THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2016-002302

NHC HealthCare/Mauldin, LLC,.....Respondent,

v.

Wade Thompson and Sheila Thompson,

Of whom Wade Thompson is the .....Appellant.

INITIAL BRIEF OF APPELLANT

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QUESTION PRESENTED

Did the trial court err in ruling under the equitable doctrine of **quantum meruit** that Appellant was unjustly enriched and, thereby, liable to Respondent "for the sum of $8,869.32, the reasonable value of the services provided to him and remaining unpaid"?

STATEMENT OF THE CASE

On February 28, 2014, Plaintiff NHC Health Care/Mauldin, LLC (**NHC**)[1] filed a Summons and Complaint in Anderson County Circuit Court against Defendants Wade Thompson (**Father**) and Thompson's daughter, Sheila Thompson (**Daughter**). **(S&C, Feb. 28, 2014)**. NHC asserted Father and Daughter owed an unpaid balance of $8,869.32 for services Father received while an inpatient from January 26 to March 10, 2011.[2] **(Compl. at 2-3, Feb. 28, 2014)**. Alternatively, NHC contended Father and Daughter had been "unjustly enriched at the expense of [NHC] and under these circumstances, it is unjust and inequitable to allow [Father and Daughter] to retain said benefits without paying [NHC] therefor." **(Compl. at 3, Feb. 28, 2104)**. NHC asked the court to award "the unpaid balance of the reasonable value of the goods and services furnished . . . the cost of this action, and for

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[1] NHCC-Mauldin is a 180-bed, skilled nursing facility. Its corporate office is located in Murfreesboro, Tennessee. **(Tr. 40-41)**.

[2] NHCC's bill for services provided to Father, January 26-March 10, 2011, was $18,071.82. **(P. Ex. 4)**. Because no semi-private room was available at NHCC, Daughter had agreed to pay a supplement of $21 per day for a private room. Medicare Part B paid $8,572.50 for physical therapy and occupational therapy services Father received at NHCC. **(P. Ex. 4)**. Medicare notified NHC on January 27, 2011 that Father had no remaining days of eligibility for inpatient services; thereafter, Medicare denied payment for the inpatient services Father received at NHC. **(Tr. 15, 42, 71,103)**.

such other and further relief as to the Court may seem just and proper." **(Compl. at 3, Feb. 28, 2104).**

Two weeks later, NHC's attorney, Craig Allen, and three NHC employees met at the Greenville law office of arbitrator James C. Sarratt for an arbitration previously scheduled by NHC. **(Def. Ex 4).** The arbitrator's Decision stated: "Notice of the arbitration place and time, along with an agreement for binding arbitration, where [sic] mailed to both the claimant and to the respondents, [Father] and [Daughter]." **(Def. Ex. 4).** Furthermore, the Decision acknowledged: "Despite notice, neither respondent was present." **(Def. Ex. 4).** The Decision explained NHC had "provided ample evidence that proves that it is due unpaid charges and expenses pursuant to the admission and financial agreement executed by [Daughter], responsible party for the [NHC] resident [Father]." **(Def. Ex 4).** The Decision concluded: "NHC Healthcare/Mauldin, LLC is due the amount of $11,197.50 from [Father]." **(Def. Ex 4).** Moreover, because NHC had paid the arbitrator's fee of $350, the arbitrator added Father's "share" of $175, making $11,372.50 the final award to NHC. **(Tr. 188; Def. Ex 4).**

On May 16, 2014, NHC filed a Motion asking Anderson County Circuit Court to conduct a hearing and, thereafter, to confirm the arbitration award,

and to award "costs and fees incurred in this action, pursuant to the Contract between the parties." **(Pl. M, May 16, 2014)**. Thereafter, Daughter obtained counsel and filed a Motion asking the court to: (1) dismiss NHC's Complaint; (2) vacate NHC's Arbitration Award; and (3) appoint a guardian ad litem [GAL] for Father, who then had diagnoses of dementia, Alzheimer's, and renal failure, and was residing in the Richard Campbell Veterans' Nursing Home.[3] **(Tr. 152; Def. M, July 14, 2014).**

Following a hearing, the trial court ordered mediation and vacated: (1) NHC's Motion to Confirm Arbitration Award, (2) Daughter's Motion to Dismiss, and (3) Daughter's Motion to Vacate Award. **(Or. June 3, 2015).** Several months later, Daughter's Return stated: "Mediation was held but did not resolve the issues." **(Def. M. Jan 14, 2016).** Furthermore, Daughter's Return asked the court to (1) dismiss NHC's complaint, and (2) vacate the Arbitration Award.[4] **(Def. M. Jan 14, 2016).**

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[3] Following a hearing, the court ordered appointment of a GAL for Father and continued action on Daughter's remaining requests. **(Or., Dec. 29, 2014)**. On March 9, 2015, the court appointed attorney Jay Duvall as Father's GAL, stating: "It appears that the parties agree that [Father], a party in the above-captioned action, is in need of the services of a [GAL] in the above-titled action." **(Or., Mar. 9, 2015)**.

[4] On June 10, 2014 and June 13, 2014, respectively, NHC served Daughter and Father with: (1) Notice of its February 28, 2014 Summons and Complaint, and (2) Notice of its May

On January 29, 2016, NHC filed an Amended Complaint, alleging additional actions against Daughter, including: (1) "false and fraudulent representations [that] were made willfully and deliberately . . . in order to induce [NHC] to admit [Father] into [NHC's] facility," and (2) negligent misrepresentation. **(Am. Comp. at IX-XII, XIII-XIV, Jan 29, 2016).** NHC asked the court to award punitive damages against Daughter for allegedly making "false misrepresentations." **(Final Or. at 1,** Oct. 14, 2016; **Am. Comp. at XV, Jan 29, 2016).** Daughter answered NHC's Amended Complaint and asserted counterclaims for negligence, fraud by misrepresentation, fraud by omission, negligent misrepresentation, promissory estoppel, abuse of process, due process, and protections granted under South Carolina's Consumer Protection Code and Unfair Trade Practices Act. **(Daughter's Ans., Mar. 10, 2016).**

On September 7, 2016, Anderson County Circuit Court conducted a bench trial and, thereafter, ruled:

1. NHC is "not entitled to judgment against [Daughter]. [Daughter] signed the

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16, 2014 Motion for Confirmation of Arbitration Award. **(Ret. to M to Confirm Arb., Jan. 14, 2016, 1-2).**

admission documents and admitted [Father] to [NHC's] facility on his behalf. [Daughter] did not hold a Power of Attorney for [Father], nor had she been appointed by any Court as a conservator or guardian for him." **(Final Or. 7, Oct. 14, 2016)**.

2. Daughter's counterclaims are dismissed with prejudice. **(Final Or. 8, Oct. 14, 2016)**.

3. [Father] is liable to [NHC] for the sum of $8,869.32, the reasonable value of the services provided to him and remaining unpaid, on the basis of *quantum meruit*." **(Final Or. at 6, Oct. 14, 2016)**.

On November 18, 2016, Father filed and served his Notice of Appeal of the trial court's October 14, 2016 Final Order. **(NOA, 11/18/16)**. This appeal followed.

STATEMENT OF FACTS

On January 22, 2011, Father, then age seventy-four, arrived by ambulance at AnMed Health's Emergency Room.[5] **(D. Ex. 1)**. After physicians diagnosed Father as having bradycardia, he was admitted to the

[5] AnMed Health is located in Anderson, South Carolina. **(D. Ex. 1)**.

hospital and remained there until January 26, 2011. **(Id.; Tr. 54-55)**. Father's Initial Assessment indicated he required "total care"; Medicare and Mutual of Omaha were Father's primary and secondary health insurance providers, respectively. **(D. Ex. 1)**.

On January 26, 2011, AnMed's discharge planner, Jenny Stansell, coordinated plans for Father's transfer by ambulance to NHC. **(D. Ex. 1; Tr. 157-58)**. Stansell's notes confirmed the planned transfer to NHC: "Jennifer [Balon] from NHC-M offered pt. bed for today if family is willing to pay $21/day because it is a private room. . . . Called Daughter, and she accepted bed with $21/day copay. She will go now to do admissions paperwork at NHC. Let Jennifer know, and she agreed for us to send pt. at 2 p.m." **(Tr. 31-32; D. Ex. 1)**. Daughter testified that Father had been admitted to both AnMed and NHC in the past and, on those occasions, Father's Medicare and supplemental insurance had "paid for everything." **(Tr. 7, 33, 64, 162, 169, 186)**.

After Daughter accepted a charge of $21 per day for Father's private room at NHC, she met with NHC Admissions Director Jennifer Zaire Balon. **(Tr. 5, 20, 159)**. Daughter testified: "I knew to ask for Jennifer Zaire because the [AnMed] social worker had told me to, that she would be waiting for me

and she would have everything ready, and she did. She had everything ready. All the papers were filled out . . . ." (**Tr. 159, 183; Def. Ex. 2**). Daughter stated that during their 30-minute pre-admission meeting, Balon asked her no questions, did not discuss the admissions paperwork with her, and "would just point to where for me to sign." (**Tr. 159-61, 183; P. Ex. 1**). According to Daughter, rather than discussing Father's admission documents, she and Balon talked about Balon's upcoming wedding. (**Tr. 160, 202**). Daughter said the only discussion of financial arrangements was the requirement that she write a $630 check to NHC for "a 30 days' payment of the difference between the semiprivate room and the private room. They wanted that up front." (**Tr. 160; P. Ex. 16**). After signing the admission documents and writing the check for $630, Daughter joined Father, who had already arrived by ambulance, in his room. (**Tr. 184**).

At trial, Balon testified she had been admissions director at NHC for twelve years. (**Tr. 5**). She stated her job involved "working with families and hospitals getting patients into our building." (**Tr. 5**). On January 26, 2011, the day of Father's transfer to NHC, Balon called the automated Medicare Verification number to confirm NHC would be paid by Medicare for inpatient services NHC provided to Father. (**Tr. 9, 13, 64; P. Ex. 2**). According to

Balon, the automated system indicated, "[Father] had his full 100 days." (**Tr. 9, 13, 22**). Balon testified that she did not recall asking AnMed about any of Father's prior hospital admissions, stating: "I don't recollect that conversation like that. I can't specifically remember."[6] (**Tr. 55**).

When Balon was asked whether she had informed Daughter that Father's NHC charges would be covered by Medicare, Balon responded, "Based on the information that we had, yes." (**Tr. 25**). NHC's ten-page Admission and Financial Agreement listed the NHC services that were covered by Medicare; on page five of the Agreement, Balon had indicated in writing: (1) Father would be placed in "a Medicare certified bed," and (2) "it is the professional judgment of this Center that Patient's care will be covered by Medicare." (**Tr. 24-25, 192-93, 242; P. Ex. 1, p. 4-5**).

Balon testified it was NHC's policy "to email our corporate office, and then they would run the Medicare verification check as well and then it was emailed back." (**Tr. 14, 23**). Balon acknowledged receiving the Medicare Verification Reply on January 27, 2011—the day following Father's

[6] However, the January 22, 2011 AnMed Physician Documentation Sheet, which was provided to NHC, stated "The Recent History is a recent hospitalization." **(P. Ex. 1)**.

admission to NHC.[7] **(Tr. 15, 42).** Balon conceded: "This one reflected that he had no days left . . . ." **(Tr. 15; P. Ex. 3).** Specifically, the January 27, 2011 Medicare Verification Reply provided NHC with the following facts:

- **Type of Verification: Inpatient**
- **Reply:**
    - Part A Begin Date 9/01/1999
    - Part B Begin Date 9/01/1999
    - Full Days Remaining in Benefit Period: 0
    - Coinsurance Days Remaining: 0
    - Last Date Billed in Benefit Period: 11/22/2010
    - PT/ST Available Under Cap for Year: 1,870.00
    - OT Available Under Cap for Year: 1,870.00

(P. Ex. 3).

After reviewing Medicare's Verification Reply, Balon concluded Medicare had provided inaccurate information to NHC. Specifically, Balon determined that Medicare's statements, "**Full Days Remaining in Benefit Period: 0**" and "**Last Date Billed in Benefit Period: 11/22/2010**" were

[7] Balon testified that although she printed the Medicare Verification Reply on January 27, 2011, handwritten notes were added later by NHC business office manager, Lisa Bollinger. **(Tr. 42).**

mutually exclusive and could not both be accurate. Thereafter, Balon unilaterally surmised Medicare had erred in informing NHC that Father had "no days left." (**Tr. 15-17**). Balon testified repeatedly that the Medicare Verification Reply "did not raise any red flags" to her because she had received inconsistent information from Medicare "four or five times" in the past. (**Tr. 18, 23-24, 52-53, 59-60**). However, Balon also testified that this was an "extremely" unusual situation for her. (**Tr. 48, 60**). After Medicare refused to pay NHC for Father's inpatient stay, Balon learned that **all** of the facts contained in Medicare's January 27, 2011 Verification Reply were correct. (**Mar. 21, 2011, 15:05:43 email, P. Ex. 9**)

Asked if she "did anything at all" to reconcile the inconsistency between the automated Medicare response received on January 26, 2011 and the written Medicare Verification Reply received on January 27, 2011, Balon responded: "No, ma'am." (**Tr. 24, 28, 52-56**). Balon explained she took no steps to resolve the discrepancy in Medicare's responses because, "I didn't feel the need to, no, sir. I felt like I had done that." (**Tr. 59-60**).

> **Q.** As far as you were concerned, as the admissions director, [Father] was eligible for Medicare insurance benefits?
>
> **[Balon]** Right.

Q. Even though it turns out that he wasn't, correct?

[Balon] Correct.

(Tr. 61).

Balon stated that "much later down the road" she learned Medicare was not responsible for paying NHC for Father's services because his Medicare Part A benefits had been exhausted prior to his January 26, 2011 admission. **(Tr. 25-26).** Balon admitted that, although Father stayed at NHC until March 10, 2011, no one from NHC discussed any financial concerns with Father or Daughter because "[w]e thought it was covered. That whole time we thought it was covered."[8] **(Tr. 27-28).**

Balon said her responsibilities at NHC ended "once we get them admitted, just get all admission paperwork done, I finish the chart, get everything in the computer, and I hand it off." **(Tr. 43).** Balon stated that she did not remember whether she had met Father; and after his admission on January 26, 2011, Balon had no further communication with Daughter. **(Tr.**

[8] Balon testified that Mutual of Omaha, Father's secondary insurance provider, was responsible for payment only after Medicare had first paid NHC. **(Tr. 28).**

51-52). Daughter also confirmed having had no further conversation with Balon after Father's admission on January 26, 2011. (**Tr. 192**).

At trial, Lisa Bollinger, NHC's business office manager, testified she "handle[s] financial aspects of residents in the facility, the billing." (**Tr. 63**). Bollinger acknowledged Father incurred charges of $18,071.82 during his stay at NHC, which included charges for room and board, physical therapy, and speech therapy. (**Tr. 66; P. Ex. 4**).

Bollinger received Father's admission file "one to two days after" Balon completed it, and she remembered reading the January 27, 2011 Medicare Verification Reply that informed NHC that Father had no remaining inpatient days. (**Tr. 131-33**).

Approximately six weeks later, Bollinger first became aware of a potential problem with Medicare payment for Father's services. (**Tr. 136**). Bollinger testified: "On March 7, [2011,] I was notified by home office, Jeanie Newman,[9] who is our Medicare specialist, via email. She informed me that

[9] Bollinger testified, "The Medicare specialist bills Medicare from the home office. They submitted the claim." (**Tr. 110**). Bollinger added that Newman was "no longer with the company. She's retired." (**Tr. 110**).

[Father's] January claim was not going to be paid, that Medicare was not paying it." **(Tr. 71, 103)**. Newman's email stated Medicare Part A had denied payment for benefits provided to Father during January 2011.[10] Newman's email added: "Lisa, [Father's] claim for JAN is processing as BEN EXH,[11] he has not had a 60 day break since he left you in July 2010 according to Medicare." **(Mar. 7, 2011, 14:16:14 email, P. Ex. 9).** Later that day, Newman notified Bollinger that she had "pulled the verification from Home Office dates 1-27-11; it states last billed on file with Medicare was 11-22-10 / NO PART A benefits." **(Mar. 7, 2011, 14:50:38 email, P. Ex. 9).**

Bollinger testified that, after receiving Newman's email, she requested a "60-day [Medicare] verification. I was trying to figure out myself what was going on." **(Tr. 72-73, 140-41; 60 Day Part A Reverify, P. Ex 10)**. The "60 Day Part A Reverify" Bollinger received on March 7, 2011 stated Father had

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[10] Medicare Part A provides inpatient hospital and skilled nursing facility stays for beneficiaries with remaining **Benefit Days** in the applicable **Benefit Period**. Although Medicare A denied payment for inpatient services, Medicare Part B paid NHC $4,215 for occupational therapy services and $4,447.50 for physical therapy services Father received at NHC. **(P. Ex. 4)**.

[11] Benefits Exhausted.

zero "full days remaining in the [applicable Medicare Part A] Benefit Period. **(Tr. 137-38; P. Ex 10).**

On March 8, 2011, Bollinger attempted to reconcile the automated response NHC received on January 26, 2011 with the emailed Medicare Verification Reply NHC received on January 27, 2011. Bollinger contacted AnMed and Daughter to determine the dates of Father's prior hospitalizations. AnMed told Bollinger that Father also had been hospitalized there from January 7-12, 2011. **(Tr. 136-37).**

Bollinger asked Daughter to call Medicare and find out where Father had been hospitalized. **(Tr. 74, 111, 168-69; Mar. 8, 2011, 11:27:08 email, P. Ex. 9).** However, while talking with Daughter, Bollinger did not explain the source of her concern; i.e., Medicare had notified NHC on January 27, 2011, and again on March 7, 2011, that Father had no remaining Part A Benefit Days. **(Tr. 219-20).** Daughter testified: "When [Bollinger] called me, she did not mention . . . one thing about there was no coverage. The only thing she said was, 'We're trying to figure out where [Father] was.' I don't know the Medicare rules. I don't know why she was trying to ask me that." **(Tr. 220).**

On March 9, 2011, Bollinger informed Newman that Daughter had called Medicare, and Medicare would not provide information to her by phone.[12] **(Tr. 199-200, 219-20; Mar. 9, 2011, 16:12:13 email, P. Ex. 9).** Later that day, Bollinger told Newman, "he is leaving tomorrow." **(Mar. 9, 2011, 16:12:13 email, P. Ex. 9).** Daughter took Father home from NHC on March 10, 2011.[13] **(Tr. 42).** Several months later, Father was admitted to the Richard Campbell Veterans Nursing Home, where he continued to reside at the time of trial. **(Tr. 184-85).**

On March 21, 2011, NHC acknowledged that the Medicare Verification Reply it had received one day after Father's admission to NHC was accurate—Father had been admitted to NHC on January 26, 2011 with zero benefit days remaining under Medicare Part A for inpatient services.[14] **(Mar. 21, 2011, 15:05:43 email, P. Ex. 9).**

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[12] Bollinger later acknowledged that Medicare could not talk to Daughter, and would provide information only to Medicare providers. **(Tr. 103, 168-69).** According to Bollinger: "I actually gave [Daughter] information where I had called Medicare, and Medicare talked to me as a provider and informed me that [Father] was at Carolina Behavioral Health . . . ." **(Tr. 81).**

[13] Father was readmitted to the hospital a few days later. **(Tr. 185).**

[14] On March 21, 2011, Medicare notified NHC that Father had received inpatient services at Carolina Behavioral Health in Greer, South Carolina from October 4-November 22,

At trial, conflicting testimony was given regarding the circumstances under which Father left NHC on March 10, 2011. According to Bollinger, "[t]he family chose to take him home." **(Tr. 69, 79-80, 138)**. Bollinger testified that she first talked with Daughter on March 8, 2011 about discharging Father, and she had informed Daughter that NHC would have to bill Father "privately." **(Tr. 82, 110, 112-13, 115)**. According to Bollinger, Daughter had responded, "there was no money."[15] **(Tr. 82)**. When asked if her conversation with Daughter "had anything to do with the discharge itself," Bollinger replied: "No. I don't normally handle discharges." **(Tr. 112)**.

According to Daughter's testimony, two days before Father's release from NHC, Bollinger called to ask "if there were other places—other hospitals that my father had been in. Well, all of my dad's doctors are in Anderson, and Anderson has only the one hospital. And I told her he had been in AnMed. But she didn't tell me why she was asking that. And I did not question her." **(Tr. 163-64)**. Daughter testified that soon thereafter, she received another call

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2010. **(Tr. 81, 187; Mar. 21, 2011, 15:05:43 email, P. Ex. 9)**. Also, AnMed confirmed that Father was hospitalized there from January 7-12, 2011. **(Tr. 136)**.

[15] NHC counsel later asked Daughter: "Now when Lisa [Bollinger] called you about Carolina Behavioral and you confirmed that information on March 21 [2011], isn't that when she told you, 'We're going to have to bill [Father] for this care?'" **(Tr. 221)**.

from an NHC employee who told her: "You need to come and get your dad. He has met his potential." Daughter had responded:

> And so I dropped everything and I went and picked him up. But when I got there, they had his belongings packed on a cart and they had him in a wheelchair, and I pushed him out. . . . And nobody helped—I mean, that was unusual that nobody didn't help me or offer to help.

(**Tr. 167-68, 194-95, 223**). Daughter stated she did not question NHC's call to pick up Father because, "I knew it was not up to me when he was discharged. It was up to the facility and what Medicare would pay for." (**Tr. 194, 197, 215**). Daughter testified that she had planned to leave Father at NHC for only as long as Medicare could pay his bills: "That's all that he's ever stayed, for when Medicare would pay for it." (**Tr. 223**). Daughter testified Father had stayed at NHC on two other occasions: "But you have to understand that this was the third time my father had been in [NHC]. We had had no problems. He did not owe a penny from the first two stays. The third time he went in on January 26 [, 2011] I had no reason to believe that it would be any different than the first two stays that he had." (**Tr. 213**).

Father was discharged from NHC on March 10, 2011; Daughter stated she found out a few days later that Medicare would not pay his NHC bill. . (**Tr. 163-64, 191, 221-22**). According to Daughter:

> A few days after my dad was sent home, Lisa [Bollinger] called me, and she was in a tizzy, what I call a tizzy. . . . She said, Your dad's bill is not going to be paid for. And I said, why not? And she [] said, 'something about the days were not right, and she told me that I needed to apply for Medicaid. I told her that my dad didn't qualify for Medicaid. . . . And she told me that [] bill had to be paid and that I was to put down whatever it would take to get him covered by Medicaid. And I told her I would not do that.

(Tr. 170).

On cross-examination, Daughter elaborated on Bollinger's recommendation to get Father on Medicaid:

> Well, I'm not crazy enough to have a federal charge against me for filing whatever it would take, and she said, to get my dad qualified for Medicaid for somebody else's mistake. I wouldn't do it anyway, but I'm certainly not going to do it for when it was their mistake, National Health Care's mistake for not letting us know that daddy did not have any coverage and we could have brought him home.

(Tr. 222). Daughter testified, "I thought Medicare was [paying] or else [NHC] wouldn't have let him come in." **(Tr. 165)**. Daughter stated she told Bollinger that if she had known that Medicare would not pay NHC's charges, she would have taken Father home and obtained outpatient physical therapy services for him. **(Tr. 192)**.

Daughter stated: "Nobody ever said anything about that [Father] owed any money when he was in the facility. But after he got out and I had the people from NHC trying to collect from me, yes, [NHC administrator, Deborah Dobson] wrote me a letter and she talked to me several times." (**Tr. 172-73**). On May 23, 2011, Daughter received a letter from Dobson. (**Tr. 172-73; D. Ex. 2**). According to Daughter, this was the first time she had received an accurate explanation for Medicare's refusal to pay for Father's services at NHC. (**Tr. 176**). Dobson's letter explained the conflicting responses NHC had received from Medicare on January 26, 2011 and January 27, 2011. (**Tr. 126-28**; **D. Ex. 2**). The letter acknowledged Bollinger had first notified Daughter of NHC's payment concerns on March 7, 2011, and it concluded: "At this time [Father's] balance is $8,958.01. If you have any questions, please contact me." (**D. Ex. 1**).

Regarding Dobson's letter to her, Daughter testified: "I thought it was ridiculous because it says that [NHC] received information showing zero days. But they didn't let us know. And that was less than 24 hours before they got this notice, that [Father] had zero days left." (**Tr. 175**). Daughter continued:

> So we got through the [admissions] paperwork probably at 5 o'clock when I was signing [Father] in, and by 10:00 a.m. they had the notice of zero days left. And so – they let him stay, and they didn't try to tell anybody. They didn't try to tell me. They didn't try to tell mom. They didn't even try to tell my dad which, you know, I mean he would have probably said, 'Tell [Daughter].'

(**Tr. 176**). On cross-examination, Daughter added: "[Father's] insurance was to pay all the charges, but when [NHC] got the denial notice in less than 24 hours [after Father's admission], they chose to ignore it and not let anyone know." (**Tr. 211**).

Dobson and Daughter had several subsequent conversations. (**Tr. 176**). According to Daughter, "She was extremely rude. Extremely. And she told me that I would have to pay this. And I told her that there was no way that I could pay it because I was on a very limited income." (**Tr. 172-73**). Daughter told Dobson that she is divorced, has an income of $900 per month, and she and her twin girls live with her parents, for whom she is the primary caretaker. (**Tr. 173-74, 184, 205-06, 217**). Daughter testified Dobson kept asking her to pay Father's bill: "[S]he told me before she got off the phone, she said that she would make sure that me and my children were homeless because she said that my daddy and mama had a house that had a big value on it and that it

could be paid, that this money could be paid." (**Tr. 174**). After this call, Daughter refused to accept further calls from Dobson. (**Tr. 176**).

Daughter testified her next contact with NHC occurred in the fall of 2011, when NHC regional accountant, Brian Schillingberger, informed her: "I would either have to get up the money to pay what he said was owed or that I would have to force my father to sign like a voluntary lien, I believe is [the] way he put it, for his property." (**Tr. 171-72**). Daughter testified that she did not discuss the NHC bill with Father because "he wasn't able to do anything about it." (**Tr. 175**).

When asked what NHC had done to try to lessen the impact of its charges on Father and his family, Bollinger responded:

> Since [Father] did not qualify for his Medicare benefits under part A, we were able to bill his therapy under his Medicare Part B. They did pay for that as well as the secondary portion that you have left over was billed to his Mutual of Omaha which covered that. He did have a prescription drug plan so he wasn't charged original costs for the medication.

(**Tr. 86-87**). Bollinger acknowledged that Medicare generally covers skilled nursing services received by NHC patients. (**Tr. 97-98**). Bollinger stated Father's balance due to NHC was $8,869.32. (**Tr. 87-88**).

Father's counsel asked Bollinger why NHC had not contacted Medicare on "January 27 of 2011 when the verification came back that there was no coverage." Bollinger responded:

> [**Bollinger**] I cannot because I didn't handle that.
>
> [**Q**] So nobody [at NHC] did anything about . . .
>
> [**Bollinger**] Again, I didn't handle that.
>
> [**Q**] . . . about notifying the family; is that right?
>
> [**Bollinger**] I didn't handle that, so no.
>
> [**Q**] To your knowledge, no body did anything about notifying the family?
>
> [**Bollinger**] That is correct.
>
> . . . . .
>
> [**Q**] Are you required to notify the family when there is a denial of coverage?
>
> [**Bollinger**] Once we locate it, yes and once we find out.
>
> [**Q**] Which would have been January 27 [2011]?
>
> [**Bollinger**] No, not necessarily.

(**Tr. 103-04**).

Finally, Father's counsel asked Bollinger: "So if there had been a denial of coverage [] in written notice and Ms. Balon had double-checked on that and discovered that, in fact, coverage was being denied, [] would NHC policy be to contact the family?" Bollinger replied, "If we had found that out, [Father] never would have been admitted probably." (**Tr. 104-05**). When Father's counsel asked, "He was already admitted, wasn't he?" Bollinger replied, "We didn't find out until the next day about that part. So, yes, we would have notified the family immediately." (**Tr. 105**). Bollinger stated that she could not explain why no one at NHC contacted Father or his family on January 27, 2011: "I didn't handle that part, so no, I can't give you an explanation." (**Tr. 105**).

Bollinger added that NHC did not notice "any red flags because of the information we were given from the hospital."[16] (**Tr. 106**). Bollinger stated she would normally not have confirmed Medicare coverage for an inpatient stay until the beneficiary had resided at NHC for sixty days: "We do [check] on the 60th day. We rely on the admission department to do the initial. And then on the 60th day of admission, that is the verification that I had ran [sic]

[16] There was no testimony regarding information NHC received from the hospital that would have alleviated concern over the Medicare Verification Reply NHC received on January 27, 2011.

because that's what the business office managers put out is a 60-day. Of course, that was done [on March 7] because we were in question." (**Tr. 107**). Bollinger testified Medicare had refused to pay NHC because Father had "exhausted his benefits. He still had eligibility, he just had exhausted his benefits" prior to admission to NHC. (**Tr. 108**). Bollinger acknowledged that, prior to Father's discharge on March 10, 2011, the facility had not billed him or his family for the services NHC had provided, other than the "private room difference." (**Tr. 107**).

When asked if anyone at NHC had done anything in response to the January 27, 2011 Medicare Verification Reply, Bollinger testified: "Again, this doesn't say it's not going to be paid by Medicare. It says that [Father] does not have any days available. It doesn't state that it's not going to be covered by Medicare." (**Tr. 111-12**). When asked what options Father would have had if NHC had known on January 27, 2011 that the Medicare Verification Reply was accurate, Bollinger responded: "Home health or private pay." (**Tr. 139-40**).

At NHC's request, an arbitration was held on March 14, 2014. (Def. Ex. 4). Daughter testified that she knew nothing about the arbitration "until it was all over with." (**Tr. 188-89**). After Daughter received a letter from NHC

attorney Craig Allen—containing the Arbitration Decision—she sought legal counsel. (**Tr. 190**). NHC's May 16, 2014 Motion to Confirm Arbitration Award, led to its action in circuit court against Daughter and Father. (**Tr. 189**; **May 16, 2014 M. to Confirm Award**). At trial, the court noted: "The arbitration award is not binding anyway. The court has not confirmed it so it's of very little value in this hearing." (**Tr. 233**).

At trial, there was conflicting testimony regarding Father's level of competency. NHC contended Father was competent while a patient at NHC. (**Tr. 89-91, 122; P. Ex. 5**). After Bollinger learned Medicare would not pay for Father's NHC services, she contacted only Daughter regarding Father's NHC account. (**Tr. 95**). Bollinger acknowledged that she had never spoken with Father. Counsel for Father and Daughter consistently asserted that Father was not competent while residing at NHC. (**Tr. 122-26, 152-53; Def. Ex. 1, 1/23/11 MD assessment**). Daughter acknowledged that a court had not declared Father incompetent, and stated, "We just went by what the doctors' notes were. We knew that he had Alzheimer's." (**Tr. 234-35**). At trial, Bollinger reviewed thirteen independent assessments of Father, contained in his extensive NHC medical record; she acknowledged each assessment included a diagnosis of "dementia" or "Alzheimer's." (**Tr. 122-26; Pl. Ex. 5,**

pp. 171, 302, 359, 373, 438, 446, 450, 452, 481, 484, 488, 501, 504). Whereupon, counsel asked Bollinger, "So throughout the records it's clear [Father] has dementia and Alzheimer's?" She responded, "Yes." (**Tr. 126**).

Although the trial court ruled NHC was not entitled to judgment against Daughter, it ruled under the equitable doctrine of quantum meruit that Father had been unjustly enriched and, therefore, was liable to NHC for $8,869.32, the value of services provided.

STANDARD OF REVIEW

The trial court ruled on the basis of quantum meruit, Father was liable to NHC "for the reasonable value of the services provided to him and remaining unpaid," (**Final Or. at 6, Oct. 14, 2016**).

"In *Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129 (1994)* the Supreme Court held that quantum meruit was an equitable doctrine to allow recovery for unjust enrichment. Previously, quantum meruit had been characterized as an action at law." Jean Hoefer Toal, Amelia Waring Walker & Margaret E. Baker, *Appellate Practice in South Carolina* 566 (3d ed., S.C. Bar 2016). "When legal and equitable causes of action are maintained in one suit, each retains its own identity as legal or equitable for standard of review purposes and must be analyzed accordingly." *Id.* at 230. "The Supreme Court held that in appeals from all equity actions the appellate court has authority to find facts in accordance with its own view of the preponderance of evidence." *Id.* at 140, (citing *Rutherford v. Rutherford*, 307 S.C. 199, 204, 414 S.E.2d 157, 160 (1992)).

ARGUMENT

The trial court erred in finding NHC was entitled to judgment against Father based on the equitable doctrine of *quantum meruit*. Father asserts NHC failed to establish each of the elements of *quantum meruit* by a preponderance of the evidence.

In *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000)*, the South Carolina Supreme Court adopted the "Scudder May" test[17] as the sole test for a quantum meruit claim.[18] In *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, the court announced that to prevail on a claim of *quantum meruit*, the plaintiff must establish each of the following three elements: (1) The Plaintiff confers a benefit on the Defendant;[19] 2) the

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[17]In *Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129 (1994)*the South Carolina Supreme Court held that absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.

[18] The *Myrtle Beach* decision also adopted this as the test for the equitable claims of quasi contract and implied by law contract, thereby settling differences in case law and making the *Scudder May* test the test for all three claims. *Id.* See also, Randolph R. Lowell, Robert L. Reibold, Shealy Boland Reibold, *South Carolina Equity: A Practioner's Guide p.115 (1st ed. S.C. Bar 2010) and* Michael G. Sullivan, Douglas S. MacGregor, *Elements of Civil Cause of Action p. 350 (5th ed. S.C. Bar 2015)*

[19] It is not enough for NHC to show Father benefitted from the residential care. NHC must show *it* conferred the benefit. See, *Ellis v. Smith Grading & Paving, Inc., 294 S.C. 470, 366 S.E.2d 12 (Ct.App.1988)* (where plaintiff seeking *quantum meruit* did not confer a

Defendant realizes the benefit; and (3)The Defendant's retention of the benefit, under the circumstances, would make it inequitable for the Defendant to retain the benefit without paying the Plaintiff the value of the benefit. *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 4; Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003); Stevens & Wilkinson of S.C., Inc. v. City Of Columbia 409 S.C. 568; 762 S.E.2d 696 (2014); Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 616–17, 703 S.E.2d 221, 225 (2010).*

Here, it is inequitable for Defendant ("Father") to be held liable to Plaintiff ("NHC") where the following facts are undisputed:(1) Father was admitted to NHC's skilled nursing facility under the parties' mutual

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benefit when she paid an IRS levy on the property that contractor had been notified to pay out of payment to it but paid its subcontractor instead of Ellis' IRS levy. The Court held it was not enough to show that contractor benefitted by its breach of duty to pay the IRS). To establish a benefit conferred upon Father, NHC was required to prove a benefit other than what was already expected as a result of the relationship of the parties that existed upon his admission to NHCC. *Sauner v. Pub. Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003),* citing *Niggel Associates, Inc. v. Polo's of North Myrtle Beach, Inc., 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988); Inglese v. Beal, 742 S.E.2; 403 S.C. 290 (Ct. App.2013),* (where an attorney sought restitution for alleged unjust enrichment to his client after he closed the sale of property without paying off a lien, court found he did not confer a benefit on his client by reimbursing title insurance company for loss that was a result of lawyer's mistake; lawyer's payment was to benefit himself and did not unjustly enrich client because liability was for the lawyer's mistake in failing to protect the client from the adverse effects of the lien.)

understanding that Medicare Part A would pay NHC for the inpatient charges Father incurred while residing in NHC; (2) The morning following Father's admission to NHC, Medicare notified NHC in writing that Father had zero "Full Days Remaining in [the] Benefit Period" and zero "Coinsurance Days Remaining"; and (3) NHC failed to notify Father, or a member of Father's family, that Medicare had notified NHC on January 27, 2011 that it would not pay for the services Father received while residing in Respondent's facility, January 26, 2011 through March 10, 2011.

On January 27, 2011, NHC was informed that Father had exhausted his inpatient days for Medicare Part A; however, NHC failed to notify Father or his family of this fact. Furthermore, NHC "sat" on this information until it received a second notice of Father's ineligibility for inpatient services on March 7, 2011. The trial court summarily found in favor of NHC, under the equitable theory of *quantum meruit*, stating "to hold otherwise would result in the absurd outcome that no one is responsible for the bill." **Order p. 7.**

The trial court's conclusion relies not on NHC's establishment of the three required elements of *quantum meruit* by a preponderance of the evidence, but rather on what the court found to be an otherwise "illogical" outcome. The trial court's conclusion misapprehends the responsibility NHC

bears for a situation it alone had the knowledge to avoid. NHC shoulders the responsibility for failing to act after receiving the Medicare Verification Reply on January 27, 2011. Moreover, NHC failed to inform Father or his daughter that Medicare had notified NHC that Father had exhausted his eligibility for Part A coverage.

The trial court's ruling overlooks the third element of *quantum meruit*; i.e., whether Father was unjustly enriched by NHC accordingly, this court must determine not only whether Father has been enriched at the expense of the NHC, but also if retention of the enrichment would be unjust without payment to NHC.

NHC received payment from Medicare Part B[20] in the amount of $8,572.5 for therapy services it provided to Father. It also received $630 from Daughter in payment for the private room differential. However, NHC failed to protect its interests when it failed to act upon the Medicare Verification Reply it received on January 27, 2011 stating Father had no benefit days available for inpatient care under Medicare Part A[21]. NHC bears responsibility for the charges not paid by Medicare because it provided care,

[20] 42 U.S.C.§§ 1395-c through 1395i-5
[21] 42 U.S.C.§§ 1395-j through 1395w-6

despite the fact that it knew or should have known, that Medicare would not pay for Father's services. NHC failed to do anything proactive to confirm its incorrect belief that there was indeed adequate Medicare coverage for Father's services. As Daughter testified, had she been informed that Medicare was unavailable, she would have taken him home and obtained outpatient therapy services.

In *Scudder May*, the Court outlined the analysis for defining "unjust" circumstances." There, the court found persuasive the evidence that Scudder May had not been unjustly enriched because:

1) Scudder May had given no assurance it would pay Supplier Columbia for the materials it had provided,

2) Scudder May had paid the general contractor on its contract, and

3) Supplier Columbia had failed to pursue its rights under the mechanics lien statute.

The Court reversed the trial court's ruling that *quantum meruit* was warranted because the preponderance of the evidence indicated that, under the circumstances, Scudder May's retention of the benefit conferred by Columbia was not unjust.

Application of the *Scudder May* analysis to the facts of this case is instructive. Here, as in *Scudder May*,

1) Father gave no assurance of payment to NHC; rather the parties agreed that Medicare would be responsible for paying for Father's services;

2) Father pre-paid the agreed upon charges of $21 per day;

3) Upon Medicare's notice that Father had no remaining eligibility for inpatient services, NHC failed to notify him or his family.

The dispositive element is whether retention of any benefit by Father is unjust without payment to NHC. NHC did not prove by a preponderance of the evidence the retention of a benefit by Father under circumstances that make it inequitable for him to retain it without paying its value. NHC was informed that Medicare Part A would not pay for inpatient services, yet it provided services to Father nevertheless. Although NHC had this knowledge, Father lacked the same knowledge.

Assuming *arguendo* there was a benefit conferred upon Father and realized by him, it would be inequitable to require Father to pay for NHC's services when he had every reason to expect Medicare to compensate NHC for these services.

To support the trial court's finding of *quantum meruit*, this court must believe that Father retained a benefit under circumstances that make it inequitable for him to do so without paying its value. To that end, NHC's

knowledge of non-coverage and Father's lack of knowledge defeats NHC's *quantum meruit* claim.

A service provider's knowledge of material facts, coupled with a failure to take reasonable measures to protect itself, prevent it from recovering in equity under *quantum meruit*. *Chase Home Finance, LLC v. Risher, 405 S.C. 202, 746 S.E.2d 471 (Ct. App. 2013)* In *Chase*, a predecessor in interest loaned Mrs. Risher's husband money to purchase a home. Despite knowing that Mrs. Risher was a part owner of the property, the bank failed to obtain her signature on the note or mortgage. *Id.* at 212. The Court noted that because Ms. Risher did not fail to disclose information or to discharge any legal obligation, it was inequitable to require Mrs. Risher to pay for the benefit she had received. *Id.*

In *Moore-Hudson Oldsmobile/GMC, Inc. v. Waterman, 298 S.C. 107, 378 S.E.2d 279 (Ct. App. 1989)*, the appellate court reversed summary judgment after finding the Plaintiff/car dealer was not unjustly enriched. In this case, the Plaintiff had miscalculated a trade-in credit and sold the trade-in vehicle before notifying buyer of the mistake thus precluding a finding that seller was unjustly enriched as a matter of law. The Court spoke to the importance of the party seeking restitution making sure that it corrects material mistakes at the earliest reasonable moment and of the consequences

to that party if they do not. In *Waterman* this Court reversed the trial court's grant of summary judgment in favor of a car dealer. The Court was persuaded, in part, that the trial court had not adequately considered that the car dealer had failed to inform Waterman of its mistake in determining the correct trade-in credit until after it sold the car he had traded in. This deprived Waterman and the dealer of a remedy (the ability to rescind the new purchase contract) that easily could have solved the problem.

As in *Waterman*, NHC withheld information that it should have shared with Father well before it did so. By not sharing this information, it deprived Father of the ability to decide whether or not to accept the services Medicare would not cover.[22] Had NHC shared this information with Father, he would have left NHC's facility. The trial court erred when it found that NHC had no duty to share this information with Father. **Order p. 5.**

A benefit provider's knowledge of expectations also was key to the South Carolina Supreme Court's decision in *Sauner v. Pub. Serv. Auth. 354 S.C. 397, 581 S.E.2d 161 (2003)*. There, the Appellants disregarded a specific statement. They had entered into lease agreements with Santee Cooper

[23] Also to this point, even if this Court finds that Father ought to be liable for a few days of service, certainly he ought not in equity to be charged with the nearly month and a half stay when NHCC knew on day 2 that Medicare would not cover the services at issue.

(lessor) which provided that "*all improvements to the leased property would become the property of Santee Cooper upon termination of the lease (other than upon termination by Santee Cooper").* Lessee made improvements on their leased lots over the years and when a potential sale alluded to by lessor to lessees did not materialize, lessee alleged the improvements it made unjustly enriched lessor. The Court found no unjust enrichment to lessor in receiving the value of improvements made by lessees because they were clearly told the improvements stayed with the property owner and, although lessor was enriched by the improvements, the enrichment was not unjust because of the knowledge possessed by lessee.

In this case, as in *Risher* and *Sauner*, it is not inequitable for Father to retain the benefit of the services of NHC not covered by Medicare because NHC chose to render them knowing Medicare would not pay for them. There is no evidence of inequitable conduct on the part of Father that led to the failure of that specific coverage. Indeed, there is evidence of inequitable conduct on the part of NHC in repudiating the Medicare notice verifying no Part A benefit days available.

The inequity demonstrated by NHC's knowledge is exacerbated in that Father was entirely unaware of his lack of remaining Medicare benefit days

because NHC withheld this information from him and his Daughter for approximately forty days while providing services with full knowledge (which it chose to ignore) of Medicare's notice of exhaustion of current benefit days. Father provided no information to the contrary nor, any promise that he would or could pursue the coverage himself or pay the additional charges. Father could not be unjustly enriched when he did not have all of the pertinent facts and there was no wrongful action on his part. This information was solely in the hands of NHC and its unfounded expectation of payment from Medicare does not equal unjust retention of services by Father.

Whether NHC had an affirmative legal duty to disclose is not the issue. Its failure to disclose prejudiced Father's ability to protect himself and is central to the relevant equitable question of whether it is proper to impose on Father an expense that he would not have incurred but for NHC's lack of diligence. Equity aids the vigilant, not those who sleep on their rights. *Ex parte Johnson, 371 S.C. 614, 640 S.E.2d 887 (Ct. App. 2006)* (applying this principle to refuse to vacate a foreclosure sale where the winning bidder failed to complain about the sale until after he won the bid).

There was a mutual assumption as to the Medicare coverage when NHC admitted Father. However NHC immediately received information correcting

that mistake, information it did not share with Father. Thus it was incumbent on NHC, in equity and good faith, to correct Father's misapprehension so he could make an informed decision about ongoing services. In not doing so, NHC ran afoul of the equally instructive equitable maxim, "One who seeks equity must do equity". See *Ingram v. Kasey's Assocs., 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000)* (declining to grant a plaintiff's request for specific performance where the plaintiff misled the defendants)

Further, our courts have long followed the equitable doctrine that where one of two innocent parties must suffer, the law looks with disfavor upon that party who, through due diligence, could have avoided the loss. See *Myrtle Beach Lumber Co. v. Willoughby, 276 S.C. 3, 6, 274 S.E.2d 423, 425 (1981)* (holding, when one of two innocent parties must suffer, the brunt should fall upon the one most responsible for the problem which developed)

There is yet another reason it would not be unjust to hold NHC responsible for the value of the services, and that is because it never really expected Father to pay for them in the first place. The trial court's view ignores the fact that NHC's expectation was for payment from Medicare not from Father. Despite the boilerplate language in the form admission document that Sheila Thompson, not Father, signed stating that Father was

not relieved from the cost of care **(Order p. 5)**, there is no evidence that NHC realistically expected Father to pay for the services if Medicare did not pay.

On these facts, NHC could have no expectation of payment from Father when it knew that all parties expected Medicare to pay. It simply failed to protect itself from the denial of payment by Medicare by choosing to believe, rather than to verify, that the Medicare Verification Reply was not correct.

Given the foregoing, the trial court's conclusion that not holding Father liable for the services rendered would create "an absurd outcome" does not adequately apply the law of *quantum meruit* to the facts. **Order p. 7**. Holding NHC responsible is not absurd or illogical. Circumstances existed under which it was not unjust or unfair for the benefit to be retained by Father. If the benefit was charges that Medicare did not pay, Father could not unjustly retain any benefit from the services when he did not know they were not covered and there was no expectation of, nor request for payment by, him on the part of NHC. See, *Gignilliat v. Gignilliat, Savitz & Bettis, LLP*, 385 S.C. 452, 684 S.E.2d 756 (2009) (where the Court held *quantum meruit* requires a showing of actual damages resulting from **wrongful** (emphasis added) retention of benefit by the Defendant).

NHC accepted the risk of non-payment when the benefit upon which it now relies for its *quantum meruit* claim became one that was different from that established upon admission. Father had no control over payment by Medicare. In *Niggel Assocs, Inc. v. Polo's of North Myrtle Beach, Inc., 296 S.C. 530 374 S.E.2d 507 (Ct. App. 1988)*, the Court held that any benefit the Defendant received was an incidental result of dealings between others in which it did not participate and over which it assumed no control.

Here, the Medicare Part A uncovered services received by Father with no request for payment by NHC, was an incidental result of the dealings between NHC and Medicare over which he had no control. The conclusion that it was unjust for Father to retain the benefit of the Part A services without paying for it out of his own pocket belies the fact that NHC knew that Father had no benefit days remaining, did not tell him and avoided protecting itself in its dealings with Medicare. Therefore, recovery of charges not paid for by Medicare is inappropriate under a theory of *quantum meruit.*

A review of the facts shows that the proper result is for the Court to find that none of the three elements of *quantum meruit* have been established, least of all inequity as to Father. Most prominent is the fact that there is insufficient

evidence to demonstrate that Father's retention of residential services was unjust because:

1) Father gave no assurances to NHC and never knew Medicare denied Part A coverage,
2) Upon admission, Father paid the charges not covered by Medicare as required by NHC,
3) NHC failed to pursue further payment from Father or even notify him they received verification that he had exhausted his benefit days for Medicare Part A coverage.

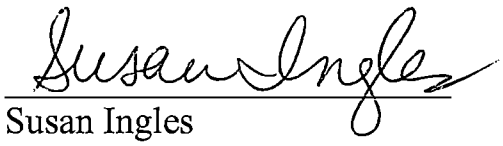
NHC knew Medicare would not pay and, armed with that knowledge, it provided residential care for six weeks without notifying Father or making any request for payment. This precludes a finding of unjust enrichment. "It is axiomatic that a claim for *quantum meruit* will not lie absent evidence of unjust enrichment. *Gignilliat v. Gignilliat, Savitz & Bettis, LLP*, 385 S.C. 452, 684 S.E.2d 756 (2009).

CONCLUSION

Father respectfully asks this court to reverse the trial court's finding that he is liable in equity to NHC for $8,869.32. Father asks the court to instead find that under the doctrine of quantum meruit and the facts of this

case, either (1) he has no financial liability to NHC, or (2) he is liable to NHC for the agreed upon fee of $21 per day, of which he has prepaid $630.

Respectfully submitted



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