

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

L. Casey Manning, Circuit Court Judge

Case No. 2019-CP-40-06996
Appellant Case No. 2022-001755

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MAY 12 2023

SC Court of Appeals

Champion Window Company of Columbia, SC.....Respondent,

vs.

Keith B. Evans and Brenda C. Evans.....Appellant.

INITIAL REPLY BRIEF OF APPELLANT

GOODWYN LAW FIRM, LLC



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May 12, 2023

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ARGUMENT

I. This court can reverse and remand for mediation as in *Ross* under the same rationale that a failure to mediate is a non-jurisdictional procedural defect.

Respondent asserts that this court cannot vacate the trial verdict and remand to compel mediation because the Circuit Court had jurisdiction to hear the case citing Ross v. Waccamaw Cnty. Hosp., 404 S.C. 56, 744 S.E.2d 547 (S.C. 2013). The court in *Ross* held that failing to comply with the 120-day statutory time period to mediate in S.C. Code §15-79-125 is a non-jurisdictional procedural defect. *Id.*

Appellant would respond by arguing that a non-jurisdictional procedural defect can and should be corrected by this court just as it was in *Ross*. This is not a question of jurisdiction, but correcting a procedural defect, specifically a violation of the court ordered requirement to mediate the case. Rule 3(a) SCADR.

If a plaintiff can go to trial without mediating, then the court order to mediate the case has been violated with no consequences. To allow this decision to stand is to effectively do away with the court ordered requirement to mediate.

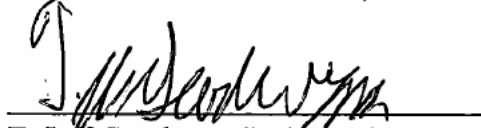
Respondent also argues that Appellant is equally at fault for failing to mediate the case as *pro se* litigants are held to the same standard as attorneys citing State v. Burton, 356 S.C. 259, 589 S.E.2d 6 (2003). The Rules of ADR, however, specifically contemplate that litigants are not aware of the requirement to participate in mediation or arbitration and require attorneys to inform their clients. Rule 6(a) SCADR. In a case such as this where only one party is represented, the burden to attempt to schedule mediation should be on the represented party as the unrepresented party had no attorney informing them of the requirement to mediate. This is especially true with a plaintiff who is represented as a plaintiff's attorney knows the case must be mediated prior to trial when

he/she brings it. Regardless of who has the burden of initiating a mediation prior to trial, the fact remains that the case was not mediated in violation of the court order and if this court does not vacate the verdict and remand for mediation, the court ordered mediation requirement in Rule 3(a) SCADR is effectively eliminated.

For the above reasons and the reasons outlined in Appellants Final Brief, this court should vacate the trial judgment, refer the case for mediation pursuant to Rule 3(d), and/or impose sanctions against Plaintiff in the form of dismissal of this action, attorney's fees, costs, or any other sanctions allowed by SCRCRCP Rule 37(b) as the court deems just and proper.

Respectfully submitted,

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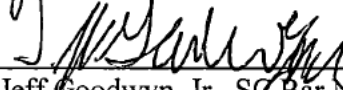
Keith B. Evans and Brenda C. Evans.....Appellants.

PROOF OF SERVICE

I certify that I have served a copy of the **Appellants' Initial Reply Brief** on Carlos W. Gibbons, Jr., Esquire, counsel for Respondent, at the address below by depositing a copy of same in the United States Mail, postage prepaid, on May 12, 2023.

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** Of Counsel

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: *Champion Window Company of Columbia, LLC v. Keith B. Evans and Brenda C. Evans*
Appellate Case No.: 2022-001755
Our File No.: 3000-0792


Dear Ms. Kitchings:

Enclosed for filing, please find the original and one copy of **Appellant's Initial Reply Brief** along with an original and one copy of the Proof of Service in regards to the above referenced matter. Please return a filed copy of same to me via email.

As evidenced in the Proof of Service, I have served all interested parties, with a copy of the Initial Reply Brief.

Thank you for your attention to this matter and should you have any questions, please do not hesitate to contact me.

Sincerely,



T. Jeff Goodwyn, Jr.

TJG/msb
Enclosures
cc: Carlos W. Gibbons, Jr., Esquire