

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-213278

Patricia A. Frierson

Appellant,

v.

Kimberly S. Clark

Respondent.

REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

DOES THE LAW SUPPORT THE RESPONDENT'S CLAIM OF RES JUDICATA IN THIS CASE?

STATEMENT OF THE CASE

This appeal follows an Order signed by Judge Cooper on August 22, 2012, granting Respondent's Summary Judgment.

FACTS

Appellant maintains that the Respondent still has or has destroyed Appellant's personal property and never intended to return it. See Affidavit of Douglas Taylor, R. p.18. The Respondent correctly states on page two (2) of her Brief that on August 6, 2009, Respondent agreed to store Appellant's personal property at her apartment. However, when Appellant returned on September 5, 2009 with a moving truck and six (6) movers, Respondent refused to return the property. There is no dispute that on November 3, 2009, the Magistrate Ordered Respondent to return Appellant's property on November 14, 2009, R. p. 16. But that did not happen. From November, 2009 until January 14, 2011, Appellant tried unsuccessfully to communicate with the Respondent in order to retrieve personally property. The Statute of Limitation is three (3) years.

ARGUMENT I

THE LAW DOES NOT SUPPORT RESPONDENT'S CLAIM OF RES JUDICATA.

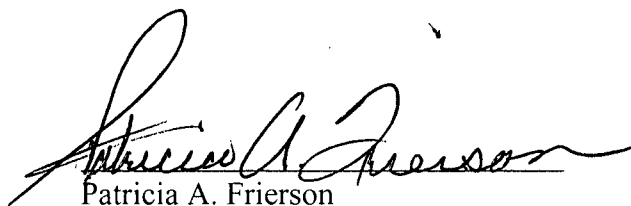
The Respondent claims Appellant's case was adjudicated in Magistrate's Court but fails to show any case law, Statues or other authorities supporting that claim. Instead, Respondent relies solely on Riedman Corporation v. Greenville Steel, Inc., 419 S.E.2d 217, 308 S.C. 467

(1992), a Workmen's Compensation case with distinguishable facts from the instant case. In Riedman, the issue was an accounting error. Riedman alleged Greenville of failure to pay premiums for several insurance policies. Greenville counterclaimed on the ground that it had paid Riedman \$6,605.00 in excess of the premiums because of cancelations, adjustments, and modifications of several policies. By Riedman's own admission that there was only one account with one balance, the issue was adjudicated when Greenville's counterclaim was tried. In the instant case the claim was dismissed without prejudice and was not adjudicated on the merits of the controversy and has no preclusive effect as a matter of law. International Fidelity v. China Const. 650 S.E. 2d. 677, 375 S.C. 175 (app. 2007). The amount of the claim is yet to be determined.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,



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November 14, 2012

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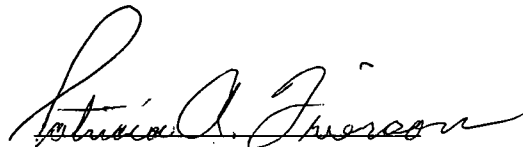
Kimberly S. Clark,

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CERTIFICATE OF COUNSEL

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

February 7, 2013



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