THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank Addy, Circuit Court Judge

Case No. 2009-CP-24-1181

Anjay Patel, Mani Investments, LLC d/b/a Cornerstop Stores, and Mani One Inc.,

Appellants

Vs.

The Garrett Law Firm PC, Carson M. Henderson, Billy J Garrett, Jr., T. Scott Ward, One Stop Marina, Inc., Greenwood Realty, Inc., Renee Simchon
** Of which, The Garrett Law Firm PC, Carson M. Henderson and Billy J. Garrett, Jr. are Respondents

Respondents,

FINAL BRIEF OF APPELLANT

A Business Law Firm, LLC
Thomas A. Belenchia – SC Bar 2371
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Post Office Box 3421
Spartanburg, South Carolina 29304
864-439-8401
ATTORNEYS FOR APPELLANT

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1. By granting Summary Judgment the lower court erred by ruling that there was no material issue of fact regarding the establishment of an Attorney-Client Relationship.

2. By granting Summary Judgment the lower court erred by ruling that there was no material issue of fact regarding the Breach of Duty owed the Appellants by the Respondents.

3. By granting Summary Judgment the lower court erred by ruling that there was no material issue of fact regarding the Proximate Cause of the damages suffered by the Appellants.

4. By granting Summary Judgment the lower court erred by ruling that there was no material issue of fact regarding the Damages suffered by the Appellants.

STATEMENT OF THE CASE

This matter is before the Court pursuant to an Appeal filed by the Appellants based on a Summary Judgment ruling against the Appellants as well as a Motion to Reconsider ruling against the Appellants.

This action was filed on August 13, 2009. The Complaint asserts Attorney Negligence, Realtor Negligence, Resulting/Constructive Trust, Breach of Contract, Specific Performance and Quantum Meruit allegations against The Garrett Law Firm, Carson Henderson, Billy Garrett, T. Scott Ward (property owner) and Renee Simchon (Realtor). These claims were based upon a real estate transaction between the Appellant(s) and the Respondent(s).

The Appellants contacted the Realtor, Renee Simchon, regarding the purchase of property from T. Scott Ward. A Commercial Purchase Agreement and Deposit Receipt **(See Commercial Purchase Agreement and Deposit Receipt)** (hereinafter referred to as a "Purchase Agreement") was prepared whereupon the Appellants would purchase the property from Mr. Ward. The Realtor, in the Purchase Agreement, wrote that the Attorneys for the paperwork and closing would be The Garrett Law Firm. The Purchase Agreement also contained a clause whereby the Appellants were required to pay a $100,000.00 down payment at the closing.

During the time the Appellant was occupying the building, which he though he purchased, he made payments according to the Amortization schedule as provided in the Purchase Agreement. These payments were applied toward the principle and interest which in turn lowered the amount owed. This contract was not a straight lease contract but was being treated as an installment contract whereby each payment made lowered the amount of principle due. These payments were made for

over three (3) years. During that three (3) year time the Appellant gained an equitable interest in the property but due to the Respondents protecting the interests and rights of one client over the other, the Appellant lost his equitable interest in the property. It was only after the Appellant received a letter stating he failed to exercise his option, did he realize that the Attorney's had failed to create a simple purchase agreement but instead had created a lease with an option to buy agreement, favoring one client's interest over the other.

The Appellant in several statements and affidavits asserted that he considered The Garrett Law firm to be his attorneys and representatives during this process. The Garrett Law Firm prepared the contract but instead of a Deed for Title/Deed with owner financing, Note and Mortgage, the Garrett Law Firm prepared a lease with an option to purchase.

During the term the Contract was in place, it was alleged the Appellants failed to assert their option to purchase or that the wrong entity attempted to assert the option. This matter came before Judge Griffith during a 12(b)(6) Motion Hearing filed by all Respondents, whereby Judge Griffith dismissed the claims against all prior Defendants except the Respondents, the Garrett Law Firm, Carson Henderson and Billy Garrett. The Judge asserted that after reviewing all the evidence he found the case had merit and should proceed.

STATEMENT OF THE FACTS

On August 13, 2009 Appellant Mani Investment, LLC and Anjay Patel filed a Summons and Complaint in Greenwood County alleging Attorney Negligence, Realtor Negligence, Resulting/Constructive Trust, Breach of Contract, Specific Performance and Quantum Meruit allegations against The Garrett Law Firm, Carson Henderson, Billy Garrett, T. Scott Ward (property owner) and Renee Simchon (Realtor). These claims were based upon a real estate transaction between the Appellant(s) and the Respondent(s). These claims were based upon a real estate transaction (as it was the intention for the Defendant Ward to Sell his property to the Appellant Mani Investments and Anjay Patel) between Appellant and Respondent Ward and are more fully detailed in Appellant's Complaint. (See Purchase Agreement).

The Respondents and other Defendants filed a Motion to Dismiss all claims and Judge Griffith agreed that the complaint against T. Scott Ward and One Stop Marina should be dismissed. However, Judge Griffith ruled that malpractice causes of action against the Garrett Law Firm, Billy Garrett and Carson Henderson should move forward. (Judge Griffith Transcript and Form 4).

On October 12, 2010 Respondents filed a Motion for Summary Judgment on the remaining claim in the lawsuit – that of Malpractice, before Judge Addy. During that same hearing, the Appellant presented an Affidavit from the Appellant and testimony from Appellant's deposition, where the Appellant asserted that "at all times he considered the Garrett Law Firm as his attorneys". Additionally, the Appellants submitted the Affidavit of a recognized expert in the matter of Real Estate and Legal Malpractice, Mr. Roof, whereby he pointed to multiple instances where not only did

it appear that the Garrett Law Firm represented the Appellants and the other party (seller) but additionally the Garrett Law Firm prepared the contract so that it favored the other party (seller) (See Exhibit C - Roof Expert Opinion).

The Court reached its decision granting Summary Judgment in favor of the Respondents on November 11, 2010. The Appellants immediately filed a timely Motion to Reconsider based on South Carolina Rules of Civil Procedure Rule 59 and Rule 60.

On January 24, 2011 Judge Addy issued his decision, denying the Appellant's Rule 59 and Rule 60 Motion to Reconsider.

STANDARD OF REVIEW

When the Court reviews the granting of a summary judgment motion, the court applies the same standard of review as the trial court under South Carolina Rules of Civil Procedure Rule 56, *Miller v. Blumenthal Mills Inc,356 S.C. 204 (2005).* Accordingly, Summary judgment is proper when no issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law, SCRCP Rule 56(c). In making the determination as to whether any triable issue of fact exists, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Pye v. Estate of Fox 369 S.C. 555 (2006).*

The Court in *McNair and McNair v. Rainsford et al 369 S.C.332,* found that "a motion for Summary Judgment shall be granted if pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and moving party is entitled to judgment as a matter of law". Furthermore they found that "determining whether to grant summary judgment, the pleadings and documents on file must be liberally construed in favor of the nonmoving party who must be given the benefit of all favorable inferences that might reasonable be drawn from records. If triable issues exist, those issues must go to the jury" *McNair and McNair v. Rainsford et al 369 S.C.332, citing Rothrock v. Copeland 305 S.C. 402 (1991).*

The South Carolina Supreme Court recently ruled that "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *M&T Group*

LLC v. Plametto Point of Williamston LLC Opinion No. 26910, 391 S.C. 73 (January 7, 2011) citing Hancock v. Mid-South Mgmt. Co. Inc. 381 S.C. 326 (2009).

ARGUMENT

Whether the lower court erred in granting Summary Judgment to the Respondents (Garrett Law Firm, PC; Carson Henderson and Billy Garrett Jr.) when material issues of fact exist

At the center of this matter, there are several disputed material facts. Those facts alone make it necessary for this case to proceed to a jury. Since the only claim left in the lawsuit is that of Attorney Malpractice, there are outstanding issues of material facts in dispute. The disputed facts are (1) Was an Attorney-Client relationship created? (2) Was there a breach of duty in that relationship? (3) Was there Proximate cause? and (4) Were the Appellants damaged and if so to what extent?

The one additional fact that is the "elephant in the room" is the weight given by the lower court to the Affidavit of the Expert in this matter. The Expert, C. Joseph Roof, Esq. made it perfectly clear that in his professional opinion there was Attorney Malpractice in this case. Furthermore Mr. Roof pointed to multiple occasions where "The Garretts" (the Expert combined the Garrett Law Firm, Mr. Henderson and Mr. Garrett as one entity for the sake of typing) breached their duty owed to their client the Appellant.

It is well established law in South Carolina that in cases where malpractice is alleged that "there will usually be no genuine issue of material fact **unless** the Appellant presents expert testimony on the standard of care and its breach by the Respondents", *Jernigan v. King, 312 S.C. 331, 334 citing Botehlo v. Bycura, 282 S.C. 578, 320 S.E. 2d 59 (Ct. App 1984).* In the case at hand, the Expert's Affidavit had been filed with the complaint, handed to the Judge in the Summary Judgment hearing and filed with the court previously.

The claim of Attorney Negligence, Legal Malpractice has four (4) elements: (a) the existence

of an attorney-client relationship; (b) breach of a duty by the attorney; (c) proximate causation; (d) damage to the client.

a.) Existence of an Attorney-client relationship

In the case at hand, the Respondents The Garrett Law Firm, Carson Henderson and Billy Garrett (hereinafter known as the "Garretts") were hired to perform a closing for the Appellant. The Appellant in his affidavit and sworn deposition asserts that at all times he considered the "Garretts" his attorneys once he signed the Purchase Agreement . When in fact and according to the Deposition of Mr. Patel, the Garretts prepared a "lease with an option to purchase." (Patel Affidavit and Patel Deposition p 82 lns 11 – 15).

Appellant's Affidavit and Deposition state that at all times he considered the "Garretts" his attorneys. (Patel Deposition p. 83 lns 13 - 23). His intention and that of T. Scott Ward were to enter into a contract whereby Mr. Patel would place a $100,000.00 down payment toward the purchase of the property. The Real Estate Company was paid a commission for the "sale" of the property. And the Attorney's fees were paid from the closing funds. (See Closing Statement Exhibit)

According to the Affidavit of the Expert C. Joseph Roof, an attorney from Columbia, South Carolina, there existed an Attorney-Client relationship between the "Garretts" and the Appellant Mr. Patel. Mr. Roof's affidavit specifically points to several instances of negligent acts or omissions by the Respondents, the Garretts:

a. " Failing to, in general, to provide competent representation in the protection of the interest of Appellants;

b. Failing to give independent, candid advice, referring not only to the law, but also to other consideration, particularly economic considerations, specifically in not giving Appellants choices of documentation and form in casting the subject transaction and including the negative or positive aspects of each form;

c. Failing to recognize that their duties to Appellants were materially and adversely affected by their relationship with Respondents, T. Scott Ward and One Stop Marina, Inc.;

d. Failing to recognize that they could not consider; recommend or carry out an appropriate course of action to Appellants because of responsibilities and the relationship with Respondents, T. Scott Ward and One Stop Marina, Inc.;

e. In continuing their representation of Respondents, T. Scott Ward and One Stop Marina, Inc., in matters arising out the subject transaction contrary to Ethics Advisory Opinion 84-24;

f. In taking positions adverse to Appellants in violation of Rule 1.9 and Ethics Advisory Opinion 90-22;

g. Failing to recognize that their duties in the subject transaction were not limited to those of a "scrivener" and required advocacy on behalf of Appellants to cast the subject transaction in a form favorable to Appellants;

h. Failing to reasonably inform Appellants about their long term representative relationship with Respondents, T. Scott Ward and One Stop Marina, Inc., and to explain that relationship to the extent necessary to permit Appellants to weigh its impact and make informed decisions;

i. Failing to recognize duties to Appellants in undertaking the preparation of documents on behalf of Appellants;

j. Failing to recognize a duty to conduct and in failing to conduct the subject transaction in a manner that would assure Appellants sufficient information to understand the subject transaction and its consequences;

k. Failing to incorporate into the Lease Agreement by reference the terms and provisions of the Option to Purchase, and vice versa, so as to cast the subject transaction as one and reflect the true interdependent character of the transaction as created by the Commercial Purchase Agreement and Deposit Receipt;

l. Failing to advise Appellants as to the legal relationship of the parties, i.e. that Appellants had an equitable interest in the Real Property and a right to redemption of which he could be deprived only by a foreclosure proceeding under South Carolina Law;

m. Failing to advise Appellants their interest in the Real Property was devisable and subject to conveyancing. " *Id.* At 6-7.

On October 12, 2010 Respondents sought a Summary Judgment hearing on the remaining claim in the lawsuit – that of Malpractice before Judge Addy, whereby the basis of the defenses were multiple but the final claim was that the Appellant had to prove the elements of the Malpractice (Oct Tr. P 7 lns 17 – 25 and P 8 lns 1 – 19). During that same hearing the Appellant presented an Affidavit from the Appellant, Mr. Patel, where he asserted that "at all times he considered the Garrett Law Firm as his attorneys". Additionally, the Appellant submitted the Affidavit of a recognized expert in the matter of Real Estate and Legal Malpractice, whereby the Expert pointed to multiple

instances not only did it appear that the Garrett Law Firm represented the Appellant and the other party but additionally the Garrett Law Firm prepared the contract so that it favored the other party (See Expert Opinion).

During that same hearing the Appellant's position on the remaining claim was clear that the Appellant's affidavit, Appellant's sworn deposition as well as the opinion of the expert that Appellant was always under the impression that the Garrett Law Firm was representing him during the closing on the property as well as the preparation of the contract involved in that closing. Judge Addy asked if the Appellant ever received a "disengagement letter" (Oct Tr P 20 ln 10 – 11). The Appellant responded that no disengagement letter was ever received. The Respondent even stated that "we will concede under the affidavit of Joe Root(f) that there is an issue of fact as to whether or not there… Judge Addy: There is an attorney-client relationship? Mr. Howser: We dispute that, that is an issue of fact." (Oct Tr P 22 lns 6 – 13).

Based on Respondents' statement to the court the Respondents admitted that there was a material issue of fact, concerning an Attorney-Client relationship.

b.) Breach of Duty by the Attorney

The Experts' Affidavit points to the Breach of Duty owed the Appellant by the "Garretts". The Expert states that "a duty to conduct and in failing to conduct the subject transaction in a manner that would assure Appellants sufficient information to understand the subject transaction and its consequences" constitutes a Breach of Duty owed the Appellant. Furthermore, the Expert listed the following examples of additional Breaches made by the Respondents:

"(a)Failing to, in general, to provide competent representation in the protection of the

interest of Appellants;

(b) Failing to give independent, candid advice, referring not only to the law, but also to other consideration, particularly economic considerations, specifically in not giving Appellants choices of documentation and form in casting the subject transaction and including the negative or positive aspects of each form;

(c) Failing to recognize that their duties to Appellants were materially and adversely affected by their relationship with Respondents, T. Scott Ward and One Stop Marina, Inc.;

(i) Failing to recognize duties to Appellants in undertaking the preparation of documents of behalf of Appellants;

(j) Failing to recognize a duty to conduct and in failing to conduct the subject transaction in a manner that would assure Appellants sufficient information to understand the subject transaction and its consequences;" *id p 6 – 7.*

The Respondents in this matter maintain they owed no duty to the Appellant but once again that becomes a material issue of fact in dispute. In fact, as a matter of the record, the Respondents were obviously prejudiced toward the rights of one client (seller) over the other. The "Garretts" deducted an additional $11,125.00 from the monies paid by the Appellant at closing for "other cases to date" owed by the client T. Scott Ward and as such the Respondents had a vested interest in concluding this sale in favor of one client (seller) over the other. (See Closing Statement Exhibit I)

c.) Proximate Cause

The above referenced breach of duty by The Garretts was the proximate cause that resulted in the Appellant not only losing his rights to the property, but the Appellant also lost

his $100,000.00 made toward that purchase.

The Appellant signed a Purchase Agreement whereby it was agreed that the Appellant would pay $100,000.00 down payment at the closing, after an "owner financing agreement is executed at The Billy Garrett Law firm" the Appellant would take possession", and Section "F" states there would be "Seller Financing". (See Attached Exhibit A)

The Closing statement listed a $50,000.00 commission paid to the Real Estate Agent as well as the payments made to the Closing attorney's – the Garretts. The Appellant paid these fees as part of the Purchase Agreement.

The Garretts were hired by the Appellant look out for his best interest. In doing so the Respondents had several options: (1) to create a Bond for Title; or (2) Prepare a Deed with owner financing and an additional note and mortgage. By choosing either of those two options would have protected the rights of both parties that were represented. Instead the Garretts chose to prepare a lease with an option to buy or an "option" contract". This is the root of the case. The Proximate cause of the Appellant's loss of his $100,000.00 down payment toward the purchase of the property is significant and a matter for the trier of fact to decide.

According to the Expert Opinion the Garretts breach of duty was the Proximate cause that resulted in the Appellant's loss of his $100,000.00 down payment:

> "(k) Failing to incorporate into the Lease Agreement by reference the terms and provisions of the Option to Purchase, and vice versa, so as to cast the subject transaction as one and reflect the true interdependent character of the transaction as created by the Commercial Purchase Agreement and Deposit Receipt (herein after referred to as

"Purchase Agreement");

(l) Failing to advise Appellants as to the legal relationship of the parties, i.e. that Appellants had an equitable interest in the Real Property and a right to redemption of which he could be deprived only by a foreclosure proceeding under South Carolina Law;" *id. p 6 -7.*

Proximate Cause requires proof of causation in fact and legal cause. Causation in fact is proved by showing that the Appellant's injury would not have occurred 'but for' the Respondent's negligence.

In *Harris Teeter v. Moore and Van Allen*, the South Carolina Supreme Court found that "in order to demonstrate proximate cause, an Appellant must show he most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice." *Harris Teeter v. Moore and Van Allen, 390 S.C. 275, 299.* Furthermore the court found that to "survive Summary Judgment the evidence presented must amount to more than a mere speculation and conjecture...the expert must state his opinion with reasonable certainty. " In this instance, the Expert was "reasonably certain" that Legal Malpractice had occurred. Yet once again, this becomes a material issue of fact in dispute.

The Court in *Harris Teeter v. Moore and Van Allen,* additionally stated that "in evaluating a motion for summary judgment, we must not weigh the credibility of the witnesses and the testimony. Thus, if the expert's testimony facially meets these criteria, it will be sufficient to defeat summary judgment. **Id.**

As this relates to the case at hand, it is clear that the Expert's Affidavit shows that "but for" the Respondents not "casting the transaction in a form favorable to Patel (§g of

Expert Affidavit); failing to recognize their duties to Patel in undertaking the preparation of the documents on behalf of Patel (§ i of Expert Affidavit); and failing to incorporate into the Lease Agreement by reference the terms and provisions of the Option to Purchase, and vice versa, so as to cast the Transaction as one and reflect the true interdependent character of the Transaction as created by the Commercial Purchase Agreement and Deposit Receipt. (§k of Expert Affidavit) we would not be before this court.

The Expert Affidavit stated it was his opinion that "Garrett Breached the duty and standard of care generally required of a reasonably competent South Carolina attorney." (§18 of Expert Affidavit pg 6).

It is clear from the above that had the Respondents simply drawn up the contract as a Contract for Deed or a Deed with Owner financing, Note and Mortgage, whereby looking out for the best interest of both of their clients (Buyer and Seller) there would have been no question of Negligence. However, the Respondents sought to represent the interest of T. Scott Ward over the interest of their other client Mr. Patel and drew up a Lease with an Option to Purchase. Had the Respondents prepared a simple Contract for Deed agreement as was requested by the Appellant there would be no question as to fault. As the Respondents took it upon themselves to prepare a Lease with an Option to Purchase this becomes a material issue of fact in dispute.

d.) Damage to the client

The Appellants were damaged by the loss of their $100,000.00 down payment which should have been refunded. However due to the negligent acts and Malpractice of the Garretts the Appellant lost his $100,000.00 down payment as a result of the contract the

Garretts prepared. Whether the Appellants exercised their option is not part of whether the Appellant was damaged. The facts are that the contract should not have been an "option" contract. The facts also show that the Appellant was been damaged by the loss of his $100,000.00. (See Closing Statement)

The Appellant went to a Real Estate office to purchase this property. He was referred to the Garrett Law Firm to represent him at the closing for the purchase of this property. The Real Estate firm was paid their fee at the closing, the Garrett Law Firm was paid their fee at the closing and all the fees paid were paid by the Appellant and his $100,000.00 down payment of $100,000.00

The Respondents maintain that the Appellant never paid an attorney's fee, however, according to the Expert's opinion, "the payment of a fee is not a pre-requisite to the creation of duties to a client and the Transaction itself created the funds from which Garrett was, in fact, paid." The Expert's opinion was that the "payment of Garrett's fees by someone other than Patel is not relevant to the establishment of duties from Garrett to Patel. (Expert Opinion pg. 6 paragraph 17 (c)).

The simple question is where is justice and who is responsible for the return of the Appellant's $100,000.00 down payment? The previous Courts have ruled that the Real Estate firm and T. Scott Ward are not responsible for the Appellants loss and the return of his $100,000.00 down payment. At the same time, the previous Court has ruled that to determine whether the Garretts are responsible and should repay and or return the Appellants $100,000.00 down payment is a question for the trier of fact. Judge Griffith determined that "in the interest of justice and after hearing arguments and reviewing all evidence presented at

the hearing", the Respondents SCRCP 12(b)(6) motion was denied.

CONCLUSION

The lower court failed to take into consideration the facts that there were and are several material issues of fact that are in question. The first fact is that of the relationship between the Appellant and the Respondent. The Respondent has stated on multiple occasions that this fact is in dispute.

The second fact in dispute is the breach of the duty owed by the Attorney due to the relationship. The expert's opinion clearly shows several instances of that breach of duty and thus makes that a material issue of fact to be determined by the trier of fact.

The third fact in dispute is that of proximate cause. It is the position of the Appellant that the loss of the $100,000.00 down payment was proximately caused by the Respondent's failure to prepare the contract that was favorable to both clients and additionally preparing the contract as a Lease with an Option to Purchase, which favored one client's (seller) interest over the other, instead of a Contract for Deed or Deed for Title/Deed with owner financing, Note and Mortgage agreement, as was sought by the Appellant. These facts become issues of material facts in dispute. While it is an undisputed fact the Respondents prepared the contract whether this contract is the "but-for" cause becomes an issue of material fact to be determined by the trier of fact.

The fourth fact in dispute is the damage done to the Appellant. Every previous Respondent, including the Respondents, in this case stated it was not their fault it was the Appellant (Appellant's) fault. But the Appellant sought to purchase the property. The Appellant paid $100,000.00 down payment for that purchase of the property. The Appellant

paid the closing cost, which included a $50,000.00 commission to the Realtor and additionally the Attorney's fees at closing. Given these facts as a whole the Appellant has suffered damage. The Appellant is seeking justice as well as the return of his $100,000.00 down payment. At all the previous Motion hearings the prior courts maintained that the loss suffered by the Appellant was a fact that needed to be determined by the Jury. (See Judge Griffith's Transcript and Judge Saunders Transcript)

Finally, as to the weight and deference given to the Expert's Affidavit's, it is well established case law that should an expert provide testimony, via an affidavit, that in their professional opinion, there was a breach in the standard of care and the duty owed the Appellant, then there becomes a material question of fact that should be determined by the trier of fact. In this instance, the Expert provided multiple points as to the Respondents breach in the standard of care owed the Appellants. As such that should have been enough to become the "mere scintilla of evidence" needed to withstand the motion for summary judgment.

Our Courts have stated that it is the policy of the Court to dispose of issues on their merits, rather than on technicalities. *Mictronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001).* Additionally, our Courts have the inherent power to see that justice is done. *Dial v. Niggel Associates, Inc.*, 333 S.C. 253, 509 S.E.2d 269 (1998). In *Dial,* the Court refused to enforce the contemporaneous objection rule in order to see that justice was accomplished.

For all of the foregoing reasons and to see that Justice is done, the Orders of the circuit court should be reversed and remanded back to the lower court for a trial date.

Respectfully submitted,

By: _____

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Defendants,

Of Whom

The Garrett Law Firm, PC, Carson M. Henderson, Billy J. Garrett, Jr., are

Respondents,

CERTIFICATE OF SERVICE

PROOF OF SERVICE

I certify that I served the Amended Final Brief of Appellant on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on June 26, 2012, address to its attorney of record, R. Davis Howser, Esq., PO Box 12009, Columbia, South Carolina, 29211.

June 26, 2012

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Brief of the Appellant complies with Rule 211(b), SCACR.

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