

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

---

**APPEAL FROM THE COURT OF COMMON PLEAS  
GEORGETOWN COUNTY**

**Honorable Kristy Harrington, Circuit Court Judge**

---

**Case No. 2016-001409**

**STRAND CLASSICS RESTORATIONS,            APPELLANT,**

**v.**

**FRANK EMILIANO,**

**RESPONDENT.**

---

**INITIAL BRIEF OF APPELLANT**

---

**Law Offices of William Stuart Duncan, PA  
Raymond C. Fischer, Bar # 2023  
William Stuart Duncan, Bar # 11549  
Post Office Box 736  
Georgetown, SC 29442-0736  
(843) 546-1212  
Attorney for Appellant  
Wsdlaw1@aol.com  
rfischer@lawyer.com**

**RECEIVED**

SEP 01 2016

SC Court of Appeals

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....ii

STATEMENT OF ISSUES ON APPEAL.....1

1. WHETHER THE EVIDENCE, IDENTIFIED AND ADMITTED AS PLAINTIFF’S EXHIBITS 1 THROUGH 6 ARE INADMISSABLE HEARSAY.

2. WHETHER THE MAGISTRATE COMMITTED ABUSE OF DISCRETION ERROR WHEN HE ADMITTED PLAINTIFF’S EXHIBITS 1 THROUGH 6 INTO EVIDENCE, OVER THE OBJECTION OF THE DEFENDANT.

3. WHETHER THE REVIEWING CIRCUIT COURT JUDGE ERRED WHEN SHE AFFIRMED THE MAGISTRATE’S COURT VERDICT AND FAILED TO REVERSE THE MAGISTRATE’S RULING ON APPELLANT’S OBJECTION TO HEARSAY EVIDENCE.

STATEMENT OF THE CASE.....1

ARGUMENTS.....2

CONCLUSION.....5

## TABLE OF AUTHORITIES

### Cases

<i>State v. Byers</i> , 392 S.C. 438, 444 (2011).....	3, 4
<i>State v. Rice</i> , 375 S.C. 302 (Ct. App. 2007) (overruled on other grounds).....	3
<i>State v. Simpson</i> , 325 S.C. 37, (1996).....	4

### Statutes and Rules of Court

Rule 801(c), S.C. Rules of Evidence.....	2
Rule 802, S.C. Rules of Evidence.....	2
Rule 803, S.C. Rules of Evidence.....	2, 3
Rule 804, S.C. Rules of Evidence.....	2
§19-5-510, S.C. Code of Laws, Ann.....	3

## STATEMENT OF ISSUES ON APPEAL

1. **WHETHER THE EVIDENCE, IDENTIFIED AND ADMITTED AS PLAINTIFF'S EXHIBITS 1 THROUGH 6 ARE INADMISSABLE HEARSAY.**
2. **WHETHER THE MAGISTRATE COMMITTED ABUSE OF DISCRETION ERROR WHEN HE ADMITTED PLAINTIFF'S EXHIBITS 1 THROUGH 6 INTO EVIDENCE, OVER THE OBJECTION OF THE DEFENDANT.**
3. **WHETHER THE REVIEWING CIRCUIT COURT JUDGE ERRED WHEN SHE AFFIRMED THE MAGISTRATE'S COURT VERDICT AND FAILED TO REVERSE THE MAGISTRATE'S RULING ON APPELLANT'S OBJECTION TO HEARSAY EVIDENCE.**

## STATEMENT OF THE CASE

This case comes to the Court on an appeal from the Court of Common Pleas for Georgetown County, the Honorable Kristy Harrington, presiding. This case originated in the Magistrates Central Jury Court of Georgetown County. The case was tried to a jury on February 24, 2016 before the Honorable John C. Benso, Summary Court Judge. The Plaintiff/Respondent appeared pro se and the Defendant/Appellant was represented by William Stuart Duncan, Esquire.

Briefly, this case involves a classic Pontiac GTO, belonging to the Plaintiff and restored by the Defendant. In his Complaint, Plaintiff alleges the restoration, done by Defendant, was defective, causing him to expend additional amounts of money to correct. (Magistrate Court Summons & Complaint).

During his testimony, Plaintiff offered 6 exhibits (Magistrate's Trial Exhibits 1-6) purported to be invoices, presented to him, that he was obliged to pay for repair of his automobile. The exhibits were admitted by the Court over the objection of Defendant. (Magistrate's Return, p. 6). After hearing testimony and viewing exhibits, the jury

returned a verdict in favor of the Plaintiff/Respondent, in the amount of \$7,500.00. (Magistrate Court Verdict Form; Magistrate Court Judgment Form).

Defendant/Appellant filed its Notice of Appeal to the Court of Common Pleas on March 14, 2016. The appeal was heard by the Honorable Kristy Harrington on May 20, 2016. Respondent did not appear nor file a brief. Judge Harrington took the matter under advisement (Transcript of May 20, 2016, p. 5, ll. 2-5). Judgment was entered on a Form 4 Order on June 1, 2016, affirming the Magistrates Court verdict. (Form 4 Order of Judge Harrington).

### ARGUMENTS

**1. THE EVIDENCE, IDENTIFIED AND ADMITTED AS PLAINTIFF'S EXHIBITS 1 THROUGH 6 ARE INADMISSABLE HEARSAY.**

Hearsay is defined thus: "Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), S.C. Rules of Evidence. "Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this state or by statute." Rule 802, S.C. Rules of Evidence. Here, Plaintiff offered into evidence six invoices from a third party. The third party was not called as a witness to vouch for the invoices.

Rule 803, S.C. Rule of Evidence prescribes 23 exceptions to the hearsay rule when the presence of the declarant is immaterial. None of those 23 exceptions are applicable here. Likewise, the exceptions to the hearsay rule in Rule 804 are inapplicable as the record is devoid of any evidence of why the declarant was absent from trial.

The closest exception is Rule 803(6), regarding business records. However, the business records act, §19-5-510, S.C. Code sets requirements for authentication.

“A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.” Further,

“A business record without evidence about the manner in which it is prepared or the source of its information does not meet the requirements in either Uniform Business Record as Evidence Act or business records exception to hearsay rule.” *State v. Rice*, 375 S.C. 302 (Ct. App. 2007) (overruled on other grounds).

Here, the authentication of the record is absent from the record. Accordingly, Exhibits 1 through 6 (Exhibits 1-6, pp. 25-30 of Magistrate’s Return). are hearsay evidence, without exception. The Trial Judge committed error in admitting them into evidence.

**2. THE MAGISTRATE COMMITTED ABUSE OF DISCRETION WHEN HE ADMITTED PLAINTIFF’S EXHIBITS 1 THROUGH 6 INTO EVIDENCE, OVER THE OBJECTION OF THE DEFENDANT.**

The appellant appeals the Court’s admission of Exhibits 1 through 6 as an abuse of discretion.

“The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. An abuse of discretion occurs when the trial court’s ruling is based on an error of law. To warrant reversal based on the wrongful admission of evidence, the complaining party must prove resulting prejudice. Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury’s verdict. *State v. Byers*, 392 S.C. 438, 444(2011). (*Internal citations omitted.*)

**A. The trial judge committed an error of law.**

As stated in argument 1, above, the evidence in question falls squarely within the hearsay rule and is not subject to a hearsay exception. This was not harmless error. Without the exhibits, the jury would not have seen the invoices and would have only Plaintiff's testimony to rely upon. Without the hearsay exhibits, the jury could have reasonably entered judgment for the Defendant/Appellant.

**B. Trial counsel timely objected.**

Attorney Duncan objected when Plaintiff made reference to certain invoices he received from Patriot Automotive.(Exhibits 1-6). At that point the trial judge overruled the objection. (Magistrate's Return, p. 6). At the close of Plaintiff's testimony, Plaintiff moved the exhibits into evidence. Again Duncan objected and was overruled. (Magistrate's Return, p. 6) The objection was therefore preserved for review, as required, by the contemporaneous objection rule. *State v. Simpson*, 325 S.C. 37, 42 (1996).

**C. Admission of the exhibits was prejudicial to the Defendant and was not harmless error.**

Had the trial judge excluded the exhibits, the jury would not have tangible evidence on which to base its verdict for the Plaintiff. It is reasonable to believe the error was not harmless and did indeed affect the outcome of the trial. (*State v. Byers, supra*).

**3. THE REVIEWING CIRCUIT COURT JUDGE ERRED WHEN SHE AFFIRMED THE MAGISTRATE'S COURT VERDICT AND FAILED TO REVERSE THE MAGISTRATE'S RULING ON APPELLANT'S OBJECTION TO HEARSAY EVIDENCE.**

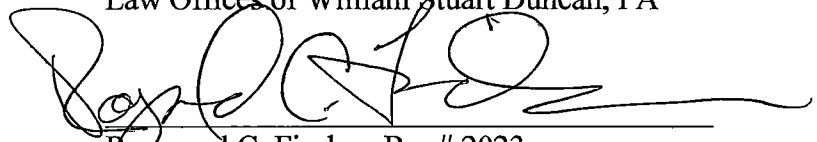
The circuit judge had before her the record on appeal including the Appellant's timely and contemporaneous objection to Exhibits 1-6 (Exhibits 1-6) as hearsay, the Magistrates overruling of the objection and the objectionable documents themselves.

(Magistrate's return, pp 2-10). Upon affirming the Magistrate Court judgment and conclusions of law, the circuit judge committed error of law and affirmed the Magistrate's error of law.

### CONCLUSION

The Court of Appeals should find the Circuit Judge committed error when she affirmed the trial judge, who committed reversible, prejudicial error when he admitted the hearsay exhibits into evidence. The remedy is reversal and remand for new trial.

Law Offices of William Stuart Duncan, PA

A handwritten signature in black ink, appearing to read 'Raymond C. Fischer', written over a horizontal line.

Raymond C. Fischer, Bar # 2023

William Stuart Duncan, Bar # 11549

Post Office Box 736

Georgetown, SC 29442-0736

(843) 546-1212

Attorneys for Appellant

wsdlaw1@aol.com

rfischer@lawyer.com

August 30, 2016

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS  
GEORGETOWN COUNTY

Honorable Kristy Harrington, Circuit Court Judge

Case No. 2016-001409

STRAND CLASSICS RESTORATIONS, APPELLANT,

v.

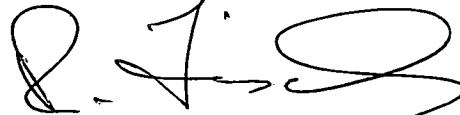
FRANK EMILIANO, RESPONDENT.

PROOF OF SERVICE OF  
APPELLANT'S INITIAL BRIEF AND  
APPELLANT'S DESIGNATION OF MATTER

I certify that I have served the Appellant's Initial Brief and Appellant's Designation of Matter to be Included on the Record on Appeal, on Mr. Frank Emiliano, Respondent, Pro Se, 5674 NW 101 Drive, Coral Springs, FL 33076, by placing the Appellant's Initial Brief and Appellant's Designation of Matter to be Included in the Record on Appeal in the U.S. Mail, postage prepaid on August 30, 2016.

August 30, 2016

Law Offices of William Stuart Duncan, PA



Raymond C. Fischer, Bar # 2023  
William Stuart Duncan, Bar # 11549  
Post Office Box 736  
Georgetown, SC 29442-0736  
(843) 546-1212

RECEIVED  
SEP 01 2016  
SC Court of Appeals

LAW OFFICES OF  
**WILLIAM STUART DUNCAN**  
A PROFESSIONAL ASSOCIATION  
1001 FRONT STREET  
GEORGETOWN, SOUTH CAROLINA 29440

(843) 546-1212

FACSIMILE: (843) 545-0177

E-MAIL: [wslaw1@aol.com](mailto:wslaw1@aol.com)

WILLIAM STUART DUNCAN  
RAYMOND C. FISCHER (OF COUNSEL)

MAILING ADDRESS:  
POST OFFICE DRAWER 736  
GEORGETOWN, SOUTH CAROLINA 29442

August 30, 2016

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

**RECEIVED**  
SEP 01 2016  
SC Court of Appeals

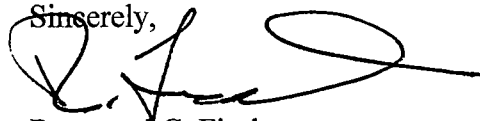
RE: STRAND CLASSICS RESTORATIONS V. FRANK EMILIANO.  
Case Number: 2016-001409

Dear Ms. Kitchings:

Enclosed for filing are the original and a copy of the following:

- (1) Proof of service of the Designation of Matter and Appellant's Initial Brief;
- (2) Appellant's Initial Brief;
- (3) Appellant's Designation of Matter; and
- (4) Return Envelope.

Sincerely,




Raymond C. Fischer  
Law Offices of William Stuart Duncan, PA  
PO Box 736  
Georgetown, SC 29442  
8430546-1212  
Attorneys for Appellant

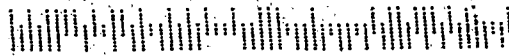
enclosures:

cc:

Mr. Frank Emiliano,  
5674 NW 101 Drive  
Coral Springs, FL 33076  
Respondent, pro se



UNITED STATES POSTAGE  
  
PITNEY BOWES  
02 1P \$ 001.78<sup>0</sup>  
0002714342 AUG 30 2016  
MAILED FROM ZIP CODE 29440



LAW OFFICES OF  
**WILLIAM STUART DUNCAN**  
A PROFESSIONAL ASSOCIATION  
1001 FRONT STREET  
GEORGETOWN, SOUTH CAROLINA 29440

**TO:**

**The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211**

**RECEIVED**

SEP 01 2016

**SC Court of Appeals**