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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

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

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,

BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN GRANTING THE RESPONDENT'S MOTION FOR A DIRECTED VERDICT AT THE CLOSE OF THE APPELLANT'S CASE?
- II. DID THE TRIAL COURT ERR IN FAILING TO GRANT THE APPELLANT'S MOTION FOR A DIRECTED VERDICT TO DISMISS DOLLAR AND MORE, INC AND ISSA GEORGE RISHMAWI AS PARTIES?
- III. DID THE TRIAL COURT ERR IN FAILING TO GRANT THE APPELLANT'S MOTION FOR A DIRECTED VERDICT AS TO G&S?

STATEMENT OF THE CASE

On September 5, 2012, Gaddy Oil, Inc. brought this action alleging that George Rishmawi, Sr., aka Issa G. Rishmawi, George Rishmawi, Jr., aka George Issa Rishmawi, individually and both trading as G&S Transports, LLC and Dollar and More, Inc. and G&S Transports, LLC and Dollar and More, Inc. were unjustly enriched. George Rishmawi, Sr., aka Issa G. Rishmawi, George Rishmawi, Jr., aka George Issa Rishmawi, individually and both trading as G&S Transports, LLC and Dollar and More, Inc. and G&S Transports, LLC and Dollar and More, Inc. answered on October 19, 2012 raising the defenses of unclean hands and statute of frauds. Issa George Rishmawi asserted a counter-claim against Gaddy Oil, Inc. for breach of contract, *Quantum Meruit*, and promissory estoppel. The Plaintiff filed its reply on November 29, 2012. On December 12, 2013, Issa George Rishmawi sought leave of court to amend his counterclaim after the discovery process revealed that the counter-claim was asserted against the wrong party. The Honorable Clifton Newman granted Issa George Rishmawi leave to amend the Answer and Counterclaim on February 26, 2014. Issa George Rishmawi filed his Summons for Amended Answer and Counterclaim and Cross-Complaint and Answer and Counterclaim and Cross-Complaint

on February 27, 2014. Issa George Rishmawi asserted claims for Breach of Contract, *Quantum Meruit*, and Promissory Estoppel against Andrew Gaddy and Gaddy Rentals, LLC. At a pretrial hearing on the case, George Rishmawi, Jr, aka George Issa Rishmawi was dismissed as a party to the case. The trial by jury in the case began on September 8, 2015. The Honorable W. Jeffrey Young granted Andrew Gaddy and Gaddy Rentals LLC's motion for a directed verdict during the trial. The only issue submitted to the jury was Gaddy Oil, Inc.'s claim for unjust enrichment, and the jury found in favor of Gaddy Oil, Inc. Judgment was entered against George Rishmawi, Sr. aka Issa George Rishmawi, individually and trading as G&S Transports, LLC and Dollar and More, Inc., G&S Transports, LLC and Dollar and More, Inc. on September 10, 2015 in the amount of thirty four thousand two hundred twenty and 82/100 (\$34,220.82) dollars. On September 22, 2015, Issa George Rishmawi, individually and trading as G&S Transports, LLC and Dollar and More, Inc., G&S Transports, LLC and Dollar and More, Inc. timely filed and served the Notice of Appeal.

FACTS

Andrew Gaddy, hereinafter referred to as "Gaddy," is an eighty-two (82) year old businessman. (R. p. 45, lines 3-12). He owned and operated an oil company in Lake City. He operated his oil business from 1962 until 2010 (R. p. 46, R. p. 97). He also operated a convenience store in Lake City. (R.p. 102). He was a licensed real estate agent and business man. (R. p. 118-119). He was more than just a real estate agent, he had his broker's license. (R. p. 125-129). He owned and operated Gaddy Oil, Inc. (hereinafter, "Gaddy Oil") and Gaddy Rentals, LLC (hereinafter, "Gaddy Rentals"). He is the majority

shareholder for Gaddy Oil and owns a majority interest in Gaddy Rentals. (R. p. 259).

Issa George Rishmawi, hereinafter referred to as "Rishmawi," is sixty-six (66) year old business man. (R. p. 245-246). He was born in Bethlehem and moved to the United States to attend college. He has been in the business of opening, running and selling convenience stores since 1982. (R. p. 176-178) He is the acting agent for Dollar & More, Inc. (hereinafter, "Dollar & More") and G&S Transports, LLC (hereinafter, "G&S"). (R. p. 162). Although he founded the companies and is the acting agent for the companies, Rishmawi has no ownership interest in either. His wife and children own all the shares of Dollar and More. (R. p. 162). Dollar and More owns one half of the ownership interest of G&S. GAC Investments owns the other half of G&S. (R. p. 165-168).

Gaddy Rentals owned a convenience store in Lake City, South Carolina. Gaddy, owner operator of Gaddy Rentals, rented the store to tenants for some time but the tenants vacated the store in October 2008 and it remained unoccupied for several months. (R. p. 107-110). The convenience store needed some upgrades and repairs to get it operational again. In early 2009, Gaddy discussed the sale of the convenience store with Rishmawi. (R. p. 110). On January 23, 2009, Awni Abuaita and Issa Abuaita of Abu Aita Brothers, Inc., hereinafter "Abu Aita," executed a Contract for Sale and Promissory Note promising to purchase and pay for the convenience store owned by Gaddy Rentals. Rishmawi signed as a guarantor on the Promissory Note and Contract for Sale. (R. p. 106-109; R. p. 379). According to the Contract for Sale, Gaddy Rentals would remain title owner of the property until Abu Aita paid the purchase price in full. (R. p. 379). Rishmawi utilized his experience and expertise in the convenience store business to get the store running. Rishmawi even utilized his own funds to make some of the repairs and improvements to

the building. Abu Aita reimbursed Rishmawi for the money he expended on the property. However, the work Rishmawi performed on the convenience store occurred while Gaddy Rentals was title owner of the store. As a result of Rishmawi's assistance in getting the convenience store repaired and in suitable condition, the Abu Aita brothers purchased the store from Gaddy Rentals and are now the title owners of the property. (R. p. 112-114; R. p. 130). The real estate closing occurred in 2013. (R. p. 154). According to Rishmawi, he was to be paid to get the store in a condition where it could be sold. (R. p. 210).

Issa Abuaita testified that when he contracted to purchase the property, the convenience store "was in bad shape." (R. p. 137, lines 18-19). It needed dispensers, a canopy and other upgrades. Rishmawi assisted in getting the repairs and improvements done. Rishmawi even paid for some of the improvements and Abu Aita paid him back. (R. p. 137-141). Issa Abuaita testified that because of work that Rishmawi had done on the store, the store does a good business. (R. p. 155, lines 19-20).

Sometime during the year 2010, Gaddy Oil began allowing G&S to purchase gasoline on his line of credit with TransMontaigne. (R. p. 48, R.p.56, R. p. 331). Gaddy entered into an agreement with G&S whereby G&S would pick up the gasoline from the port terminal and TransMontaigne would draft the payment from Gaddy Oil's checking account ten days later. (R. p. 49). G&S would pick up the gasoline at the terminal and deposit the payment for the gasoline, along with a little extra money, in Gaddy Oil's account prior to TransMontaigne drafting payment from Gaddy Oil's account. (R. p. 50). It is undisputed that Gaddy was paid extra money for the use of his line of credit, but the amount is unclear. Gaddy testified that it was a half a cent per gallon amounting to approximately fifty (\$50.00) dollars. (R. p. 51, lines 1-10). Rishmawi testified that he

believes Gaddy Oil was paid approximately ten (\$0.10) cent per gallon of gasoline for the use of his credit. (R. p. 205, line 1-10). Gaddy testified that the extra money that Rishmawi paid him was his "commission on him... using [his] line of credit." (R. p. 51, lines 6-7; R. p. 100, lines 20-23). When a G&S driver picked up the gasoline, the driver was given a bill of lading. The payment was made when an invoice was received a few days later. (R. p. 247-248).

Rishmawi or someone from G&S would make the deposits into his, Gaddy Oil's account. (R. p. 59, R. p. 364). At the beginning of the business relationship, Rishmawi gave a check directly to Gaddy, but later Gaddy had Rishmawi deposit the check directly into his, Gaddy Oil's account. (R. p. 60, lines 6-16). The checks deposited into Gaddy Oil's account were drawn on G&S's account. (R. p. 80; R. p. 364). Gaddy believed that Rishmawi owned G&S but he testified that he understood G&S to be the business entity that used his, Gaddy Oil's, line of credit. (R. p. 80-81). Gaddy further testified that Dollar and More had not purchased gas on Gaddy Oil's account nor did he have any business dealings with Dollar and More. (R. p. 260-216).

G&S continued to use Gaddy Oil's line of credit until July 2012 when Gaddy Oil contends that G&S picked up a load of gasoline and failed to pay for the gasoline. (R. p. 92). The gasoline cost thirty two thousand two hundred forty eight and 42/100 (\$32,248.42) dollars. (R. p. 90; R. p. 96). Rishmawi testified that he did not know where the gasoline went or if they received an invoice for the gasoline G&S is alleged to have gotten. (R. p. 249, lines 13-25). Further Rishmawi testified that he questioned the amount of the gasoline allegedly received because the same driver could not have gone to the terminal twice in one day as that has appeared to have occurred on the invoices and bill of

ladings. (R. p. 256-257).

Rishmawi testified that Gaddy agreed to pay him fifty thousand (\$50,000.00) dollars for his role in the sale of Gaddy Rental's convenience store. He was to be paid for the money he put into the store to get it running to be sold, his time, and the experience he brought to the store. (R. p. 244-245). Rishmawi stated that it was his business to take old stores, renovate them, get them running again and sell them or operate them himself. As it pertained to Gaddy Rentals convenience store, Rishmawi was to be paid for his work and business experience to get the store running again. (R. p. 182). Issa Abuaiti testified that Rishmawi used his experience and expertise to get the business operational again. (R. p. 155-156). He was paid to get the store in a marketable condition so it would sell for Gaddy's asking price. (R. p. 183-184). Gaddy testified that Rishmawi was knowledgeable in the convenience store business. Rishmawi had the knowledge to expertise to know what needed to be done to stores to make them competitive in market. (R. p. 129-130).

It is undisputed that Gaddy made payments to Rishmawi for over two years. From 2009 to 2012, Gaddy paid Rishmawi five hundred eighteen (\$518.00) dollars a month on the agreed upon fifty thousand (\$50,000) dollars. (R. p. 113-115). Gaddy would deposit Abu Aita's monthly promissory note payment in the Gaddy Rentals account and get cash from the deposit to give to Rishmawi. (R. p. 114; R. p. 262). Rishmawi testified that the payments were for the work and expertise he brought to the table to get the store running again. (R. p. 182). Gaddy testified that he believed the fifty thousand (\$50,000) dollars to be a "commission" on the sale of the property. He testified that he paid the payment to Rishmawi every month until July 2012 when he discovered that "it was illegal to pay him a commission." (R. p. 115, line 23). Gaddy testified that ten (10%) percent was the

standard commission in a commercial real estate sale, and that he was paying Rishmawi ten (10%) percent of the note payment each month. (R. p. 119- R. p. 122). Gaddy believed the money he was paying Rishmawi was a sales commission. (R. p. 122). Gaddy testified that when he informed Rishmawi that he was not going to pay the payments anymore, Rishmawi told him he was not going to pay for the gasoline unless he continued to pay him as agreed. (R. p. 123). Rishmawi testified that Gaddy owes him thirty two thousand (\$32,200.00) dollars plus interest in the amount of twenty two hundred (\$2,200.00) dollars. (R. p. 251).

STANDARD OF REVIEW

When an equity case is tried with a jury without reservation as if it were an action at law, the jury's verdict is binding and appellate review is at law. Horne v. Davis Elec. Constructors, Inc., 302 S.C. 484, 395 S.E.2d 724 (Ct. App. 1990), decision aff'd as modified 307 S.C. 559, 416 S.E.2d 634 (1992). If equitable issues are tried by a jury, the appellate court is to review the factual findings of the jury to determine if there is any evidence to support them. Id. The respondent's *quantum meruit* claim is to be reviewed as a case at law.

If an equitable claim is tried before a jury, and the trial judge grants a directed verdict, the case is to be reviewed as a case in equity. First State Sav. And Loan Ass'n v. Nodine, 291 S.C. 445, 354 S.E.2d 51 (Ct. App. 1987). As such, the appellate court may take their own view of the evidence giving due regard to the trial judge's explicit and implicit credibility findings. Cooper v. Cooper, 289 S.C. 377, 346 S.E.2d 326 (Ct. App. 1986). An appellate court in equity cases may find facts in accordance with its own view of the preponderance of the evidence, and may reverse a factual finding by the lower court

in such cases when the appellant satisfies the court that the finding is against the preponderance of the evidence. Crowder v. Crowder, 246 S.C. 299, 143 S.E.2d 580 (1965) citing Forester v. Forester, 226 S.C. 311, 85 S.E.2d 187 (1954). The appellant's *quantum meruit* claim is to be reviewed in equity.

In reviewing a trial court's ruling on a motion for directed verdict, the appellate court "must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party." Hurd v. Williamsburg County, 363 S.C. 421, 426, 611 S.E.2d 488, 491 (2005) citing F & D Elec. Contractors, Inc. v. Powder Coaters, Inc., 350 S.C. 454, 567 S.E.2d 842 (2002). If more than one reasonable inference may be drawn from the evidence presented at trial, the case must be submitted to the jury. Id. citing Quesinberry v. Rouppasong, 331 S.C. 589, 503 S.E.2d 717 (1998). In ruling on a directed verdict motion, the trial court must be concerned only with the existence or non-existence of evidence; the trial court does not have the authority to decide credibility issues or to resolve conflicts in the testimony. Garrett v. Locke, 309 S.C. 94, 419 S.E.2d 842 (Ct. App.1992). In reviewing the appellant's breach of contract claim, the appellate court is concerned with the existence or non-existence of evidence.

ARGUMENTS

- I. DID THE TRIAL COURT ERR IN GRANTING THE RESPONDENT'S MOTION FOR A DIRECTED VERDICT AT THE CLOSE OF THE APPELLANT'S CASE?

In reviewing a trial court's ruling on a motion for directed verdict, the appellate court "must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party." Hurd, 363 S.C. 421, 426, 611 S.E.2d 488, 491 (2005) citing F & D Elec. Contractors, Inc., 350 S.C. 454, 567 S.E.2d 842. If more than one reasonable

inference may be drawn from the evidence presented at trial, the case must be submitted to the jury. Id. citing Quesinberry, 331 S.C. 589, 503 S.E.2d 717. In ruling on a directed verdict motion, the trial court must be concerned only with the existence or non-existence of evidence; the court does not have the authority to decide credibility issues or to resolve conflicts in the testimony. Garrett, 309 S.C. 94, 419 S.E.2d 842.

In reviewing the grant of a directed verdict, the appellate court should not ignore facts unfavorable to the opposing party. Rather, it must determine whether a verdict for the opposing party would be reasonably possible under the facts as liberally construed in his favor. Bultman v. Barber, 277 S.C. 5, 281 S.E.2d 791 (1981). The appellate court should determine the elements of the action alleged and whether any evidence existed on each element. First State Sav. & Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (1989).

At the close of the appellant's case, the respondents Gaddy and Gaddy Rentals moved for a directed verdict on the appellant's claims. The appellant asserted three causes of action against the respondents for his claims, *quantum meruit*, breach of contract and promissory estoppel. The trial court granted the respondents' motion and dismissed the appellant's claims despite the appellant having produced evidence supporting the elements of *quantum meruit* and breach of contract. The appellant offered evidence to support the *quantum meruit* and breach of contract causes of action, and the trial judge should have submitted the case to the jury.¹

¹ Quantum meruit is an equitable remedy. Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, S.C. 341 S.C. 1, 532, S.E.2d 868 (2000). The appellant requested a trial by jury and the trial judge submitted the legal and equitable issues to the jury. The appellate review is at law in accordance with Horne v. Davis Elec. Constructors, Inc., 302 S.C. 484, 395 S.E.2d 724 (Ct. App. 1990), decision aff'd as modified 307 S.C. 559, 416 S.E.2d 634 (1992).

Quantum meruit or unjust enrichment is an equitable doctrine that provides for recovery for a benefit conferred on one party by another party. In order to meet all the elements for a claim of unjust enrichment, the appellant had to show that (1) he conferred a non-gratuitous benefit on the respondent; (2) the respondent realized some value from the benefit; and (3) it would be inequitable for the respondent to retain the benefit without paying the appellant for its value. Inglese v. Beal, 403 S.C. 290, 297, 742 S.E.2d 687, 691 (Ct. App. 2013); Campbell v. Robinson, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012); Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc., 296 S.C. 530, 532, 374 S.E.2d 507, 509 (Ct. App. 1988).

Gaddy testified that he had a majority ownership interest in Gaddy Rentals. (R. p. 259) Gaddy Rentals owned a convenience store in Lake City. (R. p. 106). As a result of a conversation between Gaddy and Rishmawi (R. p. 136), in January 2009, Gaddy Rentals entered into a contract to sell the convenience store to the Abu Aita brothers for \$500,000.00. (R. p. 106-109; R. p. 111, R. p. 379). The store had been vacant since October and was in need of some repairs. (R. p. 108-110). Issa Abuaita testified that the store was in bad shape and needed a lot of work. (R. p. 137, lines 14-25). Gaddy testified that Rishmawi participated in and facilitated the repairs in the store. (R. p. 112, lines 4-21; R. p. 137-138). Gaddy testified that Rishmawi had experience in the convenience store business. If work needed to be done on the store, he would know what needed to be done to make the store marketable. (R. p. 130). The repairs that were done on the store were done when the store was still in titled Gaddy Rental's name. (R. p. 131). Issa Abuaita testified that Rishmawi helped them pay for the repairs and they paid him back. (R. p. 140-141).

Gaddy testified that he paid Rishmawi a "commission" for his role in the sale of the store. (R. p. 114). He paid him \$518 a month in cash every month from January 2009 until July 2012. (R. p. 114-115). Gaddy was a licensed real estate agent and real estate broker. (R. p. 125). He testified that the normal commission for commercial real estate is ten percent. (R. p. 119). The note payment from Abua Aita was \$5,181.00 per month. (R. p. 121). Since he was paying Rishmawi ten percent of the promissory note payment each month, it was an illegal real estate commission. (R. p. 121-122). Despite being a licensed real estate agent and real estate broker, he testified that he only stopped paying the "commission" when he discovered "it was illegal to pay a commission to a person [that] did not hold a real estate license." (R. p. 123).

Rishmawi testified that he spoke to Gaddy about the sale of the convenience store. He testified that "we'll go with five hundred thousand dollars but this store needs at least three good months to work so what are you willing to offer in order to do that somebody, me, or anybody else." He further testified that Gaddy asked him what he thought and Rishmawi testified that he thought it would take fifty thousand dollars for someone "to do all the work in the store as services for Gaddy to make sure the store sells." (R. p. 182). Rishmawi was paid fifty thousand dollars "to get the proper people to bring the store up to the point it can sell for \$500,000." (R. p. 183, lines 4-7). When Gaddy told Rishmawi he had no money to put into the store, Rishmawi told him he could pay him each month when he received his note payments. (R. p. 183). The money paid to Rishmawi was for services to make the property marketable. (R. p. 184). As a result of those services, Gaddy Rentals acquired a contract for sale and the property ultimately sold to the Abu Aita brothers in 2013. (R. p. 154)

As a result of Rishmawi's experience and expertise in the convenience store business, Gaddy was able to enter into a contract for sale with the Abu Aita brothers. The work that Rishmawi contracted to perform on the store that led to a contract for sale was a non-gratuitous benefit conferred on the respondent. As a result of that work and contract for sale, Gaddy Rentals was able to sell the store to the Abu Aita brothers. Gaddy Rentals realized the benefit of the work performed on the Lake City Exxon Store when the store ultimately sold to the Abu Aita brothers in 2013. Rishmawi performed the work under the understanding that he would be paid. Since Gaddy Rentals was able to sell the gas station because of Rishmawi, it would be inequitable for Gaddy and Gaddy Rentals to retain the benefit of the services without paying the appellant for its value.

The appellant also asserted a claim for breach of contract. The appellant has produced evidence to support each element of breach of contract. Breach of contract is a failure to perform a contractual promise without legal excuse. In order to recover damages for breach of contract, the appellant had to prove: a binding contract entered into by the parties, a breach or unjustifiable failure to perform the contract, and damages suffered by the plaintiff as a direct and proximate result of the breach. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written or by conduct. Prescott v. Farmers Tel. Coop., Inc., 335 S.C. 330, 516 S.E.2d 923 (1999). "A contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act." Benya v. Gamble, 282 S.C. 624, 628, 321 S.E.2d 57, 60 (Ct. App. 1984). The necessary elements of a contract are offer, acceptance, and valuable consideration. Sauner v. Pub. Serv. Auth.

of South Carolina, 354 S.C. 397, 581 S.E.2d 161 (2003).

An offer is “the a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” Fender & Latham, Inc. v. First Union Nat. Bank of South Carolina, 316 SC 48, 50, 446 S.E.2d 448, 450 (Ct. App. 1994) citing the Restatement 2d of Contract § 24 (1981). Substantial compliance with the terms and conditions of the offer makes the contract enforceable. Holly Hill Lumber Co. v. Federal Land Bank of Columbia, 160 S.C. 431, 158 S.E. 830 (1931). Conduct manifesting approval of the agreement constitutes acceptance and acceptance of an agreement may be inferred from one’s conduct. Laidlaw Environmental Services (TOC), Inc. v. Honeywell, Inc., 966 F.Supp. 1401, 1409 (D.S.C. 1996). A trial court should submit to the jury the issue involving the existence of a contract where its existence is questioned and the evidence is either conflicting or admits of more than one inference. Capital City Garage & Tire Co. v. Electric Storage Battery Co., 113 S.C. 352, 101 S.E. 838 (1920).

Rishmawi also produced sufficient evidence to submit his claim for breach of contract to the jury. The question of the existence of a contract or the terms of the contract itself is an issue of fact for the jury. Rishmawi testified that there was an agreement that he would do the work on the store to get it in a condition to sell. Gaddy testified that the money paid to Rishmawi from Gaddy Rentals LLC was for a real estate commission. Rishmawi testified that the money paid was for the work he did in the store for nearly three months that would enable it to sell. Rishmawi worked in the store for three months. He put the Abu Aita brothers in touch with the right people to get the store in a condition that they could make the monthly payment. He enabled Gaddy to consummate the sale. From

January 2009 to July 2012, Gaddy paid Rishmawi \$518 a month on the \$50,000.00 obligation. (R. p. 113-115). Gaddy's conduct, paying the \$518 a month for three and a half years, manifested approval of the agreement. There was sufficient evidence to submit the breach of contract claim to the jury and it was reversible error for the trial judge to grant a directed verdict on the claim.

II. DID THE TRIAL COURT ERR IN FAILING TO GRANT THE APPELLANT'S MOTION FOR A DIRECTED VERDICT TO DISMISS DOLLAR AND MORE, INC AND ISSA GEORGE RISHMAWI AS PARTIES?

"In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings." Wall v. Suits, 318 S.C. 377, 379, 458 S.E.2d 43, 44 (Ct. App. 1995). The appellate court can reverse a jury verdict if it is without evidentiary support. Bishop Logging Co. v. John Deere Indus. Equipment Co., 317 S.C. 520, 455 S.E.2d 183 (Ct. App. 1994).

The appellate court must reverse the trial court if there is no evidence to support the trial judge's decision to allow the case to be submitted to the jury. Steinke v. South Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999). The respondent failed to produce any evidence to show that Dollar and More and Rishmawi benefitted from the load of gasoline retrieved by G&S. The appellate court must review the elements of the cause of action alleged and whether any evidence existed on each element. First State Sav. & Loan v. Phelps, 299 S.C. 441. Gaddy Oil failed to meet the elements of unjust enrichment as to Dollar and More and Rishmawi.

According to Inglese v. Beal, the plaintiff must show that he conferred a benefit on the defendant, and the defendant realized some value from the benefit conferred upon him. 403 S.C. 290, 742 S.E.2d 687 (Ct. App. 2013). Gaddy Oil did not produce any evidence to show that Gaddy Oil conferred any benefit on Dollar and More or Rishmawi nor that Dollar and More or Rishmawi realized any benefit allegedly conferred on them.

A non-gratuitous benefit is a benefit conferred either at the request of the defendant or in circumstances where the plaintiff reasonably relied upon compensation, or the defendant ought to have understood that the plaintiff expected compensation and looked to the defendant for payment. Niggel Assocs., Inc., 296 S.C. 532–33, 374 S.E.2d 509. “It is not enough that the defendant has knowledge of the plaintiff’s conduct; he must have induced the plaintiff to confer the benefit.” Id. There was no evidence to suggest that during the two and a half years that G&S hauled fuel on Gaddy Oil’s account that any individual or any entity other than G&S compensated Gaddy Oil for the gasoline nor is there evidence that shows Rishmawi or Dollar and More induced Gaddy Oil to act.

Rishmawi was the agent for G&S. He testified that he was the acting agent for G&S and Dollar and More. (R. p. 162-166). He further testified that he formed G&S and Dollar and More, but did not have any ownership interest in the companies. His wife and children own all shares of Dollar and More. (R. p. 162). He was merely the acting agent. Rishmawi stated “I own” in his testimony when he was referring to various properties owned by the corporations. (R. p. 165). However, he testified that he said “I own” because he “speaks about it all the time.” (R. p. 178, lines 5-23). He said “I say I just [because I am] an old man.” (R. p. 178, line 12). Rishmawi’s consistently testified that he did not have any ownership interest in Dollar and More at any time. He testified that Dollar and More owned

convenience store properties. (R. p. 164). However, there was no testimony at all that the gasoline was delivered to any of the Dollar and Dore convenience stores, that the gasoline was used in Rishmawi's cars, trucks or equipment. The record was void of any indication of where the gasoline went. There was no evidence or testimony at all that suggested Rishmawi or Dollar and More benefitted from the load of gasoline in any way.

During the time when G&S used Gaddy Oil's line of credit at the terminal, the gasoline was always picked up by G&S. (R. p. 49-52). G&S paid for the gasoline. (R. p. 59; R. p. 364). By Gaddy's own admission, Gaddy Oil had no business dealings with Dollar and More. (R. p. 260). There were no documents, invoices, deposits, checks, payments, etc. indicating that Dollar and More ever made a single payment to Gaddy Oil for gasoline during the course of the business relationship. All business dealings regarding the hauling and payment of fuel were between Gaddy Oil and G&S. This coupled with the fact that no evidence was presented to indicate that Rishmawi or Dollar and More received the benefit of the fuel clearly shows that the trial court should have granted the appellant's motion for a directed verdict on this issue.

III. DID THE TRIAL COURT ERR IN FAILING TO GRANT THE APPELLANT'S MOTION FOR A DIRECTED VERDICT AS TO G&S?

The appellate court must reverse the trial court if there is no evidence to support the trial judge's decision to allow the case to be submitted to the jury. Steinke, 336 S.C. 373, 520 S.E.2d 142 (1999). The respondent failed to produce any evidence to show that G&S benefitted from the load of gasoline. The appellate court should review the elements of the cause of action alleged and determine whether any evidence existed on each element. First State Sav. & Loan v. Phelps, 299 S.C. 441. According to Inglese v. Beal, the plaintiff must

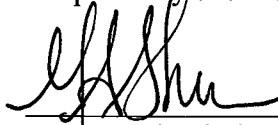
show that he conferred a benefit on the defendant, and the defendant realized some value from the benefit conferred upon him. 403 S.C. 290, 297, 742 S.E.2d 687, 691 (Ct. App. 2013). Gaddy Oil failed to produce any evidence that suggests that G&S benefitted from the gasoline. Gaddy Oil wanted the jury to assume or simply speculate that G&S benefitted from the gasoline. However, that assumption or speculation is not sufficient. Gaddy Oil must show a benefit that unjustly enriched G&S. See Clyde v. Johnson, 402 S.C. 458, 742 S.E.2d 6 (S.C. App., 2013) (holding that the trial court erred in awarding restitution when the plaintiff failed to show any conferred benefit unjustly enriching the defendant). There is nothing in the record to show that G&S benefitted from the load of gasoline that was allegedly retrieved from the terminal.

CONCLUSION

It was reversible error for the trial judge to grant a directed verdict on Rishmawi's claims for unjust enrichment and breach of contract. Rishmawi presented evidence to support each element of his claims. Gaddy Oil failed to produce any evidence to show that Rishmawi, Dollar and More or G&S benefitted in any way from the gasoline allegedly retrieved from the port; therefore, the appellants request that this court vacate the judgment against them and remand the case for trial on Rishmawi's claims for unjust enrichment and breach of contract.

November 3, 2016

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

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

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,

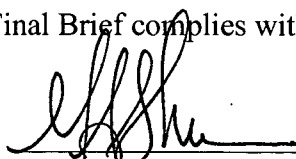
v.

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

Certificate of Counsel

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

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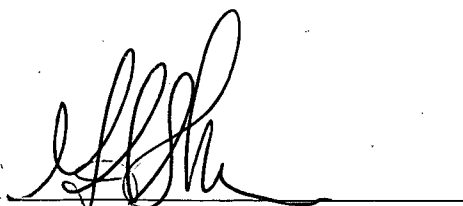
v.

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

Proof of Service

I certify that I have served the Appellant's Final Brief and Certificate of Counsel by hand delivering a copy of it to the attorneys of record, the Honorable Ronnie A. Sabb, Kimberly V. Barr and Adrian Dukes of the Law Offices of Ronnie A. Sabb on November 10, 2016 at 108 West Main Street, Kingstree, South Carolina 29556.

November 10, 2016



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November 10, 2016

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Clerk of the South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Gaddy Oil, Inc. v. George Rishmawi, Sr. et. al.
Appellate Case No.: 2015-002026

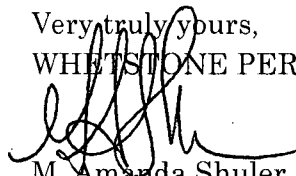
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Dear Madam Clerk:

Please find enclosed herewith fifteen copies of the Appellant's Final Brief and the Record on Appeal. According to SCACR 267(d) one copy of each is submitted unbound. Also enclosed is the original and two copies of the Certificate of Counsel and Proof of Service for the Final Brief. Please file the original Certificate of Counsel and Proof of Service and return the certified copies to me in the enclosed stamped, addressed envelope.

With warm regards, I am,

Very truly yours,
WHETSTONE PERKINS & FULDA, LLC



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Enc: as stated
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Kimberly V. Barr, Esq.
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