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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Shannon M. Phillips, Master-in-Equity

Spartanburg County Case Nos. 2021-CP-42-00086 and 2021-CP-42-00504

Consolidated Appellate Case No. 2022-001420

Gibbs International, Inc. .... Respondent,

vs.

Vidalia Industrial Facilities, LLC,...................................... Appellant.

AND

Vidalia Industrial Facilities, LLC and
Indigo Industrial Investments, LLC,.............................. Appellants,

vs.

Gibbs International, Inc., Gregory R. Boozer, and
Jimmy I. Gibbs,.. Respondents.

AND

GBPT, LLC .... Respondent,

vs.

Rumsfeld Indigo, LLC .... Appellant.

APPELLANTS' REPLY TO
RESPONDENTS' INITIAL BRIEF

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ARGUMENT

Appellants and Respondents have briefed, at length, the relationship between Rules 4.2 and 8.4 of the South Carolina Rules of Professional Conduct ("SCRPC"). While Appellants object to Respondents' characterization regarding the application of SCRPC Rules 4.2 and 8.4 to the action *sub judice*, the limited binding authority addressing the principal issue in this appeal dictates that further briefing regarding same would be duplicative of the parties' briefing to date and the Record on Appeal. *See e.g., I'on, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 418, 526 S.E.2d 716, 722 n. 6 (2000) (holding that reply briefs are the forum whereby appellants address respondents' additional sustaining grounds). In their Initial Brief, however, Respondents raise two arguments outside of Appellants briefing to date which warrant a reply.

i. Appellants Do Not Ask the Court to Adopt California's Rule 4.2 Analysis.

Respondents' argument regarding Appellants' "reliance" on *San Francisco Unified School District ex rel. Contreras v. First Student, Inc.*, 213 Cal. App. 4th 1212 (Cal. Ct. App. 2013), is misplaced. Resp'ts' Br. 19–21. In their Initial Brief, Appellants included a single citation to *San Francisco Unified* in the context of a broader discussion regarding Rule 4.2 of the SCRPC. *See* Appellants' Br. 8. The full quotation from *San Francisco Unified* reads as follows:

> Case law from other jurisdictions supports the view that an attorney crosses the line in advising a client about such communications when the attorney prepares binding legal documents that the client plans to ask the opposing party to sign. *See Holdren v. General Motors Corp.*, 13 F. Supp. 2d 1192, 1195–96 (D. Kan. 1998) (attorney violated rule when he instructed client how to draft a binding affidavit as distinct from a hearsay witness statement and encouraged client to obtain affidavits from corporate defendant's employees); *In re Marietta*, 569 P.2d 921 (Kan. 1977) (attorney violated rule when he drafted release of liability for back child support knowing client intended to ask represented ex-wife to sign the release); *In re Pyle*, 91 P.3d 1222, 1228–29 (Kan. 2004) (attorney violated rule when he drafted affidavit that, inter alia, indirectly admitted liability knowing client intended to ask opposing party to sign it). These decisions are consistent with the general principle that attorneys should not advise their clients regarding party communications in a manner that violates the underlying purpose of the rule: preparing legally binding

> documents for an opposing party to sign takes advantage of the fact that the party is being contacted without knowledge, consent or presence of her legal representative.

213 Cal. App. 4th at 1235–36 (citations revised to comply with Bluebook citation style).[1]

Appellants' citation to relevant dicta from a persuasive authority can hardly be characterized as "reliance," as Respondents suggest. Rather, Appellants merely cited *San Francisco Unified* to demonstrate that other jurisdictions with similar rules of professional conducthave generally found it to be improper for an attorney to prepare binding legal documents that his or her client plans to ask a represented opposing party to sign. To be clear, Appellants have never argued, and do not argue now, that the applicable standard for what qualifies as improper attorney conduct in advising a client about party-to-party communications under South Carolina Rule 4.2 is governed by California law.

ii. Appellants' Motion to Strike Complied with Rule 7 of the South Carolina Rules of Civil Procedure.

Respondents further argue that Rule 7(b)(1) of the South Carolina Rules of Civil Procedure ("SCRCP") precludes the Court's consideration of this appeal as they contend Appellants' Motion to Strike did not adequately state, with particularity, the grounds on which it was based. Resp'ts' Br. 21. SCRCP Rule 7(b)(1) states, in relevant part, that "[a]n application to the court for an order shall be by motion which . . . shall state with particularity the grounds therefor, and shall set forth the relief or order sought." The purpose of SCRCP Rule 7(b)(1) is to advance "the polices of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly." *Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010). (quoting *Calderon v. Kansas Dep't of Soc. & Rehab Servs.*, 181 F.3d 1180, 1186 (10th Cir. 1999))

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[1] The court in *San Francisco Unified* utilized an unusual citation style which does not comply with Bluebook citation style.

(internal quotations marks omitted). However, "[t]he particularity requirement should not be applied in an overly technical fashion when the purpose behind [Rule 7(b)(1)] is not jeopardized." *Id.* (quoting *Andreas v. Volkswagen of Am., Inc.,* 336 F.3d 789, 793 (8th Cir. 2003)) (internal quotations marks omitted).

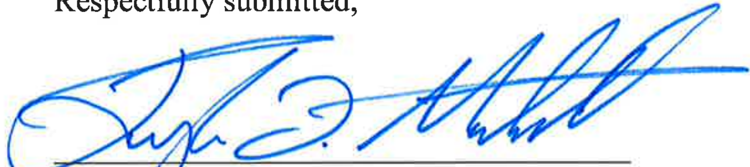
Here, Appellants duly apprised Respondents of the grounds for their Motion to Strike. In their June 29, 2022 Motions to Strike, Appellants stated: "Though the Indigo Parties are represented by counsel who have appeared in this action, the Confession of Judgment was procured directly from Rumsfeld Indigo and Vidalia Industrial Facilities without the Indigo Parties' counsels' knowledge, participation, or consent." Mot. to Strike Confession of J. (June 29, 2022) (R.____). This statement sufficiently informed counsel for Respondents of the grounds for their Motions to Strike; namely, that a Confession of Judgment was obtained between the parties and without the knowledge, participation, or consent of the Rumsfeld Parties' counsel.

Furthermore, the key inquiry in determining whether a Rule 7(b)(1) violation occurred is "whether any party is prejudiced by a lack of particularity or 'whether the court can comprehend the basis for the motion and deal with it fairly.'" *Camp,* 386 S.C at 575, 689 S.E.2d at 636. To demonstrate prejudice, a party must "establish if he or she had received appropriate notice, he or she would have done something different, thereby affecting the decision of the trial court." *Chastain v. Hiltabidle*, 381 S.C. 508, 517, 673 S.E.2d 826, 831 (S.C. Ct. App. 2009) (internal citations omitted). The trial court held oral arguments on this motion, after Appellants apprised Respondents of the grounds for their Motions to Strike in the motions itself, and subsequently ruled in favor of Respondents. Even if the Court believes a Rule 7(b)(1) violation has occurred, it may nonetheless proceed with its analysis of the substantive argument contained in this appeal as Respondents were clearly not prejudiced by the trial court.

CONCLUSION

For the foregoing reasons, Appellants pray that the Court reverse the Master-in-Equity's September 9, 2022 Order Denying Motions to Strike (R._____) and remand this matter to the trial court with instructions that the Court of Common Pleas strike the judgments and Confessions of Judgment entered against Appellants.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Undersigned counsel attests that all parties to this suit were served with the foregoing Appellant's Brief by emailing each a copy of same to the email address provided by their counsel-of-record in the South Carolina Attorney Information System.

Tyler J. Mitchell