

RECEIVED

Mar 24 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SIXTH JUDICIAL CIRCUIT
Court of Common Pleas
Fairfield County**

**The Honorable DeAndrea Gist Benjamin
Presiding Judge, South Carolina Business Court**

Case No. 2021-000944

**Blythewood Oil Co., Inc.
Appellant,**

vs.

**Shinda Singh, Five Rivers, Inc.,
and Singh, Inc.
Respondents.**

INITIAL BRIEF OF RESPONDENTS

**s/Linda Z. Jackson
Jackson & Jackson
1415 Richland Street
Columbia, South Carolina 29201
SC Bar No. 2931
linbobjack@aol.com
Attorney for Respondents**

TABLE OF CONTENTS

Table of Authorities.....	3
Statement of Issues on Appeal.....	4
Statement of the Case.....	5
Standard of Review.....	8
Statement of the Facts.....	9
Arguments.....	12
Issue I.....	12
Issue II.....	22
Issue III.....	25
Issue IV.....	26
Conclusion.....	27

TABLE OF AUTHORITIES

CASES

<i>Chapman v. Allstate Ins. Co.</i> , 263 SC 565 (1975).....	8
<i>Columbia Wholesale Co. v. Skudder May N.V.</i> , 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994).....	19
<i>Earthscapes Unlimited, Inc. v. Ulbrich</i> , 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010).....	19
<i>Hodge v. UniHealth Post-Acute Care of Bamberg, LLC</i> , 422 S.C. 544, 565-66, 813 S.E.2d 292, 304 (Ct. App. 2018).....	17
<i>Langdale v. Carpets</i> , 395 S.C. 194, 201, 717 S.E.2d 80, 83 (Ct. App. 2011).....	17
<i>McCall v. Finley</i> , 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987).....	16
<i>Odom v. Weathersbee</i> , 225 S.C. 253 (1954).....	8
<i>Townes Assocs. v. City of Greenville</i> , 266 SC 81, 221 S.E.2d 773 (1976).....	8
<i>Williams Carpet Contractors, Inc. v. Skelly</i> , 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012).....	19
<i>Young v. Jones</i> , 816 F. Supp. 1070, 1075-76 (D.S.C. 1992), <i>aff'd sub nom.</i> <i>Young v. F.D.I.C.</i> , 103 F.3d 1180 (4 th Cir. 1997).....	18

STATUTES

S.C. CODE ANN. § 33-41-220.....	18
S.C. CODE ANN. § 33-41-380(1).....	18
S.C. CODE ANN. § 33-41-380(2).....	16

OTHER AUTHORITY

South Carolina Rules of Civil Procedure: Rule 15(b), SCRPC.....	7
South Carolina Rules of Civil Procedure: Rule 52(a), SCRPC.....	6

STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT PROPERLY DENY APPELLANT'S MOTION FOR A DIRECTED VERDICT AS TO THE LIABILITY OF THE PARTNERSHIP FOR THE UNPAID INVOICES FOR GASOLINE DELIVERED BY THE APPELLANTS?

- II. DID THE TRIAL COURT PROPERLY DENY A VERDICT IN FAVOR OF APPELLANT AS IT PERTAINS TO ANY FAILURE BY THE RESPONDENTS TO NOTIFY APPELLANT OF ANY CHANGES OF OWNERSHIP, LEASE AGREEMENTS, OPERATIONAL CHANGES OR OTHERWISE TO EITHER HARDSCRABBLE OR PERCIVAL ROAD AM/PM STORES THROUGHOUT THEIR BUSINESS DEALINGS BETWEEN 2007 AND MARCH 2010 SUCH THAT IT WOULD MAKE RESPONDENTS AS A GENERAL PARTNER OF THE SINGH-SINGH PARTNERSHIP, JOINTLY AND SEVERALLY LIABLE FOR THE UNPAID INVOICES FOR GASOLINE DELIVERED BY APPELLANT?

- III. DID THE TRIAL COURT PROPERLY DENY A VERDICT IN FAVOR OF APPELLANT AS IT PERTAINS TO THE LAW OF ESTOPPEL AND AGENCY PROHIBITING THE RESPONDENTS FROM ASSERTING ANY DEFENSE TO PAYMENT OF FUNDS OWED TO BLYTHEWOOD OIL FOR UNPAID GASOLINE DELIVERED TO THE HARDSCRABBLE AND PERCIVAL ROAD CONVENIENCE STORES?

- IV. DID THE TRIAL COURT PROPERLY CONCLUDE THAT APPELLANT, BLYTHEWOOD OIL, INC. WAS NOT ENTITLED TO RECOVERY FROM THE RESPONDENTS PURSUANT TO A CLAIM OF UNJUST ENRICHMENT BASED UPON QUANTUM MERUIT, QUASI-CONTRACT OR IMPLIED CONTRACT BY LAW?

STATEMENT OF THE CASE

The dispute in this case centers around the complaint by the Appellant regarding nonpayment for gasoline it delivered to two convenience stores located in Columbia, South Carolina. Respondent Five Rivers, Inc. owns one of the stores which is located at 2409 Percival Road in Columbia, South Carolina. Respondent Singh, Inc. owns the other store, which is located at 4225 Hardscrabble Road in Columbia. Shinda Singh is the sole shareholder of both corporations

In October 2008, Five Rivers, Inc. leased the Percival Road property to Gill and Gas, LLC. Gurpreet Singh (also known as Jessie Singh) signed the lease as President of that corporation. At the same time, Singh, Inc. leased the Hardscrabble Road property to Gill and Gas No. 2, LLC. Gurpreet Singh signed the lease as President of that corporation.

On March 18, 2009, Jessie Singh signed a Credit Application provided by the Appellant for the purchase of gasoline from the Appellant for delivery to the Percival Road Store and guaranteed payment for the gasoline. On March 18, 2009, Jessie Singh signed a credit Application provided by the Appellant for the purchase of gasoline from the Appellant for delivery to the Hardscrabble Road store and guaranteed payment for the gasoline.

At some time after Jessie Singh leased the stores and signed the credit applications, he failed to pay the invoices from the Appellant for gasoline delivered and even wrote bad checks to the Appellant.

On July 2, 2014, Appellant filed a Third Amended Complaint in this case against a number of Defendants alleging their liability for the non-payment of gasoline delivered to Jessie Singh. Most of the Defendants were removed from the case pursuant to an agreement with the Appellant. The remaining Defendants that were subject to a jury trial were Shinda Singh, Five Rivers, Inc., Singh, Inc., A.M. P.M. Foodmart, Inc. and A.M. P.M. Foodmart, Inc., No. 2.

Initially, the case was tried on November 2017 before a jury on the following causes of action: (1) negligent misrepresentation; (2) unjust enrichment based on quantum meruit, quasi contract, or implied by law contract; (3) breach of contract; (4) breach of contract accompanied by fraudulent act; and (5) fraud. On November 16, 2017, the jury found in favor of the Defendants on all causes of action except for one. There was a mistrial on the cause of action for unjust enrichment based on quantum meruit, quasi contract, or implied by law contract. Subsequently, the parties requested, and the Court agreed to hear the case as a non-jury trial.

This matter came before the Court on September 23, 2019 for a non-jury trial by consent of the parties in the above-captioned matter. In a non-jury action, the Court's findings are equivalent to a jury's findings in an action at law. Rule 52(a), S.C.R. Civ. P. instructs a Court in an action tried without a jury to "find the facts specially and state separately its conclusions of law thereon..."

Present at the September 2019 non-jury trial before Judge DeAndrea Benjamin were Tony R. Megna, attorney for the Appellant, and Linda Jackson, attorney for the Respondents. Appellant's representative, Larry Sharpe, II, as corporate director of the company, and the Respondents, Shinda Singh, Individually, and as President of Singh, Inc.

and Five Rivers, Inc. and a witness, Parmjit “Goldy” Singh, were also present. Prior to trial, the parties agreed to remove A.M. P.M. Foodmart, Inc. and A.M. P.M. Foodmart, Inc., No. 2 as Defendants. The Court thus modified the caption to reflect the remaining parties to the lawsuit, Blythewood Oil Co., Inc. as Plaintiff and Shinda Singh, Five Rivers, Inc., and Singh, Inc. as Defendants.

Appellant’s trial Exhibits 1-12 as well as Respondents’ trial Exhibits 1-4 were entered into evidence without objection, and with the consent of the parties. The Exhibits were electronically filed by the Clerk of Court on September 23, 2019. Both parties made Motions for a Directed Verdict at the close of the Appellant’s case, which were denied by this Court. After presentation of all evidence by the parties, both Appellant and Respondents renewed their motions for verdicts based on the evidence presented at the September 23, 2019 trial. The Court took all motions under advisement. This Court reviewed applicable law, arguments of counsel, and the evidence presented by both parties at the September 23, 2019 trial. See Rule 15(b), S.C.R.Civ.P. (issues not raised by the pleadings but tried by consent of the parties shall be treated as if they had been raised in the pleadings). By Order filed July 17, 2020, the Court found that the Appellant was not entitled to recovery from the Respondents pursuant to a claim of unjust enrichment based on quantum meruit, quasi-contract, or implied by law contract. On July 27, 2020, counsel for the Appellant filed a Rule 59(e) Motion for Reconsideration to Alter or Amend Judgment on behalf of Blythewood Oil. However, counsel did not file the motion upon the Court. The Court filed an Amended Order on July 20, 2021. Appellant filed a Notice of Appeal of the Amended Order on August 27, 2021 and filed its initial Brief on February 25, 2022.

STANDARD OF REVIEW

In an action at law, on appeal of a case tried by a jury, the jurisdiction of this Court extends to the correction of errors of law. Factual findings of the jury are disregarded when a review of the record discloses that there is no evidence which reasonable supports the jury's findings. *Odom v. Weathersbee*, 225 S.C. 253 (1954). In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonable supports the judge's findings. The rule is the same whether the judge's findings are made with or without a reference. The judge's findings are equivalent to a jury's findings in a law action. *Chapman v. Allstate Ins. Co.*, 263 SC 565 (1975).” *Townes Assocs. v. City of Greenville*, 266 SC 81, 221 S.E.2d 773 (1976).

STATEMENT OF THE FACTS

The evidence shows that Shinda Singh had a verbal partnership with Kabal Singh regarding the purchase of two convenience stores. (Doc. 1-Shinda Singh 2019 Trial Testimony, p. 60). Initially, Kabal Singh, a former Defendant in this case, and another individual were going to buy the stores but they could not get a bank loan. Shinda Singh offered and did obtain loans from First Citizens Bank to purchase the properties. (Doc. 1-Shinda Singh 2019 Trial Testimony, pp. 60-61).

In September of 2007, Shinda Singh, in the corporate capacity of President, bought two convenience stores. The first store, located at 4225 Hardscrabble Road, was purchased by Singh, Inc. (Doc. 8-Deed for 4225 Hardscrabble Road-2019 Trial: Plaintiff's Exhibit 10). The second store, located as 2409 Percival Road, was purchased by Five Rivers, Inc. (Doc. 9-Deed for 2409 Percival Road-2019 Trial: Plaintiff's Exhibit 9). Shinda Singh is the sole shareholder of both corporations. (Doc. 1-Shinda Singh 2019 Trial Testimony, p. 61).

From April 2007 until October 2008, Kabal Singh and his son Gurpreet Singh (Jessie), former Defendants in this case, ran the convenience store businesses at the two locations.

Blythewood Oil Co., Inc., delivered gasoline to the Hardscrabble Road and Percival Road convenience stores from the time the convenience stores opened in 2007 until the last delivery of gasoline to the stores occurring in January 2010.

On October 2, 2008, Five Rivers, Inc. entered into a Commercial Lease

Agreement, as the Landlord, with Gill and Gas, LLC, as the Tenant, for the lease of the real property located at 2409 Percival Road; Jessie Singh signed the Lease as President of Gill and Gas, LLC. (Doc. 2-2019 Trial: Plaintiff's Exhibit 7). On October 2, 2008, Singh, Inc. entered into a Commercial Lease Agreement, as the Landlord, with Gill and Gas No. 2, LLC, as the Tenant, for the lease of the real property located at 4225 Hardscrabble Road; Jessie Singh signed the Lease as President of Gill and Gas No. 2, LLC. (Doc. 3-2019 Trial: Plaintiff's Exhibit 8). Both leases were effective on November 1, 2008. The above-referenced leases did not contain language regarding liability concerning the receipt of gasoline. Defendant Shinda Singh did not provide Blythewood Oil with copies of, nor any notice, of the leases. At trial, when Shinda Singh was asked if he gave copies of leases to vendors who supply services and gas and whatever to the store, his response was, "No." (Doc. 1-Shinda Singh-2019 Trial Testimony, pp. 64-65).

On March 18, 2009, Jessie Singh signed a Confidential Commercial/Wholesale Credit Application provided by the Appellant for the purchase of gasoline from the plaintiff for delivery to 2409 Percival Road, Columbia, SC 29223, and guaranteed payment for gasoline. (Doc. 4-2019 Trial: Defendants' Exhibit 2). On March 18, 2009, Jessie Singh signed a Confidential Commercial/Wholesale Credit Application provided by Blythewood Oil for the purchase of gasoline from the Plaintiff for delivery to 4229 Hardscrabble Road, Columbia, SC 29223 and guaranteed payment for the gasoline. (Doc. 5-2019 Trial: Defendants' Exhibit 1). All gasoline was paid for in a timely manner through October 2008, and June 2009.

Appellant received multiple bad checks from Jessie Singh and encountered problems with Jessie Singh paying for the gasoline delivered beginning in July 2009.

Appellant presented as evidence the remaining invoices for delivery of gasoline to the Hardscrabble Road and Percival Road convenience stores that were unpaid. Appellant continued to deliver gasoline to the Percival Road and Hardscrabble locations through January of 2010.

In March of 2010, Appellant's representative contacted the S.C. Attorney General's Office about the bad checks from Jessie Singh and an investigation was done by Pete Logan. The Blythewood Oil company representative informed Mr. Logan that Jessie Singh wrote the bad checks from his bank account. (Doc. 12-Larry Sharpe, II-2019 Trial: Testimony, pp. 39-40). The Company representative also admitted that the Plaintiff did not have anything in writing stating that Shinda Singh, Singh, Inc., Five Rivers, Inc., or a partnership were liable for the gas delivered to Jessie Singh and his businesses. (Doc. 12-Larry Sharpe, II-2019 Trial Testimony, p. 42). At no time prior to March 2010 did the Appellant notify Shinda Singh, either individually or as President of Singh, Inc., Five Rivers, Inc., or any partnership that Jessie Singh and his businesses owed large sums of money to the Plaintiff for gasoline that was delivered and that Respondents were responsible for Jessie Singh's debt. (Doc. 12-Larry Sharpe, II-2019 Trial: Testimony, p. 38) (Doc. 1-Shinda Singh-2019 Trial: Testimony, pp. 65-66).

When Larry Sharpe, II was asked at trial on cross-examination if Gurpreet Singh (Jessie Singh) was who Plaintiff was looking to, he answered, "He signed the application." (Doc. 12-Larry Sharpe, II-2010 Trial: Testimony, p. 37).

ISSUE I - ARGUMENT

Appellant contends that the trial court erred in failing to direct a verdict in favor of the Appellant as to the liability of the 2007 partnership for the unpaid invoices for gasoline delivered by the Appellant to the convenience stores located on Hardscrabble Road and Percival Road.

By the end of the presentation of Appellant's case at the trial on September 23, 2019, Judge Benjamin had heard the testimony of Appellant's representative, Larry Sharpe, II, and had been presented with twelve (12) Exhibits submitted by the Appellant. Upon completion of Appellant's case, both parties made motions for a direct verdict which were denied. After all of the evidence was presented by both parties, the Judge found as a matter of fact and law that based upon the evidence in the case and the applicable law, Appellant was not entitled to recovery from the Respondents pursuant to a claim of unjust enrichment based on quantum meruit, quasi-contract or implied by law contract. In making her decision, Judge Benjamin provided the following findings of fact which are hereby incorporated herein as the Argument on Issue I: (Doc. 7-Judge Benjamin's Amended Order dated July 20, 2021).

FINDINGS OF FACT

- (1) In April 2007, Defendant Shinda Singh, Defendant Five Rivers, Inc., and Defendant Singh, Inc. together with Kabal Singh entered into a "verbal" partnership to operate two convenience stores in Columbia, S.C.;

- (2) Initially, Kabal Singh, a former Defendant in this case, and another individual were going to buy the stores but they could not get a bank loan;
- (3) Shinda Singh, in his corporate capacity, offered to and did obtain loans from First Citizens Bank to purchase the properties;
- (4) The first store (located at 4225 Hardscrabble Road), was purchased in September 2007 by Singh, Inc. (Plaintiff's Exhibit 1, paragraph 22) (*Doc. 8-Appeal*). The second store (located at 2409 Percival Road) was purchased in September 2007 by Five Rivers, Inc. (Plaintiff's Exhibit 1, paragraph 20)(*Doc. 9-Appeal*);
- (5) Due to Kabal Singh's inability to secure a loan, Shinda Singh is the sole shareholder of Singh, Inc. and Five Rivers, Inc.;
- (6) Blythewood Oil Co., Inc., delivered gasoline to the Hardscrabble Road and Percival Road convenience stores from the time the convenience stores opened in 2007 until the last delivery of gasoline to the stores occurring in January 2010;
- (7) From April 2007 until October 2008, Kabal Singh and his son Gurpreet Singh (hereafter Jessie), a former Defendant in this case, ran the convenience store businesses at the two locations;
- (8) On October 2, 2008, Five Rivers, Inc. entered into a Commercial Lease Agreement, as the Landlord, with Gill and Gas, LLC, as the Tenant, for the lease of the real property located at 2409 Percival Road; Jessie Singh signed the Lease as President of Gill and Gas, LLC evidenced by Plaintiff exhibit 7 (*Doc. 2-Appeal*);

- (9) On October 2, 2008, Singh, Inc. entered into a Commercial Lease Agreement, as the Landlord, with Gill and Gas No. 2, LLC, as the Tenant, for the lease of the real property located at 4225 Hardscrabble Road; Jessie Singh signed the Lease as President of Gill and Gas No. 2, LLC evidenced by Plaintiff exhibit 8 (*Doc. 3-Appeal*);
- (10) The above-referenced leases (paragraphs 8 and 9) did not contain language regarding liability concerning the receipt of gasoline;
- (11) Defendant Shinda Singh did not provide Blythewood Oil with copies of, nor any notice of the leases as evidenced by Plaintiff exhibit 6 (*Doc 1-Appeal*);
- (12) On March 18, 2009, Jessie Singh signed a Confidential Commercial/Wholesale Credit Application provided by the Plaintiff for the purchase of gasoline from the Plaintiff for delivery to 2409 Percival Road, Columbia, SC 29223; Jessie Singh guaranteed payment for the gasoline (Defendant's exhibit 2) (*Doc. 4-Appeal*);
- (13) On March 18, 2009, Jessie Singh signed a Confidential Commercial/Wholesale Application provided by Blythewood Oil for the purchase of gasoline from the Plaintiff for delivery to 4229 Hardscrabble Road, Columbia, SC 29223; with this application, Jessie Singh guaranteed payment for the gasoline (Defendant's exhibit 1)(*Doc. 3-Appeal*);
- (14) All gasoline was paid for in a timely manner through October 2008, and June 2009.
- (15) The Plaintiff received multiple bad checks from Jessie Singh and

encountered problems with Jessie Singh paying for the gasoline delivered beginning in July 2009. Plaintiff's exhibits 11 and 12 evidence the remaining invoices for delivery of the gasoline to the Hardscrabble Road and Percival Road convenience stores that were unpaid.

- (16) Plaintiff continued to deliver gasoline to the Percival Road and Hardscrabble locations through January of 2010 (Plaintiff's exhibits 11 and 12);
- (17) In March of 2010, the Plaintiff's representative contacted the S.C. Attorney General's Office about the bad checks from Jessie Singh and an investigation was done by Pete Logan;
- (18) The Blythewood Oil company representative informed Mr. Logan that Jessie Singh wrote bad checks from his bank account;
- (19) The Company representative also admitted that the Plaintiff did not have anything in writing stating that Shinda Singh, Five Rivers, Inc., Singh Incorporated, Inc., or the partnership were liable for the gas delivered to Jessie Singh and his businesses (*Doc. 12-Appeal*);
- (20) At no time prior to March 2010 did the Plaintiff notify Shinda Singh, either individually or as President of Singh Incorporated, Inc. (Singh, Inc.), Five Rivers, Inc., or any partnership that Jessie Singh and his businesses owed large sums of money to the Plaintiff for gasoline that was delivered. (*Doc. 1 and Doc. 10-Appeal*).

(End of Court's findings of facts).

After hearing the testimony of the parties and the witness and reviewing all

of the evidence, the Court made the following conclusions of law which are hereby incorporated herein as the Argument on Issue I: (Doc. 7-Judge Benjamin's Amended Order dated July 20, 2021).

CONCLUSIONS OF LAW

a) Partnership Law

- a. Jessie Singh was not represented to be a partner in the existing 2007 partnership.**

The Plaintiff has based the duty or obligation imposed by law in the case at bar on SC partnership law asserting that Jessie Singh was directly involved in the operation of the two convenience stores since the formation of the partnership in 2007, as an agent of the verbal partnership described above. The plaintiff relies on South Carolina Code Ann. § 33-41-380(2) which states:

“When a person has been thus represented to be a partner in an existing partnership or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact with respect to persons who rely upon the representation. When all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.”

South Carolina case law has held that “[a] party asserting agency as a basis of liability must prove the existence of the agency, and the agency must be clearly established by the facts.” *McCall v. Finley*, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987). The existence of an agency relationship is “determined by the relation, the situation, the conduct, and the declarations of the party sought to be charged

as principal.” *Langdale v. Carpets*, 395 S.C. 194, 201, 717 S.E.2d 80, 83 (Ct. App. 2011).

To assert agency as a basis of liability, the plaintiff leans on the *de bene esse* deposition, Plaintiff’s Exhibit 5, of Vic Pathania, an employee at one of the convenience stores, as evidence that the Defendant Shinda Singh, Kabal Singh, and Kabal’s son, Gurpreet Singh (hereafter Jessie Singh) were each part of the partnership to operate the two convenience stores. The plaintiff specifically points to the following statement by Mr. Pathania:

“It was basically just they both bought it, they said they owned the store and they are partner[s]. They both own the store, they are partners and they bought the new store and Jesse needed help...” and “[t]hey told me about that they were partners and wanted me to work at the store.” (*Doc. 11-Appeal; Deposition, pp. 11 and 12*).

Plaintiff’s Exhibit 5, page 11 lines 8-16 and page 12 lines 3-12 respectively. “[A]n agency may not be established solely by the declarations and conduct of an alleged agent.” *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 565-66, 813 S.E.2d 292, 304 (Ct. App. 2018). The statement by Mr. Pathania that Jesse worked at the store does not establish his agency. Moreover, the statement is a bit ambiguous when determining which parties are being described as owners. However, the following statement also made during the deposition seems to clarify that Mr. Pathania was referring to Shinda Singh and Kabal Singh as owners of the Hardscrabble and Percival stores at inception.

“... So Shinda asked-they asked me to come to the Hardscrabble store and they were all there and then they discussed that, *Sindah and Kabal*, that they owned the store, they owned both store and they want me to take care of the Percival store.”

Plaintiff's Exhibit 5, page 10 lines 9-14 (*emphasis added*). (*Doc. 11-Appeal; Deposition, p. 10*).

Therefore, the evidence in the record does not bind the Defendants based on a theory of agency under the statutory law of South Carolina.

b. The record does not establish that Jessie Singh represented himself as a partner in an existing 2007 partnership.

S.C. Code Ann. § 33-41-380(1) states, a “person who represents himself, or permits another to represent him, to anyone as a partner in an existing partnership or with others not actual partners, is liable to any such person to whom such a representation is made who has, on the faith of the representation, given credit to the actual or apparent partnership.” S.C. Code Ann. § 33-41-380(1). As a general rule, persons who are not partners as to each other are not partners as to third persons. S.C. Code Ann. § 33-41-220 (Law Co-op 1976). However, Section 33-41-380(1) is an exception to the general rule for liability by partners by estoppel. *Young v. Jones*, 816 F. Supp. 1070, 1075-76 (D.S.C. 1992), *aff'd sub nom. Young v. F.D.I.C.*, 103 F.3d 1180 (4th Cir. 1997).

The record does not establish that Jessie Singh represented himself as a partner in an existing 2007 partnership. S.C. Code Ann. § 33-41-380(1) only creates liability for third-persons who, in reliance upon representations as to the existence of a partnership, “[give] credit” to that partnership. S.C. Code Ann. § 33-41-380(1) (Law.Co-op 1976). In the present case, there is no evidence that the gas delivered by Blythewood Oil was extended on the basis of any representation of a

partnership existing between Jessie Singh and the Defendants. There is also no evidence that the Plaintiff relied on any act or statement by Jessie Singh to indicate that he was an agent or a partner on behalf of the Defendants, Shinda Singh or Five Rivers, Inc. or Singh Incorporated, Inc. In fact, in March 2009, Jessie Singh completed a Commercial/Wholesale Credit Application provided by Blythewood Oil for the purchase of gasoline listing AM/PM Food Mart as the "Firm Name" and himself as the President. (*Doc. 5 and Doc. 6-Appeal*). The application includes no mention of the Defendants in the present case. Thus, the facts and evidence do not support a finding of liability on the basis of estoppel under the statutory law of South Carolina.

b) Unjust enrichment. Quantum meruit.

Plaintiff has failed to prove by a preponderance of the evidence all of the elements necessary to recover under quantum meruit a quantum meruit claim. "[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy." *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012). Quantum meruit is an equitable doctrine which allows recover for unjust enrichment under a quasi-contract theory. *Columbia Wholesale Co. v. Skudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). "The elements of a quantum meruit claim are: (1) a benefit conferred upon the defendant by the plaintiff, (2) realization of that benefit by the defendant, and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C.

609, 616-17, 703 S.E.2d 221, 225 (2010).

Plaintiff argues that Jessie Singh was a partner of the partnership formed April 2007 thereby making Defendants liable for the gasoline. This Court does not agree. In the present case, on October 3, 2008, Singh, Inc., as Landlord entered into two Commercial Lease Agreements for the lease of the real property. Jessie Singh signed the lease as Tenant and President of Gill and Gas, LLC and Gas and Gill, LLC No. 2 for the Percival and Hardscrabble Road convenience stores. (*Doc. 2 and Doc. 3-Appeal*). On March 18, 2009, Jessie Singh signed a Commercial/Wholesale Credit Application provided by Blythewood Oil for the purchase of gasoline from the Plaintiff for delivery to Hardscrabble and Percival Road stores. (*Doc. 4 and Doc. 5-Appeal*). According to Page 2 of the application, Jessie Singh guaranteed payment for the gasoline. At this time Plaintiff was put on notice that they were dealing with Jessie Singh. From this period forward, the record and testimony by the Plaintiff's representative, Mr. Sharpe, reflect that the bad checks were signed by Jessie Singh and were from his bank account with First Citizens Bank and Trust Company. There was no testimony presented indicating that Defendants were aware that Jessie was writing these checks.

There is no evidence in the record to ascertain that Defendants, Shinda Singh, Five Rivers, Inc., or Singh Incorporated, Inc., 1) received the gasoline from Blythewood Oil Co., Inc., 2) realized any benefit from its receipt, or 3) retained the gasoline without paying its value.

From the testimony at trial, the Court recognizes that the Plaintiff's continued venture with Jessie Singh may have been in good faith and sympathizes with the

Plaintiff's predicament. Furthermore, this Court understands how and why the jury may have been hung. However, after intense review of the record and testimony presented, this Court cannot find any legal reasoning that demonstrates that the named Defendants have been unjustly enriched at the expense of the Plaintiff entitling the Plaintiff to a monetary outcome in this case.

CONCLUSION

For the reasons noted herein, this Court finds as a matter of fact and law that based upon the evidence in this case and the applicable law the Plaintiff is not entitled to recovery from the Defendants pursuant to a claim of unjust enrichment based on quantum merit (meruit), quasi-contract or implied by law contract. This Court therefore, finds for the Defendants.

(End of Court's Conclusions of Law).

Respondents believe that the Court properly complied with Rule 52(a) of South Carolina Rules of Civil Procedure in making the decision that the Appellant is not entitled to recovery from the Respondents pursuant to a claim of unjust enrichment based on quantum meruit, quasi contract or implied by law contract.

The Court did not err in failing to direct a verdict in favor of the Appellant as to the liability of the 2007 partnership for the unpaid invoices for gasoline delivered by the Appellant to the convenience stores located on Hardscrabble Road and Percival Road. The Court was correct in its ruling that based upon the evidence in the case and applicable law the Appellant is not entitled to recovery from the Respondents.

ISSUE II - ARGUMENT

Appellant contends that the trial judge erred in failing to direct a verdict in favor of the Appellant as it pertains to failure of notice from the Respondents to the Appellant of changes in ownership, lease agreements, operational changes, or otherwise regarding the Hardscrabble and Percival Road AM PM stores such that Respondents, would be liable under the theory of partnership for the unpaid invoices for gasoline delivered.

At both trials, Appellant attempted to show that not having copies of the leases between Singh, Inc. and Five Rivers, Inc. was unfair and would make the Respondents liable. However, the evidence at both trials was clear that Appellant knew exactly who they were dealing with regarding the delivery of gasoline to the stores while they were leased to Jessie Singh. They had Jessie sign and guarantee payment pursuant to the credit applications supplied by Appellant. The credit applications have credit references and bank references. Bank account numbers for Jessie's accounts at First Citizens were written in on the applications signed by Jessie. The Appellant did not provide any evidence that the company did not know who it was dealing with when delivering gas to the Hardscrabble and Percival Road stores and that it did not know who was liable for the payment of gasoline delivered to the convenience stores. Furthermore, when the checks from Jessie's corporations, Gill and Gas No. 2 and Gill and Gas No. 2, LLC were discovered to be bad checks, Appellant contacted the South Carolina Attorney General's office in March of 2010 about the checks. Appellant's representative, Larry Sharpe, Jr. informed Pete Logan, the investigator from the Attorney General's office, that Jessie

Singh wrote the bad checks from his bank account. Appellant's representative admitted that the Appellant did not have anything in writing stating that Shinda Singh, Five Rivers, Inc., Singh Incorporated, Inc. or the partnership were liable for the gas delivered to Jessie Singh and his businesses. Given the circumstances, it would be illogical to think that the Appellant did not know who they were dealing with. Having a copy of leases would not have made any difference. Additionally, it is not customary for a landlord to give a copy of a lease to the vendors of the tenant.

The witness at the 2019 trial, Paramjit "Goldy" Singh, Shinda Singh's son, provided further evidence that the Appellant knew who it was dealing with when seeking payment for the gasoline. After Shinda Singh found out about the money owed by Jessie Singh to Blythewood Oil, Goldy and his father and Dilbag (Shinda's friend) attended a meeting in March of 2010 with Larry Sharpe, Senior and his son, Larry Sharpe, Junior. Larry Sharpe, Junior (Larry Sharpe, II) was the Appellant's representative who testified at the 2019 trial. Goldy testified that at the meeting, Larry Sharpe, Sr. proposed that Jessie needed to pay out the Wilson Boulevard store (Jessie's store) and turn the title over to Blythewood Oil to eliminate Jessie's debt. Goldy further testified that at no time during the meeting did the Sharpes say that Shinda Singh, Singh, Inc., Five Rivers, Inc., or any partnership were responsible for Jessie's debt. (Doc. 10-Paramjit (Goldy) Singh 2019 Trial Testimony, pp. 103-104). Prior to the 2019 trial, Gurpreet (Jessie) Singh settled with the Appellant and was dismissed from the case.

Respondents hereby incorporate into this Issue the argument for Issue I as to the liability of the partnership. Given the evidence at trial and the applicable law, the fact that the Appellant did not have copies of the leases with Jessie's corporations for the Hardscrabble and Percival Road stores did not create liability for the Respondents under a theory of partnership for the unpaid invoices for gasoline delivered.

Based upon the evidence and the law, the Court properly denied a directed verdict on this Issue.

ISSUE III - ARGUMENT

Appellant contends that the trial court erred in failing to direct a verdict in favor of Appellant because the law of estoppel and agency prohibits the Respondents from asserting any defense to payment of funds owed to Blythewood Oil for unpaid gasoline delivered to the Hardscrabble and Percival Road convenience stores.

Respondents incorporate herein the same argument for this Issue as the Argument for Issue I. The Court found there was no agency involved when Jessie obtained gasoline from Blythewood Oil. Also, the evidence showed that the Appellant delivered gasoline to Jessie and not to anyone else at the Hardscrabble and Percival Road stores from November of 2008 and through January of 2010.

The law of estoppel does not apply in this case. The evidence presented at trial showed that the Appellant knew who it was dealing with in providing gasoline to the stores, regardless of whether or not it had copies of leases signed by Jessie Singh for the Hardscrabble and Percival Road convenience stores. Appellant had credit applications signed by Jessie Singh and guarantees from Jessie Singh for the payment of gasoline delivered to the Hardscrabble and Percival Road stores.

Based upon the evidence and the law, the Court properly denied a directed verdict on this Issue.

ISSUE IV - ARGUMENT

Appellant contends that the Court erred in concluding that Appellant is not entitled to recovery from the Respondents pursuant to a claim of unjust enrichment based on quantum meruit, quasi-contract, or implied contract by law.

Respondents incorporate herein the same argument for this Issue as the Argument for Issue I. The Court correctly concluded that the Appellant was not entitled to recovery from the Respondents pursuant to a claim of unjust enrichment based on quantum meruit, quasi-contract or implied contract by law.

CONCLUSION

Given the evidence in this case and the applicable law, Judge Benjamin properly concluded that the Appellant was not entitled to recovery from the Respondents pursuant to a claim of unjust enrichment based on quantum meruit, quasi-contract or implied by law contract. Respondents ask that the Court affirm the decision of lower Court.

Respectfully submitted,

s/Linda Z. Jackson
Jackson & Jackson
1415 Richland Street
Columbia, South Carolina 29201
SC Bar No. 2931
linbobjack@aol.com
Attorney for Respondents