THE STATE OF SOUTH CAROLINA
In The Court of Appeals



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APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
W. Jeffrey Young, Circuit Court Judge



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Case No. 2012-CP-45-0471
Appellate Case No. 2015-002026

Gaddy Oil, Inc., Plaintiff.....Respondent,

v.

George Rishmawi, Sr. a/k/a Issa George Rishmawi, George Rishmawi, Jr., a/k/a George Issa Rishmawi, individually and both trading as G&S Transports, LLC and Dollar and More, Inc., Defendants.....Appellants,

Issa George Rishmawi, Third Party-Plaintiff.....Appellant,

v.

Andrew Gaddy and Gaddy Rentals, LLC, Third Party-Defendants.....Respondents,

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# FINAL BRIEF OF RESPONDENTS

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## STATEMENT OF THE CASE

The respondent, Gaddy Oil, Inc. commenced this action on September 5, 2012 for quantum meruit against George Rishmawi, Sr., a/k/a Issa G. Rishmawi (hereinafter called "Rishmawishi"), George Rishmawi, Jr., a/k/a George Issa Rishmawi, individually and both trading as G&S Transports, L.L.C. (hereinafter called "G&S") and Dollar and More, Inc., G&S Transports, L.L.C., and Dollar and More, Inc. (collectively "the defendants"). The defendants filed an answer on October 19, 2012, alleging affirmative defenses of unclean hands and the statute of frauds. Additionally, Rishmawi asserted a counterclaim against Gaddy Oil for breach of contract, quantum meruit, and promissory estoppel. Gaddy filed its reply to the counterclaim on November 29, 2012. On December 12, 2013, Issa George Rishmawi, individually, filed a motion to amend his answer and counterclaim to allege causes of action for breach of contract, quantum meruit, and promissory estoppel against Andrew Gaddy and Gaddy Rentals, L.L.C. Over objection from Gaddy, Rishmawi's motion was granted. Rishmawi then filed an amended summons, counterclaim and cross-complaint against Andrew Gaddy and Gaddy Rentals, L.L.C., which in turn filed their reply. Prior to trial, George Rishmawi, Jr., a/k/a George Issa Rishmawi, was dismissed as a party defendant.

The matter was heard by a jury before the Honorable W. Jeffrey Young, circuit court judge, during the September 8, 2015 term of common pleas court in Williamsburg County. At the close of the evidence, Andrew Gaddy and Gaddy Rentals, L.L.C. moved for a directed verdict against Rishmawi on his claims against Andrew Gaddy and Gaddy Rentals, L.L.C. for breach of contract, quantum meruit claim, and promissory estoppel. The motion for granted over the objection of Rishmawi. Gaddy's claim for quantum

meruit against the remaining defendants was submitted to the jury, which returned a verdict in Gaddy's favor and against the defendants for $34,220.82. George Rishmawi, Sr., a/k/a Issa G. Rishmawi, individually and trading as G&S Transports, L.L.C. and Dollar and More, Inc., G&S Transports, L.L.C., and Dollar and More, Inc. timely filed and served their notice of appeal.

## FACTS

This case initially arose out of a business relationship between Andrew Gaddy ("Gaddy") and Issa George Rishmawi ("Rishmawi"). Mr. Gaddy, who was eighty-two (82) years old at the time of trial, owned and operated what came to be known as Gaddy Oil, Inc., an oil company in Lake City, South Carolina, since 1962. In addition, at one time, he was a licensed real estate agent and operated a real estate company titled Gaddy Rentals, L.L.C. In the oil business, Gaddy delivered kerosene, fuel, and home heating oil to homes and businesses in the Lake City community and surrounding areas (R., p. 46, lines 18-25). He met Rishmawi approximately six years ago when the two of them began transacting business together. Rishmawi has engaged in the business of owning, operating and selling convenience stores since 1982. He was the founder and acting agent for the named defendants, Dollar and More, Inc. and G&S Transports, L.L.C. ("G&S"), and at the time of the transactions at issue, Rishmawi owned Dollar and More, Inc. Dollar and More operates and owns a fifty percent (50%) interest in G&S, a trucking company that hauls fuel (R., pp. 163-168). In addition, Rishmawi owned or operated several convenience stores that sell fuel for consumer purchase in Florence and Williamsburg counties (R., p. 52, lines 20-25; p. 53, lines 1-25; p. 54, lines 1-2). Tractor trailers belonging to G&S were usually kept at one of Rishmawi's convenience stores in Coward, located in lower Florence County (R., p. 54, lines 1-13; p. 149, lines 11-19). One of the convenience stores that Rishmawi owned was called Little Fisher (R., p. 53, lines 9-12; p. 136, lines 1-12; p. 165, lines 3-4; p. 177, lines 14-15).

Beginning in July 2010, Gaddy agreed to allow Rishmawi to purchase gasoline on Gaddy Oil's line of credit with TransMontaigne, an oil pipeline and terminal company

(Plaintiff's Exh. Nos. 1 and 4 R., pp.331- 336; pp.372-378). Persons purchasing gasoline from TransMontaigne can then resell it to the public for profit (R., p. 98, lines 11-19). Gaddy had maintained an account with TransMontaigne for approximately fifteen (15) years (R., p. 48, lines 1-23) years. As needed, Rishmawi would send his drivers working for G&S and George Freight to the TransMontaigne terminal to pick up the fuel (R., p. 52, lines 3-18). Once fuel was purchased, TransMontaigne would issue a bill of lading to the drivers and then draft the funds representing the amount of the fuel purchase from Gaddy Oil's checking account with the Citizens Bank within ten (10) days (R., p. 236, lines 18-25). In consideration for allowing Rishmawi to use Gaddy Oil's line of credit with TransMontaigne to purchase fuel, Rishmawi agreed to reimburse Gaddy for the amount of the fuel plus a fee representing approximately a half cent for every gallon of fuel purchased within ten days of each transaction (R., p. 49, lines 17-25; p. 50, lines 1-17; p. 51, lines 1-18). TransMontaigne would give a bill of lading to the driver at the time of the purchase of the fuel and then deliver an invoice to Rishmawi (R., p. 59, lines 17-25; p. 60, lines 1-5; p. 86, lines 7-22). Rishmawi testified that the invoices were all faxed "to G&S in Coward, which is the center for G&S" (R., p. 208, lines 19-20). For a period of time, Rishmawi reimbursed Gaddy for the fuel purchases by giving him a personal check for the amount of the transaction, which included the agreed-upon fee. Later, Rishmawi began to reimburse Gaddy by depositing the amounts directly into Gaddy's account with Citizens Bank, which was near Rishmawi's convenience store in Coward (R., p. 60, lines 13-25).

Each month between June 2010 and July 2011, Rishmawi purchased fuel valued at several hundreds of thousands of dollars using Gaddy's line of credit with

TransMontaigne. And again, each month from December 2011 through the early part of June 2012, Rishmawi purchased fuel using Gaddy's line of credit with TransMontaigne. Prior to the last transactions posted in June 2012, Rishmawi promptly reimbursed Gaddy for the amount of the fuel purchases as well as the fee Gaddy charged for the privilege of using his line of credit. Oftentimes, Rishmawi deposited these sums into Gaddy's account prior to the draft date from the bank (R., pp. 54-72, 76-80, 203-206). During the two-year period of time in which he transacted business with Rishmawi, Gaddy did not have an agreement for any other person or business entity to use his line of credit with TransMontaigne (R., p. 54, lines 8-16). Moreover, Gaddy had ceased actively operating his oil business prior to allowing Rishmawi to use his line of credit (R., p. 97, lines 17-25).

Notably, from June 5, 2012 to July 6, 2012, Rishmawi wrote checks or caused to be written checks totaling nearly $100,000.00 and drawn on the account of G&S Transports, L.L.C. on five separate occasions and deposited them into Gaddy Oil's account to cover drafts for fuel from TransMontaigne. Each deposit was made on the dates of the drafts from TransMontaigne, and each corresponded with nearly identically with the amounts of the drafts as reflected below:

| Draft Date: | Draft Amount: | Deposit Date: | Deposit Amount: | Depositor: |
|---|---|---|---|---|
| 06/08/2012 | $40,268.86 | 06/08/2012 | $40,333.86 | G&S Transports |
| 06/12/2012 | $21,969.46 | 06/12/2012 | $21,969.46 | G&S Transports |
| 06/28/2012 | $4,199.17 | 06/28/2012 | $4,199.17 | G&S Transports |
| 07/05/2012 | $17,933.08 | 07/05/2012 | $17,963.08 | G&S Transports |
| 07/06/2012 | $12,533.76 | 07/06/2012 | $12,556.26 | G&S Transports |

(R., pp. 78-85). As with all previous transactions, Gaddy's bank statements for June 2012 clearly show that Rishmawi and G&S received the fuel purchased from TransMontaigne using Gaddy's line of credit. These dealings between Gaddy Oil and Rishmawi created a pattern of conduct and course of business dealings between the parties.

The transactions at issue in the complaint occurred on June 29, 2012. Records from TransMontaigne and Gaddy Oil's checking account show that Richard Thornhill, a driver working for G&S Transports, signed a bill of lading and received $32,248.42 worth of gasoline from TransMontaigne drawn on its line of credit with Gaddy Oil (R., pp. 88-91, 238-241, 251-255). It is undisputed G&S received the fuel from the June 29, 2012 invoice (Tr., p. 124, lines 1-10, p. 223, lines 3-16). As usual, TransMontaigne subsequently drafted that sum from Gaddy Oil's checking account ten (10) days later on July 9, 2012. Unlike all previous occasions, Rishmawi refused to reimburse Gaddy for the costs of the fuel received on June 29, 2012 because Gaddy refused to pay him a real estate commission from the sale of a convenience store (the facts of which are the subject of the cross-complaint and will be outlined herein below). As a result, Gaddy had to take out a loan with First Citizens in the amount of $32,000.00 to cover the July 9, 2012 draft to his account. In the two-year period of time that he's transacted business with Rishmawi for the purchase of fuel, Gaddy has only had to reimburse his account for the last disputed transaction in June 2012. Subsequent to the souring of the parties' business relationship in July of 2012, Rishmawi no longer used Gaddy's line of credit to purchase fuel from TransMontaigne and no other drafts from TransMontaigne were ever made to Gaddy's account (R., p. 73, lines 20-23). At trial, judgment was awarded in Gaddy's

favor in the amount of $32,220.82, which represented the amount of the July 9, 2012 drafts and interest of $1,922.20 associated with the loan he took out to cover the drafts.

After Gaddy initiated suit against the defendants, Rishmawi filed a cross complaint against Andrew Gaddy and Gaddy Rentals, L.L.C. for $35,000. The basis of this claim is the sale of a convenience store in Lake City, South Carolina. Rishmawi refused to reimburse Gaddy Oil for the July 9, 2012 drafts because Gaddy told him that he would no longer pay a monthly real estate commission to him on the sale of that store (R., pp. 123-124). Gaddy Rentals owned and operated an Exxon convenience store in Lake City, South Carolina. In the fall of 2008, Gaddy Rentals ceased operating the business and closed its store. In January 2009, Gaddy began looking for a purchaser for the property. A friend of Gaddy's introduced him to Rishmawi, and Gaddy offered to sell the Exxon store to Rishmawi for $1,000.000. Rishmawi told Gaddy that the store was only worth $500,000 based on its size and current condition but he knew of two individuals, Awni Abuaita and Issa Abuaita ("the Abuaita brothers"), who were interested in purchasing it. Rishmawi knew the Abuaita brothers from their family in Bethlehem and he acted as their consultant in the transaction (Tr., p. 113, lines 1-12; p. 135, lines 4-16). He advised them that if they would "fix it and [pay] up to $500,000,..... it will bring the money back in less than two years" (R., pp. 180-182). As a result, in January 2009 Gaddy Rentals and the Abuaita brothers entered into a contract for the sale of the store for $500,000.

The contract provided that the property, including the equipment, was being sold in a "as is" condition, and that Gaddy was making no representations or warranties concerning the "quality, use, or state of repair of any of the real property, buildings, or

equipment." Issa Abuaita testified that when he and his brother entered into the contract with Mr. Gaddy, the Exxon store was "in bad shape" and "needed a lot of work." He stated that Rishmawi made financial loans on their behalf and assisted them in making contact with the necessary contractors, suppliers, and fuel companies to open and operate the convenience store, but did not charge them a fee for his consultation services. The Abuaita brothers spent over $50,000 for repairs, material, equipment, and improvements to the store, and it is undisputed that they repaid Rishmawi all money he loaned to them or advanced on their behalf in connection with the store (Tr., pp. 137-151; p. 158, lines 22-25; p. 160, lines 20-25; p. 161, lines 1-3; p. 190, lines 12-15).

Gaddy Rentals agreed to provide owner financing to the Abuaita brothers with no money down, and the terms of the promissory note provided for monthly installment payments of principal and interest to Gaddy Rentals over a period of ten (10) years at an interest rate of four and a half percent (4 ½%). The monthly installment payments of $5,181.98 were due to begin on March 1, 2009. To induce Gaddy to finance the sale of the Lake City Exxon to the Abuaita brothers, Rishmawi personally guaranteed the note (R., pp. 110-111; Defs' Exh. No.: 1, pp.379-387). In addition, Rishmawi paid the first few monthly installments on the note to Gaddy Rentals on behalf of the Abuaita brothers (R., p. 113, lines 14-21). Gaddy, in turn, initially agreed to pay Rishmawi a ten percent (10%) commission of $50,000 on the sale of the Lake City Exxon to the Abuaita brothers. That commission was to be paid to Rishmawi in monthly installments of $518 from the money Gaddy Rentals received from the Abuaita brothers each month as they paid what they owed under the terms of the promissory note (Id at lines 22-25; p. 214, lines 6-10). Rishmawi was admittedly not a licensed real estate broker or agent. Dispute

that fact, he would go to Gaddy's home each month and retrieve from his garage door an envelope containing $518 in cash (R., p. 114, lines 9-16; p. 193, lines 2-25). Unbeknownst to the Abuaita brothers, Rishmawi received these payments each month until July 2012 (R., pp. 115, 161, 218-219).

Gaddy testified that in May or June of 2012, he had a conversation with Wilbur Brown, a licensed attorney and real estate agent, about the monthly payments he was making to Rishmawi for sale of the Exxon store. Brown informed him that the arrangement they had amounted to a real estate commission and he could not pay Rishmawi a real estate commission if Rishmawi was not a licensed real estate broker. Subsequently, when Rishmawi returned from an overseas trip in the early part of July 2012, Gaddy told him that he could no longer pay him any more money from the sale of the Exxon store to the Abuaita brothers because it was an illegal real estate commission. It was at this time that Rishmawi told Gaddy that he would not reimburse him for the gasoline unless he continued to pay him the commission (R., pp. 115-123, 194-197). Although Rishmawi claimed in his amended summons, counterclaim and cross-complaint that Gaddy agreed to pay him $50,000 for funds he (Rishmawi) advanced for repairs to the store, he testified at trial that the $50,000 sum owed to him by Gaddy was for the benefit of his expertise in the business. Yet later in his testimony under cross, Rishmawi stated that Gaddy owed him the money because he (Rishmawi) used his own money to help the Abuaita brothers finance the repairs and renovations to the store. While still under cross-examination, he said that the Abuaita brothers offered to purchase the Exxon store from Gaddy Rentals for $500,000 only if Mr. Gaddy made certain repairs and renovations to the building and inside the store. His offered this testimony despite the

fact that the Abuaita brothers signed a promissory note in the amount of $500,000 and a contract to purchase the business "AS IS" on January 23, 2009, and the repairs and renovations were conducted *after* the execution of those documents. He later once again contradicted his own testimony in that regard when he said Gaddy could have sold the store for a $1,000,000 if he had fixed the store, but he didn't want to do that and chose to sell it "like it is." (R., pp. 182-183, 210-212, 216-222). Gaddy denied that he ever agreed to pay Rishmawi for any repairs or improvements to the store or for the privilege and benefit of his expertise in the convenience store business (R., p. 118).

Subsequent to the filing of this case, Gaddy Rentals executed a deed transferring title to the store to the Abuaita Brothers and in turn, they signed a mortgage in favor of Gaddy Rentals for the balance of the promissory note pursuant to the contract for sale (R., p. 154, lines 2-9).

## ARGUMENTS

A. DID THE TRIAL COURT PROPERLY GRANT RESPONDENTS' MOTION FOR A DIRECTED VERDICT ON APPELLANT RISHMAWI'S CROSS-COMPLAINT WHERE THE AMOUNT CLAIMED AGAINST RESPONDENTS WAS AN ILLEGAL REAL ESTATE COMMISSION, WHERE THERE WAS NO ENFORCEABLE CONTRACT BETWEEN THE PARTIES, WHERE THE SUM CLAIMED WAS NOT SPENT ON BEHALF OF AND DID NOT ENURE TO THE BENEFIT OF RESPONDENTS, AND WHERE EVEN IF SUCH SUM WAS OWED, IT WAS PAID IN FULL?

The trial court properly directed a verdict in favor of the respondents on the appellant Rishmawi's causes of action for breach of contract, quantum meruit, and promissory estoppel. In ruling on a motion for a directed verdict, the trial court must view the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party. Minter v. GOCT, Inc., 322 S.C. 525, 527, 473 S.E.2d 67, 69 (Ct. App. 1996). If more than one inference can be drawn from the evidence, the case must be submitted to the jury. *Id.* When considering directed verdict motions, the trial court does not have the authority to decide credibility issues or to resolve conflicts in the testimony or evidence. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002). The court must be concerned only with the existence or non-existence of evidence, not its weight. Garrett v. Locke, 309 S.C. 94, 419 S.E.2d 842 (Ct. App. 1992). Respondents submit that there is no evidence in the record by which Rishmawi would be entitled to recover on the causes of action in his cross complaint.

In his breach of contract claim as set forth in the cross complaint, Rishmawi alleges in paragraphs eighteen (18) and nineteen (19) that appellants agreed to reimburse him for repairs made to the subject property in the amount of $50,000. In an action for breach of contract, the burden of proof is on the [cross-plaintiff] to prove the existence of

a valid contract, a breach or unjustifiable failure to perform a material condition of the contract, and the resulting damages. 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 [cross-defendants are] liable for whatever damages follow as a natural consequence and a proximate result of such breach." *Id.* "The purpose of an award of damages for breach of contract is to put the [cross-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); Manning v. City of Columbia, 297 S.C. 451, 377 S.E.2d 335 (1989); Kline Iron & Steel Co. v. Superior Trucking Co., 261 S.C. 542, 201 S.E.2d 388 (1973); and Drews Co. v. Ledwith-Wolfe Assocs., Inc., 296 S.C. 207, 371 S.E.2d 532 (1988) (explaining that purpose of award of damages for breach is to give compensation, that is, to put plaintiff in as good a position as he would have been in had the contract been performed).

Here, both Rishmawi and Issa Abuaita testified that all of the money expended in the repairs and renovations of the Lake City Exxon were paid and reimbursed to Rishmawi. Gaddy testified that he never agreed to reimburse Rishmawi or anyone else for repairs or renovations done to the building because he agreed to sell the property in an "AS IS" condition. The undisputed evidence was that at both the time of the filing of the amended cross complaint and the time of trial, Rishmawi had been made whole and was not seeking damages for any repairs or renovations to the store. Consequently, the trial judge properly directed a verdict in respondents' favor on the breach of contract claim.

Rishmawi alternatively argues that the $50,000 sum he sought against the respondents were not for repairs and renovations, but was the fee that he charged for the

privilege and benefit they received in exchange for his business acumen in owning and operating convenience stores. The monthly installments Gaddy paid to Rishmawi during the first three years following the contract for sale amounted to exactly ten percent (10%) of the monthly lease payments Gaddy Rentals received from the Abuaita brothers, and were clearly conditioned upon the lease and/or subsequent purchase of the property to the Abuaitas. Rishmawi testified that in the event the Abuaita brothers did not make the monthly lease payments to Gaddy Rentals, he would guarantee the payments. (R., p. 183, lines 16-24). There was no obligation on behalf of Gaddy Rentals to pay ten percent of the monthly payments under the lease to Rishmawi if the Abuaita brothers defaulted under the promissory note and Rishmawi had to assume the payments. Rishmawi tried to cleverly disguise the nature of those payments only after Gaddy told him that the agreement was unenforceable as the transaction was an illegal real estate commission.

The parties agree that only a licensed real estate broker can collect a commission from a real estate transaction in South Carolina, and further that Rishmawi was never a licensed real estate broker. Under section 40-57-20 of the South Carolina Code of Laws, it is unlawful for an individual to act as a real estate broker, real estate salesman, or real estate property manager or to advertise as such without a valid license issued by the Department of Labor, Licensing and Regulation. Section 40-57-30(3) defines broker as:

> "an individual who for a fee, salary, commission, or other valuable consideration or who with the intent or expectation of receiving compensation:
>
> (a) negotiates or attempts to negotiate the listing, ***sale, purchase***, exchange, ***lease, or other disposition of real estate or the improvements thereon*** [emphasis added];

(d) offers advisory services as a real estate consultant or counselor;

(e) or offers to act as an agent representing a principal in a real estate transaction."

Section 40-57-220 makes it a criminal offense for a person to act as a real estate broker or assume to act as such without first having obtained a license issued by the Real Estate Commission. Despite his attempts to avoid characterizing the disputed transaction as a commission, Rishmawi undeniably charged to Gaddy Rentals a fee, salary, or other valuable consideration representing ten percent of the lease payments made by the Abuaita in connection with the Lake City Exxon. Also undisputed is the evidence that Rishmawi was the individual who introduced the Abuaita brothers to Mr. Gaddy and negotiated key terms of the contract for sale on their behalf, including the purchase price (R., pp. 180-183). In negotiations with Gaddy for the contract for sale, Rishmawi acknowledged that he offered advisory services to the Abuaita brothers as a consultant or counselor in owning, operating and selling convenience stores by telling them his opinion of how much the Lake City Exxon was worth, how much other convenience stores in the area sold for, the nature and extent of renovations he thought needed to be done to the store, and the length of time that they could expect to pay off the promissory note or mortgage (R., pp. 174, 182). It is precisely this kind of conduct by an unlicensed person that the statute contemplates and prohibits.

Even if the appellate court determines that the sum claimed by Rishmawi was not for repairs or renovations but rather a fee charged for his role in the transaction, his breach of contract claim must nonetheless fail. In order for Rishmawi to succeed, he must first prove that there was a binding, ***valid*** contract between himself and respondents.

See Tidewater Supply Co. v. Industrial Elec. Co., 253 S.C. 483, 171 S.E.2d 607 (1969); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). An agreement is unenforceable if the subject or object of which is to do an act that is a violation of the law. Gaddy admits that he paid Rishmawi $518 each month for three years until he became aware that the transaction was an illegal real estate commission. He also admits that as result, he refused to continue paying Rishmawi ten percent of the monthly note payments he received from the Abuaita brothers. Other than simply maintaining that Gaddy Rentals owed him a "fee" that did not represent a real estate commission, there was no evidence before the trial court as to the value, if any, of any services he allegedly provided to Gaddy in connection with the sale of the Lake City Exxon store. Consequently, in viewing the evidence in the light most favorable to the Rishmawi on his breach of contract claim, respondents submit that the trial court properly determined that there was no valid contract to be enforced and granted their motion for a directed verdict.

The trial also properly granted respondents' motion for a directed verdict on Rishmawi's claim for quantum meruit. Quantum meruit is an equitable doctrine that provides for recovery of a benefit conferred on one party by another. In order to prevail on a cause of action for quantum meruit, Rishmawi must have established the following: (1) a benefit conferred by him on the respondents; (2) realization of that benefit by the respondents; and (3) retention of the benefit by the respondents under circumstances that make it inequitable for them to retain it without paying its value. Myrtle Beach Hosp. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868, 872 (2000). In a law action, the measure of damages is determined by the parties' agreement. On the other hand, in

equity, 'the measure of the recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been unjustly enriched at the expense of the plaintiff.'" (*Id.* quoting United States Rubber Prods., Inc. v. Town of Batesburg, 183 S.C. 49, 55, 190 S.E. 120, 12 (1937)). "[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy." Id. at 8, 532 S.E.2d at 872.

In that instant action, Rishmawi failed to put forth any evidence on the elements of a quantum meruit claim. There is no evidence whatsoever in the record that he conferred a benefit to the respondents or that they realized any such benefit. To the contrary, all of the equitable benefits in the lease and subsequent sale of the Lake City Exxon were realized and retained by the Abuaita brothers and not the respondents. Rishmawi successfully negotiated a purchase price of $500,000, which is half of what Gaddy originally wanted for the store. He also convinced Gaddy to provide owner financing of a half million dollars to the Abuaita brothers without any money down and at a very reasonable interest rate. Rishmawi boasted that the Abuaita brothers were earning more than $300,000 a month and $70,000 a year from the sale of lottery tickets alone in the Lake City Exxon store. Rishmawi testified that the "benefit" that he conveyed to the respondents was in the nature of the expertise that he provided to the Abuaita brothers that allowed them to open and successfully operate the store, thereby enabling them to make their monthly note payments to Gaddy Rentals (R., pp. 191-192). However, as previously noted, the property was sold by Gaddy rentals to the Abuaita brothers in an "AS IS" condition, and all of the repairs and renovations were unquestionably made to the property following the signing of the January 23, 2009

contract for sale. The contract for sale and the promissory note, which was signed the same day, obligated the Abuaita brothers (and Rishmawi if they defaulted) to pay the purchase price over a ten-year period of time. The contract further obligated Gaddy Rentals to convey title to the premises to the Abuaitas after payment of the purchase price and interest in full. Respondents had already received the benefit of their bargain at the time of the signing of the contract and promissory note, and did not receive any other benefits that they would not have otherwise under the contract. The Abuaita brothers were already legally bound under the contract and promissory note to pay the purchase price plus interest at the time the renovations and repairs were made. The subsequent sale of the business four years later would have occurred notwithstanding any contributions by Rishmawi provided the Abuaita brothers satisfied the note. As such, the respondents cannot be said to have retained a benefit from Rishmawi's efforts under a quantum meruit claim.

The appellants do not argue that the trial court erred in dismissing Rishmawi's cause of action for promissory estoppel and therefore, that issue is not addressed here.

B. DID THE TRIAL COURT PROPERLY DENY THE APPELLANTS' MOTION TO DISMISS ISSA GEORGE RISHMAWI AND DOLLAR AND MORE, INC. AS PARTY DEFENDANTS AND G&S TRANSPORT'S MOTION FOR A DIRECTED VERDICT WHERE THERE WAS COMPETENT EVIDENCE IN THE RECORD THAT RISHMAWI WAS THE PERSON WHO ENTERED INTO AN AGREEMENT WITH GADDY FOR THE PURCHASE OF FUEL USING GADDY OIL'S LINE OF CREDIT, WHERE RISHMAWI ADMITTED THAT HE FOUNDED, OWNED AND OPERATED DOLLAR AND MORE, INC., WHICH OWNED A FIFTY PERCENT INTEREST IN G&S TRANSPORTS, L.L.C., THE TRUCKING COMPANY THAT TOOK POSSESSION OF AND RECEIVED THE BENEFIT OF FUEL VALUED AT $32,220.82 USING GADDY'S LINE OF CREDIT WITHOUT REIMBURSING GADDY?

The issue of Rishmawi and Dollar and More, Inc.'s liability to Gaddy Oil was properly submitted to the jury under the theory of actual or implied agency. "An agent is one appointed by a principal as his representative and to whom the principal confides the management of some business to be transacted in the principal's name, or on his account, and who brings about or effects legal relationships between the principal and third parties." Colleton County Taxpayers Ass'n v. Sch. Dist. of Colleton County, 371 S.C. 224, 239, 638 S.E.2d 685, 693 (2006). Consequently, a principal or corporation is liable for the acts of its agent while the agent is acting within the scope of his authority. Cook vs. Canal Ins. Co., 245 S.C. 238, 140 S.E.2d 166 (1965). "If there are any facts tending to prove the relationship of agency, it then becomes a question for the jury[,]" and the grant of summary judgment is inappropriate. Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 226, 317 S.E.2d 748, 752 (Ct. App. 1984). Rishmawi testified at trial that he was the designated agent for the family businesses Dollar and More, Inc., Southside and G&S Transport Corporation and was authorized to act on their behalf (R., pp. 176-179). Gaddy entered into a verbal agreement that with Rishmawi that allowed Rishmawi to purchase fuel using Gaddy Oil's line of credit with TransMontaigne for the support of his convenience stores and fuel hauling business, G&S Transport (R., pp. 49-54). Dollar and More, Inc. owns a couple of the convenience stores that Rishmawi operates as well as a fifty percent (50%) interest in G&S Transport (R., pp. 176-177).

All of Gaddy's interactions concerning the fuel purchases were with Rishmawi and no one else. Gaddy reasonably believed, to his detriment, that Rishmawi was the owner and operator of the convenience stores and G&S Transport. Both Rishmawi (initially) and G&S Transport (subsequently) promptly repaid the amounts invoiced and a

surplus directly to Gaddy Oil for the fuel purchases for the two years that the parties transacted business. It wasn't until Gaddy refused to continue paying Rishmawi a commission in an unrelated transaction that Rishmawi and G&S Tranport then refused to reimburse reimburse Gaddy Oil for the June 29, 2012 invoice. Rishmawi never informed Gaddy that he was merely an agent for the true owners of the transport company and the convenience stores. To the contrary, Rishmawi repeatedly testified in his deposition that he owned Dollar and More, Inc. and G&S Transport. If an agent did not disclose his principal when making a contract with a third party, the party, upon discovering the principal, may hold either the agent or the principal liable. See Goodale v. Page, 92 S.C. 413, 416, 75 S.E. 700, 701 (1912); see also Broom v. Marshall, 284 S.C. 530, 540, 328 S.E.2d 639, 645 (Ct. App. 1984) (Gardner, J. dissenting) (quoting 3 C.J.S. Agency § 369 (1973)) ("An agent ..... if he contracts as agent for an undisclosed principal, will be personally liable unless there is a mutual intention of the parties to the contrary."); Restatement (Third) of Agency § 6.03 (2006). ("When an agent acting with actual authority makes a contract on behalf of an undisclosed principal, (1) unless excluded by the contract, the principal is a party to the contract; [and] (2) the agent and the third party are parties to the contract . . . ."). "A principal is undisclosed if, when an agent and a third party interact, the third party has no notice that the agent is acting for a principal." Restatement (Third) of Agency § 1.04(2)(b) (2006).

Rishmawi routinely conducted business with Gaddy Oil for two years as an agent of G&S Transport and its owner, Dollar and More, Inc. Rishmawi founded, operated and at one point owned theses business. It was only after Rishmawi, individually and as an agent for G&S Transport, refused to reimburse Gaddy Oil for the June 29, 2012 the fuel

purchase by G&S based on Rishmawi's personal dispute with Gaddy on an unrelated matter. Rishmawi's name appears on the tax documents prepared on behalf of Dollar and More, Inc. (Tr., pp.180-181). Gaddy reasonably believed that Rishmawi was the owner and operator of the companies with which he engaged in the transactions at issue in the complaint, and had no reason to believe otherwise. As such, Dollar and More, Inc. was an undisclosed principal, and thus, Rishmawi can be held personally liable as its agent.

Equally important is the fact that Rishmawi admitted to receiving the gas (R., p. 124), but simply feigned ignorance as to which of his convenience stores were ultimately delivered the gas (R., p. 222-225). Appellants were in actual possession of all of the documents related to the disposal of the fuel received from the TransMontaigne terminal on June 29, 2012, and deliberately elected not to call any witnesses with knowledge or introduce any documents at trial that would be decisive on that issue. Moreover, Rishmawi, as the designated Rule 30(b)(6) witness for the corporate defendants, did not produce any of the requested documents at his April 2013 deposition. There is evidence that Dollar and More, Inc. owned all of the convenience stores that Rishmawi operated and each of them were equipped with fuel pumps that allowed the public to purchase gasoline. Rishmawi acknowledged that G&S Transport's driver, Richard Thornhill, signed the 06/29/2012 invoice and "probably could have" gotten the fuel. He testified that the gas "could have gone to the Coward store.....," which is owned by Dollar and More, Inc. (R., pp. 239-240). Earlier in his testimony, he did not dispute the fact that the G&S Transport's driver picked up gas "for the business" (R., p. 223, lines 3-16). According to the testimony of Issa Abuaita and Mr. Gaddy, fuel delivery trucks bearing the G&S Transport logo were always seen at the Coward Truck stop. The jury could

have reasonably inferred from the evidence that G&S Transport purchased the fuel and delivered it to one of the many convenience stores owned by Dollar and More, Inc., which would have subsequently resold it to the public for profit. As such, it would be unjust for the appellants to retain the benefit of over $32,000 in fuel without reimbursing Gaddy Oil the value of it. Accordingly, the trial court did not err in refusing to dismiss Rishmawi and Dollar and More, Inc. as party defendants and in denying the motion of G&S Transport to direct a verdict in its favor.

## CONCLUSION

For the reasons stated, this Court should reverse the judgment of the trial court.

RESPECTFULLY SUBMITTED:

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November 22, 2016

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
W. Jeffrey Young, Circuit Court Judge



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Case No. 2012-CP-45-0471
Appellate Case No. 2015-002026

Gaddy Oil, Inc., Plaintiff.....Respondent,

v.

George Rishmawi, Sr. a/k/a Issa George Rishmawi, George Rishmawi, Jr., a/k/a George Issa Rishmawi, individually and both trading as G&S Transports, LLC and Dollar and More, Inc., Defendants.....Appellants,

Issa George Rishmawi, Third Party-Plaintiff.....Appellant,

v.

Andrew Gaddy and Gaddy Rentals, LLC, Third Party-Defendants.....Respondents,

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**CERTIFICATE OF COUNSEL**

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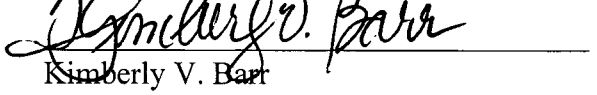
The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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**PROOF OF SERVICE OF FINAL BRIEF**

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I hereby certify that I have served the respondents' final brief and certificate of counsel on the appellants by mailing a copy of the same to their attorney of record, M. Amanda Shuler, to her at Post Office Box 980, Kingstree, South Carolina 29556 on the 22nd day of November 2016.

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November 22, 2016



The Honorable Jenny Abbott Kitchings
Clerk of South Carolina Court of Appeals
Post Office Box 11629
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RE: Gaddy Oil, Inc. vs. George Rishmawi, Sr, et al
Trial Court Case No.: 2012-CP-45-0471
Appellate Court Case No.: 2015-002026

Dear Ms. Kitchings:

In connection with the matter referenced above, please find enclosed the original and fifteen (15) copies of initial brief on behalf of the respondents. I have also enclosed the proof of service and certificate of counsel.

By copy of this letter, I am serving three copies of these documents on Mandy Shuler, counsel for the appellants.

With kindest regards, I am

Very truly yours,

Kimberly V. Barr

KVB:rh

enclosures

cc: M. Amanda Shuler, Esquire (w/ enclosures)
Andrew Gaddy (w/ enclosures)