

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE COURT OF COMMON PLEAS  
GEORGETOWN COUNTY

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OCT 12 2016

Honorable Kristy Harrington, Circuit Court Judge SC Court of Appeals

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Case No. 2016-001409

STRAND CLASSICS RESTORATIONS,

APPELLANT,

vs.

FRANK EMILIANO,

RESPONDENT.

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FINAL BRIEF OF APPELLANT

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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.

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## 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. (ROA, pp. 5-10).

During his testimony, Plaintiff offered 6 exhibits (ROA, p. 14-19) 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. (ROA, p.24). After

hearing testimony and viewing exhibits, the jury returned a verdict in favor of the Plaintiff/Respondent, in the amount of \$7,500.00. (ROA, pp. 3, 4).

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 (ROA, P. 33). Judgment was entered on a Form 4 Order on June 1, 2016, affirming the Magistrates Court verdict. (ROA, pp. 1, 2).

### 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 (ROA, pp 14-19). 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.(ROA, pp. 14-19). At that point the trial judge overruled the objection. (ROA, p. 24). At the close of Plaintiff's testimony, Plaintiff moved the exhibits into evidence. Again Duncan objected and was overruled. (ROA, p. 24). 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 (ROA, pp. 14-19) as hearsay, the Magistrates overruling of the objection and the objectionable documents themselves.

(ROA, pp 20-28). 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.

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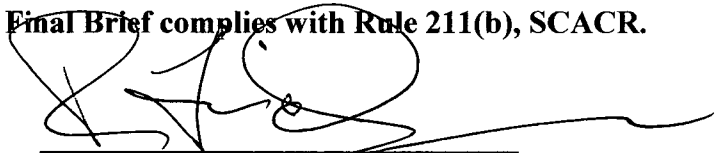
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**CERTIFICATE OF COUNSEL**

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

**October 4, 2016**



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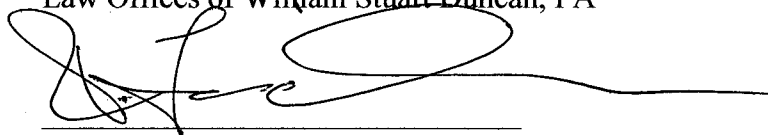
**RESPONDENT.**

**PROOF OF SERVICE OF  
APPELLANT'S FINAL BRIEF AND  
RECORD ON APPEAL**

I certify that I have served the Appellant's Final Brief and the Record on Appeal, on Mr. Frank Emiliano, Respondent, Pro Se, 5674 NW 101 Drive, Coral Springs, FL 33076, by placing the Appellant's Final Brief and the Record on Appeal in the U.S. Mail, postage prepaid on October 4, 2016

October 4, 2016

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