

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2007-CP-23-3206

North American Rescue Products, Inc., Respondent,
v.
P.J. Richardson, Petitioner.

**P.J. RICHARDSON'S REPLY IN SUPPORT OF HIS PETITION FOR WRIT OF
CERTIORARI**

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Introduction

This Court should grant Richardson's petition for certiorari. The decision of the Court of Appeals is inconsistent with the law of this State because its Opinion imposes a price term into the parties' contract when the parties had previously agreed to all of the essential terms of the contract, including price. Courts do not impose contractual terms onto parties. The jury found one contract capable of performance and the trial court's judgment ordered specific performance of that contract. But the Court of Appeals incorrectly set a price term that was different than the one for which Richardson bargained.

LAW/ANALYSIS

I. Richardson is not asking this Court to consider issues outside of the Court's purview.

NARP contends that Richardson's argument relating to the purpose of the dollar amount contained on the verdict form is not preserved for review by this Court. This is incorrect. Richardson argued this issue to the Court of Appeals both in the initial appeal and in his efforts following the issuance of the Opinion in trying to gain rehearing before the Court of Appeals. Further, a lengthy discussion of the question about the meaning of the dollar amount on the verdict sheet was undertaken at the oral argument before the Court of Appeals—making the issue quite literally “raised in the Court of Appeals.” The Court of Appeals properly considered the issue even though it ultimately ruled against Richardson on the point.

In fact, NARP moved to dismiss Richardson's appeal on the grounds that Richardson won at the trial, and was not an aggrieved party. However, part of NARP's position in this regard was that Richardson must pay \$2,936,000 for the 7.5% of NARP

stock. Richardson disagreed and resisted the motion to dismiss, which motion the Court of Appeals denied. Hence, the issue of how much, under the contract, Richardson must pay for the NARP stock was an issue always squarely before the Court of Appeals for consideration. This Court should thus review this matter to correct the mistakes of law contained in the Court of Appeals' decision as outlined herein and in Richardson's petition for certiorari.

II. Richardson's presentation of the Record is accurate and thus supports certiorari.

Richardson is requesting that this Court enforce the judgment of the trial court as written, which ordered specific performance of the contract the jury found capable of performing—the 2000 contract as orally amended in Charleston. That agreement provided for the exchange Richardson seeks this Court to recognize in accordance with the trial court's judgment (the value of 7.5% of the stock of the former Reeves Company for 7.5% of NARP).

Here, the Court of Appeals erred in its November 14, 2011 Opinion in this matter by using a dollar amount on the verdict form which corresponded to Richardson's promissory estoppel cause of action. It is true that the dollar amount was not expressly linked to the promissory estoppel claim on the verdict form itself. However, the Court correctly affirmed the jury's determination that the 2000 agreement as modified in Charleston was capable of being performed. Such a finding by both the jury and the Court of Appeals requires the conclusion that the contract contained all the essential terms—including price. *See Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891 (1989) (holding that in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms

of the contract). Price is an essential term of a contract. *Ringer v. Graham*, 293 S.C. 238, 359 S.E.2d 523 (Ct. App. 1987). Thus, Richardson believes these legal principles and logic show that the dollar amount written in by the jury on the verdict form related not to an agreed price, but instead to Richardson's promissory estoppel claim.

The Record demonstrates that evidence existed showing the parties' agreement in Charleston, as amended. NARP points to evidence from its witnesses that there was no such amended contract where money, rather than stock, could be exchanged by Richardson for 7.5% of NARP stock. The jury disagreed with NARP. The jury found that the Charleston contract was still enforceable, and that Richardson could pay money rather than swap stock. Hence, what the trial court ordered to be specifically performed provided every essential term for performance, including what Richardson would pay for the 7.5 % share of NARP, which amount was \$415,988 from the proceeds of the Reeves company sale. Because the judgment orders performance of a contract and only one contract exists in this matter, the judgment for specific performance can only relate to that contract. The Court of Appeals erred in finding otherwise.

III. The Court of Appeals erred in imposing additional terms into the parties' contract based on events occurring after trial.

After trial, NARP took the position that in order for Richardson to obtain his 7.5% interest in NARP, he must pay \$2,936,300.00 for his shares of stock. (October 6, 2008 letter from Curtis Stogdhill; R. p. 1067.) The Court of Appeals erred in adopting this position in its November 9, 2011 Opinion despite the reality that the trial court found that a valid agreement existed and ordered it to be specifically performed. Now, however, the Court of Appeals has imposed a new term on Richardson, one to which he did not agree. Richardson seeks certiorari.

“The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous.” *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003); *see also Charles v. Canal Ins. Co.*, 238 S.C. 600, 608-09, 121 S.E.2d 200, 205 (1961) (holding where a contract’s terms are clear, the court’s function is to enforce the terms and not to substitute its own judgment for that of the parties). The Court of Appeals’ Opinion ignores the above-cited and well-settled points of law.

Here, the trial court properly entered judgment in favor of Richardson and lawfully ordered NARP to specifically perform its obligations under the parties’ 2000 agreement as orally amended following the 2004 meeting in Charleston, South Carolina. The jury found that a contract existed. The terms of the contract are clear. The trial court ordered the parties to specifically perform that contract. Hence, the court of appeals should have concluded that Richardson is entitled to pay \$415,988 for the 7.5 percentage share of NARP. But in its Opinion, the Court of Appeals uses the phrase “method of payment” and states that the parties’ contract was silent on this point. *See NARP v. Richardson*, Op. No. 4909 at p. 57. However, the “method of payment” as agreed was recognized by the jury’s findings that the 2000 Agreement, as orally amended in Charleston, was a binding and enforceable contract capable of performance.

The Court of Appeals rightly understood that as a matter of fact, the Reeves Company had sold. Given that Reeves had already sold, it had an identifiable and sum certain value. 7.5% of the identified value of the Reeves Company amounted to \$415,988. Accordingly, 7.5% of the Reeves Company’s sale price was the method of

payment that was to be exchanged under the contract between the parties (as orally amended), for 7.5% share of NARP. Sufficient evidence supports the jury's determination on this point. Despite the finding of a valid agreement, the Court of Appeals imposed a term not contemplated by the parties. This was error and certiorari is warranted.

IV. Courts must enforce judgments as written and the judgment in this matter was for specific performance.

The Court of Appeals did not properly interpret the judgment of the trial court. The trial court submitted a special verdict form to the jury. (Special Verdict Form; R. p. 2.) That verdict form contained written questions for findings which might properly be made under the pleadings and evidence. (*Id.*) The trial court then entered the form of the judgment based on the jury's answers to the interrogatories contained on the special verdict form. (Judgment; R. p. 1.) Based on the pleadings and the answers to the interrogatories, the trial court entered judgment in favor of Richardson "under the doctrine of specific performance." (*Id.*)

Examining the Rules of Civil Procedure in the context of the actions of the trial court, it is clear that the trial court properly ordered relief—by way of specific performance—in favor of Richardson. The starting point of the examination is Rule 49 of the South Carolina Rules of Civil Procedure which provides in pertinent part:

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court *may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence*; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and

instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. . . .

Rule 49(a), SCRCP (emphasis added).

Following the jury's return of the special verdict, the trial court is charged with preparing the form of the judgment. Rule 58, SCRCP. It is well-settled that "[a] judgment is effective only when reduced to writing and entered into the record." *Johnson v. S.C. Dep't of Prob.*, 372 S.C. 279, 284, 641 S.E.2d 895, 898 (2007) (citing Rule 58(a)(2), SCRCP). Rule 58 provides:

(a) Entry Upon Verdict or Decision. Subject to the provisions of Rule 54(b): . . .

(2) upon a decision by the court granting other relief, or *upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly prepare the form of the judgment*, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, *and after review and approval by the court, the clerk shall promptly enter it.*

Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record. Entry of the judgment should not be delayed for the taxing of costs.

Rule 58, SCRCP (emphasis added).

In this case, the trial court submitted a special verdict form containing written questions as to factual findings that might be made under the evidence presented at trial. On the special verdict form, the trial court inquired of the jury "[c]an [b]oth parties perform under the 2000 Agreement as amended in Charleston?" (Special Verdict Form at ¶ 3; R. p. 2.) The jury responded, "Yes." The trial court also inquired as to whether any other agreement "end[ed] both parties' rights to acquire 7.5% of the capital stock of each other?" (*Id.* at ¶ 5; R. p. 3.) To which the jury answered "No." (*Id.*) On the same day the jury answered the special interrogatories, the trial court entered judgment

for Richardson under the specific performance doctrine on a one-page Form 4 Order. (Judgment; R. p. 1.)

The trial court correctly and lawfully entered a judgment in favor of Richardson under the doctrine of specific performance. But NARP created a question post-trial—not through a post-trial motion but under the guise of an offer letter—as to the meaning to be given to the portion of the verdict form containing the amount of \$2,936,300. As the record demonstrates, this is an amount that does not appear in any agreement reached by the parties. Rather, this amount was provided by the jury in connection with Richardson’s promissory estoppel claim. When considered in context, the \$2,936,000 figure is easily understood but NARP has succeeded in crafting a new meaning for that amount without moving to alter or amend the judgment. The Court of Appeals incorrectly adopted NARPs’ meaning.

At trial, Richardson’s claims in this case were for specific performance and promissory estoppel. South Carolina recognizes that promissory estoppel and contract enforcement claims are separate and distinct causes of action. *Duke Power Co. v. South Carolina Public Service Com’n*, 284 S.C. 81, 326 S.E.2d 395 (1985). If the jury agreed that a contract existed, which it did, then the trial court could grant the remedy of specific performance. However, if the jury had concluded that no contract existed, the trial court could still have rendered judgment in Richardson’s favor on his claim for promissory estoppel because it is a remedy provided when no contract has been reached but a party has relied on a promise to his detriment. See *Ackerman v. The Money Store*, 728 A.2d 873 (N.J. Sup. Ct. Law Div. 1998) (referring to plaintiff’s promissory estoppel “cause of action” and noting that while consideration is required for a breach of contract,

a promise is still enforceable pursuant to a claim of promissory estoppel even where consideration is lacking).

The trial court did not have to, nor did it, utilize the part of the verdict form containing a price amount for the purchase of NARP's stock. Instead, the jury answered questions that the parties had a contract, and that contract provided for a swap of the percentage ownership of each company's stock. The value of the percentage share of Reeves had been reduced to a sum certain in light of its recent sale—\$415,988. Accordingly, the \$2,936,000 amount provided for by the jury on the verdict form was not relevant to nor needed by the trial court in awarding specific performance. The Court of Appeals should not have used this \$2,936,000 amount and its Opinion unlawfully imposes a contractual term onto Richardson to which he never agreed. Therefore, this Court should grant certiorari and reverse.


Conclusion

Granting of this petition for writ of certiorari is warranted in light of the circumstances presented by this case. All the issues detailed herein and in Richardson's Petition are preserved for review by this Court. The true issue before this Court is whether the Court of Appeals failed to properly enforce the judgment in this matter. Neither courts nor juries impose new terms on contracting parties and the Court of

Appeals' Opinion in this case does just that. Review by this Court is necessary in order to correct the incorrect statements of law contained in the Opinion below.

Respectfully submitted,

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April 30, 2012

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PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Petitioner P.J. Richardson, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):


Pleadings:

P.J. Richardson's Reply in Support of His Petition for Writ of Certiorari

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April 30, 2012

The Honorable Daniel E. Shearouse
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APR 30 2012

S.C. Supreme Court

RE: North American Rescue Products, Inc. v. P.J. Richardson
Civil Action No. 2007-CP-23-3206
SC Court of Appeals Case No. 2008105026
SC Supreme Court Tracking No. 2012-208586
NMRS File No. 30528/01500

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of P.J. Richardson's Reply in Support of His Petition for Writ of Certiorari in the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier.

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

Very truly yours,



A. Mattison Bogan

AMB:lpw

Enclosures

cc: Bernie W. Ellis, Esquire
Robert L. Widener, Esquire