

RECORD ON APPEAL  
THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

---

Docket no. 10-AJL-30-0910-CC

---

Charles Moore,

Appellant,

v.

S C Department of Employment and  
Workforce,

Respondent.

---

RECORD ON APPEAL

---

**RECEIVED**

JUL 19 2012

**SC Court of Appeals**

E.B. "Trey" McLeod  
P.O. Box 8597  
Columbia S.C. 29202  
803-737-2666  
Attorney for Respondent

Charles A. Moore II  
618 Waterway Villa Blvd  
Apt 23d  
Myrtle Beach SC 29579  
Pro Se

## INDEX OF RECORD ON APPEAL

1. Letter of Approval for unemployment benefits from SCDEW.
2. Payment history and record of income from SCDEW.
3. Letter of corrected determination for unemployment benefits from SCDEW.
4. Correspondence letters from Appellant to SCDEW
5. Letters to SCDEW explanations of absence and reason during SCDEW appeal hearings.
6. SCDEW application for waiver of no fault overpayment
  - a. financials
  - b. debts.
  - c. assets
7. Lawnix. com: Summary of *Feinburg v. Pfeiffer Co.*, 322 S.W. 2d 163 (Mo. App1959)
8. Verizon Wireless cell phone statement.
9. Webster's dictionary
10. "Punishment and Proportionality: The Estoppel Approach. *The Journal of Libertarian Studies*. (1996).
11. *Wachovia Bank of South Carolina, N.A. v. Mathrtha B. Thomasko*.  
( Respondents referred Case.)

CERTIFICATE OF COUNSEL ON RECORD OF APPEAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

---

Docket no. 10-AJL-30-0910-CC

---

Charles Moore,

Appellant,

v.

S C Department of Employment and  
Workforce,

Respondent.

---

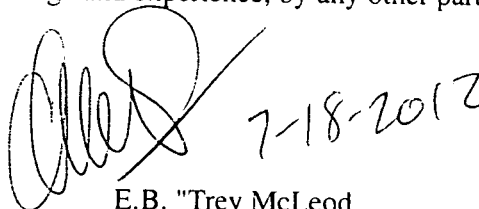
CERTIFICATE OF COUNSEL ON RECORD OF APPEAL

---

E.B. "Trey" McLeod  
P.O. Box 8597  
Columbia S.C. 29202  
803-737-2666  
Attorney for Respondent

Charles A. Moore II  
618 Waterway Villa Blvd  
Apt 23d  
Myrtle Beach SC 29579  
Pro Se

I, Charles Austin Moore II, Appellant, certify that the Record On Appeal contains all material proposed to be included, to the best of my knowledge and experience, by any other party and not any other material.



E.B. "Trey" McLeod  
P.O. Box 8597  
Columbia S.C. 29202  
803-737-2666  
Attorney for Respondent

Charles A. Moore II  
618 Waterway Villa Blvd  
Apt 23d  
Myrtle Beach SC 29579  
Pro Se

① LETTER OF APPROVAL

NONMON LETTER TEXT SSN.: 244 43 1757 1 NAME: CHARLES A MOORE  
YOU ARE WORKING AS NEEDED WITH YOUR MOST RECENT BONA FIDE EMPLOYER AND FILING  
FOR PARTIAL BENEFITS. YOU ARE ELIGIBLE FOR BENEFITS FOR EACH WEEK IN WHICH  
YOU ACCEPT ALL AVAILABLE WORK OFFERED TO YOU, MAKE LESS THAN YOUR WEEKLY  
BENEFIT AMOUNT, ACTIVELY SEEK OTHER FULL TIME EMPLOYMENT AND OTHERWISE MEET  
THE AVAILABILITY REQUIREMENTS OF THE SOUTH CAROLINA CODE.

YOU MUST REPORT ALL GROSS EARNINGS DURING EACH WEEK YOU FILE A CLAIM EVEN IF  
YOU HAVE NOT YET BEEN PAID.

PRESS PF2 FOR OTHER LETTERS

STAT NO.: 3040

ISS DATE: 020609

TRANSACTION OPTION:

EFFECT DTE: 010409

RES CDE: 10

SCESC-MYRTLE BEACH  
WORKFORCE CENTER  
9714 N. KINGS HWY STE 144  
MYRTLE BEACH, SC 29572

②

PAYMENT HISTORY AND RECORD  
OF INCOME HISTORY

02/22/11

P A Y M E N T H I S T O R Y N O I I

SSN: 244 43 1757 1 NAME: CHARLES A MOORE

BYE: 01/03/10

CWE DATE	DISP DATE	SEVERANCE AMOUNT	EARNINGS AMOUNT	SOC SEC AMOUNT	OTHER PENSION	SUPPORT AMOUNT	SUPP PERC	CLEAR DATE	OPEN IND
010210	011110	.00	.00	.00	.00	.00	00	012510	1
122609	122909	.00	.00	.00	.00	.00	00	122809	1
121909	122309	.00	600.00	.00	.00	.00	00		1
121209	121409	.00	999.99	.00	.00	.00	00		1
120509	120809	.00	150.00	.00	.00	.00	00	120709	1
112809	113009	.00	999.99	.00	.00	.00	00		1
112109	112409	.00	135.00	.00	.00	.00	00	112309	1
111409	112009	.00	999.99	.00	.00	.00	00		1
110709	111109	.00	999.99	.00	.00	.00	00		1
103109	111109	.00	999.99	.00	.00	.00	00		1
102409	102809	.00	999.99	.00	.00	.00	00		1
101709	102009	.00	.00	.00	.00	.00	00	101909	1

FOR MORE THAN 12 PAYMENTS DEPRESS PF2

TRANSACTION OPTION:

SCESC-MYRTLE BEACH  
 WORKFORCE CENTER  
 9714 N. KINGS HWY STE 144  
 MYRTLE BEACH, SC 29572

02/22/11

PAYMENT HISTORY NO I I

SSN: 244 43 1757 1 NAME: CHARLES

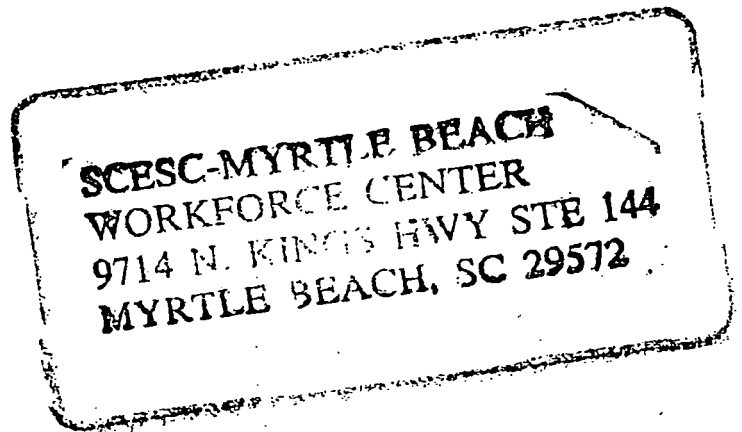
A MOORE

BYE: 01/03/10

CWE DATE	DISP DATE	SEVERANCE AMOUNT	EARNINGS AMOUNT	SOC SEC AMOUNT	OTHER PENSION	SUPPORT AMOUNT	SUPP PERC	CLEAR DATE	OPEN IND
042509	042909	.00	.00	.00	.00	.00	00	042809	1
041809	042109	.00	225.00	.00	.00	.00	00	042009	1
041109	041409	.00	.00	.00	.00	.00	00	041309	1
040409	040709	.00	199.00	.00	.00	.00	00	040609	1
032809	033109	.00	.00	.00	.00	.00	00	033009	1
032109	032509	.00	.00	.00	.00	.00	00	032409	1
031409	031709	.00	.00	.00	.00	.00	00	031609	1
030709	030909	.00	805.00	.00	.00	.00	00		1
022809	030309	.00	.00	.00	.00	.00	00	030209	1
022109	022409	.00	.00	.00	.00	.00	00	022609	1
021409	022309	.00	.00	.00	.00	.00	00	022409	1
020709	021109	.00	.00	.00	.00	.00	00	021709	1

FOR MORE THAN 12 PAYMENTS DEPRESS PF2

TRANSACTION OPTION:



02/22/11

P A Y M E N T H I S T O R Y N O I I

SSN: 244 43 1757 1 NAME: CHARLES

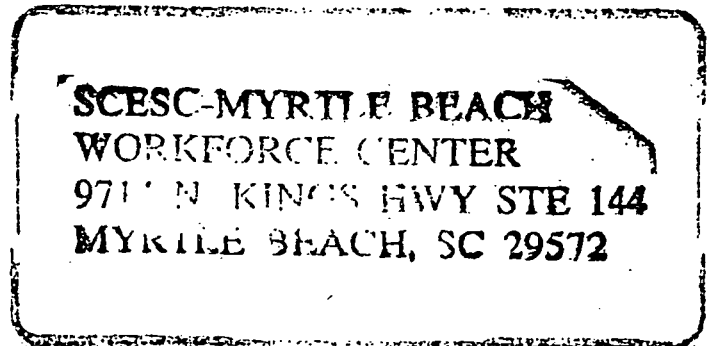
A MOORE

BYE: 01/03/10

CWE DATE	DISP DATE	SEVERANCE AMOUNT	EARNINGS AMOUNT	SOC SEC AMOUNT	OTHER PENSION	SUPPORT AMOUNT	SUPP PERC	CLEAR DATE	OPEN IND
071809	080709	.00	569.00	.00	.00	.00	00		1
071109	071509	.00	.00	.00	.00	.00	00	071409	1
070409	070709	.00	154.00	.00	.00	.00	00	070609	1
062709	062909	.00	999.99	.00	.00	.00	00		1
062009	062209	.00	999.99	.00	.00	.00	00		1
061309	061609	.00	.00	.00	.00	.00	00	061509	1
060609	061609	.00	305.00	.00	.00	.00	00	061509	1
053009	060909	.00	417.00	.00	.00	.00	00		1
052309	052509	.00	999.99	.00	.00	.00	00		1
051609	051909	.00	999.99	.00	.00	.00	00		1
050909	051209	.00	.00	.00	.00	.00	00	051109	1
050209	050509	.00	.00	.00	.00	.00	00	050409	1

FOR MORE THAN 12 PAYMENTS DEPRESS PF2

TRANSACTION OPTION:



02/22/11

P A Y M E N T H I S T O R Y N O I I

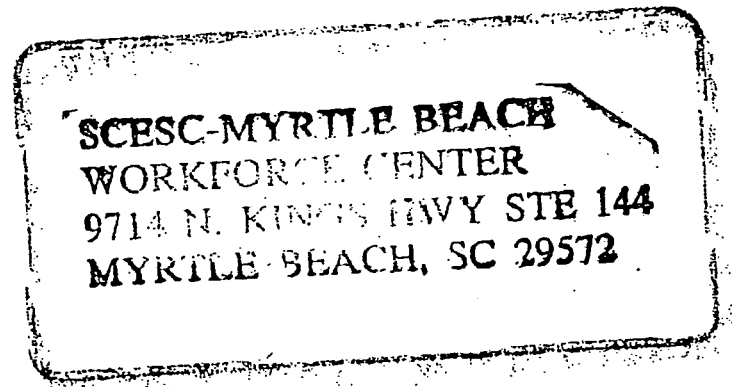
SSN: 244 43 1757 1 NAME: CHARLES A MOORE

BYE: 01/03/10

CWE DATE	DISP DATE	SEVERANCE AMOUNT	EARNINGS AMOUNT	SOC SEC AMOUNT	OTHER PENSION	SUPPORT AMOUNT	SUPP PERC	CLEAR DATE	OPEN IND
013109	020209	.00	648.00	.00	.00	.00	00		1
012409	020909	.00	.00	.00	.00	.00	00	021209	1
011709	012609	.00	1048.00	.00	.00	.00	00		1
011009	012009	.00	.00	.00	.00	.00	00		1

FOR MORE THAN 12 PAYMENTS DEPRESS PF2

TRANSACTION OPTION:



THIS IS A CORRECTED DETERMINATION THAT SUPERSEDES THE DETERMINATION MAILED 02/09/09. THIS DETERMINATION MAY CREATE AN OVERPAYMENT OF BENEFITS. YOU ARE A COMMISSIONED SALESPERSON, AND YOU STATE YOU ARE EMPLOYED WITH BLUEGREEN VACATIONS UNLIMITED INC. AS A COMMISSIONED SALESPERSON, PAID SOLELY BY COMMISSION, YOU ARE CONSIDERED EMPLOYED FULL TIME IN SUCH EMPLOYMENT AND ARE NOT CONSIDERED UNEMPLOYED IN ANY WEEK IN WHICH THE EMPLOYEE-EMPLOYER RELATIONSHIP EXISTS. THEREFORE, IN ACCORDANCE WITH SECTION 41-35-110 OF THE SOUTH CAROLINA EMPLOYMENT SECURITY LAW, YOU ARE INELIGIBLE FOR BENEFITS EFFECTIVE 01/04/09 AS YOU DO NOT MEET THE CONDITIONS OF ELIGIBILITY FOR BENEFITS.

PRESS PF2 FOR OTHER LETTERS

TRANSACTION OPTION:

STAT NO.: 0001

ISS DATE: 042710

EFFECT DTE: 010409

RES CDE: 03

SCESC-MYRTLE BEACH  
WORKFORCE CENTER  
9714 N. KINGS HWY STE 144  
MYRTLE BEACH, SC 29572

③ LETTER OF COLLECTED DETERMINATION  
FOR UNEMPLOYMENT BENEFITS FROM SCDEW

THIS IS A CORRECTED DETERMINATION THAT SUPERSEDES THE DETERMINATION MAILED 02/09/09. THIS DETERMINATION MAY CREATE AN OVERPAYMENT OF BENEFITS. YOU ARE A COMMISSIONED SALESPERSON, AND YOU STATE YOU ARE EMPLOYED WITH BLUEGREEN VACATIONS UNLIMITED INC. AS A COMMISSIONED SALESPERSON, PAID SOLELY BY COMMISSION, YOU ARE CONSIDERED EMPLOYED FULL TIME IN SUCH EMPLOYMENT AND ARE NOT CONSIDERED UNEMPLOYED IN ANY WEEK IN WHICH THE EMPLOYEE-EMPLOYER RELATIONSHIP EXISTS. THEREFORE, IN ACCORDANCE WITH SECTION 41-35-110 OF THE SOUTH CAROLINA EMPLOYMENT SECURITY LAW, YOU ARE INELIGIBLE FOR BENEFITS EFFECTIVE 01/04/09 AS YOU DO NOT MEET THE CONDITIONS OF ELIGIBILITY FOR BENEFITS.

PRESS PF2 FOR OTHER LETTERS

TRANSACTION OPTION:

STAT NO.: 0001

ISS DATE: 042710

EFFECT DTE: 010409

RES CDE: 03

1. Correspondence letters from  
Appellant to SCDew

5. Letters to SCDew explanations  
of Absence and Reason during  
SCDew Appeals Hearing

6. SCDew Applications for Waiver of no  
Fault overpayment

Exhibit C

PO Box 995  
1550 Gadsden Street  
Columbia, SC 29202  
www.dew.sc.gov



Mark Sanford  
Governor

John L. Finan  
Executive Director

P.O. Box 995  
631 Hampton Street  
Columbia, SC 29202

August 2, 2010

Charlie Moore  
618 Waterway Villas Drive Apt, 24  
Myrtle Beach, SC 29579

RE: Charlie Moore  
SSN: 244-43-1757  
Appeal No: 09465-11818

Dear Charlie Moore:

This will acknowledge your appeal filed July 23, 2010 from Appeal Tribunal Decision Number 2010-A-10797 issued July 7, 2010.

South Carolina Code § 41-35-680 provides that an Appeal Tribunal Decision becomes final ten (10) days after the mailing thereof. We, therefore, have no alternative but to dismiss the appeal as being untimely.

You have the right to appeal this ruling to the Appellate Panel within ten (10) calendar days from the date of this letter setting forth the reasons for the untimeliness of your appeal.

Legal Department  
(803) 737-2664  
(803) 737-0124 fax

cc:  
Local Office—Conway  
Benefits Section—(Imaging)  
File

SC Employment Comm.

AUG 10 2010

Received Benefits Div.

SOUTH CAROLINA  
DEPARTMENT OF EMPLOYMENT AND WORKFORCE  
631 HAMPTON STREET  
POST OFFICE BOX 995  
COLUMBIA, SOUTH CAROLINA 29202

DECISION OF THE ADMINISTRATIVE HEARING OFFICER

Debtor: CHARLES A. MOORE  
618 WATERWAY VILLAS DR APT24D  
MYRTLE BEACH, SC 29579 0000

Claimant Agency: SCDE&W  
Debtor SSN: 244-43-1757  
Original Debt Amt: \$9128.00

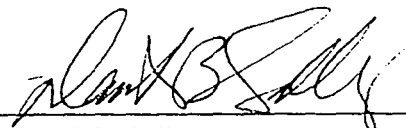
I, David B. Salley, do hereby find that:

\_\_\_\_\_ No amount is due from the debtor.

\_\_\_\_\_ The amount of the debt originally submitted through the Debt Setoff Collection Act should be REDUCED and the proper amount due is \$\_\_\_\_\_.


XXX The amount of the debt originally submitted through the Debt Setoff Collection Act is correct and is rightfully due from the above debtor.

The specific reasons for my ruling are as follows: The debtor received benefits to which they are not entitled. This case was set for a hearing on November 8, 2010, at 9:00 am. I find that notice of the hearing was mailed to the appellant's address of record on October 29, 2010. There was no response at the call of the case. After waiting for the required ten (10) minutes, I find that the appeal has been abandoned.

  
\_\_\_\_\_  
David B. Salley  
Chief Administrative Hearing Officer

DBS:mtt

Decision Mailed: November 10, 2010

Mailed on the above Date By: mtt 

**Namasco**

**Namasco**

P.O. Box 11  
Peosta, IA 52068

**klöckner & co** multi metal distribution

9/30/11

Telephone: (563) 588-0501  
Facsimile: (563) 588-1855  
Toll Free: (800) 369-4810

TO WHOM IT MAY CONCERN:

THE DATES OF 11-1/10 - 11/8/10

CHARLES MOORE WAS IN CARROLL Co., IL.

HELPING ME WITH FALL HARVEST

Allen Fleming

★ PROVIDED AFTER  
COURT PROCEEDINGS  
STARTED



To whom it may concern,

I WAS OUT OF STATE IN AN AREA CALLED Mount Carmel, Illinois for two weeks helping a friend on his Farm! I left the 1<sup>ST</sup> of November via North Carolina and did not return until the 13<sup>th</sup>. My Roommate did not give me the mail until the weekend. There is no service in that area for Verizon! I would like it face to face hearing with my Attorney present. Not threatening anyone with a lawyer but I need assistance with this. It is impossible to communicate with SEW the way they do it.

Charles N. Grant

P.S. No Phone Messages!

NO EMAILS!  
ETC

818-273-1449

11-20-2010

10:24 AM

Telephone - 828-273-1449

TO WHOM IT MAY CONCERN,

AFTER MY DIVORCE IN 2006 - 2007  
I LOST MY HOME IN FL, LOST A BUSINESS,  
FORCED TO PAY ALIMONY AND HAD TO MOVE  
TO MYrtle Beach to get help from my  
family! The economy was rough the last  
two years and I felt short of  
my bills and financial obligations!

IN TURN I FILED FOR UNEMPLOYMENT  
IN THE WINTER TIME I WAS TOLD TO REPORT  
WEEKLY INCOME AND FOLLOW PROCESSES TO  
RECEIVE BENEFITS! I USED THE MONEY TO  
EAT & LIVE! I LIVED WITH MY SISTER  
SO I COULD GET ON MY FEET. THE  
UNEMPLOYMENT BENEFITS HELPED ME GREATLY.  
NOW S.C. WANTS THE MONEY BACK  
AND I CAN'T PAY IT! I WAS NEVER  
TOLD THAT TIMESHARE REPS. COULDN'T  
DRAW. IF MY LOCAL OFFICE KNEW I WAS  
A TIMESHARE REP. I SHOULD HAVE BEEN  
TOLD UP FRONT - NOT ALLOWED TO DRAW  
THE MONEY FOR A YEAR THEN BE FORCED  
TO PAY IT BACK - I WAS NONTRADITIONAL  
PLEASE ADVISE APPEALS OFFICE! I NEVER  
RECEIVED A CHANCE TO EXPLAIN! I CAN  
NEVER GET THROUGH TO AN APPEALS OFFICE.

Carol 8-8-2010

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE  
 APPLICATION FOR WAIVER OF NO FAULT OVERPAYMENT

SOCIAL SECURITY NUMBER: 244-43-1757 OVERPAYMENT AMOUNT \$ 9128<sup>00</sup>  
 NAME: CHARLES A MOORE II  
 ADDRESS: 618 WILLOWAY VILLA BLVD APT 23D  
 CITY: MYRTLE BEACH STATE: S.C. ZIP CODE: 29759  
 CHECK PROGRAM TYPE:  UI  TRA\*\*  OTHER:

EXPLANATION OF APPLICATION FOR WAIVER

If it is determined that an overpayment occurred through no fault of yours and requiring repayment would cause an extraordinary financial hardship, you may apply for waiver of the overpayment. An extraordinary financial hardship shall exist if overpayment recovery would result directly in the loss of or inability to obtain minimal necessities of food, medication, shelter and transportation for a substantial period of time.

\*\* Utilities and transportation expenses are not applicable to TRA.

In order to make a waiver determination, we must have your monthly income and monthly expense information as set forth on this form. You must complete and return this form within ten (10) days to your local office.

1. CURRENT MONTHLY INCOME (What you are making now.): *ITUARIES*

a. Your total monthly income (do not include unemployment insurance benefits).	\$ <u>COMM. SS. BEN</u>
b. Your spouse's total monthly income.	\$ <u>0</u>
c. Other family members' total monthly income.	\$ <u>0</u>
d. Other monthly income.	\$ <u>0</u>
<b>TOTAL MONTHLY INCOME:</b>	
	\$ <u>0</u>

2. CURRENT MONTHLY EXPENSES (What you are spending now.):

a. Food.	
b. Medicine.	
c. Housing (Mortgage Payment or Rent Payment).	
d. Utilities (Electric, Gas, Water).	
e. Transportation.	
<b>TOTAL MONTHLY EXPENSES:</b>	

*SEE ATTACHMENT*

3. NET POTENTIAL AMOUNT TO BE APPLIED TO OVERPAYMENT  
 (TOTAL MONTHLY INCOME minus TOTAL MONTHLY EXPENSES): \$ 0

I UNDERSTAND THAT I AM OVERPAID, BUT I REQUEST THAT MY OVERPAYMENT BE WAIVED BASED ON THE FACT THAT THE OVERPAYMENT OCCURRED THROUGH NO FAULT OF MINE.

I HEREBY CERTIFY UNDE THE PENALTY OF PERJURY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

*Charles A Moore II*  
 SIGNATURE

8-18-2010  
 DATE

1. CONDO DEBT	73,000 <sup>00</sup>	-
2. I.R.S.	25,000 <sup>00</sup>	
3. PMI INS.	2,000 <sup>00</sup>	
4. LAND MORTGAGE	37,000 <sup>00</sup>	
5. PERSONAL LOAN	6,926 <sup>00</sup>	
6. SECUR CARD	30,000 <sup>00</sup>	
7. BOA CARD	18,000 <sup>00</sup>	
8. LAND TAX	1,000 <sup>00</sup>	
9. LAND TAX II	249 <sup>00</sup>	
	<u>193,175<sup>00</sup></u>	

BASIC MONTHLY

RENT	400 <sup>00</sup>
CAR	100 <sup>00</sup>
BEICO	51 <sup>00</sup>
PHONE	130 <sup>00</sup>
GROCERY	400 <sup>00</sup>
HAIR	30 <sup>00</sup>
MEDICINE	160 <sup>00</sup>
	<u>\$ 1271<sup>00</sup></u>

MONTHLY TOTAL

\$ 2498<sup>00</sup>

MONTHLY MASS

1.	-
2.	? - UNSURE NOW
3.	<del>100</del> 100 <sup>00</sup>
4.	627 <sup>00</sup>
5.	250 <sup>00</sup>
6.	100 <sup>00</sup>
7.	- UNSURE NOW
8.	100 <sup>00</sup>
9.	<u>50<sup>00</sup></u>

1227

MONTHLY UNSURE FEES

2 PAYMENTS ABOVE

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO. 09 CVD 2031  
2009 MAY 12 AM 9:45

BUNCOMBE CO., C.S.C.  
BY *A*

STATE EMPLOYEES CREDIT UNION,

Plaintiff,

vs.

CHARLES A. MOORE, II,

Defendant,

DEFAULT JUDGMENT

This case coming before the Court on Plaintiff's Application, and being heard by the undersigned, and it appearing to the Court upon affidavit, and the court finding as fact that; this is an action for damages on a claim for a sum certain; service was had; the Court has jurisdiction over the subject matter of the action; Defendant(s) is/are not under a disability and has/have failed to plead or appear in the time allowed by law; Default has been entered and Defendant(s) is/are indebted to the Plaintiff in the principal sum of \$3,103.00 plus accrued interest in the amount of \$32.37 without setoff or counterclaim;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff have and recover of Defendant(s), by Judgment:

1. The sum certain of \$3,103.00 plus accrued interest in the amount of \$32.37 resulting in a judgment in the amount of \$3,135.37, and interest at 8% per annum from date of judgment until paid in full;
2. Reasonable attorneys fees of 15% of the above amounts pursuant to N.C.G.S. §6-21.2, such sum being \$470.31; and
3. The costs of this action.

This the 12 day of May, 2009.

*Barbara M. Gray Ash*  
Clerk of Superior Court



**PLAZA ASSOCIATES**  
**370 Seventh Avenue**  
**New York, NY 10001**  
**Tel: (212) 947-7233 Fax: (212) 947-5186**  
**Toll Free: 1-800-535-1303**

April 15, 2009

Charles Moore  
4363 Spa Dr Apt 204  
Little River, SC 29566

Client: Bank of America  
Re: Charles Moore  
Balance: \$18,644.60  
Account: #74975999795697  
Control: #76517528

Your Honor  
COULD NOT PAY THIS AND NEVER DID.  
Charlie Moore

Dear Sir/Madame:

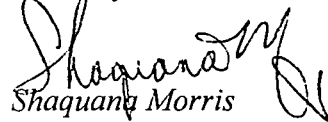
Please be advised that this office in concurrence with our client, **Bank of America**, agrees to accept one payment in the amount of **\$3,000.00** in settlement of the above referenced account.

Said sum must be in the form of a **money order** to be received by this office on or before **April 29, 2009**.

Upon clearance of your money order payment, a letter will be provided to you stating said account has been "**Settled**". Furthermore this office agrees to advise our client to update your credit report accordingly.

If there should be any questions with respect to this matter, don't hesitate to contact this office at 866-837-4889.

Sincerely,

  
Shaquana Morris  
Manager,  
Collection Operations

SML/cs

Note\* This communication is from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

828-894-5550

PAYER FEDERAL NATL MORTGAGE ASSOC  
C/O FLAGSTAR BANK, FSB  
5151 CORPORATE DRIVE  
TROY, MI 48098-2639

RECIPIENT

CHARLES MOORE II  
4363 SPA DRIVE APT 204  
LITTLE RIVER, SC 29566

<input type="checkbox"/> CORRECTED (if checked)		OMB No. 1545-0877	Acquisition or Abandonment of Secured Property	
		2008		
		Form 1099-A	Copy B For Borrower  This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.	
1 Date of lender's acquisition or knowledge of abandonment	2 Balance of principal outstanding	10/08/08		\$ 73,047.27
3	4 Fair market value of property			\$ 73,047.27
5 Was borrower personally liable for repayment of the debt?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
6 Description of property		2250 COOPERUNIT E2 PUNTA GORDA, FL. 33950		
PAYER'S Federal identification number		RECIPIENT'S identification number		
52-0883107		244-43-1757		
Account number (see instructions)				
FS501106735				

Form 1099-A

(keep for your records)

Department of the Treasury - Internal Revenue Service

**Instructions for Borrower**

Certain lenders who acquire an interest in property that was security for a loan or who have reason to know that such property has been abandoned must provide you with this statement. You may have reportable income or loss because of such acquisition or abandonment. Gain or loss from an acquisition generally is measured by the difference between your adjusted basis in the property and the amount of your debt canceled in exchange for the property, or, if greater, the sale proceeds. If you abandoned the property, you may have income from the discharge of indebtedness in the amount of the unpaid balance of your canceled debt. You also may have a loss from abandonment up to the adjusted basis of the property at the time of abandonment. Losses on acquisitions or abandonments of property held for personal use are not deductible. See Pub. 544, Sales and Other Dispositions of Assets, for information about foreclosures and abandonments.

**Property** means any real property (such as a personal residence); any intangible property; and tangible personal property that is held for investment or used in a trade or business.

If you borrowed money on this property with someone else, each of you should receive this statement.

**Account number.** May show an account or other unique number the lender assigned to distinguish your account.

**Box 1.** For a lender's acquisition of property that was security for a loan, the date shown is generally the earlier of the date title was transferred to the lender or the date possession and the burdens and benefits of ownership were transferred to the lender. This may be the date of a foreclosure or execution sale or the date your right of redemption or objection expired. For an abandonment, the date shown is the date on which the lender first knew or had reason to know that the property was abandoned or the date of a foreclosure, execution, or similar sale.

**Box 2.** Shows the debt (principal only) owed to the lender on the loan when the interest in the property was acquired by the lender or on the date the lender first knew or had reason to know that the property was abandoned.

**Box 4.** Shows the fair market value of the property. If the amount in box 4 is less than the amount in box 2, and your debt is canceled, you may have cancellation of debt income. If the property was your main home, see Pub. 523, Selling Your Home, to figure any taxable gain or ordinary income.

**Box 5.** Shows whether you were personally liable for repayment of the loan when the debt was created or, if modified, when it was last modified.

**Box 6.** Shows the description of the property acquired by the lender or abandoned by you. If "CCC" is shown, the form indicates the amount of any Commodity Credit Corporation loan outstanding when you forfeited your commodity.

# LOAN FROM FAMILY

## Charlie loan information

Date	Amount	For
6/15/2007	\$200.00	Cash advance
6/24/2007	\$876.20	Uhaul
7/12/2007	\$3,300.00	Car
7/23/2007	\$350.00	health ins. advance
10/2/2007	\$1,780.00	Loan to cover expenses until payday
8/1/2007	\$1,000.00	Loan to cover Punta Gorda Payment
8/29/2007	\$1,900.00	Loan to cover other expenses
12/17/2007	\$1,300.00	Loan to cover expenses until payday
<b>Total Loaned</b>	<b>\$10,706.20</b>	

8/1/2007	-\$700.00	Payment from Charlie
10/10/2007	-\$200.00	Oct 07 payment
11/3/2007	-\$1,400.00	Payment from Charlie
6/1/2008	-\$200.00	Payment from Charlie
7/11/2008	-\$200.00	Payment from Charlie
7/16/2008	-\$200.00	Payment from Charlie
10/2/2008	-\$300.00	Payment from Charlie

<b>Total Loaned</b>	<b>\$10,706.20</b>	<b>Total due 2008</b>	<b>\$2,400.00</b>
<b>Total Paid</b>	<b>-\$3,200.00</b>	<b>Total Paid 2008</b>	<b>\$900.00</b>
<b>Total Owed</b>	<b>\$7,506.20</b>	<b>Outstanding for 2008</b>	<b>\$1,500.00</b>

*This speaks for itself -!  
We love you,  
P. Ralph, Mama*

T a x B i l l I n q u i r y

Bill Nbr: 09A1635957                      Bill Date: 07/10/09                      Bill Status: C  
 Account: 15183159 MOORE, CHARLES II                      Bill Class: RR  
 Desc/Loc: 346 STONE MTN FARM RD                      Bill Type: R  
 Parcel ID: 16-35957  
 Map/Bik/Lt: 528 1 13 U                      District: 02 CHIMNEY ROCK                      Tax Year(s): 09  
 Real Value:                      29,000  
 Pers Value:                      Principal:                      5.60  
 Exemptions:                      0                      Interest:                      0.13                      as of 08/18/10  
 Deferments:                      0                      Bal Due:                      5.73

Ln	Eff Date:	Trans:	Amount:	Paid By:	Reference:
1	03/05/10	ADDITION	2.00		A01*10*3*3817
2	03/31/10	MAIL-IN	261.48-	RPS	RPS*10*90*49
3					
4					
5					

Enter detail(/), date(D), receipt(Ln#), report(P), trans inq(T), toggle(G), or return<CR>

8/18/2010 4:14:50 PM I

Please pay the highlighted delinquent outstanding taxes to clear your account. Thanks.

Charles A. Moore  
4363 Spa Dr - Apt 204  
Little River, SC 29566

RE: Mortgage Loan  
Account #\*\*\*\*\*17-41

## NOTICE OF DEFAULT, OPPORTUNITY TO CURE, AND INTENT TO FORECLOSE

Dear Mr. Moore:

Under the provisions of the deed of trust dated February 14, 2006, your above referenced indebtedness to the State Employees' Credit Union is in default due to non-payment of the payment due April 15, 2009, and subsequent monthly installments. The total amount past due at this time is \$1,762.00 with another payment of \$627.00 coming due July 15, 2009.

Within forty-five (45) days from the date of this letter, you may cure the default by payment of \$3,016.00 plus any attorney fees that may be due. If the default is not cured in the time allowed, the entire principal balance will be declared due without further demand and we will proceed to foreclose and sell the property.

**Payment in full of the past due amount should be made by cash or certified check to State Employees' Credit Union within forty-five (45) days from the date of this notice. **If you submit to the State Employees' Credit Union any payment insufficient to pay the entire past due amount such payments WILL NOT CANCEL the effect of this notice.** If such insufficient payments are received and credited to your account, no waiver or prejudice to any right the State Employees' Credit Union may have for breach of any promissory note or covenant in the deed of trust will result, and the State Employees' Credit Union may proceed as though no such payment had been made.**



Recycled  
Paper

3101 Wake Forest Road P.O. Drawer 25279 Raleigh, NC 27609 (919) 839-5018

"Equal Employment/Affirmative Action Employer, M/F"

7. hawnt.com (INFORMATION)

# Feinberg v. Pfeiffer Co. – Case Brief Summary

Summary of *Feinberg v. Pfeiffer Co.*, 322 S.W.2d 163 (Mo.App.1959).

## Facts

Feinberg (P) worked for Pfeiffer Co. (D) for 37 years, attaining the positions of bookkeeper, office manager, and assistant treasurer. In 1947 the Board of Directors adopted a resolution recognizing Feinberg's long and faithful service by increasing her salary from \$350 to \$400 per month and offering her \$200 per month for life after retirement. The Chairman stated that the resolution had been adopted to provide her with financial security. Feinberg testified that she would have continued in her position whether or not the resolution had been passed by the Board. Feinberg retired a year and a half later and received \$200 per month for several years. The retirement plan was a major factor in her decision to retire. Several years later a new president of Pfeiffer Co. decided that the payments were mere gratuities and notified Feinberg that her payments would be reduced to \$100 per month. Feinberg refused to accept the reduced amount and Pfeiffer terminated all payments.

Feinberg sued for breach of contract. The trial court found that there was no consideration because the pension had been given for past acts; however, the trial court held that Feinberg was entitled to damages because she had justifiably relied on Pfeiffer's promise. The trial court awarded Feinberg \$5,100 for the amount of pension due plus interest. Pfeiffer appealed.

## Issues

1. Is past performance valid consideration to render a promise enforceable?
2. Is a gratuitous promise enforceable if the promisee justifiably relies on the promise?

## Holding and Rule

1. No. Past performance is not valid consideration to render a contract enforceable.
2. Yes. A gratuitous promise is enforceable if the promisee justifiably relies on the promise.

Promissory estoppel: a promise which the promissor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise, even if the promise was given without consideration. Past performance is not valid consideration to support a promise.

The appellate court held that there was ample evidence to support the trial court's findings that Feinberg would not have terminated her employment if she had not known and relied on Pfeiffer's promise to pay her \$200 per month for life, and that Feinberg relied on the continued receipt of the monthly pension. Consideration may be either a benefit to the promissor or a loss or detriment to the promisee. The court held that the doctrine of promissory estoppel supported Feinberg's action. The action that was induced was Feinberg's retirement from a lucrative position in reliance on Pfeiffer's promise to pay her a pension. Feinberg justifiably relied on Pfeiffer's promise by retiring earlier than she planned. The court held that, by retiring, Feinberg's reliance upon the promise contained in the resolution created an enforceable contract under the doctrine of promissory estoppel.

## **Disposition**

Judgment for Feinberg affirmed.

## **Notes**

The court explained that there are three theoretical justifications for promissory estoppel:

1. theory of act for promise in that the induced action or forbearance is the consideration for the promise (Underwood);
2. theory of promissory estoppel wherein the induced action or forbearance works an estoppel against the promisor (Sheidly); and
3. the theory of bilateral contract: when the induced action or forbearance is commenced, a promise to complete is implied and an enforceable bilateral contract is formed, the implied promise being the consideration for the original promise.

## B. VERIZON WIRELESS STATEMENT

NOTE: HAS BEEN ORDERED!  
BUT DO NOT THINK IT  
MATTERS UNTIL CLARIFICATION  
OF THE NOVEMBER MEETING  
IS CLARIFIED.

9. WEBSTERS

A. TO BGT TO INCLUDE

PURPOSE WAS TO INCLUDE

DEFINITIONS OF ESTOPPEL,

QUASI CONTRACT, HARM ETC.

10. PUNISHMENT AND PROPORTIONALITY:  
THE ESTOPPEL APPROACH.

THE JOURNAL OF LIBERTARIAN  
STUDIES (1996).

# PUNISHMENT AND PROPORTIONALITY: THE ESTOPPEL APPROACH

N. Stephan Kinsella\*

---

*It is easier to commit murder than to justify it.*  
—Papinian<sup>1</sup>

## I. Introduction

No doubt punishment serves many purposes. It can deter crime and prevent the offender from committing further crimes. Punishment can even rehabilitate some criminals, if it is not capital. It can satisfy a victim's longing for revenge, or his relatives' desire to avenge. Punishment can also be used as a lever to gain restitution, recompense for some of the damage caused by the crime. For these reasons, the issue of punishment is, and always has been, of vital concern to civilized people. They want to know the effects of punishment and effective ways of carrying it out.

People who are civilized are also concerned about *justifying* punishment. They want to punish, but they also want to know that such punishment is justified—they want to legitimately be able to punish.<sup>2</sup> Hence the interest in punishment theories. As pointed out by Murray Rothbard in his short but insightful discussion of punishment and proportionality, however, the theory of punishment has not been adequately developed, even by libertarians.<sup>3</sup>

---

\* N. Stephan Kinsella practices computer software and hardware patent law with Schnader Harrison Segal & Lewis in Philadelphia. Internet: kinsella@shsl.com. In accordance with the author's request, the footnote and citation style used in this article is primarily consistent with law review format. The author would like to thank Professor Hans-Hermann Hoppe and Jack Criss for encouragement and for helpful comments on an earlier draft of this article.

<sup>1</sup> Papinian (Aemilius Papinianus), quoted in BARRY NICHOLAS, *AN INTRODUCTION TO ROMAN LAW* (Oxford: Clarendon Press, 1962), p. 30 n.2. Papinian was a jurist in Rome in the third century A.D., and is considered by many to be the greatest of Roman jurists. "Papinian is said to have been put to death for refusing to compose a justification of Caracalla's murder of his brother and co-Emperor, Geta, declaring, so the story goes, that 'it is easier to commit murder than to justify it'." *Id.* at 30 n.2.

<sup>2</sup> The distinction between the effects or utility of punishment and the reason we have a right to punish has long been recognized. See, e.g., IV WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* \*7-\*13, §§ 7(a)-7(c); F.H. BRADLEY, *ETHICAL STUDIES* 26-27 (2d ed., London: Oxford University Press, 1927); H.L.A. HART, *PUNISHMENT AND RESPONSIBILITY* 73-74 (New York: Oxford University Press, 1968).

<sup>3</sup> MURRAY N. ROTHBARD, *Punishment and Proportionality*, ch. 13 in *THE ETHICS OF LIBERTY* (Atlantic Highlands, N.J.: Humanities Press, 1982) [hereinafter, Rothbard, *Ethics*], at p. 85. This chapter appeared in substantially the same form in Rothbard, *Punishment and Proportionality*, in *ASSESSING THE CRIMINAL: RESTITUTION, RETRIBUTION, AND THE LEGAL PROCESS* (Randy E. Barnett & John Hagel III, eds., Cambridge, Mass.: Ballinger, 1977), ch. 11, pp. 259-70. See also Rothbard's article *King on Punishment: A Comment*, 4 J. LIBERTARIAN STUD. 167 (1980) (commenting on J. Charles King, *A Rationale for Punishment*,

In this article I will attempt to explain how punishment can be justified. The right to punish discussed herein applies to property crimes such as theft and trespass as well as to bodily-invasive crimes such as assault, rape, and murder. As will be seen, a general retributionist/retaliatory, or *lex talionis*, theory of punishment is advocated, including related principles of proportionality. This theory of punishment is largely consistent with the libertarian-based *lex talionis* approach of Murray Rothbard.<sup>4</sup>

## II. Punishment and Consent

What does it mean to punish? Dictionary definitions are easy to come by, but in the sense that interests those of us who want to punish, punishment is the infliction of physical force on a person, in response to something that he has done or has failed to do. Punishment thus comprises physical violence committed against a person's body, or against any other property that a person legitimately owns, against any rights that a person has. Punishment is *for*, or *in response to*, some action, inaction, feature, or status of the person punished; otherwise, it is simply random violence, which is not usually considered to be punishment. Thus when we punish a person, it is because we consider him to be a wrongdoer of some sort. We typically want to teach him or others a lesson, or exact vengeance or restitution, for what he has done.

If wrongdoers always consented to the infliction of punishment once they were convicted of a crime, we would not need to justify punishment—it would be justified by the very consent of the purported wrongdoer. As the great Roman jurist Ulpian hundreds of years ago summarized this common-sense insight, “there is no affront [or injustice] where the victim consents.”<sup>5</sup> It is only when a person resists us, and refuses to consent to being punished, that the need to justify punishment arises. As John Hospers notes, what is troublesome about punishment “is that in punishing someone, we are forcibly *imposing* on him something against his will, and of which he may not approve.”<sup>6</sup>

I will thus seek to justify punishment exactly where it needs to be justified:

---

4 J. LIBERTARIAN STUD. 151 (1980)). For additional discussion of various punishment-related theories, see CRIMINAL JUSTICE? THE LEGAL SYSTEM VS. INDIVIDUAL RESPONSIBILITY (Robert James Bidinotto, ed., Irvington-on-Hudson, New York: Foundation for Economic Education, Inc., 1994); PHILOSOPHICAL PERSPECTIVES ON PUNISHMENT (Gertrude Ezorsky, ed., Albany: State University of New York Press, 1972); THEORIES OF PUNISHMENT (Stanley E. Grupp, ed., Bloomington: Indiana University Press, 1971); and Hart, *supra* note 2.

<sup>4</sup> Professors Barnett and Hagel state that Rothbard's punishment theory, “with its emphasis on the victim's rights, . . . is a significant and provocative departure from traditional retribution theory which, perhaps, merits a new label.” Barnett and Hagel, *supra* note 3, at 179.

<sup>5</sup> Ulpian (Domitius Ulpianus), *Edict, book 56*, 4 THE DIGEST OF JUSTINIAN (eds. Theodor Mommsen, Paul Krueger, & Alan Watson, Philadelphia: University of Pennsylvania Press, 1985), at Book 47, § 10.1.5 (*nulla iniuria est, quae in volentem fiat*). As Richard Epstein explains, “The self-infliction of harm generates no cause of action, no matter why inflicted. There is no reason, then, why a person who may inflict harm upon himself should not, *prima facie*, be allowed to have someone else do it for him.” Richard A. Epstein, *Intentional Harms*, 4 J. LEGAL STUD. 391, 411 (1975).

<sup>6</sup> John Hospers, *Retribution: The Ethics of Punishment*, in Barnett & Hagel, eds., *supra* note 3, at 190.

at the point at which we attempt to inflict punishment upon a person who opposes the punishment. In short, we may punish one who has initiated force, in a manner proportionate to his initiation of force and to the consequences thereof, exactly because he cannot coherently object to such punishment. It makes no sense for him to object to punishment, because this requires that he maintain that the infliction of force is wrong, which is contradictory because he intentionally initiated force himself. Thus, he is *estopped*, to use related legal terminology, or precluded, from denying the legitimacy of his being punished, from withholding his consent.<sup>7</sup> As shown below, this reasoning may be used to develop a theory of punishment.

### III. Punishment and Estoppel

#### A. Legal Estoppel

ARGUMENT

*Estoppel* is a well-known common-law principle that prevents or precludes someone from making a claim in a lawsuit that is inconsistent with his prior conduct, if some other person has changed his position to his detriment in reliance on the prior conduct (referred to as "detrimental reliance"). Estoppel thus denies a party the ability to assert a fact or right that he otherwise could. Estoppel is a widely-applicable legal principle that has countless manifestations.<sup>8</sup> The Roman law and today's civil law contain the similar doctrine *venire contra factum proprium*, or "no one can contradict his own act." Under this principle, "no one is allowed to ignore or deny his own acts, or the consequences thereof, and claim a right in opposition to such acts or consequences."<sup>9</sup> The principle behind estoppel can also be seen in common sayings such as "actions speak louder than words," "practice what you preach" or "put your money where your mouth is," all of which embody the idea that actions and assertions should be consistent. As Lord Coke stated, the word "estoppel" is used "because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth."<sup>10</sup>

For legal estoppel to operate, there usually must have been detrimental reliance by the person seeking to estop another.<sup>11</sup> A showing of detrimental reliance is required because, until a person has relied on another's prior action or representation, the action or representation has not caused any harm to others and thus there is no reason to estop the actor from asserting the truth or from rejecting the prior conduct.<sup>12</sup>

As an example, in the recent case *Zimmerman v. Zimmerman*, a daughter

<sup>7</sup> For an earlier presentation of ideas along these lines, see N. Stephan Kinsella, *Estoppel: A New Justification for Individual Rights*, REASON PAPERS No. 17 (Fall 1992), p. 61.

<sup>8</sup> See, e.g., 28 AM. JUR. 2D, *Estoppel and Waiver*.

<sup>9</sup> Saül Litvinoff, *Still Another Look at Cause*, 48 LA. L. REV. 3, 21 (1987).

<sup>10</sup> 2 LORD COKE, COMMENTARY UPON LITTLETON 352a (1628), quoted in 18 AM. JUR. 2D, *Estoppel and Waiver*, § 1. In the remainder of this paper, the expression "estoppel" or "dialogical estoppel" refers to the more general, philosophical estoppel theory developed herein, as opposed to the traditional theory of *legal* estoppel, which will be denoted "legal estoppel."

<sup>11</sup> *Bellsouth Advertising & Publishing Corporation v. Gassenberger*, 565 So.2d 1093, 1095 (La. App. 4th Cir. 1990).

<sup>12</sup> See *Dickerson v. Colegrove*, 100 U.S. 578, 586 (1879).

sued her father for tuition fee debts she had incurred during her second and third years at college.<sup>13</sup> In this case, when the daughter was a senior in high school, the father promised to pay her tuition fees and related expenses if she attended a local college (Adelphi University). However, the promise was a "mere" promise, because it was not accompanied by the requisite legal formalities such as consideration, and therefore did not constitute a normally binding contract. Nevertheless, during her first year at college, her father paid her tuition for her, as he had promised. However, he failed to pay her tuition during the second and third years, although he repeatedly assured her during this time that he would pay the tuition fees when he had the money. This resulted in the daughter's legal obligation to pay approximately \$6,700 to Adelphi. In this case, although the promise itself did not give rise to an enforceable contract (because of lack of legal formalities such as consideration), it was found that the father should have reasonably expected that his daughter would rely on his promise, and that she did in fact rely on the promise, taking substantial action to her detriment or disadvantage (namely, incurring a debt to Adelphi). Therefore, the daughter was awarded an amount sufficient to cover the unpaid tuition. The father was, in effect, estopped from denying that a contract was formed, even though one was not.<sup>14</sup>

### *B. Dialogical Estoppel*

As can be seen, the heart of the idea behind legal estoppel is the idea of consistency. A similar concept, "dialogical estoppel," can be used to justify the libertarian conception of rights, because of the reciprocity inherent in the libertarian tenet that force is legitimate only in response to force. The basic insight behind this theory of rights is that a person cannot consistently object to being punished if he has himself initiated force. He is (dialogically) "estopped" from asserting the impropriety of the force used to punish him, because of his own coercive behavior. This theory also establishes the validity of the libertarian conception of rights as being strictly negative rights against aggression, the initiation of force.<sup>15</sup>

The point where punishment needs to be justified is when we attempt to inflict punishment upon a person who opposes the punishment. Thus, using a philosophical, generalized version of "dialogical" estoppel, I want to justify punishment in just this situation, by showing that an aggressor is estopped from objecting to his punishment. Under the principle of dialogical estoppel, or simply estoppel for short, a person is estopped from making certain claims during discourse if these claims are inconsistent and contradictory. To say

<sup>13</sup> *Zimmerman v. Zimmerman*, 86 A.D.2d 525, 447 N.Y.S. 2d 675 (Sup. Ct. 1982).

<sup>14</sup> The concept of "detrimental reliance" actually involves circular reasoning, however, for reliance on performance is not "reasonable" or justifiable unless one already knows that the promise is enforceable, which begs the question. See, e.g., Randy E. Barnett, *A Consent Theory of Contract*, 86 COLUMBIA L. REV. 269, 274-76 (1986). The legitimacy of the traditional legal concept of detrimental reliance is irrelevant here, however.

<sup>15</sup> As used herein, "Aggression" is defined as the *initiation* of the use or threat of physical violence against the person or property of anyone else." MURRAY N. ROTHBARD, *FOR A NEW LIBERTY: THE LIBERTARIAN MANIFESTO* 23 (rev'd ed'n, New York: Libertarian Review Foundation, 1985)

11. Wachovia Bank of South Carolina,  
N.A. v. MARTHA B. Thomas.  
(RESPONENTS Refused Case)

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

Wachovia Bank of South Carolina, N.A.,  
Respondent,

v.

Martha B. Thomasko, Appellant.

---

Appeal From Georgetown County  
Sidney T. Floyd, Circuit Court Judge

---

Opinion No. 3140  
Submitted March 7, 2000 - Filed March 27, 2000

---

**AFFIRMED**

---

William Isaac Diggs, of Myrtle Beach, for  
appellant.

Douglas M. Zayicek, Henrietta Golding and  
Mary Anna Malpass, all of Bellamy,  
Rutenberg, Copeland, Epps, Gravely &  
Bowers, of Myrtle Beach, for respondent.

---

**GOOLSBY, J.:** Wachovia Bank of South Carolina, N.A., brought this action for unjust enrichment to recover an overpayment to Martha B. Thomasko that occurred when she exchanged foreign currency at the bank. The trial court granted Wachovia summary judgment and ordered Thomasko to repay Wachovia \$21,213.64, plus prejudgment interest. Thomasko appeals. We affirm. <sup>(1)</sup>

On March 10, 1997, Thomasko presented 183,000 Mexican pesos and 78,000 Spanish pesetas to the Wachovia branch in Spartanburg and requested United States currency in exchange. The teller mistakenly calculated the value of the foreign currency as \$21,741.10. The teller issued Thomasko a cashier's check in the amount of \$21,503.44. The check represented the exchange for both the pesos and the pesetas (\$21,741.10), minus a \$237.66 transaction fee.

Two days later, on March 12, 1997, Wachovia determined the currency presented by Thomasko was actually worth \$527.46, instead of \$21,741.10. The error arose from the teller's miscalculation of the pesos' value. (2)

In January 1993, the Mexican government devalued the peso by a factor of 1,000. The Mexican government issued "nuevo pesos" that equaled 1,000 old pesos. The government circulated the new pesos and the old pesos jointly. Due to the devaluation, Thomasko's old pesos were actually worth only 183 new pesos. On March 10, 1997, the exchange rate for new pesos was 8.6179 cents per peso.

Immediately upon discovering its error, Wachovia contacted Thomasko seeking recovery of the overpayment. Wachovia informed Thomasko of the error and sought a return of the \$21,216.64 overpayment. (3) Thomasko, however, refused to repay Wachovia. After several subsequent attempts to collect the overpayment failed, Wachovia filed an action for unjust enrichment on May 5, 1997.

In her answer, Thomasko maintained she should not be required to return the excess funds because she had already spent the money to pay previously incurred medical bills. She also alleged she was financially incapable of returning the overpayment. Thomasko further alleged she relied upon Wachovia's representations as to the value of the foreign currency and Wachovia was negligent in ascertaining its true value. Thomasko sought either a dismissal of Wachovia's action or an offset for damages caused by Wachovia's alleged negligence. The trial court awarded summary judgment to Wachovia, finding it had "clearly made a case for restitution based on unjust enrichment" and finding Thomasko's defenses to be without merit.

Thomasko contends the trial court erred in granting Wachovia summary judgment because she submitted affidavits establishing that: (1) she is not physically well; (2) she no longer has the money given to her by the bank; (3) she is no longer employed; and (4) requiring her to pay restitution "would work an extreme financial hardship." Thomasko asserts "[b]ecause there is a factual dispute about whether [she] learned of the error before she paid her medical expenses or afterwards . . . summary judgment [is] inappropriate." We disagree.

In 1879, our supreme court held, "There can be no doubt of the correctness of the legal proposition that, where money is paid under a mistake of fact, to a person who has no ground in conscience to claim it, the person paying it may recover it back." (4)

Thomasko asserts detrimental reliance as a defense. The trial court found that even if detrimental reliance were a defense, Thomasko did not show any change in position because she admittedly used the money to pay pre-existing medical bills.

In an action to seek repayment of money paid under mistake of fact, it is generally no defense that the money has been spent or paid over to another. (5) Under limited circumstances, however, repayment will not be required where the recipient detrimentally relied on the overpayment. (6) For Thomasko to prevail under a theory of detrimental reliance, she is required to demonstrate that in paying back the money, she would suffer a greater detriment than she would have incurred had she never received the overpayment. (7)

In the present case, Thomasko has failed to establish detrimental reliance. Mere payment of pre-existing debts is insufficient to establish such reliance. <sup>(8)</sup> By requiring Thomasko to repay Wachovia, the court is simply restoring her to the same status she occupied prior to her receipt of the overpayment.

Further, Thomasko's assertion that the currency was worth more when she first acquired it is immaterial. Thomasko was only entitled to the value of the foreign currency as of March 10, 1997, the date of the exchange. The fact that it may have been worth more at one time is not relevant. <sup>(9)</sup>

To the extent Thomasko argues summary judgment is inappropriate because there is a question of fact as to whether the mistake in this case was mutual or unilateral, Thomasko did not raise this issue below; therefore, it is not preserved for our review. <sup>(10)</sup>

Viewing the evidence in the light most favorable to Thomasko, we find the trial court properly granted summary judgment for Wachovia.

**AFFIRMED.**

**CONNOR and HOWARD, JJ., concur.**

1. We decide this case without oral argument pursuant to Rule 215, SCACR.
2. Thomasko was given \$506.23 for the 78,000 Spanish pesetas. There was no error made in this exchange.
3. The overpayment of \$21,213.64 is the difference between the miscalculated value of the foreign currency (\$21,741.10) and the asserted actual value (\$527.46).
4. Glenn v. Shannon, 12 S.C. 570, 570 (1879). See also Pilot Life Ins. Co. v. Cudd, 208 S.C. 6, 36 S.E.2d 860 (1945) (holding the general rule is that money paid to another under a mistake of fact may be recovered because the money belongs, in equity and good conscience, to the person who paid it).
5. See Castock Corp. v. Bailey, 492 N.Y.S.2d 921 (Sup. Ct. 1985) (the fact that recipient has parted with the money is an insufficient excuse to forgive repayment); 70 Am. Jur. 2d Payment § 114(c) (1987) (no defense where money has been paid to another or spent).
6. See Pilot Life, 208 S.C. at 14, 36 S.E.2d at 863 (noting that repayment would be just provided there had been no change in position); 70 Am. Jur. 2d Payment § 114(c) (1987) ("In general, where a payee has suffered a detriment or has materially and irrevocably changed his position to his prejudice in reliance on the payment and cannot be placed in the statu[s] quo, the payment cannot be recovered . . . .").
7. 70 Am. Jur. 2d Payment § 114(c) (1987).
8. Castock, 492 N.Y.S.2d 921.
9. Cf. Brabham v. Crosland, 25 S.C. 525, 1 S.E. 33 (1886) (holding that where guardian

received proceeds from the sale of real estate in Confederate currency but it had not been paid over, the ward assumed the risk in the loss of value as the currency was legal tender at the time it was received and the guardian was not responsible for the devaluation).

10. SSI Medical Services v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990).

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL  
THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Docket no. 10-AJL-30-0910-CC

Charles Moore,

Appellant,

v.

S C Department of Employment and  
Workforce,

Respondent.

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Letter of Approval for unemployment benefits from SCDEW.
2. Payment history and record of income from SCDEW.
3. Letter of corrected determination for unemployment benefits from SCDEW.
4. SCDEW application for waiver of no fault overpayment
  - a. financials
  - b. debts.
  - c. assets
5. Letters to SCDEW explanations of absense and reason during SCDEW appeal hearings.
6. Coresspondence letters from Appellant to SCDEW.
7. Verizon phone bill
8. Lawnix. com: Summary of Feinburg v. Pfeiffer Co., 322 S.W. 2d 163 (Mo. App1959)
9. Verizon Wirless cell phone statement.
10. Webster's dictionary
11. "Punishment and Proportionality: The Estoppel Approach. The journal of Libertarian Studies. (1996).

I certify that this designation contains no matter which is irrelevant to this appeal.

Pro Se  
Charles A. Moore II  
618 Waterway Villa Blvd  
Apt 23d  
Myrtle Beach SC 29579

*CAW*  
*7-18-2012*

CERTIFICATE OF COUNSEL ON DESIGNATION OF MATTER

---

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

---

Docket no. 10-AJL-30-0910-CC

---

Charles Moore,

Appellant,

v.

S C Department of Employment and  
Workforce,

Respondent.

---

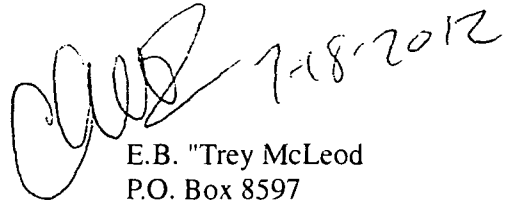
CERTIFICATE OF COUNSEL ON DESIGNATION OF MATTER

---

E.B. "Trey McLeod  
P.O. Box 8597  
Columbia S.C. 29202  
803-737-2666  
Attorney for Respondent

Charles A. Moore II  
618 Waterway Villa Blvd  
Apt 23d  
Myrtle Beach SC 29579  
Pro Se

I, Charles Austin Moore II, Appellant, certify that the Designation of Matter contains all material proposed to be included , to the best of my knowledge and experience, by any other party and not any other material.



E.B. "Trey" McLeod  
P.O. Box 8597  
Columbia S.C. 29202  
803-737-2666  
Attorney for Respondent

Charles A. Moore II  
618 Waterway Villa Blvd  
Apt 23d  
Myrtle Beach SC 29579  
Pro Se