the  
15 conditions, and they refused to accept my terms in order for me to continue to  
16 work there under the flat rate.

17 HEARING OFFICER: Again, my question, Mr. Timmons, did you...were you  
18 told that you were being discharged or did you leave because of the change in the  
19 conditions?

20 CLAIMANT: Well, I was no longer being paid.

21 HEARING OFFICER: But you're not answering my question. Did you leave  
22 because they changed the pay or did...were you told that because you would not  
23 accept the conditions, that you were being discharged from your job?

1 CLAIMANT: According to the job, which that was their...just a  
2 reference to how much time they give per work job.

3 HEARING OFFICER: All right.

4 CLAIMANT: So, in other words, a job says it takes one hour to  
5 do, if you do it in a half hour, you still get paid for one hour.

6 HEARING OFFICER: So if it takes you 30 minutes, you're still going to get 18  
7 dollars.

8 CLAIMANT: If it takes you ten hours to do that one hour job,  
9 you only get paid for one hour.

10 HEARING OFFICER: So it depends on how long it takes you, yourself, to  
11 complete that job, correct?

12 CLAIMANT: Right.

13 HEARING OFFICER: Mr. Brown, do you have any objection to us entering that  
14 document into the record?

15 EMPLOYER WITNESS -1: Under the current information that he's presented,  
16 yes, I do. This, first of all, is probably at least ten years old, this information, or  
17 thereabout. I couldn't tell you the exact date [UNCLEAR], but somewhere in that  
18 time frame. This is not what we charge customers. Keystone [UNCLEAR]  
19 established their own flat rate for jobs, repairs being done. We only use those flat  
20 rates when there's more than one job. But we, we also use, primarily, the RVIA,  
21 which is Recreational Vehicle Industry Association's flat rate manual, and that's  
22 generally what we normally use. That's established by the industry.

23 HEARING OFFICER: So this, you don't use this at all?

24 EMPLOYER WITNESS -1: No, we [UNCLEAR] document [UNCLEAR].

- 1 HEARING OFFICER: The handwritten at the bottom of the page is yours?
- 2 CLAIMANT: Correct.
- 3 HEARING OFFICER: But the notes by each specific item?
- 4 CLAIMANT: Not mine.
- 5 HEARING OFFICER: That came from the company?
- 6 CLAIMANT: Correct.
- 7 HEARING OFFICER: Okay. Mr. Brown, do you have any objection to us  
8 entering that document into the record? Sir?
- 9 EMPLOYER WITNESS -1: No, ma'am, I don't.
- 10 HEARING OFFICER: Okay. Then without objection, I will enter it as Claimant  
11 Exhibit One. It is a two page typewritten document with notations to the left, in  
12 the left margin, written by the employer. The bottom handwritten information is  
13 by the claimant. After the negotiation, Mr. Timmons, between yourself and Mr.  
14 Brown or the company, it appears that they agreed to some of your terms and some  
15 they did not, correct?
- 16 CLAIMANT: Most, they didn't.
- 17 HEARING OFFICER: Okay. What, what was the final decision making...let  
18 me rephrase that. What was the final thing that happened that made you decide  
19 that you could no longer be employed at Brown's RV?
- 20 CLAIMANT: That I would not work off the clock.
- 21 HEARING OFFICER: When you say, "work off the clock"...

- 1 EMPLOYER WITNESS -1: Keystone is a company that makes [UNCLEAR]  
2 products, [UNCLEAR] travel trailers. If it's a Winnebago brand product, we  
3 would go by their flat rate manual. If it's a Damon Motor Coach, it would go by  
4 theirs. And [UNCLEAR] whoever the manufacturer is, they all have their own  
5 codes.
- 6 HEARING OFFICER: So each company has a code and this is just a, a reference  
7 as to what Keystone would use?
- 8 EMPLOYER WITNESS -1: Yes, yes, exactly. And again, I'm not sure the  
9 adequate [UNCLEAR] currently. I think it's rather old.
- 10 HEARING OFFICER: But this is just an example of...
- 11 EMPLOYER WITNESS -1: It's an example, yes, ma'am.
- 12 HEARING OFFICER: ...of time, such as roof molding should take 12 minutes  
13 and the flat rate is 20 cents. Is that...am I reading that correctly? I just want to  
14 make sure I'm reading it correct. Right here, roof molding repair, each, 12  
15 minutes.
- 16 EMPLOYER WITNESS -1: Yeah, that's .20 hours is what they're saying,  
17 which is 12 minutes. And that time would go in at their...it's 18 dollars an hour at  
18 .20 hours.
- 19 HEARING OFFICER: Okay, okay. Thank you.
- 20 EMPLOYER WITNESS -1: Yes, ma'am.
- 21 HEARING OFFICER: Do you have any objection to us entering this just as a  
22 point of reference?
- 23 EMPLOYER WITNESS -1: That's fine, yes.

Name \_\_\_\_\_

Rate \_\_\_\_\_

EXHIBIT

C#: 2

-20-

FILE NO: 0906675

Flat Rate will start on March 5<sup>th</sup>, 2009.

You are responsible for turning in all work orders. They will be date stamped when turned in.

You will be paid on tickets from 12:00pm Wednesday to 12:00pm Wednesday.

You are to use one time ticket until it is complete, no matter how many work orders.

Turn in your time ticket(s) by the end of every day. You will be given the pink copy of the time ticket back the next day. It will have the paid hours per job. This is your receipt. Keep it and reconcile it.

You will only be paid on time tickets. There will be nothing added for anything that is not on a ticket. All time tickets must be filled out completely or you will not be paid for this line item. It is your responsibility.

There is no overtime pay.

Set flat rate for moving units, is 15 mins. motorhome, 20 mins. towable. Moving units for a PDI is part of the PDI. There will be no extra time added.

Delivery of campers, and any set-up required will be given a flat rate time prior to leaving Brown's with unit.

Every job has a flat rate time attached to it. If there is no flat rate time there will be an estimated time attached to that job line. If you find that more time is going to be required, approval must be given by the service advisor BEFORE doing the work.

If a job is to be re-done, you have the options of fixing your error at NO PAID TIME to you or allowing another Tech to do the repairs. If another Tech repairs your work you will be charged back ALL time paid to you for this job line. The service advisor has the authority to make the decision on what Tech will make the repairs.

If there is a problem, question it immediately. Don't expect someone else to fix it. This is your responsibility.

No pay for cleaning the shop - ever. You are to clean up after yourself always and to keep the shop area clean.

Your trash needs to be located in a central area for pick up or placed in the back of the truck - (if it is too big for the trash cans).

Do not work on anything at any time without a time ticket and a work order. Do not perform jobs that others ask you to do (ie salesman or customers) without approval from the service advisor. The advisor will need to provide you with a job line for your time ticket.

If you are asked to work on anything without a work order (ie customer phone calls) you will need the time signed by the manager requesting this. This needs to be signed before you will be paid for the service.

All parts will be pulled and staged before the work order is given to the Tech.

Service Advisor will assign all work required. You will work on assigned work.

Thursday, February 12, 2009

EXHIBIT

288

C#: 1

FILE NO: 0906675

- ANY WORK DONE PRIOR TO MARCH 5, 2009, CANNOT BE CONSIDERED OR DEDUCTED AS A 'REDO' JOB.

- IF A TECHNICIAN BELIEVES THAT A FLAT RATE OR ESTIMATED TIME TO BE UNREASONABLE - HE/SHE CAN REFUSE THAT JOB WITHOUT BEING REPRIMANDED.

- EXTRA TIME USED DUE TO DEFECTIVE OR DAMAGED PARTS (EXAMPLE, RUSED OR STRIPPED SCREWS) WILL BE ADDED AS EXTRA TIME AND NOT PART OF FLAT RATE.

- MEMBER OF MANAGEMENT WITH THE AUTHORITY TO MAKE DECISIONS ON WORK PERFORMED WILL BE ON PREMISES AT ALL TIMES.

*Set to let Chris know*

- STANDARD PARTS AND SHOP SUPPLIES WILL BE READILY AVAILABLE SO AS TO NOT DELAY COMPLETING A JOB.

- CLEAN UP OF WORK AREA (FROM JOB) WILL BE PAID AS A JOB AND NOT AS PART OF A JOB.

- TIME WILL BE ADDED TO FLAT RATE TO COVER FOR WRITEUP TIME.

- SALESMEN NOT PERMITTED TO BRING CUSTOMERS INTO UNITS TO SHOW UNIT AND INTERFERE WITH TECH'S WORK ON THAT UNIT.

- PHOTOS, MODEL AND SERIAL NUMBERS WILL BE CONSIDERED AS A JOB, NOT AS PART OF A JOB.

- UNIT MILEAGE AND VIN NUMBERS WILL BE THE SERVICE ADVISER'S RESPONSIBILITY.

*Everybody*

- WORK ORDERS WILL BE WRITTEN SO AS TO INFORM TECH WHAT, WHERE AND WHEN PROBLEM OCCURS. *will the best we can.*

- TECHNICIAN WILL NOT BE PULLED FROM ONE JOB/UNIT TO ANOTHER UNIT, UNLESS JOB/UNIT SCHEDULED AND TECHNICIAN INFORMED PRIOR TO.

*can't promise*

- MINIMUM OF 20 HOUR WEEK GUARANTEED. *up to tech to do the job*

- EXTRA TIME GIVEN ON FLAT RATE DUE TO INADEQUATE, IMPROPER OR LACK OF TOOLS.

- EXTRA TIME GIVEN ON FLAT RATE DUE TO INCORRECT OR DEFECTIVE PARTS.

*specific Holiday & Vacation Terms outlined*

*unit manager decision require AS to he does it im will sign off*

- If deductions made on time ticket or after - Person Responsible for change are to be on premises for discussion of

- Place For Aht - owner/manager for signatures and Their Position Ther of

*Copy For Employees*

- TIME TO BE GIVEN (NOT TO BE CONSIDERED AS "DOWN TIME") FOR WAITING FOR WORK ORDER, INFORMATION OR MANAGEMENT DECISION, WAITING O PARTS PERSONNEL OR SEARCHING FOR VEHICLE KEYS. *this is a team issue, tech must notify Service advisors when they need a new ticket*

- TIME WILL NOT BE DECREASED AFTER CALCULATED ON TICKET..

- ANY DEDUCTION TO PAY CHECK DUE TO CLERICAL ERROR (OVERPAY) WILL NOT BE DEDUCTED UNTIL 2 WEEKS AFTER WRITTEN REASON FOR DEDUCTION. *written reason will be given*

- A JOB/UNIT WILL BE BE SCHEDULED DURING DURING OR THROUGH TECH'S LUNCH HOUR AND IN CASES OF LENGTH JOBS, THE CUSTOMER NEEDS TO BE INFORMED OF TIME INCLUDING LUNCH HOUR. *If the job is close to being done, finish work before leaving for lunch. We will add time that will be cash*

- NO DELIVERY TO BE SCHEDULED WITHIN ONE HOUR OF SHOP CLOSING TIME, UNLESS TECH HAS PRIOR AGREED TO WORK OVER. *We have always had to put our customers first, and work with their schedule. As Always we will attempt to avoid staying late*

1 pg

EXHIBIT

A#: 1

1 UCB-103  
REV. May 2007

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION  
P.O. BOX 995, COLUMBIA, S.C. 29202

FILE NO: 0906675

1 FRITZ A TIMMONS  
1 PO BOX 367  
1 HARTSVILLE SC 29550

DATE OF THIS NOTICE 04/03/09

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER		EFFECTIVE DATE		DISQUALIFICATION ENDS	
FRITZ A TIMMONS				308-70-5327		03/15/09		INDEF	
LO. NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS		
160	I	01	\$ 326.00	\$ 8476.00	\$ 0.00	\$ 8476.00	03/14/10		

DETERMINATION BY CLAIMS ADJUDICATOR ON CLAIM FOR BENEFITS

- 1  You are eligible for benefits from the above effective date.
- 1  You have been disqualified from receiving benefits or have been found to be ineligible for benefits for the following reason(s).

1 YOU LEFT YOUR MOST RECENT BONA FIDE EMPLOYER BECAUSE YOU DID NOT LIKE YOUR WORKING HOURS AND/OR  
 1 PAY. A REVIEW OF THE RECORDS SHOWS NO UNREASONABLE CHANGE IN THE ORIGINAL CONDITIONS OF HIRE.  
 1 YOU LEFT VOLUNTARILY WITHOUT GOOD CAUSE UNDER SOUTH CAROLILNA EMPLOYMENT SECURITY LAW, SECTION  
 1 41-35-120(1). YOU ARE DISQUALIFIED FROM 03/15/09 AND UNTIL YOU RETURN TO WORK AND EARN AT LEAST  
 1 EIGHT TIMES YOUR WEEKLY BENEFIT AMOUNT.

1 LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

MAILING DATE 04/06/2009

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE COMMISSION UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS, INCLUDING WEEKENDS AND HOLIDAYS, FROM THE MAILING DATE SHOWN ABOVE IF THE TENTH DAY FALLS ON A SATURDAY, SUNDAY, OR HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT BUSINESS DAY. YOUR APPEAL MAY BE FILED IN PERSON AT ANY EMPLOYMENT SECURITY OFFICE, OR BY MAIL, ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 995, COLUMBIA, SOUTH CAROLINA 29202. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL EMPLOYMENT SECURITY OFFICE.

EXHIBIT

384

C#: 3

FILE NO: 0906675

KEYSTONE FLAT RATES - QUICK REFERENCE

FLAT RATE	OPERATION
	EXTERIOR
.20	STEP NON SLIP TAPE LOOSE, REPAIR (12 MINUTES)
.40	ADJUST SLIDEOUT - SYNCHRONIZE TRAVEL IN/OUT (24 MINUTES)
.50	ADJUST SLIDEOUT - VERTICAL/HORIZONTAL TRAVEL
.40	SLIDEOUT HYDRAULIC HOSE - TIGHTEN FITTING (6 MINUTES)
.75	EXTERIOR SLIDEOUT TRIMS - REPAIR PER PIECE - SECURE (LOOSE, ETC. MINUTES EACH PIECE)
.20	EXTERIOR CORNER MOLDINGS, FRONT OR REAR (12 MINUTES EACH)
.10	ROOF MOLDINGS (REPAIR EACH 12 MINUTES)
.10	ROOF MOLDINGS (RESEAL EACH 12 MINUTES)
.10	RESEAL ROOF VENT (6 MINUTES)
.10	RESEAL AWNING RAIL (6 MINUTES)
.10	RESEAL FENDERSKIRT OR SECURE FENDERSKIRT (6 MINUTES)
.20	ADJUST ENTRY DOOR (12 MINUTES)
.20	ADJUST SCREEN DOOR OR LATCH (12 MINUTES)
.30	REPLACE ENTRY DOOR FOAM SEAL (18 MINUTES)
.20	REPLACE SCREEN DOOR LATCH - 12 MIN.
.10	REPLACE SCREEN DOOR SLIDER - 6 MINUTES
.30	REPLACE/REPAIR ENTRY DOOR SCREENING MATERIAL - 18 MIN
.20	REPAIR COMPARTMENT DOOR (SMALL OR MED DOOR)
.50	REPLACE COMPT DOOR (SMALL OR MED)
.20	ADJUST COMPT DOOR
.20	R/R COMPT DOOR WEATHER SEAL
.20	R/R COMPT DOOR OR LATCH
1.00	R/R LARGE (GARAGE OR UNDER 5W) COMPT DOOR
.50	ADJ LARGE, GARAGE COMPT DOOR
.10	REPAIR DECAL, LOGO, STRIPE
.10	R/R STRIPE ONLY PER 2 FT OF STRIPE
	INTERIOR
.20	REPAIR BASE CABINET
.20	REPLACE PANEL BASE CABINET
.20	REPAIR BASE CABINET STILE
.50	REPLACE BASE CABINET STILE
.20	REPAIR CABINET DOOR
.20	REPLACE CABINET DOOR
.10	ADJUST CABINET DOOR
.10	R/R CABINET CATCH, HINGE, HANDLE OR KNOB
.10	REPAIR CABINET STRUT
.10	REPLACE CABINET STRUT
.20	REPAIR DINNETTE TABLE
.20	REPLACE DINNETTE TABLE
.10	REPLACE DINNETTE TABLE LEG
.20	REPAIR DINNETTE TABLE LEG BASE
.20	REPLACE DINNETTE TABLE LEG BASE
.20	REPAIR DRAWER
.20	REPLACE DRAWER
.10	ADJUST DRAWER
.10	REPLACE DRAWER CATCH, HANDLE OR KNOB
.20	REPAIR DRAWER GUIDE
.20	REPLACE DRAWER GUIDE
	REPAIR HINGED INTERIOR DOOR

- .50 REPLACE HINGED INTERIOR DOOR
- .10 ADJUST INTERIOR HINGED DOOR
- .10 REPLACE HINGE - INTERIOR DOOR
- .20 REPLACE KNOB INTERIOR DOOR
  
- .20 REPAIR INTERIOR SLIDING DOOR
- .50 REPLACE INTERIOR SLIDING DOOR (THIS WILL APPLY IF YOU HAVE TO  
R/R DOOR TO REPAIR TRACK)
- .10 ADJUST INTERIOR SLIDING DOOR
- .30 REPAIR DOOR TRACK
- .30 REPLACE DOOR TRACK
- .10 REPLACE LATCH OR STRAP
  
- .10 REPAIR WALL BATTEN PER PIECE
- .20 REPLACE WALL BATTEN PER PIECE
- .20 REPLACE BATTEN TAPE PER 8 FT
- .20 REPAIR BORDER PER 8 FT
- .20 REPLACE BORDER PER 8 FT
  
- .10 REPAIR WOOD TRIM/MOLDING PER PIECE
- .20 REPLACE WOOD TRIM/MOLDING PER PIECE
  
- .10 REPAIR WALL PANEL
- 1.00 REPLACE WALL PANEL
  
- .20 REPAIR VENETIAN BLIND
- .20 REPLACE VENETIAN BLIND
- .10 REPLACE HOLD DOWN OR WAND
  
- .20 REPLACE DAY/NIGHT SHADE
- .10 ADJUST DAY/NIGHT SHADE
- .10 REPLACE HOLD DOWN
  
- .20 REPAIR VALANCE
- .30 REPLACE VALANCE
  
- .50 TIGHTEN MOUNTING BOLTS - A/C - DOMETIC
- .50 REPAIR EXTERNAL WIRING - A/C - DOMETIC
- .20 STRAIGHTEN CONDENSER FINS - COMB - DOMETIC
  
- .30 REPAIR EXTERNAL WIRING ATWOOD OR SUBURBAN FURNACE
- .50 REPAIR EXTERNAL WIRING - DOMETIC REFRIGERATOR
  
- .30 REPAIR EXTERNAL WIRING - ATWOOD OR SUBURBAN WATER HEATER
- .50 REPLACE RELIEF VALVE - ATWOOD OR SUBURBAN WATER HEATER
- .50 REPLACE THERMOSTAT - ATWOOD OR SUBURBAN WATER HEATER
- .50 REPLACE ECO TSTAT - ATWOOD OR SUBURBAN WATER HEATER
  
- .10 TIGHTEN LP FITTING (LEAK CHECK AFTER REPAIR .20)
  
- .50 REPAIR EXTERNAL WIRING , TV ANTENNA
- .20 REPAIR MICROWAVE MOUNTING OR TRIM
- .30 REPAIR EXTERNAL WIRING ON LP DETECTOR
- .20 REPAIR FIRE EXTINGUISHER BRACKET
- .50 REPAIR EXTERNAL WIRING FOR RANGE HOOD
- .30 REPAIR SPEAKER WIRING

- .30 REPAIR WIRING STEREO/TAPE/CD PLAYER
- .30 REPAIR WIRING DVD,TV,HOME THEATRE SYSTEM, VCR/VCP
  
- .20 REPAIR 12V RECEPTACLE, 120V RECEPTABLE, 12V OR 120V SWITCH
- .30 REPLACE 12V RECEPTACLE, 120V RECEPTACLE, 12V OR 120V SWITCH
- .20 REPAIR OR REPLACE CLEARANCE OR TAIL LIGHTS
- .10 REPLACE LENS - CLEARANCE OR TAILLIGHT
- .20 REPAIR OR REPLACE PORCH OR HITCH LIGHT
- .10 REPLACE LENS PORCH OR HITCH LIGHT
- .20 REPAIR OR REPLACE SCARE LIGHT
- .10 REPLACE LENS SCARE LIGHT
- .20 \*REPAIR OR REPLACE 12V INTERIOR LIGHT
- .10 \*REPLACE LENS OR GLOBE INTERIOR 12V LIGHT
- \*SAME FOR FLUORESCENT OR 120V INERIOR
- .20 REPAIR MONITOR PANEL
  
- .30 REPAIR BATH SHOWER FAUCET
- .50 REPLACE BATH SHOWER FAUCET
- .30 REPAIR BATH SINK
- .50 REPLACE BATH SINK
- .20 REPAIR BATH OR KITCHEN SINK DRAIN
- .30 REPLACE BATH OR KITCHEN SINK DRAIN
- .20 REPAIR PTRAP BATH OR KITCHEN
- .30 REPLACE PTRAP BATH OR KITCHEN
- .20 REPAIR OUTSIDE SHOWER
- .50 REPLACE OUTSIDE SHOWER
- .50 REMOVE, RESEAL, REINSTALL OUTSIDE SHOWER
- .30 REPAIR KITCHEN FAUCET
- .50 REPLACE KITCHEN FAUCET
- .10 REPAIR WATER PUMP EXTERNAL WIRING
- .20 REPAIR WATER PUMP EXTERNAL PLUMBING
- .30 REPLACE WATER PUMP
  
- .50 REPAIR SHOWER WALLS
- .50 REPAIR SHOWER/TUB DRAIN
- .50 REPAIR SHOWER/TUB PTRAP
- .50 REPAIR SHOWER DOOR
- 1.00 REPLACE SHOWER DOOR
  
- .30 REPAIR EXTERNAL PLUMBING TOILET
- .20 REPAIR TOILET MOUNTING
  
- .10 TIGHTEN LP FITTING (.20 LEAK CHECK WITH REPAIR)
- .10 LP REGULATOR REPAIR
- .10 LP RUBBER HOSE REPAIR

COMMISSIONERS  
J. William McLeod  
Becky D. Richardson  
McKinley Washington, Jr.



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Samuel R. Foster  
803-737-2617

---

631 Hampton Street  
P.O. Box 995  
Columbia, South Carolina 29202  
(803) 737-2666  
FAX (803) 737-0124  
November 16, 2009

The Honorable J. Michael Baxley  
Judge of Fourth Judicial Circuit  
531 East Carolina Avenue  
Hartsville, South Carolina 29550

Re: Fritz Timmons v. Brown's A/S RV's et al.  
Case No.: 2009-CP-16-540

Dear Judge Baxley:

I am writing regarding the Order that I received in the above referenced case. The Order, dated November 4, 2009, denied the Employment Security Commission's Motion to Dismiss and indicated that the Commission failed to appear at the hearing. This Order was the first notification I had that a hearing had been scheduled. My assistant contacted the Clerk of Court's office this morning and was informed by Cynthia that notice was sent to the employer but not to the Commission. Thus, I am asking that the Order be rescinded and a hearing scheduled on the Motion at a later date with notice to the Commission.

With kind regards, I am

Sincerely,

Romi Y. Robinson  
Attorney for SCESC

cc: Fritz Timmons  
PO Box 367  
Hartsville, SC 29550

Brown's A/S RV's  
30049 Highway 151  
McBee, SC 29101

COMMISSIONERS  
J. William McLeod  
Becky D. Richardson  
McKinley Washington, Jr.

INTERIM EXECUTIVE DIRECTOR  
Samuel R. Foster  
803-737-2617



-29-  
Your  
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631 Hampton Street  
P.O. Box 995  
Columbia, South Carolina 29202  
(803) 737-2666  
FAX (803) 737-0124  
January 6, 2010

Fritz Timmons  
Post Office Box 367  
Hartsville, SC 29550

Re: Case Number 2009-CP-16-0540  
Fritz Timmons v. SC Employment Security Commission  
and Browns a/s RV & Campers

Dear Mr. Timmons:

The Motion to Dismiss in the above referenced case is scheduled to be heard on January 20, 2010 at 2:00 before Judge Paul M. Burch.

If you have any questions, please contact the Darlington County Clerk of Court's office.

With kind regards, I am

Sincerely Yours,

Kristi Chesley  
Administrative Legal Assistant for  
Romi Y. Robinson  
Staff Attorney

NOTICE OF MOTION SCHEDULING

April 21, 2011



**Motion "MAMNMO - MOTION TO AMEND" for Case:  
2009CP1600540 - Fritz Timmons VS Browns A/s Rv's Etal, defendant,  
et al has been added to the following Motions Roster:**

**1 - Motion Roster May 25, 2011 @ 10:00 AM**

**The hearing of this motion has been scheduled for Wednesday, May 25,  
2011 at 12:00 am.**

The case referenced in this email is scheduled on the Docket. The Docket is available at <http://publicindex.sccourts.org/darlington/courtrosters/>. If your case is settled, please notify us in writing immediately. If you have any communication regarding this case, please do NOT call this office.

Please send it in writing, via fax or e-mail at the following address: [clerk@darosc.com](mailto:clerk@darosc.com) and [timmmons@darosc.com](mailto:timmmons@darosc.com).

Mail Notice To:

Pro Se Fritz Timmons  
P O Box 367  
Hartsville, SC 295500000

Court Info:

Common Pleas  
1 Public Square, Rm B-4  
Darlington, SC 29532-9532

**If you have any questions regarding the scheduling of this motion, please contact the courts at:**

**(843)398-4330**

Respectfully,

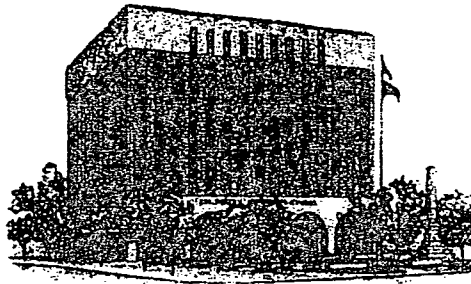
Scott B. Suggs  
Clerk of Court

**COUNTY OF DARLINGTON**  
**OFFICE OF THE CLERK OF COURT**

-31-

**SCOTT B. SUGGS**  
CLERK OF COURT

**JONNA CARTER**  
CHIEF DEPUTY CLERK



*Darlington County Courthouse  
Darlington, South Carolina*

**JENNIFER SANDERS**  
DEPUTY CLERK  
COMMON PLEAS

**SAMANTHA SCOTT**  
DEPUTY CLERK  
FAMILY COURT

January 23, 2013

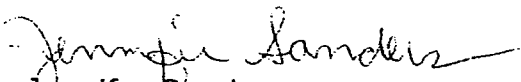
Mr. Fritz Timmons  
Post Office Box 367  
Hartsville, South Carolina 29550

RE: 2009-CP-16-540 Fritz Timmons v. Brown's A/S RV and Campers, Inc.

Mr. Timmons,

In reviewing your case, I see that there was an order dated May 25, 2011 stating a motion was under advisement signed by Judge Burch. No activity has taken place since that time. Please notify me regarding the status of this case.

Thank you,

  
Jennifer Sanders  
Deputy Clerk of Common Pleas Court

ONE PUBLIC SQUARE ROOM B4 • DARLINGTON, SOUTH CAROLINA 29532  
POST OFFICE BOX 1177 • DARLINGTON, SOUTH CAROLINA 29540  
843-398-4330 • CLERK OF COURT  
843-398-4333 • FAMILY COURT

NOTICE OF CASE SCHEDULING

September 10, 2013



**Case 2009CP1600540 - Fritz Timmons VS Browns RVs and Campbers Inc , defendant, et al has been added to the following Court Roster:**

**Roster ID: 53 - COMMON PLEAS NON JURY October 7, 2013 @ 9:30 a.m. Judge Baxley**

This case has been assigned as priority 1 of 18 cases scheduled for the court period of 10/7/2013 through 10/10/2013

The case referenced in this email is scheduled on the Non Jury Roster. Roster meeting will begin at 9:30 a.m. The Docket is available at <http://publicindex.sccourts.org/darlington/courtrosters/>. ALL cases on this Roster are subject to trial.

Any request for a continuance is considered a Motion and requires a \$25.00 Motion fee, which must be paid at the time of the request. Requests may be submitted to the presiding judge. If your case is settled, please notify Jennifer Sanders, Deputy Clerk.

Please send it in writing, via fax or e-mail at the following address: [jsanders@darlcosc.com](mailto:jsanders@darlcosc.com)

Mail Notice To:

Fritz Timmons Pro se  
P O Box 367  
Hartsville, SC 295500000

Court Info:

Common Pleas  
1 Public Square, Rm B-4  
Darlington, SC 29532-9532

**If you have any questions regarding the scheduling of this case, please contact the courts at:**

**(843)398-4330**

Respectfully,

Scott B. Suggs  
Clerk of Court

CERTIFICATE OF COUNSEL

---

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 1, 2014



Fritz A. Timmons, Pro Se  
P. O. Box 367  
Hartsville, SC 29551

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DARLINTON COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

---

Case No.2013-002356

---

Fritz Allen Timmons

Appellant.

v.

SCESC and Browns a/s RV and Campers

Respondent

---

BRIEF OF APPELLANT

---

Fritz A. Timmons Pro Se  
P. O. Box 367  
Hartsville, SC 29551

Derrick McFarland  
P. O. Box 8597  
Columbia, SC 29202  
Attorney for Respondent

Browns A/S RV and  
Campers, Inc. (Pro Se)  
30049 Hwy 151  
McBee SC 29101

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STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT ER BY NOT AWARDING APPEALENT BY DEFAULT ?
2. DID THE COURT ER BY CONDUCTING APPEAL HEARING ?
3. DID THE COURT VIOLATE APPEALANTS RIGHTS TO DUE PROCESS AND COMMIT PERJURY?
4. DID THE SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION VIOLATE STATE CODE AND COURT RULES?
5. CAN AN EMPLOYEE BE TERMINATED WITHOUT VERBALLY BEING TOLD THAT THEY ARE “FIRED” OR “TERMINATED”?
6. DO THE EMPLOYEES THAT WORKED UNDER THESE CONDITIONS REQUIERED TO BE PAID FOR THE OVERTIME AND NON-PRODUCTIVE WORKING HOURS?
7. DID BROWN’S RVS VIOLATE THE FAIR LABOR STANDARD ACT (FLSA) AND CODE OF FEDERAL REGULATIONS (CFR)?
8. WAS THE APPELANT TERMINATED, DID QUIT, OR IS STILL EMPLOYED BY BROWN’S RVS?
- 9, DID THE COURT SHOW BIAS BY RENDERING A DECISION WITHOUT EVIDENCE TO SUPPORT IT?

STATEMENT OF THE CASE

In 2002 Brown’s Rvs filed for bankruptcy

Prior to 2006 Brown’s Rvs lost floor plans (loans) due to default payments and/or multi-floor plans on same campers.

In 2006 Brown’s Rvs business was completely destroyed by fire under unknown circumstances while owners grandson was washing campers at night in parking lot of the business.

Between 2006 and 2009 Brown's Rvs manufacturing and supplier accounts was changed from credit to C.O.D. only accounts along with lawsuits due to default payments.

On Feb 12, 2009 technicians was informed of wage change from hourly pay wage to flat rate pay wage without overtime pay and threatened if did not accept change then browns would inform South Carolina Employment Security Commission (SCESC) that they had quit.

On March 4, 2009, technician pay wage was change, technician hourly pay was terminated, only technicians that had signed new contract of hire would continue to work.

On April , 2009, Testimonial hearing was held at SCESC, 1317 S. Fourth Street. Hartsville, SC, Unemployment benefits denied.

On June 16, Notice of appeal tribunal hearing

On July 1, 2009, Appeal tribunal hearing held, without representative nor letter from brown's Rvs, without Becky D Richardson (commissioner) being present for over half of the hearing and with J. William McLeod (Vise-Chairman) and McKinley Washington, Jr. (Chairman) both of which had uninterested attitudes and based denial of benefits upon South Carolina as being a Right to work state.

On July 24, 2009, Appeal filed with Darlington Cleark of Court.

On Aug 26, 2009, Motion to Dismiss filed

On Sep 2, 2009, Motion to Amend filed

On Nov 4, 2009, Motion to Dismiss hearing held (1<sup>st</sup>), denied due to no representation for SCESC nor Brown's Rvs, presiding Judge Baxley.

On Dec 30, 2009, Notice of 2<sup>nd</sup> Motion to Dismiss hearing.

On Jan 6, 2010, Notice of 2<sup>nd</sup> Motion to Dismiss hearing from SCESC, with Judge Burch presiding.

On April 21, 2011, Motion to Amend notice served

On May 25, 2011, Motion to Amend hearing without Brown's Rvs representation and with unknown judge (Judge Joe) presiding. Due to no decision filed from the Motion to Dismiss hearing (Jan 6, 2010), Judge Doe contacted Judge Burch as to decision of which led to the "motion under advisement" document filed on same day as Motion to Amend hearing.

On Jan 23, 2013, Notice as to status of case served

On Jan 28, 2013, Appellant contacted Darlington Clerk of Court Office as to waiting on Judge Burch's decision. Office personnel were to contact Burch's office.

On Feb 11, 2013, Recontacted Darlington Clerk of Court Office, still not response from Judge Burch's office.

Mid March 2013, Recontacted Darlington Clerk of Court Office, still not response from Judge Burch's office.

On Sep 10, 2013, Appeal case added to roster and served notice of.

On Sep 11, 2013, Motion to Amend order (signed by Judge Burch) filed with Darlington Clerk of Court Office, never served.

Oct 8, 2013, Appeal hearing held and denied without representatives for SCESC nor Brown's Rvs also without full record from SCESC.

On Oct 29, 2013, Appellant served Notice of Appeal.

On Nov 6, 2013, Appellant ordered Transcripts.

On Nov 18, 2013, Appellant served payment for Transcripts.

ARGUMENTS

I HEARING WAS HELD WITHOUT REPRESENTATION OF EITHER PARTY NOR COMPLETE RECORD TO SUPPORT SUBSTANTIAL EVIDENCE

With only the letter of transmittal(R p 6) without the record of the appellant tribunal' that violates SC code §1-23-320 (G1,2), (I), §1-23-380 (5a, d, e), and Rule 75, SCRCPP (providing that the purpose of requiring a party to provide a record on appeal is to give the reviewing court the ability to decide whether the lower court erred in the respects alleged). Because substantial evidence exists in the record to support appellants appeal, the failure did not make the record sufficient to review whether the Commission's decision was supported by substantial evidence (McEachern v. S.C. Emp't Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 647 (Ct. App. 2006)) and without representatives by Browns a/s RV and Campers (Browns) or South Carolina Employment Security Commission (SCESC)(2009), aka South Carolina Department of Employment and Workforce (eff March 30, 2010), therefore the Appellant should have been awarded by default (§18-7-130, §18-7-140, §18-7-170, Rule 55, SCRCPP). Thereby, Judge Baxley has violated Rule 501, 3B(2), SCACR (R p 4,5).

II HEARING WAS HELD WITHOUT THE DECISION OF THE MOTION TO DISMISS HEARING, WITHOUT FULL RECORD, AND PLACED ON COURT ROSTER PRIOR TO A MOTION TO AMEND ORDER FILED

On Nov 18, 2013, Appellant served payment for Transcripts.

ARGUMENTS

I HEARING WAS HELD WITHOUT REPRESENTATION OF EITHER PARTY NOR COMPLETE RECORD TO SUPPORT SUBSTANTIAL EVIDENCE

With only the letter of transmittal(R p 6) without the record of the appellant tribunal' that violates SC code §1-23-320 (G1,2), (I), §1-23-380 (5a, d, e), and Rule 75, SCRCPP (providing that the purpose of requiring a party to provide a record on appeal is to give the reviewing court the ability to decide whether the lower court erred in the respects alleged). Because substantial evidence exists in the record to support appellants appeal, the failure did not make the record sufficient to review whether the Commission's decision was supported by substantial evidence (McEachern v. S.C. Emp't Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 647 (Ct. App. 2006)) and without representatives by Browns a/s RV and Campers (Browns) or South Carolina Employment Security Commission (SCESC)(2009), aka South Carolina Department of Employment and Workforce (eff March 30, 2010), therefore the Appellant should have been awarded by default (§18-7-130, §18-7-140, §18-7-170, Rule 55, SCRCPP). Thereby, Judge Baxley has violated Rule 501, 3B(2), SCACR (R p 4,5).

II HEARING WAS HELD WITHOUT THE DECISION OF THE MOTION TO DISMISS HEARING, WITHOUT FULL RECORD, AND PLACED ON COURT ROSTER PRIOR TO A MOTION TO AMEND ORDER FILED

Without the decision filed from the 2<sup>nd</sup> motion to dismissed (R p 25,26),without Brown's representation, held on Jan. 20, 2010 with Paul M. Burch as presiding judge and added to roster on Sep. 10, 2013 (R p 29) prior to the motion to amend decision being filed on Sep 11, 2013 (R p 3). Without the full record of the SCESC on record (Wilson v. Am. Cas. Ins., 252 S.C. 393, 397, 166 S.E.2d 797, 798 (1969) ,(§1-23-380, McEachern v. S.C. Emp't Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 647 (Ct. App. 2006)) especially without the SCESC appeal tribunal hearing (also without Brown's representation or letter from) being a court of record and violating §41-35-720 (2009). Also the court did not have the decision on filed from the motion to amend hearing held on May 25, 2011(R p 27), without Brown's representation, with unknown judge (Judge Doe) presiding which was not Burch, Baxley, or Cottingham. Judge Doe could not render a decision due to the lack of decision by Judge Burch from the motion to dismiss hearing (Jan. 20, 2010) and Judge Doe contacted Judge Burch as to the situation of the motion to dismiss, thus obtaining the "motion under advisement" document (R p 2) signed by Judge Burch and filed on same day as the motion to amend hearing. Also with the motion to amend filed 7 calendar days after the motion to dismiss was filed, therefore, Rule 15(a),(d), SCRCF invalidates Rule 12(b), SCRCF, ipso facto, the court upon its own initiative should have, under Rule 12(f), SCRCF, stricken the motion to dismiss. The denial of the motion to dismiss also violates Rule 61,SCRCF in which states "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

III WITH THE APPEAL PROCESS BEGINNING ON , 2009 AND ENDING ON OCT. 8, 2013 DUE TO THE LACK OF DECISION FROM THE MOTION TO DISMISS HEARING ON JAN. 10, 2010 WITH JUDGE BURCH AS PRESIDING AND THE MOTION TO AMEND HEARING HELD ON MAY 25, 2011 AND DECISION (DENIED) SIGNED BY NON-PRESIDING JUDGE BURCH ON SEP 11, 2013

On May 4, 2009 A motion to dismissed hearing (presiding Judge Baxley) was held in which neither respondent had representation and the decision was granted to the appellant by default (R p 1).

A second motion to dismissed hearing was held on Jan. 20, 2010 (R p 26) with Judge Burch presiding and without representation by Browns in which no decision was given thereby an unnecessary and unreasonable delay was caused (State v. Chapman, 289 S.C. 42, 344 S.E.2d 611 (1986)). Judge Burch was contacted by Judge Doe on May 25, 2011 as to the motion to dismiss hearing (Jan.20, 2010) and again contacted in Jan of 2013 (R p 28) by Darlington Clerk of Court off with no response as of March 2013 and as to this day Judge Burch still has not rendered a decision for this motion to dismiss. Although the commission itself had violated code §1-23-380 and Rule 75 , SCRPC without providing the full record to the court. On Sep 11, 2013 Judge Burch files a decision order (R p 3)(and without being served violating Rule 77,SCRPC ) denying a motion to amend although Judge Burch was not the presiding judge of the motion to amend hearing and did not hear the case, ipso facto, committing barratry (§16-17-10 (2b),

§16-17-735(A2),(B)). The case being based upon clerical error and Rule 61, SCRCP , also violating Rule 15 , SCRCP , ipso facto, violating §8-1-60, §16-9-10(A2). With §41-35-740 (2009) stating “**The Commission shall be deemed to be a party to any judicial action** “ and the commission claiming they are not named as a party along with the “letter of transmittal of commission decision” (R p 6) being filed with the appeal cover sheet and the commission served, therefore was the commission a party to the case and if not then the commission did not have legal authority for a motion to dismiss nor be a party in the motion to amend. The letter of transmittal states “The petition must be filed in the court of common Pleas” thereby complying to the grounds in which the appeal is sought and with the statement “The commission ....must be named as defendants” thereby the commission has been named although not on the coversheet itself and along with being served by the clerk of court. Along with the above said and with Judge Baxley as supervisor over Judge Burch therefore Judge Baxley has committed Barratry (§16-17-10(2a)) and Conspiracy (§16-17-410) for the purpose of a shame legal process (§16-17-735(E3) to cover up the violations of Article I, Section 14 of the S.C. Constitution (S.C. Const. art. I, § 14), and the Sixth Amendment to the U.S. Constitution (U.S. Const. amend. VI) by Judge Burch.

IV SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION TOTALLY IGNORED COURT RULES, FEDERAL AND STATE CODES

With Brown’s Rvs statute clearly stating “There is no overtime pay”. “you will only be paid on time tickets” and “No pay for cleaning the shop--ever” (Strickland v. Strickland, 375 S.C. 76. 88-89, 650 SE 2d 465, 472 (2007)) clearly violating FLSA and

CFR codes §778.223, §778.308, §778.311, §778.315, §778.316, §778.318 (R p. 17,18) (Lawson v. South Carolina Dep't of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 260 (2000)), and with the appellant tribunal bound by the code of judicial conduct, therefore the members of the tribunal has violated , Rule 501, 3B(2),(5), SCACR (McEachern v. S.C. Emp't Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006)) And has committed Neglect of duty (§8-1-60), and Conspiracy (§16-17-410) (R p 7, 8, 21), and without providing the court a full record (Wilson v. Am. Cas. Ins., 252 S.C. 393, 397, 166 S.E.2d 797, 798 (1969)) violating §41-35-750 (2009) that states “With its answer the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter and its findings of fact and decision.”, “An appeal may be taken from the decision of the court of common pleas in the manner provided by the South Carolina Appellate Court Rules” and “the findings of the commission as to the facts, if supported by evidence and in the absence of fraud.”.

V AN EMPLOYEE CAN BE TERMINATED WITHOUT VERBALLY BEING TOLD THAT THEY ARE “FIRED” OR “TERMINATED” BY BREACH OF CONTRACT OF HIRE

Due to the fact that both parties must agree for an agreement/contract to be amended, therefore only one party cannot amend but can only terminate the agreement/contract. When an employer violates code §41-27-230 (2009) by altering or termination without the employee’s agreement does this constitute as quitting without cause as the SCESC process normally justifies it to be(R p 13, 21). Example; if an employer reduces an employee’s normal working hours (30 to 40 per week) down to 4 to

8 hours per week thereby causing the employee to quit due to financial loss thereby not being eligible to receive unemployment benefits which is a common practice in South Carolina. In this case the Employer terminated the contract of hire in favor of a new one thereby violating code §41-27-230 (2009). Therefore when an employer terminates a contract of hire, the employer terminates the employee with or without written or verbally informing the employee of their termination, ispo facto, the employee becomes unemployed (§41-27-370(1) (2009)) without the employer verbally telling the employee that they are “**FIRED**” or “**TERMINATED**” .

VI EMPLOYEES THAT HAS OR DOES WORK UNDER THESE CONDITIONS ARE REQUIERED TO BE PAID FOR THE OVERTIME AND NON-PRODUCTIVE WORKING HOURS PER FEDERAL AND STATE CODES

Due to the violations of the FLSA and CFR codes §778.223, §778.308, §778.311, §778.315, §778.316, §778.318 (R p 19, 20) under which the employees of Browns Rvs are forced to work under (R p 17,18) constitutes a complete audit (§41-10-70) of the company for the maximum time aloud by law if not back to March 5, 2009 due to the violation of due process caused by the state (State v. Chapman, 289 S.C. 42, 344 S.E.2d 611 (1986)) and payment to the employees and ex-employees for all the wages not paid to them at three times the amount (§41-10-80C) along with interest due to the lack of a disclaimer, creates an implied contract of employment and wrongful termination (Lawson v. South Carolina Dep’t of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 260 (2000)).

VII BROWN'S RV'S CONTRACT OF HIRE CLEARLY VIOLATES THE FAIR LABOR STANDARD ACT (FLSA) AND CODE OF FEDERAL REGULATIONS (CFR)

As of March 5, 2009, Brown's terminated the contract/agreement under which the service technicians were employed under. In which if a technician was not to sign a new contract of hire (R p 17, 18), then the technician would no longer be employed by Browns Rvs. Due to the termination of hourly pay for the technicians, the technicians did not have an option to continue to work under hourly pay. The technicians was also threatened that if they did not sign the new contract of hire that Browns Rvs would tell the unemployment office that they had quit and if they had any customer information (phone number, address not private or confidential information) that the technicians would be hearing from Browns lawyers. The hourly pay termination without option thereby violates SC code §41-27-230 (1)(a) (2009), along with the new contract (R p 17, 18) that violates CFR codes §778.223, §778.308, §778.311, §778.315, §778.316, §778.318. With the duties of a RV technician including but not limited to carpentry, plumbing. Electrical (12v DC, 120v and 220v AC), hydraulics, small appliance repair/installation, HVAC, small engine repair, ect.(R p 22, 23), thereby Browns is not immune to FLSA and CFR as to overtime wage, minimum wage, or non-productive hourly wage.

VIII THE APPELANT WAS WRONGFULLY TERMINATED, QUIT WITH CAUSE, OR IS STILL EMPLOYED BY BROWN'S RVS

As to being still employed, As to the standards of the unemployment agency's

practice that an employee is not fired/terminated unless the employer informs the employee orally or written that the employee is “fired” or “terminated”, then it also stands that an employee has not quit if the employee does not stated to the employer orally or written that the employee does in fact “quit”, ipso facto, the appellant was not terminated nor quit, therefore the appellant is still employed (§41-27-230(1) (2009)) by Brown’s Rvs. With an average work week of 53 hours, therefore due to the change of work policy, of which neither has a disclaimer (§41-1-110), that does not state “employee must be on premises” nor “must use time clock“ and does state “do not work on anything at any time without a time ticket and a work order” (R p 17, 18), therefore in accordance with CFR 778.223, 778.315, 778.316, 778.318, along with the pay scale increase to \$18 hour with no differential between productive and non-productive hours established, therefore back pay of wages from March 5, 2009 to present with interest (7.25%), approximately \$1,043,982.78 is owed. In accordance to §41-10-80 (C) (an amount equal to three times the full amount of the unpaid wages), therefore a total of \$3,131,948.34 in wages that Brown’s Rvs owes to the appellant.

As to being terminated, Brown’s terminated the contract of hire (§41-27-230 (2009)) in favor of a new contract of hire (R p 17, 18) and with no option to continue under the original hire of contract (§41-10-30 in which states “normal hours and wages **agreed upon**”, thereby causing the appellant to become unemployed (§41-27-370 (2009)) through wrongful termination and no fault by the appellant (Lawson v. South Carolina Dep’t of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 260 (2000) .

As to appellant quitting, with the new contract of hire (R p 17, 18)(§41-10-100) that directly violates CFR codes §778.223, §778.308, §778.311, §778.315, §778.316, and

§778.318 (R. p. 15, L 18-20, p. 14, L 8-9), in which Brown's is not immune due to the technicians duties include (R p 22, 23, 24) carpentry, electrician, plumbing, ect., therefore, violation of state and/or federal codes and/or regulations cause a "Quitting with good cause" to be implemented.

IX WITHOUT EVIDENCE OR ARGUMENT TO SUPPORT THE COURTS DECISION, THE COURT HAS SHOWN BIAS AGAINST THE APPELLANT

•  
With the appellants statement "...if you did not agree to the new way they pay it, then you not longer work for them." (R p 9, L 7-9), "So under Title 41 -- states that employment is a contract, written or oral, and by terminating the contract -- which I was under for hourly -- to work by commission; therefore I was terminated and did not quit." (R p 9, L 10-13)(§41-27-230 (2009)) and "you'd have to sign the contract when they changed over to the commission part, which clearly stated that they do not pay overtime, which is a clear violation of federal law.." (R p 10, L2-5)(CFR §778.315). Therefore, With only a letter of transmittal and not the full record to base a decision on (R p 4, 5), violating §18-7-130, nor was there any representatives for Brown's Rvs or SCESC, what was the basis of Judge Baxley's decision and his statement "I do find that you did voluntarily quit because you refused to accept the new employment terms." (R p 11, L 24,25, p. 12, L1) and "I don't find a violation of federal law, which you have talked about, for overtime -- failure to pay overtime; nor do I find any other violation of state law." (R p 12, L4-6).

## CONCLUSION

The appellant was wrongfully dismissed from Brown's Rvs when Brown's change contract of hire of which new contract of hire (flat rate) violates State and Federal codes along with no option to continue to work under old contract of hire (average of 53 hours clock hours per week). The SCESC violated Stated codes and court rules by denying of benefits of appellant and not following state code or court rules in the appeal process. The SCESC decision and appeal decision was made with total disregard for state and federal codes. The state violated the appellants rights to due process while violating state code and court rules. Therefore the Brown's Rvs, SCESC along with the State has cause financial burden upon the appellant that forced the appellant to take a substandard part time job limited to 30 hours per week that prevented an appropriate job to be found along with a loss of substantial income.

Thereby the Appellant requests the following.

- 1) \$3,131,948.34 the equivalent to loss wages if continued to work for Brown's Rvs and accordance to State and Federal codes for non paid wages weather as to being considered as to being "Fired", "Quitting with Cause" or "Wrongfully Terminated".
- 2) The full investigation by South Carolina Department of Labor, Licensing

and Regulation and/or SLED and payment of owed wages to the employees and ex-employees in accordance to State and Federal codes

3) The Appellant also request the equivalent of lawyer fees for both appeals to the circuit and appeal courts to the total of \$2,408,155.08

4) Appellant also request charges and complaints to be filed with the appropriate authorities for each of the following persons along with the immediate suspension from their jobs and duties there of and without pay pending a full investigation.

**(A) Judge Paul Burch**

(A) §16-17-10 (2b), (B) §16-17-735(A2), (C) §16-17-735(B), (D) §16-17-735(E3), (E) S.C. Const. art. I, § 14, (F) U.S. Const. amend. VI, (G) Rule 15 , SCRCPP, (H) Rule 501, 3B(8), SCACR

**(B) Judge J. Michael Baxley**

(A) Rule 501, 3B(2), SCACR, (B) Rule 501, 3C(3), SCACR, (C) Rule 501, 3D(1), SCACR, (D) Rule 501, 3E(1a), SCACR , (E) Rule 61,SCRCPP, (F) §16-17-10(2a), (G) §16-17-410, (H) §16-17-735(E3)

**(C) The SCESC Tribunal (Becky D Richardson (commissioner), McKinley Washington, Jr. (Chairman), and J. William McLeod (Vice-Chairman))**

**(A)** §1-23-320 (G1), **(B)** §1-23-320 (G2), **(C)** §1-23-320 (I), **(D)** §1-23-380, **(E)** §1-23-380 (5a), **(F)** §1-23-380 (5d), **(G)** §1-23-380 (5e), **(H)** §8-1-60, **(I)** §16-17-410, **(J)** §41-35-720 (2009), **(K)** §41-35-750 (2009), **(L)** Rule 75 , SCRPC, **(M)** Rule 501, 3B(2), SCACR, **(N)** Rule 501, 3B(5), SCACR

**(D) Browns Rvs**

**(A)** §778.223, **(B)** §778.308, **(C)** §778.311, **(D)** §778.315, **(E)** §778.316, **(F)** §778.318, **(G)** §41-27-230 (2009), **(H)** §41-27-230 (2009), **(I)** §41-27-230 (1)(a) (2009)

July 1, 2014

Respectfully submitted,



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CERTIFICATE OF COUNSEL

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The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

July 1, 2014



Fritz A. Timmons  
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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS  
Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-00236

Britt Allan Simmons

South Carolina  
Appellate Court  
Case No.

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2013-00236

Britt Allan Simmons

2013-00236

**APPELLANT'S STATEMENT OF ISSUE ON APPEAL**

DID THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE ERR IN FINDING APPELLANT INDEFINITELY DISQUALIFIED FROM UNEMPLOYMENT BENEFITS BECAUSE HE VOLUNTARILY QUIT WITHOUT GOOD CAUSE?

- I. HEARING WAS HELD WITHOUT REPRESENTATION OF EITHER PARTY NOR COMPLETE RECORD TO SUPPORT SUBSTANTIAL EVIDENCE.
- II. HEARING WAS HELD WITHOUT THE DECISION OF THE MOTION TO DISMISS HEARING, WITHOUT FULL RECORD, AND PLACED ON COURT ROSTER PRIOR TO A MOTION TO AMEND ORDER FILED.
- III. WITH THE APPEAL PROCESS BEGINNING ON , 2009 AND ENDING ON OCTOBER 3, 2013 DUE TO THE LACK OF DECISION FROM THE MOTION TO DISMISS HEARING ON JAN. 10, 2010 WITH JUDGE BURCH AS PRESIDING AND THE MOTION TO AMEND HEARING HELD ON MAY 25, 2011 AND DECISION (DENIED) SIGNED BY NON-PRESIDING JUDGE BURCH ON SEP 11, 2013.
- IV. SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION TOTALLY IGNORED COURT RULES, FEDERAL AND STATE CODES.
- V. AN EMPLOYEE CAN BE TERMINATED WITHOUT VERBALLY BEING TOLD THAT THEY ARE "FIRED" OR "TERMINATED" BY BREACH OF CONTRACT OF HIRE.
- VI. EMPLOYEES THAT HAS OR DOES WORK UNDER THESE CONDITIONS ARE REQUIRED TO BE PAID FOR THE OVERTIME AND NON-PRODUCTIVE WORKING HOURS PER FEDERAL AND STATE CODES.
- VII. BROWN'S RV'S CONTRACT OF HIRE CLEARLY VIOLATES THE FAIR LABOR STANDARD ACT (FLSA) AND CODE OF FEDERAL REGULATIONS (CFR).
- VIII. THE APPELLANT WAS WRONGFULLY TERMINATED, QUIT WITH GOOD CAUSE, OR IS STILL EMPLOYED WITH BROWN'S RV'S.

**RESPONDENT'S STATEMENT OF ISSUE ON APPEAL**

THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE  
CORRECTLY HELD APPELLANT INDEFINITELY DISQUALIFIED FROM  
UNEMPLOYMENT BENEFITS BECAUSE HE VOLUNTARILY QUIT WITHOUT GOOD  
CAUSE.

**STATEMENT OF THE CASE**

Appellant Fritz Timmons (Appellant) filed for unemployment insurance benefits with the South Carolina Employment Security Commission (currently the Department of Employment and Workforce (Agency) on or about March 20, 2009. (UCB101I)<sup>1</sup>. The claims adjudicator determined on or about April 3, 2009, that Appellant was “disqualified from 03/15/09 and until you return to work and earn at least eight times your weekly benefit amount.” (UCB-103)

Appellant filed a request for appeal on or about April 8, 2009. (Notice of Appeal to Appeal Tribunal). The Appeal Tribunal scheduled a hearing on April 21, 2009, to consider the issues of “Voluntary Quit” and “Discharge.” (Appeal No:0906675). The Appeal Tribunal found that Appellant was “disqualified from receiving benefits effective March 15, 2009, until requalification, upon a finding the claimant voluntarily quit employment without good cause.” (Decision of Appeal Tribunal).

Appellant filed an appeal on or about May 1, 2009. (Application For Leave To Appeal To Commission). On July 2, 2009, the South Carolina Employment Security Commission affirmed the Appeal Tribunal and found Appellant “voluntarily quit without good cause connected with the work.” (Decision No: 09-C-1233). Appellant then filed a copy of the Letter of Transmittal and a Motion Information Form and Cover Sheet with Darlington County Court of Common Pleas on July 24, 2009. On August 25, 2009, the Agency filed a Motion to Dismiss because the filing did not state grounds for judicial review and the Agency was not named as a party to the proceedings. On October 7, 2013, the Honorable J. Michael Baxley affirmed the Agency decision stating: “Appeal from decision of SCESC denied. Court affirms Agency finding of voluntary quit per 41-34-120(1). Also, failure to properly file appeal.” (Judgment In A Civil

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<sup>1</sup> Because the case was heard below as a motion to dismiss, a record does not exist.

Case, No: 2009CP1600540). The Judgment indicates a copy was mailed, first class, to appellant on October 7, 2013.

Appellant now seeks judicial review of the Circuit Court's decision in the South Carolina Court of Appeals.

**STATEMENT OF THE FACTS**

Appellant worked for Brown's RV's & Campers (Brown's) from July 15, 1998 to March 4, 2009 as a technician. (UCB 101I; Tr. p.4, lines 15-16).

In his Initial Claims Application, Appellant's lists his reason for discharge as "lack of work." However, during the fact finding, Appellant indicated he quit because Brown's changed the method of compensation from an hourly rate to flat rate for each assignment. Appellant flatly refused to work under a flat rate compensation method, and voluntarily resigned after Brown's efforts to "negotiate" with Appellant failed. (Tr. p.17, line 16 – p.18, line 12).

The claims adjudicator determined "you left your most recent bona fide employer because you did not like your working hours and/or pay. A review of the records shows no unreasonable change in the original conditions of hire. You left voluntarily without good cause under . . . 41-35-120(1)." (UCB-103). In his Notice of Appeal to Appeal Tribunal, Appellant indicated that converting from an hourly rate to a flat rate constituted unreasonable conditions.

The Appeal Tribunal Hearing was held on April 21, 2009. During his testimony before of the Administrative Hearing Officer, Appellant testified he was discharged on March 4, 2009.

He further testified concerning his separation:

HEARING OFFICER: Okay. But did they tell you that you were being discharged or that they were just changing your pay?

CLAIMANT: They said they was changing the flat rate from hourly over to a flat rate and which I would not accept their flat rate under the conditions, and they refused to accept my terms in order for me to continue to work there under the flat rate.

HEARING OFFICER: . . . Did you leave because they changed the pay or did . . . were you told that because you would not accept the conditions, that you were being discharged from your job?

CLAIMANT: No one came out right, rightly and told me I was fired.

HEARING OFFICER: So nobody told you that you were being discharged, correct?

CLAIMANT: I was told I would no longer be paid hourly.

HEARING OFFICER: Okay. When you were told that you were no longer going to be paid hourly, you said that you had given some...

CLAIMANT: I would not work there under their conditions for flat rate and they would not accept my terms for me to continue working under flat rate.

(Tr. p.5, line 11 – p.6, line 10).

The Appeal Tribunal found:

“Good cause” for quitting within the meaning of the law refers to a substantial, material change in the terms or conditions of employment, or any circumstances that would cause a reasonable and prudent person to become totally unemployed rather than continue working.

In this case, the testimony shows that the claimant voluntarily quit and was not discharged. The claimant has the burden of proving that he voluntarily quit . . . That burden was not met. Although the employer had made a change in the terms of employment, it was not unreasonable to the point that would cause a reasonable or prudent person to become totally unemployed rather than continue working.

(Decision of Appeal Tribunal).

After appeal, the Commission found:

We find that the claimant quit because he did not want to accept a change to a flat rate of pay. However, the general manager testified that the claimant would not have made less money and had the opportunity to earn more. Further, the change was not so substantial as to justify the claimant’s quitting his employment. Therefore, the Appeal Tribunal decision is affirmed. The claimant is indefinitely qualified from benefits effective March 15, 2009, for having voluntarily quit without good cause connected with the work.

(Decision No. 09-C-1233).

ARGUMENT

Standard of Review

DEW is an agency and subject to the Administrative Procedures Act. South Carolina Code § 1-23-310 (Supp. 2013). The administrative procedures of the agency include an appeal to the Appeal Tribunal and further appeal to the Appellate Panel. S.C. Code Ann. § 41-35-680 (Supp. 2013); S.C. Code Ann. §41-35-710 (Supp. 2013). Once the administrative remedies available within an agency are exhausted, the aggrieved party is entitled to a judicial review. S.C. Code Ann. § 1-23-380 (Supp. 2013); S.C. Code Ann. §41-35-740 (Supp. 2013). A notice of appeal must be filed and served “as provided in the South Carolina Appellate Court Rules.” S.C. Code Ann. §1-23-380 (Supp. 2013).

The South Carolina Court of Appeals has found “[t]he decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law.” *Original Blue Ribbon Taxi Corp. v. S. Carolina Dep't of Motor Vehicles*, 380 S.C. 600, 604-05, 670 S.E.2d 674, 676 (Ct. App. 2008). This Court has noted that it can only reverse the ALC “if the findings are affected by error of law, are not supported by substantial evidence, or are characterized by abuse of discretion or clearly unwarranted exercise of discretion.”) *Olson v. South Carolina Dep't. of Health and Envil. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 501 (Ct. App. 2008.)

Unless there is a clearly erroneous application of the law, the ALC’s decision will be upheld if there is substantial evidence to support its finding. Substantial evidence has been defined as:

[N]ot a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

*Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135-36, 276 S.E.2d 304, 306-07 (1981).

**The Circuit Court's decision should be affirmed because substantial evidence supports the Court's finding that Appellant voluntarily quit without good cause.**

There is substantial evidence for the lower court to find Appellant voluntarily quit his job without good cause. DEW found the record established that Appellant "initiated the separation" and "did not return to work" after refusing to accept a different compensation structure. DEW also found that the evidence is insufficient to show the conditions of his employment would cause a reasonable person to leave available work to become totally unemployed and there was no substantial change in the claimant's condition of employment.

Further, Appellant failed in his burden of showing he is eligible for benefits under S.C. Code Ann. §41-35-110. *McEachern v. S. Carolina Employment Sec. Comm'n*, 370 S.C. 553, 558, 635 S.E.2d 644, 647 (Ct. App. 2006) (internal citation omitted).

Pursuant to S.C. Code Ann. § 41-35-120(1) "An insured worker is ineligible for benefits for: (1) Leaving work voluntarily. If the department finds he left voluntarily, without good cause, his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year...."

"An employee who voluntarily resigns from employment without good cause is ineligible for unemployment benefits." *Ex parte South Carolina Employment Sec. Com'n*, 332 S.C. 286, 288, 504 S.E.2d 345, 346 (1998) (citing S.C. Code Ann. 41-35-120 (1) (1986)). An employee who voluntarily leaves employment has the burden of showing good cause for leaving. 76 Am. Jur. 2d *Unemployment Compensation* § 104. "To constitute good cause, the circumstances which lead an employee to leave the job must be such as would cause a reasonable person to leave." 76 Am Jur. 2d *Unemployment Compensation* § 102. A claimant is not entitled



to unemployment compensation benefits for voluntarily quitting a job for cause unless he “explored all viable options before making the decision to quit.” *Id.*

Appellant testified that he refused to work under a flat pay structure. However, the Commission found Appellant did not present sufficient evidence that the conditions would cause a reasonable person to leave his employment. In *Svidland v. S.C. Employment Sec. Com’n*, the Court, in finding the claimant voluntarily quit without good cause, noted that without showing any illegality, the claimant may have “considered the employer’s business practices improper and immoral, such is personal judgment which amounts to nothing more than a disagreement with management decisions.” *Id.* 300 S.C. 305, 308, 308 S.E.2d 688, 689 (1998). Appellant’s concerns about to a similar disagreement with management.

Appellant expressed concern with his pay, however the employer testified before the Appeals Tribunal that technician’s pay has risen since switching to flat rate. (Tr. p. 21-22). Appellant did not stay in the position to verify the legitimacy of his concerns and clearly did not explore all viable options to ease his concerns.

Even if Appellant never stated that he quit, by failing to return to work he initiated the separation. “An employee may be charged with quitting a job by action or inaction with unavoidable ramifications.” *Samuel v. S.C. Employment Security Commission*, 285 S.C. 476, 477, 330 S.E.2d 300, 301 (1985). In *Samuel*, the claimant did not follow the directions provided by the employer to apply for a leave of absence or she would be removed from the employer’s payroll. The claimant in *Samuel* did not “nothing to save her job” and the Court found by “her own inaction” she “voluntarily quit within the meaning of S.C. Code Ann. § 41-35-120.” *Id.* at 478, and 330 S.E.2d at 301. By failing to return to work, Appellant similarly quit.

In this matter, Appellant decided he was not interested in a position with Brown's unless he was paid hourly. Appellant presented no evidence below that the flat pay compensation method violated the law in any manner. Instead, Brown's General Manager testified the rate used is determined by the reference guide of a particular manufacturer's product. (Tr. pp.19-20).

Even if reasonable minds differed on how Appellant handled his concerns, he did not return to work. His action initiated the separation. DEW's decision must stand as there was no clearly erroneous application of the law to the facts that were presented. *Houston*, 378 S.C. at 550-51, 663 S.E.2d at 89. (internal citations omitted).

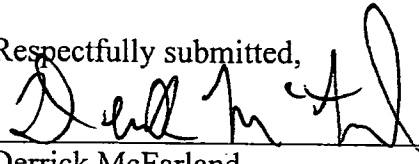
There is substantial evidence in the record supporting the finding that Appellant voluntarily left his position with Brown's without good cause. Accordingly, this Court should affirm the lower court's decision that Appellant voluntarily quit without good cause.

Finally, Appellant consistently stated below his separation was solely based on his refusal to work on a flat rate basis. He now raises other issues for which he failed to make any objections on the record that would preserve for appeal before this Court any of these issues. These issues, which Appellant did not present as his "good cause" for quitting below, are not properly before the court. *See State v. Sullivan*, 310 S.C. 311, 426 S.E.2d 766 (1993)(To preserve an issue for appellate review, an appellant must object at his first opportunity).

**CONCLUSION**

For the reasons discussed above, this Court should affirm the Circuit Court's decision.

Respectfully submitted,



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Attorney for Respondent DEW

July 22, 2014

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Fritz Timmons, Appellant,

v.

South Carolina Employment Security Commission and  
Browns A/S RV and Campers, Respondents.

Appellate Case No. 2013-002356

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Appeal From Darlington County  
J. Michael Baxley, Circuit Court Judge

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Unpublished Opinion No. 2015-UP-402  
Submitted May 1, 2015 – Filed August 12, 2015

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**AFFIRMED**

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Fritz Timmons, of Hartsville, pro se.

Derrick K. McFarland, of the South Carolina Department  
of Employment and Workforce, of Columbia, for  
Respondent.

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**PER CURIAM:** Fritz Timmons appeals from a circuit court order affirming the South Carolina Employment Security Commission's (the Commission's) denial of unemployment benefits, arguing the circuit court erred in (1) determining he

voluntarily quit his job with Brown's RVs; (2) finding his new employment contract did not violate the Fair Labor Standards Act and Code of Federal Regulations; and (3) conducting an appellate hearing, not ruling in Timmons's favor by default, violating Timmons's rights and committing perjury, violating the state code and court rules, failing to award Timmons back pay for overtime and non-productive working hours, and rendering a decision unsupported by the evidence. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in determining Timmons voluntarily quit his job with Brown's RVs: *McEachern v. S.C. Emp't Sec. Comm'n*, 370 S.C. 553, 557, 635 S.E.2d 644, 646 (Ct. App. 2006) ("The Commission is an agency governed by the Administrative Procedures Act (APA)."); *id.* at 557, 635 S.E.2d at 646-47 ("Reviewing courts apply the substantial evidence rule, under which the agency's decision is upheld unless it is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." (internal quotation marks omitted)); *id.* at 557, 635 S.E.2d at 647 ("Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. It is more than a mere scintilla of evidence, but is something less than the weight of the evidence. Furthermore, the possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports an administrative agency's finding." (footnotes and internal quotation marks omitted)); *id.* at 558, 635 S.E.2d at 647 ("The burden is on a claimant to show compliance with benefit eligibility requirements." (internal quotation marks omitted)); S.C. Code Ann. § 41-35-110(5) (Supp. 2014) (providing to be eligible for unemployment benefits, a worker must have "separated, through no fault of his own, from his most recent bona fide employer"); S.C. Code Ann. § 41-35-120(1) (Supp. 2014) (providing a worker is ineligible for unemployment benefits "[i]f . . . he left voluntarily, without good cause, his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year").

2. As to whether the circuit court erred in determining Timmons's potential new employment contract with Brown's RVs did not violate federal law: *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998) (finding an issue unpreserved and holding that in an appeal from an administrative agency where the circuit court sits in an appellate capacity, the circuit court may not consider an issue unless the issue was raised to and ruled upon by the agency).

3. As to Timmons's remaining issues: *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 617-18, 632 S.E.2d 874, 881 (Ct. App. 2006) (providing when the circuit court sits in an appellate capacity, an issue not raised to and ruled upon by the circuit court is not preserved for review).

**AFFIRMED.**<sup>1</sup>

**FEW, C.J., and HUFF and WILLIAMS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DARLINTON COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

—————  
Case No.2013-002356  
—————

Fritz Allen Timmons

Appellant.

v.

SCESC and Browns a/s RV and Campers

Respondent

—————  
MOTION TO REHEAR  
—————

Fritz A. Timmons, Pro Se  
P. O. Box 367  
Hartsville, SC 29551

Appellant respectfully petitions this Court for rehearing pursuant to Rule 221,(a), SCACR, and submits there are important reasons for this Court to exercise its discretion to grant rehearing in this matter. The Appellant hereby seeks rehearing on the grounds that the Court has ignored Federal Code, State Code and Court Rules, and misinterpreted and misapplied Case Law to several crucial points in affirming the opinion of the Circuit Court. For all of these reasons, the Appellant respectfully asks this Court to grant this petition for rehearing because the entire appeals process has been clearly erroneous.

As to default judgment, under Rule 55, SCRCF. The Authority for a judgment for default lies upon the Clerk of Court and not within the jurisdiction of the judge although the judge may be required to write the order. This rule clearly states "When a party against whom a judgment for affirmative relief is sought has **failed to plead or otherwise defend...**", "the clerk shall enter his default upon the calendar (file book).", this rule bound by Rule 81, SCRCF stating "These rules, or any of them, shall apply to every trial court of civil jurisdiction ". The judges in these matters can only write the order for the default judgment and can not try the hearing, a judge can only set aside a default hearing upon proper procedure, Ipso Facto, Judge Baxley has committed a "Sham legal process" ( §16-17-735 (C) "**It is unlawful for a person to act without authority under state law as ...a clerk of court**". Thereby, with neither party, representative for the Commission nor that of Brown's Rvs, was present at the hearing to **plead or otherwise defend**, Ipso facto, **had** abandoned and forfeited any decisions in favor of, the Clerk of court has violated State Code §8-1-60 "Neglect of duty". With no representative nor documents filed for Brown's Rvs, present at any of the hearings starting from the commission to present day, Ipso Facto, Brown's Rvs has totally and completely abandoned and forfeited

any decisions in favor of said case.

In said case, Judge Baxley took it upon himself to defend the Agency of which is unsupported by substantial evidence and bound by SC code §41-35-720 and §41-35-750. Thereby, Judge Baxley awarded the verdict in favor of the agency without any representation, in violation of state law, and without any evidence to base a verdict upon of which would have contained substantial evidence to verified the appellants argument. said case the commission and employer, after properly served notice of, has “failed to plead or otherwise defend” (*Goldman, Antonetti, Ferraiuoli, Axtmayer & Hertell v. Medfit Int’l, Inc.*, 982 F.2d 686, 688 (1st Cir. 1991)), *Melendez v. Illinois Bell Co.*, 79 F.3d 661, 671 (7th Cir. 1996) (“Sanctions are proper upon a finding of wilfulness, bad faith, or fault on the part of the noncomplying litigant.”). *Estates of Ungar & Ungar v. Palestinian Auth.*, 325 F. Supp. 2d 15, 65 (D.R.I. 2004) (“The First Circuit has also observed that a ‘failure to file the requested memoranda or even explain the failure after months of delay, amounted to a failure under Fed. R. Civ. P. Rule 55(a) to “otherwise defend” the suit . . . .’”; *Akra*, 86 F.3d at 856 (quoting *Harre*, 983 F.2d at 130). “Default judgment for failure to defend is appropriate when the party’s conduct includes ‘willful violations of court rules, contumacious conduct, or intentional delays.’”

With the above said, Derrick McFarland happens to be violating Rule 407 SCACR RULE 1.2(d) “A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent,” and RULE 4.1(b) “fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client”. Thereby, Rule 407 SCACR, RULE 8.3 demands that the appropriate professional authority to be informed.

With the Appeals Court stating “ *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 617-18, 632 S.E.2d 874, 881 (Ct. App. 2006) (providing when the circuit court sits in an appellate capacity, an issue not raised to and ruled upon by the circuit court is not preserved for review).”, Therefore the Respondent’s Brief is nullified and due to the Respondent’s failure to plead or otherwise defend at the lower court level then the Respondent can not plead or otherwise defend at the upper court level.

This court has violated Rule 264(a),(b), SCACR by the withdrawal of Romi Yolanda Robinson and substituted by Derrick McFarland without any petition to the court, order from the court or notice to the adverse party.

It is not improper for this Court to hold the defendants accountable for their lawyer's misconduct. *Everyday Learning*, 242 F.3d at 817-18. "While it may seem harsh to make defendants answer for their attorney's behavior, any other result would punish [the plaintiff] for the inaction of [its] opponents' lawyer. Defendants are better suited to bear the risk." *Inma*[1], 120 F.3d at 118-19. Further, "[if]they were truly diligent litigants who were misled and victimized by their attorney, they have recourse in a malpractice action." *Id.* See also *Glick v. Henderson*, 855 F.2d 536, 541 (8th Cir. 1988) ("[The] remedy for any ineffective assistance of counsel is a suit against his attorney for malpractice, not a new trial.") or in said case an appeal to an unjust judgment.

As to the Appeals court Determination as to the issues the administrative agency raised to and ruled upon, the violations of SC code §41-35-720 and §41-35-750 prevents these determination due to lack of ANY evidence (substantial and/or relative) of said to support the determination on (*State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008) "Unfair prejudice means an undue tendency to suggest a decision on an

improper basis.", Lisenba v. California, 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941) that fundamental fairness essential to the very concept of justice, *State v. Blackwell-Selim*, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011) trial court failed to make specific findings of fact to support its ruling, Ipso Facto, the commission has also violated **18 U.S. Code § 2071** “ (a)Whoever willfully and unlawfully conceals, ...in any public office,... shall be fined under this title or imprisoned not more than three years, or both” . “(b)Whoever, having the custody of any such record... willfully and unlawfully conceals... shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States...”. Therefore the appeals court has fraudulently declared issues that was and/or was not raised to and ruled upon by the agency The only item on record from the agency is the commission’s decision (R. p. 7,8) that has no merit and is no more then hearsay evidence Rule 802, SCRE for the commission although it does confirms the violation of §41-27-230 ("Employment" means: (1) “for wages under a contract of hire, written or oral, expressed or implied,” *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008) "Unfair prejudice means an undue tendency to suggest a decision on an improper basis.", *State v. Pittman*, 373 S.C. 527, 578, 647 S.E.2d 144, 170 (2007) Rule 402, SCRE; Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.". A man of common intelligence and of common reasoning would conclude that a faulty record that lacks substantial, relative or even circumstantial evidence would in no doubt bring about a faulty verdict even though this court system has refused to acknowledge due to its self governing and self protecting

actions, ipso facto, the courts below severely abused their discretion.

Commission have failed to present a complete record on appeal. It was the Commission ' burden under state code to furnish this court with a record supporting their decisions and any documents there of. It also violated Brady/s Rule (Withholding of evidence violates *due process* "where the evidence is material either to *guilt* or to punishment. " Brady v. Maryland, 373 U.S. 83 (1963)). Without the Record and without any representatives for the commission nor employer, that the plain error that is so obvious that the fairness and integrity of the hearing was based on prejudice and/or bias.

Courts finds that Defendants' failure to comply with the discovery referenced the possible harm to other victims that might have resulted if similar future behavior were not deterred.

Appeals court erred upon holding the circuit court determination upon "the whole record" and without substantial evidence in the record to support the Commission's decision when the Commission directly violated SC code §41-35-720. (Conduct of appealed claims. **"A full and complete record SHALL BE KEPT of ALL PROCEEDINGS in connection with an appealed claim. All testimony at any hearing upon an appealed claim shall be recorded, but shall not be transcribed unless the claim is further appealed."**) and §41-35-750. (Procedure to obtain review. "With its answer **the commission SHALL certify and FILE with the court ALL documents and papers and a transcript of all testimony taken in the matter and its findings of fact and decision.**", "the findings of the commission as to the facts, **IF SUPPORTED by evidence and in the absence of fraud,**"). With the Circuit Courts statement " I don't find a violation of federal law. Which you have talked about, for overtime" (R. p. 12),

along with “There is no overtime pay” on a new contract for hire (§41-27-230) (R. p. 17), and also “the employer would no longer be required to pay me time & a half when I worked over 40 hours per week. This is a violation of federal law..”, (see attached p. 15, Rule 1004,SCRE), These are substantial and relevant evidence (Rule 401, 402 SCRE) and are bound by Rule 1103 SCRE. Ipso Facto, the absence of evidence is evidence of absence.

The Appeals court has acknowledge S.C. Code Ann. § 41-35-110(5) (Supp. 2014) and § 41-35-120(1) (Supp. 2014) while at the same time blatantly refused to acknowledge (be faithful to the law - Canon 3(B)(2)) S.C. Code Ann. §41-27-230 "Employment" means: (1) “wages under a contract of hire, written or oral, expressed or implied”, S.C. Code Ann. §41-35-720 “A full and complete record shall be kept of all proceedings “, S.C. Code Ann. § 41-35-750 “the **commission shall certify and file** with the court **all** documents and papers and a transcript of all testimony taken in the matter and its findings of fact and decision” and 18 U.S. Code § 2071(b) “Whoever, having the custody of any such record...willfully and unlawfully conceals...shall be fined under this title...”, ipso facto, the judges of these courts are subject to 18 U.S. Code § 3 “Whoever, knowing that an offense...has been committed, receives, relieves, comforts or assists the offender ...is an accessory after the fact. “

With the Court using case laws such as *TNS478 (1998) Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471 that also states “Accordingly, since the Commission's decision was supported by the evidence”, Ipso Facto, there must be evidence to support the decision, it also states “Second, the record indicates”, Ipso Facto, there must be a “whole” record of the agency to determine whether or not an issue was

raised to and ruled upon by the agency, "to get such a judgment without evidence" is a violation of due process.

The lower courts can not make a decision in favor of the State and/or State Agency while the process is based upon the criminal actions of the State and/or State Agency, Therefore, said case can not be bound to process of which it would normally be bound to if no such criminal actions had existed. To do so is a violations of State Code §16-17-735 (E)(3) ""Sham legal process" means the ...reliance on as lawful authority... which purports to", (b)"assert **jurisdiction or authority** over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of a person or property"

With the Appeals Court subjects this case upon the "Record as whole" and has taken a bias defense posture in favor of the State and/or State Agency. Then this court must provide substantial evidence in support of its decision and since this court can not, ipso facto, this court must acknowledge and base its decision upon the violation of S.C. Code Ann. §41-35-720 and § 41-35-750 (2009), thus "absence of evidence is evidence of absence". A case law must be so closely similar to the case at hand as to not create severe damages the justice of the case.

As explained in the Appellants Brief that the termination and/or altering the Contract for hire without the agreement of the employee by an employer is determined as an employee as quitting by the commission has and is in direct contradiction of SC Code §41-27-230 and constitutes as a breach of contract. (*State v. Blackwell-Selim*, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011) trial court failed to make specific findings of fact to support its ruling), : *Houston v. Deloach & Deloach*, 378 S.C. 543, 549, 663 S.E.2d 85,

88 (Ct. App. 2008) (stating that pursuant to the Administrative Procedures Act, an appellate court's review of a decision of the Appellate Panel is limited to deciding whether the Appellate Panel's decision is **unsupported by substantial evidence** or is **controlled by some error of law**);. Therefore, any case law used by this court for the purpose of confining a decision to the whole record is invalid and void of any merit and/or authority. The failure of the Commission to provide the whole record to the Circuit Court is in fact have been harmful to the Appellant and causing and depriving the Appellant of a just appeal. With *United States v. Conces*, 507 F.3d 1028, 1043 (6<sup>th</sup> Cir. 2007) (party must show “categorically and in detail” that it took “all reasonable steps within its power to comply with the court’s order” (quoting *Glover v. Johnson*, 934 F.2d 703, 708 (6th Cir. 1991))); *United States v. Santee Sioux Tribe*, 254 F.3d 728, 736 (8th Cir. 2001) (party must demonstrate it “made in good faith all reasonable efforts to comply”), the Commission must categorically and in detail that it took all reasonable steps within its power to comply with State Code §41-35-720. §41-35-750 and made in good faith all reasonable efforts to comply under State Code §1-23-380 (5) The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:(c) **made upon unlawful procedure**; and (d) **affected by other error of law**.

Therefore the question to this court is

- (1) Does this court find that a pro se would know that the commission would refuse to disclose the record to the court violating §41-35-720 and §41-35-750 and prepare for such an criminal action as in brining in documents for the record. Also would the judge also have know as to the lack of record.

- (2) Does this court find that only the “Decision of the Commission” to be the “Whole Record”
- (3) Does this court find that the violating **CFR Title 29 §778.315** by an employer to be a “GOOD CAUSE” for an employee to either quit or refuse to accept a new contract of hire.
- (4) Does this court find that violating **CFR Title 29 §778.223** and/or **§778.318** by an employer to be a “GOOD CAUSE” for an employee to either quit or refuse to accept a new contract of hire when the employee are required to be on the job for a specific time frame and without pay for all hours worked.
- (5) Does this court find that failure of the commission and employer to show, plead and defend at a hearing to be abandonment of a case
- (6) Does this court find that violation of the above said is an **unlawful procedure** and/or **other error of law**
- (7) Does this court find that a verdict in favor of the State and/or State Agency that is base upon criminal action of the State and/or State Agency to be considered as “JUSTICE”
- (8) Does this court find that the termination of a contract of hire by an employer to be the termination of an employee (§41-27-230)
- (9) Does this court find that the alteration of a contract of hire by an employer without the approval or acceptance of an employee to be a breach of contract (§41-27-230).

Example of of the above (8 & 9 ), if the State was to inform the judges of this court that on XX date that it would no longer pay judges their salaries but instead would

pay only 1 hour per civil case and 1.5 hour per criminal case (@ \$15 per case hour) while having to be in the court house for nine hours a day Monday through Saturday (54 hours per week) without overtime pay, pay for anytime that you are in the court house while not working nor pay for any other job performances and also claims that's its an incentive to be more productive and considers it a pay raise (a judge can make more this way then by salary by doing enough cases although if a judge does not receive enough cases per week then the judge would make less then minimum wage for the required onsite working hours) to make more money. If any of the judges refused to accept this then they would be considered as quitting.

Due to the lower court judges refusal or incompetence in being faithful to the law (direct violation to Rule 501 SCACR **CANON 3**, the Judges's Oath, Rule 502.1 SCACR and the Lawyer's Oath, Rule 402 (k) SCACR ) The Appellant has provided the following authorities from CFR Title 29 Subtitle B Chapter V Subchapter B:

(A) §779.101 Guiding principles for applying coverage and exemption provisions.

It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope. "Breadth of coverage is vital to its mission." (Powell v. U.S. Cartridge Co., 339 U.S. 497.) **An employer who claims an exemption under the Act has the burden of showing that it applies.** (Walling v. General Industries Co., 330 U.S. 545; Mitchell v. Kentucky Finance Co., 359 U.S. 290; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52.) Conditions specified in the language of the Act are "explicit prerequisites to exemption." (Arnold v. Kanowsky, 361 U.S. 388.) "The details with which the exemptions in this Act have been made preclude their enlargement by implication." (Addison v. Holly Hill, 322 U.S. 60; Maneja v.

Waialua, 349 U.S. 254.) Exemptions provided in the Act “are to be narrowly construed against the employer seeking to assert them” and their application limited to those who come plainly and unmistakably within their terms and spirit; this restricted or narrow construction of the exemptions is necessary to carry out the broad objectives for which the Act was passed. (Phillips v. Walling, 324 U.S. 490; Mitchell v. Kentucky Finance Co., supra; Arnold v. Kanowsky, supra; Calaf v. Gonzalez, 127 F. 2d 934; Bowie v. Gonzalez, 117 F. 2d 11; Mitchell v. Stinson, 217 F. 2d 210; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52.)

- (B) §779.372 (a) “Section 13(b)(10)(A) states that the provisions of section 7 shall not apply with respect to “any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements”
- (C) §779.372 (c)(3) “As used in section 13(b)(10)(A), a mechanic is any employee primarily engaged in doing **mechanical work** “, “**The term does not include** employees primarily performing such **nonmechanical work** as washing, cleaning, painting, polishing, tire changing, installing seat covers, dispatching, lubricating, **or other nonmechanical work**”

As to the action of Judge Burch’s perjury, this action is controlled under 18 U.S. Code § 1001 “whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

- (1)falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2)makes any materially false, fictitious, or fraudulent statement or representation; or
- (3)makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title”

and 18 U.S. Code § 1621 “Whoever— (2)in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury” and SC Code 16-9-10 “(2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.”

The action of refusal to produce a decision by Judge Burch in turn has violated the appellants Rights to Due Process, Thus has also violated 18 U.S. Code § 242 “Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States...be fined under this title or imprisoned not more than one year, or both” State v. Chapman, 289 S.C. 42, 344 S.E.2d 611 (1986). The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay. With the above said. Rule 502. SCACR, RULE 7 demands that the appropriate professional authority to be informed.

With the above said. The Judges of the Court of Appeal bound under the Rule 501, SCACR **APPLICATION OF THE CODE OF JUDICIAL CONDUCT**

**“A. Anyone, whether or not a lawyer, who is an officer of the unified judicial system and who performs judicial functions, including an officer such as a magistrate, master-in-equity or special referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.”** and with the information provided to them and dismissing the actions there of, has directly violated Rule 501, SCACR **CANON 3D(1)** “A judge who receives information indicating a substantial

likelihood that another judge has committed a violation of this Code should take appropriate action. **A judge having knowledge\* that another judge has committed a violation** of this Code that raises a substantial question as to the other judge's fitness for office **shall inform the appropriate authority.**”, 18 U.S. Code § 242, 18 U.S. Code § 1001 “...whoever, in any matter within the jurisdiction of...judicial branch of the Government of the United States, knowingly and willfully— (1)falsifies, conceals, or covers up by any trick, scheme, or device a material fact;...shall be fined under this title, imprisoned not more than 5 years “, 18 U.S. Code § 3 “Whoever, knowing that an offense ... has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.”. With the evidence given along with court records, the judges of the lower court thereby has knowledge of the perjury and violations of the Rights to Due Process by Judge Paul M. Burch and are now considered as accessories after the fact and conspirators to said.

With the above said, the Judges of the Appeals court can not rule on or dismiss the accusations of the actions of the above said but can only report these actions to the appropriate authorities or be in direct violations to and/or be in conspiracy after the fact to the violations

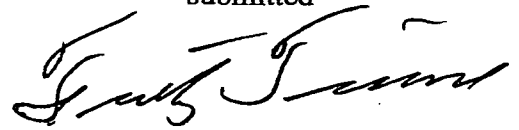
### CONCLUSION

Based on the foregoing argument and the arguments raised the Appellant’s Brief, the Appellant respectfully request that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue an opinion which reverses the Court of Appeals’ decision in its entirety, removes any language that conflicts with this Courts

prior decisions and awards decision in the Appellants favor. Alternatively, the Appellant ask this Court to issue an opinion which clarifies for the bench and bar exactly what the definition "GOOD CAUSE" consist of and also an opinion as to a process when a State Agency fails to comply to state law while in a judiciary process.

August 27. 2015

Respectfully  
submitted



Fritz A. Timmons  
P. O. Box 367  
Hartsville, SC 29551

faxed 5-4-9 @ 2:25pm VB

Form App-111...Rev. 2/05  
Catalog#: 05170

Appeal No. 0906675 -87-

**SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION**

**APPLICATION FOR LEAVE TO APPEAL TO COMMISSION**

X  
5/5/09  
5/1/09

Claimant's Name Fritz A. Timmons

SSN \_\_\_\_\_

Address \_\_\_\_\_

Date or \_\_\_\_\_

Initial Claim 03/20/09

Employer's Name Browns A/S RV's & Campers Inc

Address 30049 Hwy 151 Mcbee, SC 29101

Party Appealing Claimant

On 04/25/09, I received Appeal Tribunal Decision Number 2009-A-6453

mailed to me on 04/24/09 and ask for review of the record on the following grounds:

I disagree with the decision of the appeal tribunal because there was a substantial change in the terms or conditions of employment. The employer changed the pay system that was originally agreed upon when I was hired. The employer would dictate how much I would be paid for each job no matter how long it took to actually perform the work. With the change in the pay system, the employer would no longer be required to pay me time & a half when I worked over 40 hours per week. This is a violation of federal law because the type of work I performed & the employer are not considered exempt from paying overtime under federal law.

\* If appeal is untimely, state the reason. If appellant failed to attend Appeal Tribunal hearing, state the reason and whether postponement was requested:

S. C. Employment Security Commission  
MAY 05 2009

I know that I must continue to file my claims for each week of unemployment during the pendency of this appeal, I know that I can only be paid for those weeks that I have timely claimed. If I have received benefits and am ruled disqualified or ineligible, I know that I will be required to repay the benefits I have received for that time period.

\*\*As a Board of Review, the Commission is confined solely to the record submitted by the Appeal Tribunal and does not accept additional evidence or testimony in its consideration of the appeal.

Appellant Claimant \_\_\_\_\_

Signed by [Signature]

Title \_\_\_\_\_

Date 05/01/09

Does claimant need an interpreter?  YES  NO

What language/culture? [Handwritten]

Claimant is  Deaf  Mute

MAY 04 2009

(For Workforce Center Use Only)

Filed at Hartsville WFC / 1600  
(Workforce Center Name and Number)

Date 05/01/09

Received by [Signature]  
(Workforce Center Representative)

# The South Carolina Court of Appeals

Fritz Timmons, Appellant,

v.

SCESC and Browns A/S RV and Campers, Respondents.


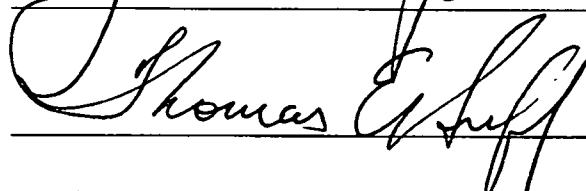

Appellate Case No. 2013-002356

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	C.J.
	J.
	J.

Columbia, South Carolina

cc:  
Fritz Allen Timmons  
Derrick K. McFarland, Esquire

**FILED**

October 23, 2015

**Robinson, Romi**

**From:** Burch, Paul M. Law Clerk (Roger E. Henderson) <PBurchLC@sccourts.org>  
**Sent:** Wednesday, September 11, 2013 1:25 PM  
**To:** Robinson, Romi  
**Subject:** RE: Fritz Timmons vs. Brown's RV 2009CP1600540

Ms. Robinson,

Judge Burch already issued an order denying the Motion to Amend. It has been sent in to replace the "lost order".

And yes, I assume the case is still being heard as indicated by the email notice. Judge Burch, however, will not be hearing it.

Please let me know if there is anything else I can do for you.

Edward Henderson

**RECEIVED**  
MAR 04 2014  
SC Court of Appeals

**From:** Robinson, Romi [mailto:RYRobinson@dew.sc.gov]  
**Sent:** Tuesday, September 10, 2013 11:42 AM  
**To:** Burch, Paul M. Law Clerk (Roger E. Henderson)  
**Cc:** Harrelson, Sandy; Chesley, Kristi  
**Subject:** RE: Fritz Timmons vs. Brown's RV 2009CP1600540

Mr. Henderson,

I just received email notification that this case was back on the roster which prompted me to look back at this email. I'm sorry that I have not yet forwarded an order for Judge Burch's review. Please advise whether I still need to send an order or whether the case is being heard again as indicated by the email notification.

Thank you,



Romi Y. Robinson, Esquire | SCDEW | Chief Administrative Hearing Officer & Director of Appeals  
631 Hampton Street | Columbia, SC 29201 | 803.737.3026 (p) 803.737.0287 (f) [ryrobinson@dew.sc.gov](mailto:ryrobinson@dew.sc.gov)

**CONFIDENTIALITY:** This email and any files transmitted with it contain information from the South Carolina Department of Employment and Workforce which may be confidential or privileged. The information is intended for business purposes only, and is solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited. Please notify the sender immediately if you have received this email by mistake and delete this email from your system. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the South Carolina Department of Employment and Workforce.

**From:** Harrelson, Sandy  
**Sent:** Monday, August 26, 2013 2:44 PM  
**To:** 'Burch, Paul M. Law Clerk (Roger E. Henderson)'  
**Cc:** Robinson, Romi  
**Subject:** RE: Fritz Timmons vs. Brown's RV (draft)

Mr. Henderson,

Ms. Robinson is out of town this week and will be returning to the office on Tuesday, September 3. I will put this in queue for her review sometime that week.

Thanks,  
Sandy



Sandy Harrelson  
Administrative Coordinator  
Romi Y. Robinson, Esq.  
Paul Famolari, Esq.  
Appellate Division  
Phone: 803.737.3622

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**From:** Burch, Paul M. Law Clerk (Roger E. Henderson) [<mailto:PBurchLC@sccourts.org>]  
**Sent:** Monday, August 26, 2013 1:52 PM  
**To:** Harrelson, Sandy  
**Subject:** RE: Fritz Timmons vs. Brown's RV (draft)

Ms. Robinson,

Judge Burch reviewed his notes on the issue you presented in your message. He determined that *Pringle* is controlling and that he had issued an order so indicating. However, Judge Burch said it is likely that the order was lost by the Darlington County Clerk of Court's office. He said they had been undergoing some changes recently and have such problems.

He asked that you draft a proposed order and he will proceed from there. Thank you and please let me know if I can do anything else to further assist you.

Edward Henderson  
Law Clerk to the Honorable Paul M. Burch

**From:** Harrelson, Sandy [<mailto:SHarrelson@dew.sc.gov>]  
**Sent:** Wednesday, August 21, 2013 12:31 PM  
**To:** Burch, Paul M.; Burch, Paul M. Law Clerk (Roger E. Henderson)

Cc: Robinson, Romi  
Subject: FW: Fritz Timmons vs. Brown's RV (draft)

From: Robinson, Romi  
Sent: Wednesday, August 21, 2013 11:41 AM  
To: Harrelson, Sandy  
Subject: RE: Fritz Timmons vs. Brown's RV (draft)

Judge Burch,

I spoke with Dell in your office yesterday regarding a discussion we had a week or so ago in reference to Fritz Timmons vs. Brown's RV (2009 -CP-16-0540). My hand-written file notes indicate that... "Mr. Timmons apparently filed a motion to amend with the court. The Commission has no record of ever being served. We rec'd a copy of the filings after a request to the Court. Even if it had been served, the motion to amend should be dismissed. Also, he is not entitled to amend the notice after the time for an appeal has expired." My notes also indicate I cited Pringle v. Builders Transport, 381 S.E.2d 731 (1989) in support of my Motion to Dismiss. I believe that you took the matter under advisement rather than rule from the bench, but I do not see that an order was ever issued.

I am happy to forward you anything from the agency's file to assist you in determining the next steps in this matter. Please let me know however I may be of assistance.

Kind regards,  
Romi Y. Robinson



Sandy Harrelson  
Administrative Coordinator  
Romi Y. Robinson, Esq.  
Paul Famolari, Esq.  
Appellate Division  
Phone: 803.737.3622

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**RECEIVED**  
MAR 04 2014  
SC Court of Appeals

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Fritz Timmons, Appellant,

v.

South Carolina Employment Security Commission and  
Browns A/S RV and Campers, Respondents.

Appellate Case No. 2013-002356

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Appeal From Darlington County  
J. Michael Baxley, Circuit Court Judge

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Unpublished Opinion No. 2015-UP-402  
Submitted May 1, 2015 – Filed August 12, 2015

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**AFFIRMED**

---

Fritz Timmons, of Hartsville, pro se.

Derrick K. McFarland, of the South Carolina Department  
of Employment and Workforce, of Columbia, for  
Respondent.

---

**PER CURIAM:** Fritz Timmons appeals from a circuit court order affirming the South Carolina Employment Security Commission's (the Commission's) denial of unemployment benefits, arguing the circuit court erred in (1) determining he voluntarily quit his job with Brown's RVs; (2) finding his new employment

3. As to Timmons's remaining issues: *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 617-18, 632 S.E.2d 874, 881 (Ct. App. 2006) (providing when the circuit court sits in an appellate capacity, an issue not raised to and ruled upon by the circuit court is not preserved for review).

**AFFIRMED.**<sup>1</sup>

**FEW, C.J., and HUFF and WILLIAMS, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

contract did not violate the Fair Labor Standards Act and Code of Federal Regulations; and (3) conducting an appellate hearing, not ruling in Timmons's favor by default, violating Timmons's rights and committing perjury, violating the state code and court rules, failing to award Timmons back pay for overtime and non-productive working hours, and rendering a decision unsupported by the evidence. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in determining Timmons voluntarily quit his job with Brown's RVs: *McEachern v. S.C. Emp't Sec. Comm'n*, 370 S.C. 553, 557, 635 S.E.2d 644, 646 (Ct. App. 2006) ("The Commission is an agency governed by the Administrative Procedures Act (APA)."); *id.* at 557, 635 S.E.2d at 646-47 ("Reviewing courts apply the substantial evidence rule, under which the agency's decision is upheld unless it is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." (internal quotation marks omitted)); *id.* at 557, 635 S.E.2d at 647 ("Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. It is more than a mere scintilla of evidence, but is something less than the weight of the evidence. Furthermore, the possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports an administrative agency's finding." (footnotes and internal quotation marks omitted)); *id.* at 558, 635 S.E.2d at 647 ("The burden is on a claimant to show compliance with benefit eligibility requirements." (internal quotation marks omitted)); S.C. Code Ann. § 41-35-110(5) (Supp. 2014) (providing to be eligible for unemployment benefits, a worker must have "separated, through no fault of his own, from his most recent bona fide employer"); S.C. Code Ann. § 41-35-120(1) (Supp. 2014) (providing a worker is ineligible for unemployment benefits "[i]f . . . he left voluntarily, without good cause, his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year").

2. As to whether the circuit court erred in determining Timmons's potential new employment contract with Brown's RVs did not violate federal law: *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998) (finding an issue unpreserved and holding that in an appeal from an administrative agency where the circuit court sits in an appellate capacity, the circuit court may not consider an issue unless the issue was raised to and ruled upon by the agency).