

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2006-CP-40-1814

Lauren Proctor and Trans-Union National
Title Insurance Company f/k/a Atlantic
Title Insurance Company,

Respondents,

v.

Whitlark & Whitlark, Inc. d/b/a Rockaways
Athletic Club and Pizza Man, Forrest
Whitlark, Paul Whitlark, Charlie E. Bishop,
and Brett Blanks,

Appellants.

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SC Court of Appeals

**APPELLANTS' REPLY TO RESPONDENT'S
RETURN TO THE PETITION FOR REHEARING
OR REHEARING EN BANC**

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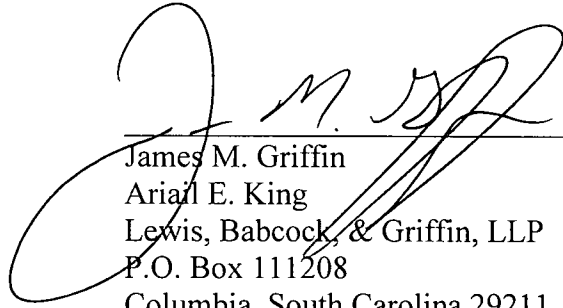
Appellants submit this reply to Respondent Proctor's Return to the Petition for Rehearing or Rehearing *en banc*.

In the Petition for Rehearing, Appellants noted that the Opinion failed to address why neither Rice v. Gist, 32 S.C.L. 82 (1846) and Livingston v. Wootan, 10 S.C.L. 178 (1818) control. Rice held that there could be no recovery for an unlawful wager, stating the intent "to sweep from our Courts the whole body of wagers, great and small." Likewise, the Court in Livingston held that "[a]t common law, the parties to a gambling transaction stand in *pari delicto*, and money lost and paid over cannot be recovered." Respondent Proctor has ignored these decisions and fails to distinguish them in her Return. However, both of these cases are valid and controlling.

In addition, Respondent continues to rely on *Johnson v. Collins Entertainment Co.*, 349 S.C. 613, 635, 564 S.E.2d 653, 664 (2002), and ignores the crucial difference as to why *in pari delicto* could not be used as defense there—**the conduct at issue in *Johnson* was legal**. The plaintiffs in Johnson were engaged in gambling, but it was a legal form of gambling. Here, Respondent Proctor engaged in illegal gambling. Proctor admits that she engaged in illegal gambling and she also admits that she knew her conduct was illegal.. (S.R. p. 2). Neither *Johnson* nor any other decision relied upon in the Opinion involves a lawsuit brought by a plaintiff who knowingly engaged in criminal conduct seeking to recover financial losses resulting from her failed illegal endeavor.

The Panel's Opinion contradicts and undermines South Carolina's well established common law prohibition against allowing persons engaged in criminal ventures access to our

civil courts to resolve disputes arising from their own illegal conduct.¹ Appellants therefore respectfully request that this Court vacate the Panel's Opinion and conduct an *En Banc* re-hearing of this appeal.



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June 20, 2013

Columbia, South Carolina

¹ In *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170 (Ct. App. 1993) the Court applied the doctrine of “illegality” to bar claims brought under the South Carolina Unfair Trade Practices Act and noted “[i]t is a well founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act.”

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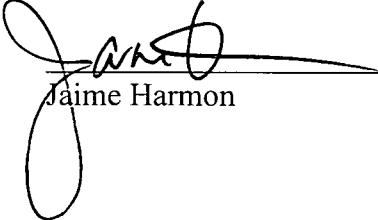
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PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorney for Appellant Whitlark & Whitlark, Inc. d/b/a Rockaways Athletic Club and Pizza Man, Forrest Whitlark, Paul Whitlark, do hereby certify that I have served a copy of the foregoing **Appellants' Reply to Respondent's Return to the Petition for Rehearing or Rehearing En Banc**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

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June 20, 2013

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Lauren Proctor, et al. v. Whitlark & Whitlark, Inc., et al.
Case No.: 06-CP-40-1814
Appellate Case No. 2012-205510

Dear Ms. Abbott Kitchings:

Enclosed please find the original and nine copies of the Appellants' Reply to Respondent's Return to the Petition for Rehearing or Rehearing En Banc in the above-referenced case. Please file these documents and return three clocked in copies to our courier.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jaime Harmon', is written over a circular stamp. The signature is fluid and cursive.

Jaime Harmon
Assistant to James M. Griffin

/jh
Enclosure

cc: Mario A. Pacella
Louis Lang

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