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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-00013

RECEIVED  
JUN 11 2013  
SC Court of Appeals

Maureen T. Coffey, ..... Respondent,

v.

Community Services Associates, Inc. and George F. Breed, Jr., ..... Appellants.

MOTION TO STRIKE PARTS OF APPELLANT COMMUNITY SERVICES ASSOCIATES, INC.'S INITIAL BRIEF AND REQUEST FOR STAY OF BRIEFING REQUIREMENTS ON RESPONDENT

INTRODUCTION

The Respondent Maureen T. Coffey hereby moves to strike parts of the initial brief of Appellant Community Services Associates, Inc.<sup>1</sup> (hereinafter "CSA"). Respondent obtained a verdict in this matter against both Appellants. Appellants have filed separate appeal briefs, and are represented by separate counsel in the appeal. Many of Appellants' arguments are not preserved for review on appeal. All of Appellants' arguments which are grounded upon the failure to grant judgment notwithstanding the verdict are not preserved, and must be stricken from Appellants' initial briefing.

<sup>1</sup> Respondent is concurrently filing a similar motion with respect to the initial appeal brief of Appellant George F. Breed Jr.

## ARGUMENT

"When defendant moves for a directed verdict under Rule 50, SCRCP at the close of the plaintiff's case, he must renew that motion at the close of all evidence." Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 at 496 (Ct. App. 2007) (emphasis added). The rule that a judgment notwithstanding the verdict may not be granted unless the moving party moved for a directed verdict at the close of all the evidence is a strict one. Hendrix v. Eastern Distribution, Inc., 316 S.C. 34, 446 S.E.2d 440 (Ct. App. 1994) (emphasis added). Further, "[w]hen a party fails to renew a motion for a directed verdict at the close of all evidence, he waives his right to move for JNOV." Id.

Legal arguments are preserved via proper directed verdict and JNOV motions for matters arising during the trial. See, Ballenger v. Bowen, 313 S.C. 476, 443 S.E.2d 379 (1994) (denial of summary judgment does not establish the law of the case...issues raised in the motion may be raised again later...by a motion for a directed verdict). Collins Cadillac, Inc. v. Bigelow-Sanford, Inc., 276 S.C. 465, 279 S.E.2d 611 (1981) (failure to raise legal issue on motion for directed verdict precluded review on appeal). Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436, 437 (Ct. App. 1995) ("a party cannot for the first time raise an issue by a Rule 59(e) motion which could have been raised at trial").

As can be seen from the trial transcript pages attached as Exhibit A, the Appellants made renewed directed motions, but did not do so at the close of all

evidence.<sup>2</sup> Rather, after the renewed motions were made, Respondent put up a rebuttal witness, Ms. Sherry Hamilton, who was questioned by both Respondent's counsel and Appellants' counsel. At the conclusion of Ms. Hamilton's testimony, the following occurred:

THE COURT: Mr. Mathison, at this time, do you rest?

MR. MATHISON: I do, Your Honor.

(Transcript 1728.)

No directed verdict motion was renewed after this evidence came in. Therefore, the appellate courts may not review the defective directed verdict motion as to either Appellant. Nor can the Court review the appeal of any JNOV denial order. This is because, as set forth above, the JNOV motion is considered waived by virtue of the defectiveness of the renewed directed motions.

As a result, the following arguments of Appellant CSA must be stricken from the initial brief:

Argument I, pages 5-13

Argument III, pages 29-39<sup>3</sup>

Argument IV, pages 46-53

Respondent believes that many of the Appellants' arguments in their briefs are not preserved for various other reasons. Respondent does not waive its ability to raise those reasons at a later time.

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<sup>2</sup> Appellant Community Services Associates, Inc. states in its initial brief, "Defendants again moved for directed verdict at the close of their case." CSA In. Brief at p. 9. This is inaccurate.

<sup>3</sup> Appellant CSA's argument regarding the constitutionality of punitive damages with respect to the *de novo* review of the determination of constitutionality, and with respect to the proper ratio is not addressed in this motion.

Because this motion addresses a substantial portion of the Appellant CSA's 53 page brief, Respondent requests a stay of its briefing responsibilities until this motion is resolved.

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By: 

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Attorneys for Respondent Maureen T. Coffey

6/11, 2013

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Community Services Associates, Inc. and George F. Appellants.  
Breed, Jr.,.....

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Motion to Strike Parts of Appellant Community Services Associates, Inc.'s Initial Brief and Request for Stay of Briefing Requirements on Respondent

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Lisa P. Whitehurst  
Administrative Assistant

June 11, 2013

# Nelson Mullins

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June 11, 2013

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1015 Sumter Street - 5th Floor  
Columbia, SC 29201

RE: Maureen T. Coffey v. Community Services Associates, Inc., and George F.  
Breed, Jr.  
Civil Action No.: 2011-CP-07-00013  
SC Court of Appeals Tracking No. 2012-213252  
Our File No.: 41064.01500

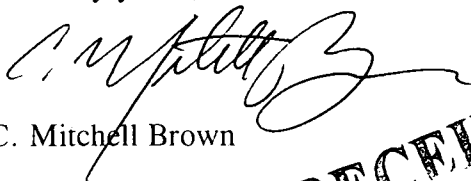
Dear Ms. Kitchings:

Enclosed please find the original and seven copies of a Motion to Strike Parts of Appellant Community Services Associates, Inc.'s Initial Brief and Request for Stay of Briefing Requirements on Respondent. We would ask that you file the original and return a clocked-in copy to us via our courier. Also enclosed is our check in the amount of \$25.00 as the required filing fee.

By copy of this letter to counsel of record, we are serving them with a copy of this motion.

With kind regards, I remain

Sincerely yours,

  
C. Mitchell Brown

CMB:lpw  
Enclosures  
cc: Mark S. Barrow, Esquire  
William R. Calhoun, Jr., Esquire

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