INITIAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA

In The Court of Appeals
[In The Supreme Court]

APPEAL FROM HORRY COUNTY
COURT of COMMON PLEAS

LARRY B. HYMAN JR. Circuit Court Judge

Case No. 2014-CP-26-01684

Appellant Case No: 2015-001210

Archie Howell, Respondent,

v.

Christopher Chabot Appellant,

DBA Autoworks,

APPELLANT CHRISTOPHER CHABOT'S INITIAL BRIEF

November 24, 2015

Christopher Chabot, Pro Se
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Myrtle Beach SC 29577

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2. Did the lower error by allowing Mr. Tunning to testify A) on the basis of his qualifications and B) after the Appellant made his defense of unclean hands in his response to the complaint as well as during the bench trial. C) Allowing hearsay in the court proceedings.
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STATEMENT OF THE CASE

The Respondent filed complaint against the Appellant and his business on September 9, 2013 in the surfside magistrate court bearing the case number 2013CV261041363.

The Honorable Blanton was the sitting judge in the case.

The bench trial was held on January 22, 2014

Judge Blanton found in favor of the plaintiff in the amount of $3,995.00

The Appellant filed an appeal to the court of common pleas case number 2014CP2601684

The Honorable Hyman was the sitting judge in the case.

The Appellant filed along with his appeal a motion to vacate the lower court's decision and a motion to dismiss with prejudice.

Judge Hyman ruled that since the Appellant didn't remember the Respondent he found in favor of the Respondent based on hearsay from the Respondents expert witness that did not show up in court.

The Appellant then filed motion to reconsider, judgment notwithstanding the verdict and/or amend the judgment, judicial review, judicial review of the damages and denovo.

The Honorable Judge Hyman also denied the Appellants motion.

This appeal then followed.

MAGISTRATE BENCH TRIAL OVERVIEW

The Respondent and the Respondent's attorney misrepresented the facts in their original complaint to the court. In the Respondents original complaint they stated "Plaintiff and Defendant entered into a contract in which Defendant represented that it could repair Plaintiff's automobile by replace the engine valves. The automobile is a 2002 BMW 745. Respondent supplied the Appellant with $600.00 in parts which he required to perform the work" (APP: Page Page 002, #4). The Respondent reinstates again on page 2 number 9 and 14 "Because of Defendant's breach of contract. Plaintiff suffered damages of approximately $6,000.00 for loss of the cars value plus $600.00 in parts supplied to the Defendant." (APP Page003-004, # 9, 14, 17)

In fact his testimony states the complete opposite as of the initial complaint. The Plaintiff testified that " I took the car to Joe Tunning" (APP Page 046, line 9) The Plaintiff goes to say "I gave him some money to buy some parts for it" (APP Page 046, line 14-15) yet in his complaint over and over again he states he gave it to the defendant. On cross examination he reinstated his testimony by stating "that is correct" when he was asked "the car was brought to.. Joe Tunning.. would this be the same Joe that owns Twisted Off-Road" (APP Page 053 lines17-19) on the same (APP Page 054 lines1-11) The Appellant asked the Respondent "you said you paid six hundred dollars.. I believe.. who was that given to" The Respondent answered "that was Joe Tunning" There was never a contract between the Respondent and the Appellant. The only contract was between the Respondent and Joe Tunning. The same Joe Tunning who was his expert witness, Joe Tunning is unqualified to be an expert witness in this case furthermore was highly prejudicial against the Appellant.

The court erred in letting Joe Tunning testify in this case. He was unqualified and was highly prejudicial in this case. The plaintiff stated in his testimony about Joe Tunning " when he looked at it..um he decided it was something that was out of his realm... because he did not have the capability to fix that" (APP Page 046 lines 9-18). Joe Tunnings testimony stated when he purchased the parts he talked to the guy "that kinda told me what was the easiest way to do it..and I felt comfortable in doing it..but I didn't know the motor" (APP Page 061 lines 9-17) His extent in his own words of being an expert was "from basic maintenance to lift kits..rims..tires..some general maintenance repair"(APP Page 056 Lines10-13) Joe Tunning is not a registered entity and he defined his work by "under the table stuff" (APP Page 058 lines 22-23)

In addition to the Respondents expert witness being unqualified and prejudicial, it was he himself who took apart the vehicle. " I was kinda ready to do it.. I went and popped the hood took the engine cover off.. there was so much going on.. under there I am not a BMW kinda person.. could have done it.. maybe.. but that wasn't a chance I was taking.. because if I couldn't afford to fix it.. if I broke it" There is no way to know what Mr. Tunning did to the vehicle. In fact matter he could done something to the vehicle, not put it back together and he supposedly drove it to Autoworks which could have caused the damage. The Appellant stated multiple defenses that the plaintiff could not be entitled to his claims.

The Respondent fails to state that there was no contract between the two parties and therefore a breach of contract, breach of warranty, negligence, misrepresentation, and the violation of South Carolina consumer protection code fail to be acceptable claims when no contract existed. There was no offer, acceptance, or consideration in this case between the Respondent and the Appellant. There were no terms as the plaintiff Archie Howell testified between him and the

Appellant. Without any terms there cannot be any terms which can be breached. The plaintiff in addition claims he incurred damages but was merely statements and no evidence was offered to what he claimed in which must be proven in order to receive compensation for those damages. The Plaintiff's counsel in his complaint identified that the vehicle was worth $9,000.00 (APP Page 003 #6), but during the trial the trial in his opening statements said the "bluebook value is seventy two hundred on it" (APP Page 044 line 12-13 & APP Page 052 lines 9-17). In addition to the Plaintiff's damages he never produced any blue book records or pictures of the vehicle to determine its worth as to the condition. He argues that he's entitled to receive $600.00 in parts that he paid to the Defendant but as noted above that the Defendant never received any monies from the plaintiff. The money was given to Joe Tunning. In the trial he said he had Sonny's Auto body tow the vehicle but again no receipt was produced. (APP Page 050 line 16-19). The plaintiff in his testimony said he had the vehicle towed to Hughes Automotive where he has the vehicle checked out, yet once again no estimate was produced no receipts from Hughes Automotive not even a diagnosis of what was wrong with the vehicle although testified that Hughes Automotive tried to fix the valve and told the plaintiff he needed a new engine. (APP Page 051 lines 6-7, 23-27). Conveniently the plaintiff sold the car to Billy Hughes of Hughes Automotive. He stated that "ended up just selling the car.. to Billy Hughes.. aw .. for .. aw.. I believe.. it was three thousand dollars" (APP Page 052 Line 6-9) It all seems a little suspect when the plaintiff couldn't remember what he sold his car for especially when he could not produce any of the mentioned above items. The plaintiff fails produce any proof of damages which his claims rely on. For what anybody knows the plaintiff could still have the vehicle. The defendant is not responsible for any claims that the plaintiff incurred if he incurred any. The plaintiff took the vehicle to Twisted Off Road and Joe Tunning. He gave Joe Tunning the six

hundred dollars not to the defendant Christopher Chabot. Joe Tunning worked on the vehicle who was unqualified to do so. He drove the vehicle to Autoworks. The defendant told Mr. Tunning that he had a lot of work. Mr. Chabot never got the chance to ever touch the vehicle before it was removed from his shop. On numerous occasions in the trial if the plaintiff was asked if he had a ro (repair order) or a work order from Autoworks, the plaintiff stated "I do not" (APP Page 054 Lines 7-11)

The plaintiff is responsible for taking a vehicle that he claims is worth such value to a guy who works on lift kits. He is responsible for not asking Mr. Tunning for his expertise to see if he was qualified to work on the vehicle.

Mt. Tunning drove the vehicle to the Appellants shop. The Appellant never looked or touched the vehicle. The next day the vehicle was gone. The next thing he knows he's being sued!

COMMON PLEAS BENCH TRIAL OVERVIEW

The Appellant filed an appeal along with a motion to vacate and dismiss the lower court's ruling attaching exhibits along with transcripts but his appeal was denied.

Then the Appellant filed a set of motions for reconsideration, judgment notwithstanding the verdict and/or amend the judgment, judicial review, and judicial review of damages, and denovo giving the court and the opportunity to look over the errors and to correct the mistakes that were made in the case but that to was denied.

STANDARD OF REVIEW

A court must make their ruling on substantial evidence – Any final ruling made by a court or jury must be supported by evidence with some substance to it. If a finder of fact makes an ultimate ruling that is not supported by such substantial evidence, it cannot be sustained on appeal. The court of appeals must consider the record as a whole, weighing both the evidence that supports and the evidence that detracts from the agency's decision. *See* Mayes v. Massanari, 276 F.3d 453, 459 (9th Cir. 2001); *see also* Int'l Union of Painter & Allied Trades v. J & R Flooring, Inc., 656 F.3d 860, 865 (9th Cir. 2011); Hawaii Stevedores, Inc. v. Ogawa, 608 F.3d 642, 652 (9th Cir. 2010)

In this case it is apparent that no substantial evidence was ever presented and therefore the court should have ruled in the Appellants favor by dismissing the claims with prejudice. A district court's findings of fact are reviewed under the clearly erroneous standard.

If a court has clearly made an erroneous decision – If a finder of fact makes a ruling that is clearly at odds with the evidence presented, the clearly erroneous standard should apply and have the case remanded and dismissed.

It is very clear in this case that the lower court made more than one erroneous decision and should be reversed and remanded to be dismissed with prejudice.

If the Respondents so called expert witness was qualified he should have done the work but couldn't. Yet the court allowed as an qualified expert witness. More so it is was apparent that in fact he took the money took the car apart and made the contract with the Respondent.

ARGUMENT

I. THE COURT BELOW ERRED IN NOT REMOVING THEMSELVES FROM THE BENCH AFTER HE DISCLOSED KNOWING THE PLAINTIFF/RESPONDENT

During the initial bench trial Judge Blanton stated off the record that he played bridge with the Respondents wife. He should've excused himself from hearing the case and found another judge to be un biased to hear the case. Although it is strange how it was never in the court records on the cd's given to the Appellant for his appeal. Judge Blanton should have known Under 28 U.S.C. §455(a), "any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." He should have recused himself and or disqualified himself by hearing this case but chose not to. In some cases, it may be that the judge's conduct is so egregious that the verdict may be reversed on appeal even in the absence of an express objection. The District of Columbia Circuit found in *U.S. v. Wyatt,* 442 F.2d 858 (D.C. Cir. 1971). In addition in the case of *McMillan v. Castro,* 405 F.3d 405, 410 (6th Cir. 2005). While the Sixth Circuit called the court's tone and interrogation of the plaintiff "troubling," it did not find grounds for reversal in *McMillan v. Castro.* The trial court's conduct in question included cutting the plaintiff's answers to his questions short, stating that he was asking "a simple question," questioning whether he and plaintiff were "speaking the same language," ending a line of questioning by saying "[t]hat's it? That's your case?," and suggesting that the plaintiff's attorney had keyed her in on an answer. *Id.* at 409.

It is apparent in this case that the Appellant was treated unfairly and that Judge Blanton was biased in his ruling. The Respondents could not meet the required element set forth under the law nor provided any such proof of their claims yet a judgment was granted to them against the

Appellant. Judge Blanton told the Appellant that he could not testify about what someone told him but aloud the other side to. This was also true with Judge Hyman in the common pleas court but after numerous attempts to retrieve the transcripts from an un responsive and un willing transcriptionist the Appellant has to proceed with his appeal without those. The Respondents claims will be gone into greater detail later in this brief.

Wherefore, the court erred by hearing the case that he should have recused himself or should have disqualified himself from the case.

II. THE COURT BELOW ERRED IN RULING THAT THE ALLOWING MR. TUNNING TO TESTIFY AS A QUALIFIED EXPERT WITNESS

A. BY HIS QUALIFICATIONS

The Respondents own expert witness Joe Tunning who was unqualified as an expert should never been allowed to testify to his knowledge of the situation not only accepted the money from the Respondent but took the car apart. "The court erred in letting Joe Tunning testify in this case. He was unqualified and was highly prejudicial in this case. The Respondent stated in his testimony about Joe Tunning " when he looked at it..um he decided it was something that was out of his realm... because he did not have the capability to fix that" (APP Page 046Lines 14-18)Yet he called him as an expert witness and this was allowed by the lower court.

Joe Tunnings testimony stated when he purchased the parts he talked to the guy "that kinda told me what was the easiest way to do it..and I felt comfortable in doing it..but I didn't know the motor" (APP Page 061 line 9-17) His extent in his own words of being an expert was "from basic maintenance to lift kits..rims..tires..some general maintenance repair"(APP Page 14 Lines 11-13)"

In addition to the Respondent expert witness being unqualified and prejudicial, it was he himself who took apart the vehicle. " I was kinda ready to do it.. I went and popped the hood took the engine cover off.. there was so much going on.. under there I am not a BMW kinda person.. could have done it.. maybe.. but that wasn't a chance I was taking.. because if I couldn't afford to fix it.. if I broke it" (APP Page 061 Lines 24-28 & APP Page 062, lines1-4) There is no way to know what Mr. Tunning did to the vehicle. In fact matter he could done something to the vehicle, not put it back together and he supposedly drove it to Autoworks which could have caused the damage. How can this person be an expert witness? Mr. Tunning stated "I told Archie yeah... lets go for it...I looked up the stuff I ordered the parts" (APP Page 061 lines 15-17)

The Respondent made a gesture to the court that he was not qualified as a mechanic but the court granted him the right to testify as an expert. (APP Page 057 lines 16-17)

Wherefore, the court erred in allowing Mr. Tunning to testify he has no qualifications as being a mechanic, he contacted and accepted money from the Respondent to fix his car, the Respondent brought the car to Mr. Tunning, Mr. Tunning took the vehicle apart, and was highly prejudicial against the Appellant.

B. BY THE APPELLANTS RESPONSE DEFENSE OF UNCLEAN HANDS

In the Appellants response to the original complaint one of his defenses was unclean hands defense. The Respondent choose to take his vehicle to his so called expert witness Joe Tunning without checking his qualifications and allowed Mr. Tunning to take the vehicle apart paying making a contract with Mr. Tunning and paying Mr. Tunning to fix the vehicle. The Respondent

filed a complaint against the Appellant when he did not have clean hands nor mitigated his damages during this whole ordeal.

Wherefore, the court erred in not dismissing the Respondents complaint after the Appellant filed a response with multiple defenses and asked for strict proof and to have the case dismissed.

C. BY ALLOWING HEARSAY IN THE TRIAL PROCEEDINGS

During the trial proceedings the Respondent claimed that the Appellant ruined the engine of the vehicle. The Respondent in his testimony said he had the vehicle towed to Hughes Automotive where he had the vehicle checked out, yet once again no estimate was produced no receipts from Hughes Automotive not even a diagnosis of what was wrong with the vehicle although testified that Hughes Automotive tried to fix the valve and told the Respondent he needed a new engine. (APP Page 051 lines 6-7,). Conveniently the plaintiff sold the car to Billy Hughes of Hughes Automotive. He stated that "ended up just selling the car.. to Billy Hughes.. aw .. for .. aw.. I believe.. it was three thousand dollars" (APP Page 052 Line 6-9) It all seems a little suspect when the Respondent couldn't remember what he sold his car for especially when he could not produce any of the mentioned above items. The amount that the Respondent claimed the vehicle changed numerous times before, during and the court proceedings. The Respondent fails produce any proof of damages which his claims rely on. For what anybody knows the Respondent could still have the vehicle. Allowing him to testify about what someone told him about what was wrong with the vehicle is purely hearsay and should have never been allowed to be heard.

Wherefore, the court erred in allowing the Respondent to introduce hearsay into the proceedings.

III. THE COURT ERRED IN GRANTING A JUDGMENT AGAINST THE APPELLANT WITH NO PROOF WAS ENTERED AND THE RESPONDENT COULD NOT MEET THE ELEMENTS IN COURT ON THE BELOW COUNTS

A. COUNT I-BREACH OF CONTRACT

As specified above there was never a contract between the Respondent and the Appellant. As the Respondent and the Respondents witness testified that the vehicle was brought to Joe Tunning of Twisted Off Road (the Respondents expert witness). The Respondent testified that he never talked to the Appellant about any terms of a contract. The Respondent failed to meet any of the elements regarding a breach of contract. There was neither an offer acceptance nor consideration. Within a breach of contract there has to be terms in which there was a breach but the Respondent in his own testimony testified that he didn't have any set terms with the Appellant only with his own expert witness to fix the vehicle. Moreover the respondent proved no damages, showed no receipts, no invoices, no work orders, no blue book values, no estimates, no pictures of the condition of the car, especially the sale of the car. In *RoTec Services, Inc. v. Encompass Services, Inc., 359 SC. 467, 473,. 597 S.E.2d 881, 884 (Ct.App. 2004)* the appellant court found that , "Encompass has failed to allege any facts which would tend to prove Rotec committed a fraudulent act accompanying its alleged breach of contract."The Court of Appeals of South Carolina standard of review in the *Maro v. Lewis, 697 S.E.2d 684 (S.C. Ct. App. 2010)* stated "This being an action for the breach of contract, the burden was upon the [plaintiff] to prove the contract, its breach, and the damages caused by such breach." *Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).* "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." *Id.* The court of appeals reversed and remanded the case due to the plaintiff did not prove all the necessary elements to prove a breach of contract had taken place.

In the original complaint the plaintiff claimed the car was worth $9,000 but in their testimony it was $7,200 and then $ 6,200 so really what was it worth? Then couldn't remember what he sold it for. There was never and receipts bluebook values or anything else submitted in court as to the value of the vehicle.

"The purpose of an award of damages for breach of contract is to put the plaintiff in as good a position as he would have been in if the contract had been performed." *Minter v. GOCT, Inc., 322 S.C. 525, 528, 473 S.E.2d 67, 70 (Ct. App. 1996).* "The proper measure of compensation is the loss actually suffered by the plaintiff as a result of the breach." *Id.*

There is simply no way of knowing the proper compensation if there is to be compensation to be had in this case especially when the contract was between the Respondent and the Respondents own witness.. The value of the car or damages lost was never presented in court. There is no diagnosis of what was wrong with the vehicle when he supposedly testified (hearsay that should have not been allowed) what somebody told him that he needed. There is no way of knowing even if he sold the vehicle. Without the proof of damages; damages cannot be given.

Wherefore, the court erred in granting a judgment against the Appellant on the account of breach of contract.

B. COUNT II-NEGLIGENCE & COUNT IV- MISREPRESENTATION

The Respondent has shown that there was no contract between him and the Appellant, in fact that he never met the Appellant nor contacted with him to fix his vehicle. There was no misrepresentation on his part and there for the Respondent claims fall flat and cannot be justified nor the elements met.

In order to state a claim for negligent misrepresentation "a plaintiff must show (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to communicate truthful information to the plaintiff; (4) the defendant breached that duty; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as a result of such reliance." Redwend Ltd. P'ship v. Edwards, *354 S.C. 459, 473, 581 S.E.2d 496, 504 (Ct. App. 2003)*, all which the Respondent did not meet.

It has been well established that "there can be no liability for casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence." Robertson v. First Union Nat'l Bank, *350 S.C. 339, 348, 565 S.E.2d 309, 314 (Ct. App. 2002)* (quoting West v. Gladney, *341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000))*.

A claim for negligent misrepresentation is predicated upon the transmission of a negligently made false statement. *See Armstrong v. Collins, 366 S.C. 204, 220, 621 S.E.2d 368, 376 (Ct. App. 2005); Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003); Robertson v. First Union Nat'l Bank, 350 S.C. 339, 349, 565 S.E.2d 309, 315 (Ct. App. 2002); Brown v. Stewart, 348 S.C. 33, 42, 557 S.E.2d 676, 680–81 (Ct. App. 2001); West v. Gladney, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000).* Like negligent misrepresentation, an actionable fraudulent misrepresentation case requires there first be a false representation predicated upon misstatements of fact rather than upon expression of opinion, intent, or confidence that the deal would be satisfactory. *See Bishop Logging Co. v. John Deere Indus. Equip. Co., 317 S.C. 520, 526–27, 455 S.E.2d 183, 187 (Ct. App. 1995)* (finding statements by equipment seller concerning expected performance of logging system were opinions as to future performance and could not be basis for claim of fraud).

More specifically, the alleged false representation must be of a present or pre-existing fact. *See* *Spires v. Acceleration Nat'l Ins. Co.*, *417 F. Supp. 2d 750, 755-56* (D.S.C. 2006) (applying South Carolina law). The negligent representation cannot be based on unfulfilled promises or statements as to future events. *See* *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993).

No right to rely In addition to showing that a false representation was made, a plaintiff must also show that it had a right to rely on such representation in order to pursue a claim for either negligent misrepresentation or fraudulent misrepresentation. *See* *GSM Dealer Servs., Inc. v. Chrysler Corp.*, *32 F.3d 139, 142 (4th Cir. 1994)* (applying South Carolina law). When there is no fiduciary relationship between the parties and the situation involves an arm's length transaction between mature, educated parties, there is no right to rely. *Lands Inn, Inc. v. Branch Banking and Trust Company of South Carolina*, C.A. *No. 2:98-158-23* (S.C. Com. Pl. April 12, 1999) (*citing Florentine Corp. v. PEDA I., Inc.*, 339 S.E.2d 112, 114 (S.C. 1985).

Wherefore, the court erred in granting the Respondent a judgment against the Appellant for negligence and misrepresentation.

C. COUNT III-BREACH OF WARRANTY

In order to have a claim for breach of warranty claim there had to have a warranty given. As stated above the Respondent took the car to Twisted Off Road and contracted with Joe Tunning to fix his vehicle not the Appellant. The Respondent never spoke, saw or never contracted with the Appellant.

South Carolina law allows people injured by defective products to recover damages under three contract theories: breach of an express warranty, breach of an implied warranty of merchantability; and breach of an implied warranty of fitness for a particular purpose. *See Herring v. Home Depot, Inc., 350 S.C. 373, 379–80, 565 S.E.2d 773, 776 (Ct. App. 2002)* ("Breach of warranty is an action affirming the contract."). All which are based when an action has taken place affirming a contract. Here the Appellant has already proven that no contract had taken place. Reinserting the fore mention statements and exhibits to that there was neither offer acceptance nor consideration. The Respondent never testified to any terms or anything that the Appellant told him because the Appellant never spoke to the Respondent. The Respondent could have never had an implied a warranty from an Appellant he never spoke to or saw. There is no doubt, however, that a Respondent who asserts breach of warranty must prove only that his contractual expectations were not fulfilled. See *Gasque v. Eagle Mach. Co., 270 S.C. 499, 502-03, 243 S.E.2d 831, 831-32 (1978)* The Appellant has shown that there was no contract between the Respondent and the Appellant and therefore the Respondents failed to meet his burden on any of his claims.

In order to have a claim for a breach of warranty the defendant/appellant had to be at least a participant *See Spring Mill Townhomes v. Osla Fin. Servs., Inc., 465 N.E.2d 490, 493 (Ill.App.Ct.1983)* (holding that a homeowners' association did not have standing to bring an action for breach of an implied warranty of habitability, in part, because individual participation would have been necessary) the Appellant never participated anywhere in this case. Again there was no contract in this case between the Respondent and the Appellant.

The Respondents counsel has gone overboard again in his complaint on (APP Page 003 #16) when he claimed that "the defendant mad express or implied warranties that the repair would be made in a diligent good and working manner" There is not one shred of testimony from the Respondent that he says the Appellant spoke to him and expressed or implied a warranty. Again this claim is purely a fabricated story by the Respondents side.

Wherefore, the court erred in granting the Respondent a judgment against the Appellant on his breach of warranty count.

D. COUNT V-VIOLATION OF THE SOUTH CAROLINA CONSUMER PROTECTION CODE

The Respondents counsel claims that the Respondent is entitled under the South Carolina regulation of manufacturers' distributors and dealers act. Under the act section 56-15-10 they are defined as follows: (h) "Dealer" or "motor vehicle dealer", any person who sells or attempts to affect the sale of any motor vehicle. (b) "Manufacturer," any person engaged in the business of manufacturing or assembling new and unused motor vehicles. (g) "Distributor", any person who sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives within the State. All which do not apply to the Appellant. This act does not have anything to do with the Appellant. The Respondents counsel again is grasping for straws and making us some false claims against the Appellant. The Appellant did not contract with the Respondent to fix his vehicle and without a contract his claims on the violation of South Carolina consumer protection code because the Appellant didn't owe any duty to him.

Wherefore, the court erred in granting the Respondent a judgment against the Appellant on his count for violation of the South Carolina consumer protection act and the South Carolina regulation of manufacturers' distributors and dealers act.

Wherefore, the court erred in granting a judgment to the Respondent against the Appellant in the above count.

IV. THE COMMON PLEAS COURT ERRED IN GRANTING THE APPELLANTS MOTION TO VACATE AND DISMISS

The Appellant filed a motion to vacate and dismiss in conjunction with his appeal in which the court denied his motion and dismissed his appeal. The honorable Judge Hyman refused to read his motions or exhibits. He based his denial of the Appellants appeal that since the Appellant didn't remember the vehicle or the Respondent at the time of the damage to the car was caused he wasn't telling the truth. He would hear nothing as to what this appeal is based on as it were when the case was appeal from the magistrate court to the court of common pleas. The Appellant throughout his testimony and his motions has never wavered. He never spoke or saw the Respondent nor did he accept any money from him and has no repair order for any such year, make, or model.

V. THE COMMON PLEAS COURT ERRED IN GRANTING THE APPELLANTS MOTION TO RECONSIDERATION, JUDGMENT NOT WITH STANDING THE VERDICT AND/OR ALTER OR AMEND THE JUDGMENT, JUDICIAL REVIEW, JUDICIAL REVIEW OF DAMAGES AND DENOVO.

The Appellant then filed in accordance of the last a try with the court of appeals to reconsider his along with other motions allowing the lower court a last chance to rectify their ruling before appealing the case to the South Carolina Court Of Appeals in which is a lengthy and

costly process. The motion had sat for months with no hearing date set. Then after months a hearing date was set the Appellant had a prior business trip and when he went to file a continuance the told him he case was closed and that they could not find the file? After four trips to the court house and running out of time a continuance was filed. The Appellant could not make the court date and should have had the case continued for good cause. The motions were denied as well as the motion to continue the day of the hearing date.

CONCLUSION

Nothing in this brief is new or has not been brought up in the past and apologizes to the court if the information contained in this brief became repetitive. The Appellant contends that this case should have been dismissed with prejudice at the magistrate court stage of the proceedings. It's apparent but the above submitted documents and arguments that this case does not even involve the Appellant. It is very clear that Mr. Tunning was an unqualified mechanic and expert witness and should have never been allowed to testify. Furthermore the above exhibits submitted goes to show that the contract was between the Respondent and the Respondents witness. The Respondents attorney couldn't even keep his statements or arguments correct. The attorney went as far as to try to have the Appellants this appeal dismissed on a technicality when he knew he had been served multiple times which this court denied. This is a case of bootstrapping the system to get a judgment against the Appellant who had nothing to do with his vehicle. The fact is that Mr. Tunning accepted money from the Respondent took the vehicle apart and who knows what he did to it. The Appellant testified he never contracted, spoke, received any money or promised to fix the Respondents care that was all the Respondents witness who did which has been proven throughout the exhibits. The facts are exactly how they are they need not meet any of the elements nor entered any evidence of their claims.

Wherefore, the Appellant respectfully asks this court to remand and dismiss this case with prejudice on the grounds and exhibits stated above.

The Appellant moves to ask this honorable court for reimbursement for out of pocket cost for this litigation. The Appellant has incurred numerous costs in fighting this frivolous lawsuit including but not filing fees, appeal fees, transcriptionist costs, paper, ink, process server fees, postage, and time off of work as well as other costs.

Respectfully Submitted,

Christopher Chabot
4787 Dahlia Court #204
Myrtle Beach SC 29577

CERTIFICATE OF SERVICE OF APPELLANT

THE STATE OF SOUTH CAROLINA

In The Court of Appeals
[In The Supreme Court]

APPEAL FROM HORRY COUNTY
COURT of COMMON PLEAS

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Archie Howell, Respondent,

v.

Christopher Chabot Appellant,

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APPELLANT CHRISTOPHER CHABOT'S

CERTIFICATE OF SERVICE

I, Christopher Chabot, hereby certify that I have personal served a copy of the Appellants initial brief, designation of matter, motion to leave outside the initial deadline, letter of designation of matter on December 3,2015 to Other Counsel of Record

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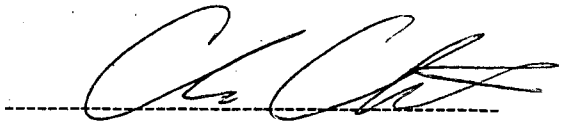
Murrells Inlet, SC 29576
Attorney for the Respondent

Respectfully Submitted,



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