

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

RECEIVED

MAR 18 2016  
SC Court of Appeals

Dear Court:

My name is CHANG HUA ZENG. I so sorry, English is my second language. I still cannot understand the all for English. So, I cannot do a perfect job like the professional attorney.

My lower Court Case NO. 2013 CP1800368

My Appellate Case NO. 2014-001353.

Plead agree and allow me do this second Appeal. Because the Judge had very obvious mistake to my case. I have some documents to prove.

1. Transcript of Hearing. April 8, 2014

2. Judgement, April 21, 2014

3. Propose Order draft by Mr. Smith, June 6, 2014

4. Initial Brief of Respondents

5. Final Brief of Respondents.

These documents all are white paper black ink.

Initial Brief and Final Brief are very important. These were done by Mr. Smith - the attorney for the Defendants. I believe nothing I can do without these two documents.

Plead don't going to tell me "sorry. Nothing we can do". Because you are the Court - South Carolina state the Court of Appeals. Also, it is my understanding that the court has its system. Everyone case come to the court, it is the court's responsibility and duty, the court is suppose to take care the case, to find out the truth and fact, and make the right decision.

Transcript of Hearing, April 8, 2014.  
Starting page 16 line 17 end by page 17 line 6.

" And the other one talk about the breach contract. Contract - the regular lease the section 7, it state parking is by the North Charleston city code. I got a require - the code requirements show up. When I got a parking problem the amendment, I can hold a vote for only my customer use, my landlord not allow me do that.

And I'll tell the two or three weeks.

They are --- the steel piece --- piece of plate  
can do that. They are still got a parking  
problem too.

Because they are got a to go--to go people.  
They are got a pick up --- pick up order.  
The people can not find the parking. why  
they are can do the sign? I cannot.

The --- the contract, just say fraud of the  
North Charleston city code. what happened  
they are not allow me do that.

Judgement by Judge Diane S. Goodstein.

April 21, 2014. Page 1 Last five Line.

"First, the Plaintiff has failed to prove  
his breach of contract claim. As provided  
for the in the lease. Plaintiff was responsible  
for maintaining the HVAC unit. Defendant  
was required to provide Plaintiff with a  
working HVAC unit, but it was Plaintiff's  
obligation to maintain the unit. Plaintiff  
did not present any evidence proving that  
he had in fact properly maintain the unit;  
therefore, Plaintiff has failed in proving  
the condition precedent."

Initial Brief of Respondents and Final Brief

of Respondents. These Brief was done by Mr. Steven L. Smith - attorney for Defendants. Facts - Page 1 Last five line.

" A careful reading of the complaint, combined with Appellant's statement during the course of the hearing, reveal that he raised three cause of action: breach of contract, fraud and discrimination. The breach of contract is apparently predicated upon Respondents' refusal to permit Appellant to block off a portion of the communal parking lot for the sole use of his customers.

So, Initial Brief of Respondents and Final Brief of Respondents, combin the Transcript of Hearing are already prove the Judge had mistake was very obvious. Not any rule. It is white paper black ink.

Law is going to protect the people who is the rights or going to protect the people who is the rich? Many peoples teach me, Law is Justice. Law is blind, right is right, wrong is wrong. Law does not distort the facts. The law does not deteriorate because of skin color or

nationality. Including the Judge for Dorchester County Magistrate's Court. Plead don't make the law only protect the rich people, even they are wrong. Also, because the Judge made the very obvious mistake, then bring some damage to me. SO, Plead to dismiss the Judgement and gotta other one the fair trial for me.

My money order for the \$100.00 filing fee is enclosed.

Sincerely

Chang Hua Zeng

3/16/2016

CHANG HUA ZENG

8600 Dorchester Rd unit 406

North Charleston, SC 29420

(646) 575-2676

Appellant, Pro Se

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

JUDGMENT IN A CIVIL CASE

CERTIFIED COPY

2014 JUN -6 PM 2:06

CASE NO. 2013CP-18-368

RECEIVED  
MAY 18 2014

Change Hua Zeng

Coosaw Partners, LLC and Terry Kinder

*Cheryl Adams*

PLAINTIFF(S)

CLERK OF COURT  
DORCHESTER COUNTY

SC Court of Appeals  
DEFENDANT(S)

Submitted by: Steven L. Smith

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (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 Consent Stipulation
- 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 (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Coosaw Partners, LLC	Chang Hua Zeng	\$3,541.25
Terry Kinder	Chang Hua Zeng	\$3,541.25
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

**For Clerk of Court Office Use Only**

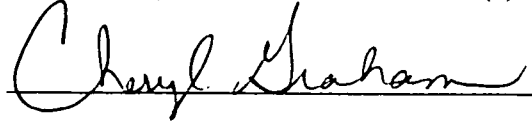
This judgment was entered on **6/6/2014**, and a copy mailed first class or placed in the appropriate attorney's box on **6/6/2014**, to attorneys of record or to parties (when appearing pro se) as follows:

**Chang Hua Zeng** 8600 Dorchester Rd Unit 406 North  
Charleston, SC 29420

**Steven L. Smith** PO Box 40578 Charleston, SC 29423-0578

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**



**Court Reporter**

**Cheryl Graham - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT  
CASE NO. 2013-CP-18-368

Chang Hua Zeng, )

Plaintiff, )

vs. )

Coosaw Partners, LLC and Terry Kinder, )

Defendants. )

ORDER

CERTIFIED COPY  
2014 JUN -6 PM 2:06  
Clerk of Court  
DORCHESTER COUNTY

A bench trial was held in the above captioned matter on April 8, 2014. Present at the hearing was Plaintiff, Plaintiff's translator, Defendants and Defendants' attorney, Steven L. Smith. The Court has had an opportunity to consider the arguments of counsel and the Plaintiff and review the related documentation and evidence. The Court makes the following findings of fact and conclusions of law.

1. The Plaintiff Chang Hua Zeng has failed to meet his burden of proof for each of his causes of action and I find in favor of the Defendants at each and every one of Plaintiff's causes of action.

a. Plaintiff's Breach of Contract Cause of Action

The Plaintiff has failed to prove his breach of contract claim. As provided for in the lease, Plaintiff was responsible for maintaining the HV AC unit. Defendant was required to provide Plaintiff with a working HVAC unit, but it was Plaintiff's obligation to maintain the unit. Plaintiff did not present any evidence proving that he had in fact properly maintained the unit; therefore, Plaintiff has failed in proving the condition precedent.

b. Plaintiff's Fraud Cause of Action

Plaintiff has failed to meet the burden of proof for his fraud claim. To prove fraud, the Plaintiff

must prove each of the nine (9) elements of fraud. Here, Plaintiff was not able to prove all of the elements by a preponderance of the evidence.

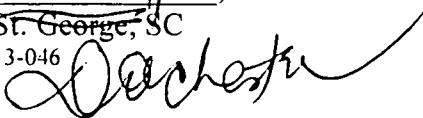
c. Plaintiff's Discrimination Cause of Action

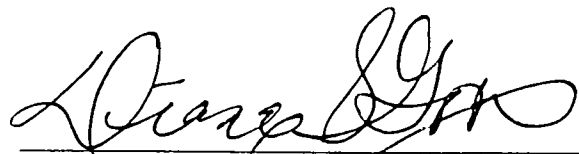
Plaintiff failed to prove his discrimination cause of action because he presented no evidence in support of the claim.

2. The lease entered into by the parties contains a provision providing for reasonable attorney's fees. Therefore, I find that it is proper to award attorney's fees to the Defendants. I further find that, pursuant to Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (S.C. 1991), the attorney's fees due incurred by the Defendants, in the amount of Three Thousand Five Hundred Forty-One and 25/100 (\$3,541.25) Dollars satisfy the six (6) factors set forth in Glasscock, and therefore, are reasonable.

THEREFORE, IT IS ORDERED that judgment is hereby granted in favor of Defendants against Plaintiff, in the amount of Three Thousand Five Hundred Forty-One and 25/100 (\$3,541.25) Dollars for Defendants attorney's fees.

IT IS SO ORDERED!

May 26, 2014  
St. George, SC  
13-046  


  
The Honorable Diane S. Goodstein

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT  
CASE NO. 2013-CP-18-368

Chang Hua Zeng, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Coosaw Partners, LLC and Terry Kinder, )  
 )  
Defendants. )  
\_\_\_\_\_ )

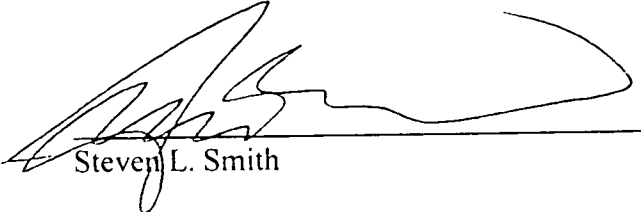
AMENDED  
AFFIDAVIT OF ATTORNEY'S  
FEES AND COSTS

*Chang Hua Zeng*  
CLERK OF COURT  
DORCHESTER COUNTY  
2014 JUN -6 PM 2:06  
CERTIFIED COPY

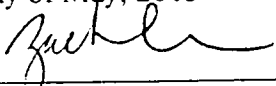
Personally appeared before me, the below signed attorney, who, after being duly sworn, hereby states as follows:

1. I am the attorney for the Defendants in this action.
2. The Defendants have incurred attorney's fees of Three Thousand Five Hundred Forty-One and 25/100 (\$3,541.25) Dollars.
3. Upon information and belief, the attorney's fees charged herein are reasonable based upon the nature, extent, and difficulty of the services rendered; the time and labor necessarily devoted to the case; the professional standing of counsel; the beneficial results obtained; and the fee customarily charged in the locality for similar legal services. See Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 259 (S.C. 1993).

FURTHER YOUR AFFIANT SAYETH NOT.

  
Steven L. Smith

SWORN to before me this 14<sup>th</sup>  
day of May, 2013

  
Notary Public for South Carolina  
My Commission expires: 8/31/16  
13-046



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MAR 18 2016

SC Court of Appeals

State of South Carolina  
The Circuit Court of the First Judicial Circuit

Diane Schafer Goodstein  
Judge

Post Office Box 234  
St. George, SC 29477  
Phone: (843) 832-0332  
Fax: (843) 832-0389  
dgoodsteinlc@sccourts.org

April 21, 2014

Steven L. Smith  
7455 Cross County Rd., Suite 1  
P.O. Box 40578  
Charleston, SC 29423-0578

Chang Hua Zeng  
8600 Dorchester Rd. Unit 406  
North Charleston, SC 29420

RE: Chang Hua Zeng v. Coosaw Partners, LLC, Case No.: 2013-CP-18-368

Dear Counsel and Mr. Zeng,

A bench trial was held in the above-referenced matter on April 8, 2014. The Court has had an opportunity to consider the arguments of counsel and review the related documentation. The Court is now ready to make a determination of the matter and finds as follows.

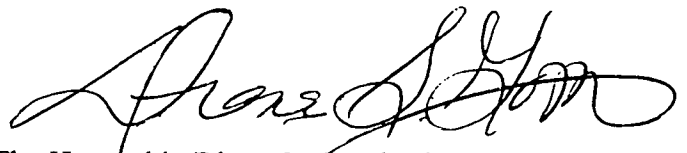
The Plaintiff Chang Hua Zeng has failed to meet his burden of proof for every cause of action. First, the Plaintiff has failed to prove his breach of contract claim. As provided for in the lease, Plaintiff was responsible for maintaining the HVAC unit. Defendant was required to provide Plaintiff with a working HVAC unit, but it was Plaintiff's obligation to maintain the unit. Plaintiff did not present any evidence proving that he had in fact properly maintained the unit; therefore, Plaintiff has failed in proving the condition precedent.

Second, Plaintiff has failed in meeting the burden of proof for fraud. To prove fraud, the Plaintiff must prove each of the 9 elements of fraud. Here, Plaintiff was not able to prove all of the elements by a preponderance of the evidence. Finally, Plaintiff failed in proving his discrimination cause of action because he presented no evidence in support of the claim.

Because the lease contains a provision providing for reasonable attorney's fees, I find that it is proper to award attorney's fees to the Defendant.

I am requesting that Mr. Smith draft a proposed order in accordance with this letter within thirty (30) days.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane S. Goodstein", written in a cursive style.

The Honorable Diane S. Goodstein  
Presiding Judge

RECEIVED

MAR 18 2016

SC Court of Appeals

Smith | Closser, P.A.

Attorneys at Law  
7455 Cross County Road, Suite One  
Post Office Box 40578  
Charleston, South Carolina 29423-0578

Steven L. Smith  
ssmith@scnlaw.com

Office - 843-760-0220  
Fax - 843-552-2678  
www.smithclosser.com

December 31, 2014

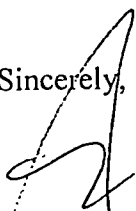
Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: *Zeng, Cheng vs Coosaw Partners, LLC and Terry Kinder*  
Case No. 2013-CP-18-0368  
SC File No.: 13-046

Dear Ms. Kitchings,

Enclosed please find the Respondents *Coosaw Partners, LLC and Terry Kinder*, *Initial Brief and Designation of Matter for Record on Appeal* Motion for Extension of Time and the accompanying Certificate of Service showing that the same has been served upon the Pro Se Appellant, Cheng Hua Zeng. Please feel free to contact me should you have any questions.

Sincerely,



Steven L. Smith

cc: Cheng Hua Zeng

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

MAR 18 2014

The Honorable Diane S. Goodstein, Circuit Court Judge

SC Court of App.

Case No. 2013-CP-18-0368

CHANG HUA ZENG .....

Appellant

v.

COOSAW PARTNERS, LLC and TERRY  
KINDER .....

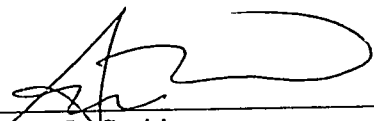
Respondents

RESPONDENTS' DESIGNATION OF MATTER  
FOR RECORD ON APPEAL

Respondent hereby designates the following for inclusion into the Record on Appeal:

1. Complaint
2. Answer and Counterclaim
3. Order dated October 3, 2013
4. Final Order dated May 26, 2014
5. Lease
6. Transcript of Hearing, April 8, 2014

SMITH | CLOSSER, P.A.



Steven L. Smith  
7455 Cross County Road  
P.O. Box 40578  
Charleston, SC 29405-0578  
(843) 760-0220  
(843) 552-2678 facsimile

12-30, 2014  
Charleston, SC

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Diane S. Goodstein, Circuit Judge

Case No. 2013-CP-18-0368

RECEIVED  
MAR 18 2016  
SC Court of Appeals

Chang Hua Zeng ..... Appellant

v.

Coosaw Partners, LLC and Terry Kinder ... Respondents

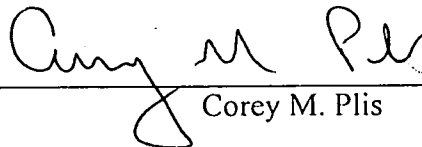
RESPONDENTS' INITIAL BRIEF AND DESIGNATION  
OF MATTER FOR RECORD ON APPEAL

PROOF OF SERVICE

The undersigned hereby certifies that a true and accurate copy of Appellants' Motion for Extension of Time, to the following:

Cheng Hua Zeng  
8600 Dorchester Road, Unit 406  
North Charleston, SC 29420  
Appellant, Pro Se

SMITH | CLOSSER, P.A.

  
Corey M. Plis

12-31, 2014  
Charleston, South Carolina  
13-046

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2013-CP-18-0368

CHANG HUA ZENG .....

Appellant

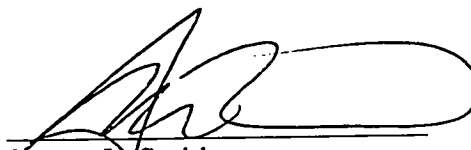
v.

COOSAW PARTNERS, LLC and TERRY  
KINDER .....

Respondents

INITIAL BRIEF OF RESPONDENTS

SMITH | CLOSSER, P.A.

  
Steven L. Smith  
7455 Cross County Road  
P.O. Box 40578  
Charleston, SC 29405-0578  
(843) 760-0220  
(843) 552-2678 facsimile

12-30, 2014  
Charleston, SC

RECEIVED  
MAR 18 2014  
SC Court of Appeals

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## I. FACTS

Respondent Coosaw Creek Partners, LLC is the owner of a shopping center located on Dorchester Road, North Charleston; Respondent Terry Kinder is one of the partners in Coosaw Creek and acts as the property manager. Appellant Chang Hua Zeng is the proprietor and owner of an oriental restaurant, known as Bamboo House. On September 10, 2009, Appellant and Respondent entered into a commercial lease, pursuant to which Appellant was to occupy a space located at one end of the center. Appellant was responsible for any and all alterations to the "white box" unit he rented that he deemed necessary for the operation of his business.

In 2011, the parties were advised by the City of North Charleston that the business would require a specialized grease fan on top of the building. The roof structure was insufficient to support the new unit; after significant difficulty attempting to coordinate with Appellant, Respondents undertook the work themselves through the services of a design engineer and the appropriate contractors. At the same time as the new unit was ready to be installed as a fixture addition to the roof, Respondents – who had been dealing with thefts of air conditioning units from the center – put two new units, including the one servicing Appellant's business, on top of the roof. Appellant, through counsel, negotiated an addendum to his lease allowing him to pay an increase of \$200 per month to his rent in order to repay a portion of the cost of the new installation.

Appellant subsequently filed a complaint seeking One Million Dollars in damages. A careful reading of the complaint, combined with Appellant's statements during the course of the hearing, reveals that he raised three causes of action: breach of contract, fraud, and discrimination. The breach of contract is apparently predicated upon Respondents' refusal to permit Appellant to block off a portion of the communal parking lot for the sole use of his

customers. The fraud arises from Appellant's belief that 1) no work was actually necessary on the roof; and 2) that Respondents are forcing him to pay for a new support system that Respondents at all times intended to be used by their other tenants. It is impossible to determine the factual basis for the claim of discrimination. Respondents denied all allegations and sought attorney's fees pursuant to the Lease Agreement.

## II. PROCEDURAL POSTURE

The matter was originally scheduled for a bench trial to commence on October 2, 2013. At that time, Appellant informed the Honorable Diane Goodstein that he believed his command of the English language to be insufficient to permit him to testify or understand the proceedings. Judge Goodstein prepared a detailed Order continuing the matter until January 6, 2014, and setting out the procedure by which Appellant, with the assistance of counsel for Respondents and the Court itself, was to locate a qualified interpreter of Mandarin Chinese.

It appears that no formally qualified interpreter could be found within any reasonable distance from the State of South Carolina. On April 8, 2014, Appellant appeared for the trial accompanied by an interpreter he had selected. He presented his own testimony, both through the interpreter and by himself. Respondents called no witnesses, and on June 14, 2014, the Court entered an Order dismissing all of Appellant's claims and awarding Respondents their fees incurred. It is from that Order that Appellant now appeals. The sole issue raised in the appeal is the adequacy of the interpreter.

## ARGUMENT

### I. No Finding of Waiver Was Necessary as the Interpreter Was Selected by Appellant.

Although Appellant phrases his argument as having two separate issues, there is actually only one raised in his Initial Brief. This argument is predicated entirely on Section 15-27-155(A) of the South Carolina Code of Laws, which he asserts requires the Trial Court to make factual findings regarding the competence of the interpreter, and to determine whether or not waiver of a court-appointed, qualified, interpreter is necessary before allowing the trial to go forward. Appellant also claims that the statute mandates a finding that testifying without an interpreter is in his best interest, and the Trial Court should not have permitted him to speak. Under the facts of this case, this is incorrect.

Section 15-27-155(A) of the South Carolina Code of Laws reads as follows:

Notwithstanding any other provision of law, whenever a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.

Appellant cites to *Melton v. Olenik*, 664 S.E.2d 487, 379 S.C. 45 (Ct. App. 2008) as support for his contention that the Trial Judge was required to ensure that he had a qualified interpreter, or, in the alternative, expressly find that waiver of court-certified assistance was in Appellant's interest.

The *Melton* Court did, in fact, hold that the trial court was required to create a factual record in cases where it concluded that no qualified interpreter would be necessary. *Melton* is sufficiently factually distinguishable as to have no relevance to the instant situation. In *Melton*, both the plaintiff and the defendant were Korean, and neither was fluent or even comfortable in

the English language. Both parties expressed their concern regarding the language barrier prior to the hearing. The plaintiff arrived at the hearing with an interpreter, to whom the defendant objected. After the trial judge conducted a voir dire of the interpreter, the defendant renewed her objection. The hearing proceeded without any interpreter whatever. The Court of Appeals, which quoted extensively from the transcript, found that it was impossible to decipher the testimony, finding that it was “confusing and at times incoherent.” *Id.* at 51, 664 S.E.2d at 490. The Court concluded that the trial court was required to make factual findings, in accordance with the statute, before it could decide that no interpreter would be required.

Although Appellant in the instant action objected to proceeding without an interpreter – the first time the case was called for trial it was continued for the express purpose of allowing him, with the assistance of both opposing counsel and the trial court, to locate one – there was no question of proceeding without Appellant having assistance with his language difficulties.

Although it appears from the transcript that the interpreter herself might not have been totally comfortable in her role<sup>1</sup>, she was selected and brought to the courthouse by Appellant himself. Far from objecting to the use of the services of this individual, and regardless of whether she was or was not “qualified” within the meaning of S.C. Code § 15-27-155, this was an interpreter selected, hired, and brought to the trial by the person who wanted her services.

Although Appellant now complains that his own hand-selected interpreter was not properly qualified by the Court prior to entering upon her services, this is simply not a case in which the Court was required to independently verify the qualifications of the interpreter, or make any determination as to whether or not the use of this individual was in Appellant’s best interest. This was Appellant’s interpreter. Furthermore, despite Appellant’s current

---

<sup>1</sup> Although it does not appear in the record, it seems that the closest court-qualified interpreter in Mandarin Chinese was located in California. Bringing this individual to South Carolina imposed a financial burden the Court was not willing to bear.

protestations that the Trial Court was required to ask Appellant separately whether he waived the use of an interpreter, the transcript of the hearing clearly demonstrates that Appellant did so.

Appellant testified regarding his complaint, through the interpreter he had chosen and brought with him to the hearing. Following his own direct testimony, he was cross-examined, again through the interpreter, by counsel for Respondent. At the conclusion of his own testimony, he returned to his seat, whereupon the Court asked if he had any additional witnesses. Appellant, still speaking through his hand-selected interpreter, made a couple of statements from counsel table, after which the following exchange occurred:

PLAINTIFF (by his interpreter):      If it's okay, I want to try my English to repeat my purpose.  
I...

THE COURT:                                      He's finished testifying. Did --- did you want to testify  
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Because if you wish, you may.

PLAINTIFF:                                      Okay.

THE COURT:                                      Yes?

THE INTERPRETER:                              Yes.

THE PLAINTIFF:                                      Yeah.

THE COURT:                                      Okay. Well, come on back up.

(Plaintiff resumes his seat on the witness stand)

THE PLAINTIFF:                                      Okay. I try my English; see it's enough; make you  
understand what's I mean and why I am kind of here....

Transcript, pp. 14 – 15.

Following the resumption of his testimony, Appellant testified at length, testimony that comprises a full three-and-a-half pages of the transcript, without interruption. Although it is clear that English is not his native language, and some of his language structure is awkward, he

appears to have gotten his points across. He appeared to be satisfied with his testimony, and resumed his seat at counsel table without indicating any confusion or desire to continue to speak.

A waiver is an intentional relinquishment of a known right. *Bonnette v. State*, 277 S.C. 17, 282 S.E.2d 597 (1981). It may be either express or implied. *Lawrimore v. American Health & Life Ins. Co.*, 276 S.C. 112, 276 S.E.2d 296 (1981). An implied waiver results from acts and conduct of the party against whom the doctrine is invoked, from which an intentional relinquishment of a right is reasonably inferable. *Pitts v. New York Life Ins. Co.*, 247 S.C. 545, 148 S.E.2d 369 (1966).

It is difficult to conceive of a situation in which an implied waiver of a known right is more clear. Appellant knew that he had the right to an interpreter; he himself had requested a continuance of the original trial date in order to locate one, and had selected an individual he believed to be competent to accompany him to trial. He used the services of the interpreter during his initial testimony and cross-examination. After discussing the matter with the Trial Judge, he elected to add to his testimony, and specifically stated, on the record, that he wished to try his English. Once he had brought an interpreter to help him with his testimony, and then specifically stated that he wished to add to that testimony in his own words, there is no need for the Court to additionally ask him, specifically, whether he waives his right to the continued use of an interpreter. He has already said so, and his resumption of the stand and additional testimony makes his waiver of any right or examination apparent.

Because of the actual process in this particular instance, neither the statute nor the single case cited by Appellant are relevant or apposite. Appellant entered this trial fully cognizant of his right to have an interpreter, selected one himself and brought that individual to the trial, and, following his interpreted testimony, affirmatively indicated to the Trial Court his desire to waive

any right to on-going translation and testify in English himself. Appellant cannot now complain of the procedure, or the interpreter, he selected.

## II. Appellant Has Failed to Preserve Any Issues for Appeal.

In addition to the general waiver of the use of a qualified interpreter, Appellant has equally clearly failed to preserve the issues he now raises.

When the case was first called for trial, Appellant specifically requested a continuance in order to obtain assistance in presenting his facts and argument. As noted *supra*, the Trial Court not only granted the continuance, and ordered that opposing counsel help Appellant, but itself took on some of the burden of attempting to locate an interpreter qualified in Mandarin. Despite the best efforts of all concerned, no such interpreter was located within any reasonable distance of the Trial Court.

The significance of Appellant's request is to show that, had Appellant truly been dissatisfied with the quality of the assistance he was receiving during the actual hearing, he certainly knew enough at that time to ask that the Court permit him to continue to case yet again. He had done so once. He knew he could request a continuance. He did not do so, nor did he raised any objections to the Trial Court regarding proceeding at the time the case was called.

An issue waived below cannot be brought forward for the first time on appeal. *Doe v. Roe*, 379 S.C. 291, 297, 665 S.E.2d 182, 185 (Ct. App. 2008); *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 704 (Ct. App. 2001). The issue must have been raised to and ruled upon by the trial judge in order to be preserved for review. *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (Ct. App. 2008); *see also Ulmer v. Ulmer*, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006) (“An appellate court will not consider issues on appeal which have not been preserved for appellate review.”).

To preserve an issue for appeal, it must be: 1) raised to and ruled upon by the trial court; 2) raised by the appellant; 3) raised in a timely manner; and 4) raised with sufficient specificity. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301 – 02, 641 S.E.2d 903, 907 (2007). It is, of course, clear from the transcript that Appellant never raised the qualifications of his interpreter to the Trial Court, nor did he at any time request that the Trial Court conduct a voir dire of the interpreter in order to determine her qualifications. It is also clear that Appellant at no time requested that the Trial Court make a finding as to whether it was or was not in his best interest to use the interpreter he had provided, or to testify without the assistance of his interpreter. In fact, despite the existence of this appeal, Appellant never objected to a single event or occurrence at the trial. He did not object to his testimony being translated by the interpreter he had chosen. He did not object to the Trial Court's omission of any qualification of his interpreter. Not only did he not object to the Trial Court's decision to have him testify without any interpreter at all, he affirmatively indicated that it was his decision to do so. Only after the conclusion of the hearing, and only after the Trial Court's Final Order ruling in favor of Respondents, did Appellant raise any issues. The issues Appellant now raises to this Court were never addressed below, and have not been preserved for appellate review.

**III. Either Appellant Has Violated the Rules of Appellate Procedure Or His Knowledge Of English Is Far Greater Than He Has Represented.**

Rule 267(b) of the South Carolina Rules of Appellate Procedure reads:

[t]he original of a document or paper filed by a party or his attorney shall be signed by the party or the attorney. The signature of a party or attorney constitutes a certificate by him that he has read the document or paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

Appellant herein simultaneously argues that he is unable to testify on his own behalf without the services of a court-qualified interpreter, and, at least by implication, that he is qualified to write and understand the Initial Brief he has filed with this Court.

Respondent cannot know whether the Initial Brief was written by Appellant or not. If it was, his command of the English language is clearly far beyond that necessary to be able to testify on his own behalf, without an interpreter. The Initial Brief is clearly and succinctly written. Not only the English but the citation form is proper; the former appears to comply with the standard rules of grammar, spelling, and composition, and the latter basically complies with the rules set out by the *Harvard Bluebook*. In the alternative, if the Initial Brief was drafted on Appellant's behalf by a third party, Appellant's signature on the document is certification that he has not only read but understood it.

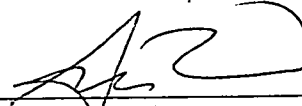
Appellant cannot simultaneously argue that he was unable to properly present his case at trial due to his inability to speak English and that he understands the complex Initial Brief he has submitted. It is routinely accepted that counsel will argue theories of recovery in the alternative. What is not accepted is that a party will make a single argument predicated upon facially contradictory facts. Appellant is contending, in a well-written and coherent brief drafted in totally comprehensible English, that he does not speak English. Either his command of the language is excellent, or he has signed and filed a document he does not understand. To put it simply, either the entire basis for this appeal is spurious, or the Initial Brief, and the appeal, should be dismissed for failure to comply with the fundamental Rules of this Court.

CONCLUSION

For the reasons set forth above, Respondent would respectfully request that the Appeal be dismissed and the decision of the Trial Court affirmed in its entirety.

Respectfully submitted,

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12-30, 20  
Charleston, SC  
13-046

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2013-CP-18-0368

CHANG HUA ZENG

Appellant

COOSAW PARTNERS, LLC and TERRY  
KINDER

Respondents

**FINAL BRIEF OF RESPONDENTS**

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## I. FACTS

Respondent Coosaw Creek Partners, LLC is the owner of a shopping center located on Dorchester Road, North Charleston; Respondent Terry Kinder is one of the partners in Coosaw Creek and acts as the property manager. Appellant Chang Hua Zeng is the proprietor and owner of an oriental restaurant, known as Bamboo House. On September 10, 2009, Appellant and Respondent entered into a commercial lease, pursuant to which Appellant was to occupy a space located at one end of the center. Appellant was responsible for any and all alterations to the "white box" unit he rented that he deemed necessary for the operation of his business:

In 2011, the parties were advised by the City of North Charleston that the business would require a specialized grease fan on top of the building. The roof structure was insufficient to support the new unit; after significant difficulty attempting to coordinate with Appellant, Respondents undertook the work themselves through the services of a design engineer and the appropriate contractors. At the same time as the new unit was ready to be installed as a fixture addition to the roof, Respondents – who had been dealing with thefts of air conditioning units from the center – put two new units, including the one servicing Appellant's business, on top of the roof. Appellant, through counsel, negotiated an addendum to his lease allowing him to pay an increase of \$200 per month to his rent in order to repay a portion of the cost of the new installation.

Appellant subsequently filed a complaint seeking One Million Dollars in damages. A careful reading of the complaint, combined with Appellant's statements during the course of the hearing, reveals that he raised three causes of action: breach of contract, fraud, and discrimination. The breach of contract is apparently predicated upon Respondents' refusal to permit Appellant to block off a portion of the communal parking lot for the sole use of his

customers. The fraud arises from Appellant's belief that 1) no work was actually necessary on the roof; and 2) that Respondents are forcing him to pay for a new support system that Respondents at all times intended to be used by their other tenants. It is impossible to determine the factual basis for the claim of discrimination. Respondents denied all allegations and sought attorney's fees pursuant to the Lease Agreement.

## II. PROCEDURAL POSTURE

The matter was originally scheduled for a bench trial to commence on October 2, 2013. At that time, Appellant informed the Honorable Diane Goodstein that he believed his command of the English language to be insufficient to permit him to testify or understand the proceedings. Judge Goodstein prepared a detailed Order continuing the matter until January 6, 2014, and setting out the procedure by which Appellant, with the assistance of counsel for Respondents and the Court itself, was to locate a qualified interpreter of Mandarin Chinese.

It appears that no formally qualified interpreter could be found within any reasonable distance from the State of South Carolina. On April 8, 2014, Appellant appeared for the trial accompanied by an interpreter he had selected. He presented his own testimony, both through the interpreter and by himself. Respondents called no witnesses, and on June 14, 2014, the Court entered an Order dismissing all of Appellant's claims and awarding Respondents their fees incurred. It is from that Order that Appellant now appeals. The sole issue raised in the appeal is the adequacy of the interpreter.

## ARGUMENT

### I. No Finding of Waiver Was Necessary as the Interpreter Was Selected by Appellant.

Although Appellant phrases his argument as having two separate issues, there is actually only one raised in his Initial Brief. This argument is predicated entirely on Section 15-27-155(A) of the South Carolina Code of Laws, which he asserts requires the Trial Court to make factual findings regarding the competence of the interpreter, and to determine whether or not waiver of a court-appointed, qualified, interpreter is necessary before allowing the trial to go forward. Appellant also claims that the statute mandates a finding that testifying without an interpreter is in his best interest, and the Trial Court should not have permitted him to speak. Under the facts of this case, this is incorrect.

Section 15-27-155(A) of the South Carolina Code of Laws reads as follows:

Notwithstanding any other provision of law, whenever a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.

Appellant cites to *Melton v. Olenik*, 664 S.E.2d 487, 379 S.C. 45 (Ct. App. 2008) as support for his contention that the Trial Judge was required to ensure that he had a qualified interpreter, or, in the alternative, expressly find that waiver of court-certified assistance was in Appellant's interest.

The *Melton* Court did, in fact, hold that the trial court was required to create a factual record in cases where it concluded that no qualified interpreter would be necessary. *Melton* is sufficiently factually distinguishable as to have no relevance to the instant situation. In *Melton*, both the plaintiff and the defendant were Korean, and neither was fluent or even comfortable in

the English language. Both parties expressed their concern regarding the language barrier prior to the hearing. The plaintiff arrived at the hearing with an interpreter, to whom the defendant objected. After the trial judge conducted a voir dire of the interpreter, the defendant renewed her objection. The hearing proceeded without any interpreter whatever. The Court of Appeals, which quoted extensively from the transcript, found that it was impossible to decipher the testimony, finding that it was “confusing and at times incoherent.” *Id.* at 51, 664 S.E.2d at 490. The Court concluded that the trial court was required to make factual findings, in accordance with the statute, before it could decide that no interpreter would be required.

Although Appellant in the instant action objected to proceeding without an interpreter – the first time the case was called for trial it was continued for the express purpose of allowing him, with the assistance of both opposing counsel and the trial court, to locate one – there was no question of proceeding without Appellant having assistance with his language difficulties. Although it appears from the transcript that the interpreter herself might not have been totally comfortable in her role<sup>1</sup>, she was selected and brought to the courthouse by Appellant himself. Far from objecting to the use of the services of this individual, and regardless of whether she was or was not “qualified” within the meaning of S.C. Code § 15-27-155, this was an interpreter selected, hired, and brought to the trial by the person who wanted her services.

Although Appellant now complains that his own hand-selected interpreter was not properly qualified by the Court prior to entering upon her services, this is simply not a case in which the Court was required to independently verify the qualifications of the interpreter, or make any determination as to whether or not the use of this individual was in Appellant’s best interest. This was Appellant’s interpreter. Furthermore, despite Appellant’s current

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<sup>1</sup> Although it does not appear in the record, it seems that the closest court-qualified interpreter in Mandarin Chinese was located in California. Bringing this individual to South Carolina imposed a financial burden the Court was not willing to bear.

protestations that the Trial Court was required to ask Appellant separately whether he waived the use of an interpreter, the transcript of the hearing clearly demonstrates that Appellant did so.

Appellant testified regarding his complaint, through the interpreter he had chosen and brought with him to the hearing. Following his own direct testimony, he was cross-examined, again through the interpreter, by counsel for Respondent. At the conclusion of his own testimony, he returned to his seat, whereupon the Court asked if he had any additional witnesses. Appellant, still speaking through his hand-selected interpreter, made a couple of statements from counsel table, after which the following exchange occurred:

PLAINTIFF (by his interpreter):     If it's okay, I want to try my English to repeat my purpose.  
I...

THE COURT:                             He's finished testifying. Did --- did you want to testify  
some more? Did --- would he like to testify additionally?  
Because if you wish, you may.

PLAINTIFF:                             Okay.

THE COURT:                             Yes?

THE INTERPRETER:                     Yes.

THE PLAINTIFF:                        Yeah.

THE COURT:                             Okay. Well, come on back up.

(Plaintiff resumes his seat on the witness stand)

THE PLAINTIFF:                        Okay. I try my English; see it's enough; make you  
understand what's I mean and why I am kind of here....

Transcript, pp. 14 – 15, R. pp. 48 – 49.

Following the resumption of his testimony, Appellant testified at length, testimony that comprises a full three-and-a-half pages of the transcript, without interruption. Although it is clear that English is not his native language, and some of his language structure is awkward, he

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It is difficult to conceive of a situation in which an implied waiver of a known right is more clear. Appellant knew that he had the right to an interpreter; he himself had requested a continuance of the original trial date in order to locate one, and had selected an individual he believed to be competent to accompany him to trial. He used the services of the interpreter during his initial testimony and cross-examination. After discussing the matter with the Trial Judge, he elected to add to his testimony, and specifically stated, on the record, that he wished to try his English. Once he had brought an interpreter to help him with his testimony, and then specifically stated that he wished to add to that testimony in his own words, there is no need for the Court to additionally ask him, specifically, whether he waives his right to the continued use of an interpreter. He has already said so, and his resumption of the stand and additional testimony makes his waiver of any right or examination apparent.

Because of the actual process in this particular instance, neither the statute nor the single case cited by Appellant are relevant or apposite. Appellant entered this trial fully cognizant of his right to have an interpreter, selected one himself and brought that individual to the trial, and, following his interpreted testimony, affirmatively indicated to the Trial Court his desire to waive

any right to on-going translation and testify in English himself. Appellant cannot now complain of the procedure, or the interpreter, he selected.

## **II. Appellant Has Failed to Preserve Any Issues for Appeal.**

In addition to the general waiver of the use of a qualified interpreter, Appellant has equally clearly failed to preserve the issues he now raises.

When the case was first called for trial, Appellant specifically requested a continuance in order to obtain assistance in presenting his facts and argument. As noted *supra*, the Trial Court not only granted the continuance, and ordered that opposing counsel help Appellant, but itself took on some of the burden of attempting to locate an interpreter qualified in Mandarin. Despite the best efforts of all concerned, no such interpreter was located within any reasonable distance of the Trial Court.

The significance of Appellant's request is to show that, had Appellant truly been dissatisfied with the quality of the assistance he was receiving during the actual hearing, he certainly knew enough at that time to ask that the Court permit him to continue to case yet again. He had done so once. He knew he could request a continuance. He did not do so, nor did he raised any objections to the Trial Court regarding proceeding at the time the case was called.

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CONCLUSION

For the reasons set forth above, Respondent would respectfully request that the Appeal be dismissed and the decision of the Trial Court affirmed in its entirety.

Respectfully submitted,

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2-19

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, 2015  
Charleston, SC  
13-046

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Diane S. Goodstein, Circuit Judge

Case No. 2013-CP-18-0368

RECEIVED

MAR 18 2016

SC Court of Appeals

Chang Hua Zeng ..... Appellant

v.

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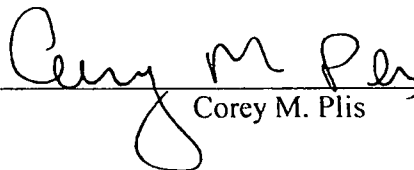
RESPONDENTS' INITIAL BRIEF AND DESIGNATION  
OF MATTER FOR RECORD ON APPEAL

PROOF OF SERVICE

The undersigned hereby certifies that a true and accurate copy of Appellants' Final Brief,  
to the following:

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Appellant, Pro Se

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Corey M. Plis

2-20, 2015  
Charleston, South Carolina  
13-046

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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CHANG HUA ZENG .....

Appellant

v.


COOSAW PARTNERS, LLC and TERRY  
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Respondents

CERTIFICATE OF RESPONDENTS

The undersigned hereby certifies that the Final Brief of Respondents complies with Rule 211(b) of the South Carolina Rules of Appellate Procedure.

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