

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Roger M. Young, Circuit Court Judge

Case No. 2012-212331

Ron Orlosky in his capacity as Personal  
Representative of The Estate of Debora  
L. Orlosky and in his capacity as trustee  
of the Debora Laura Orlosky Revocable  
Trust

Respondent

v.

The Law Office of Jay A. Mullinax, LLC

Appellant

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APPELLANT'S MOTION TO REMAND TO CIRCUIT COURT AND MEMORANDUM IN  
SUPPORT

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Pursuant to South Carolina Appellate Court Rule 240, Appellant, The Law Office of Jay A. Mullinax, LLC, by and through undersigned counsel, hereby responds to the South Carolina Court of Appeal's letter dated June 06, 2013 and requests that the matter of Ron Orlosky v. The Law Office of Jay Mullinax, identified as Case No.: 2012-212331 be remanded back to the circuit court in order to reconstruct the record.

**RECEIVED**

JUN 21 2013

## MEMORANDUM IN SUPPORT

### BACKGROUND

On July 29, 2010, Defendant filed a creditor's claim in the Beaufort County Probate Court for the outstanding balance Plaintiff owed Defendant, plus a statutory 8.75% interest rate. On August 20, 2010, three weeks after Defendant filed the creditor's claim against the Plaintiff, Plaintiff filed suit in the Beaufort County Circuit Court against Defendant for breach of contract seeking damages of \$29,751.68 (plus interest) and (\$89,253.00 treble damages) for unfair trade practices. Defendant's creditor's claim against Plaintiff filed on July 29, 2009 was subsequently removed to Circuit Court and the Defendant's claim and the Plaintiff's suit were essentially merged and resulted in a jury trial. The Court disallowed the claim for unfair trade practices.

On April 20, 2012, a Beaufort County Jury returned a verdict in favor of Respondent and against Appellant in the amount of \$80,000.00 actual damages. On April 26, 2012 Appellant filed post-trial motions for Directed Verdict, Relief from Judgment To Alter or Amend Judgment, and for a New Trial Absolute of New Trial Nisi Remittitur which were denied on May 17, 2012, but the Court stayed the judgment based on post-trial motions, pending Appeal.

Appellant filed the Notice of Appeal on June 18, 2012, and requested the transcript from the court reporter and from the Beaufort County Clerk of Court on June 25, 2012. The transcript was unattainable. Appellant complied with all other post-trial Rules and the Respondent filed a Motion to Dismiss the Appeal alleging Appellant failed to comply with the Rules. The Court of Appeals dismissed the Respondent's motion and advised the parties of two options: (1) If the parties would like to proceed without the transcript, then written consent from all the parties must be provided to the Court and the Appellant's initial brief and designation of matter must be

served and filed no more than thirty (30) days from the date of the Court of Appeal's letter dated June 06, 2013; or (2) If the parties would like the matter remanded back to the circuit court in order to reconstruct the record, then a motion must be filed no more than fifteen (15) days from the date of this the Court of Appeal's letter dated June 06, 2013. Appellant files this motion to remand the case to the Circuit Court to reconstruct the record, one of the two options provided by the court.

### DISCUSSION


Based on the Court of Appeal's letter dated June 06, 2013, the Court of Appeals granted two options: (1) If the parties would like to proceed without the transcript, then written consent from all the parties must be provided to the Court and the Appellant's initial brief and designation of matter must be served and filed no more than thirty (30) days from the date of the Court of Appeal's letter dated June 06, 2013; or (2) If the parties would like the matter remanded back to the circuit court in order to reconstruct the record, then a motion must be filed no more than fifteen (15) days from the date of this the Court of Appeal's letter dated June 06, 2013. The Appellant reviewed the options presented and chooses the option to remand the matter back to the circuit court in order to reconstruct the record, or alternatively, for the circuit court to simply conclude that the record could not be reconstructed with the specificity to support meaningful appellate review.

### CONCLUSION

The Appellant requests that this matter be remanded back to the circuit court in order to reconstruct the record, or alternatively, for the circuit court to simply conclude that the record could not be reconstructed with the specificity to support meaningful appellate review. If a

transcript is altogether inaccurate and no adequate record of what transpired at trial can be reconstructed, the Appellant requests that the court remands for a new trial.

June 18<sup>th</sup>, 2013

  
Jay A. Mullinax, Esquire, Bar No. 68293  
Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Suite 303  
Hilton Head Island, SC 29928  
(843) 785-6101

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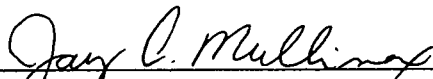
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CERTIFICATE OF SERVICES

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I certify that I have served the Appellant's Motion to Remand to Circuit Court and Memorandum in Support on Ron Orlosky by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record, John R. C. Bowen, Esquire, Laughlin & Bowen, P.C., P.O. Drawer 21119, Hilton Head Island, SC 29925, Attorney for Respondent.

June 18<sup>th</sup>, 2013

  
Jay A. Mullinax, Esquire, Bar No. 68293  
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Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303  
HILTON HEAD ISLAND, SC 29928

June 18, 2013

**VIA FEDERAL EXPRESS**

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

Re: Ron Orlosky v. The Law Office of Jay Mullinax  
Appellate Case No. 2012-212331

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Appellant's Motion to Remand to Circuit Court and Memorandum in Support and Certificate of Service. Also enclosed, please find a check in the amount of Twenty-Five Dollars (\$25.00) for the filing fee. Please file the original and return a clocked copy in the self-addressed, stamped envelope provided.

If you have any questions, please do not hesitate to contact our office. Thank you for your time and attention to this matter.

Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax, Esquire

JAM:kem

Cc: Mr. John R.C. Bowen, Esquire

**RECEIVED**

JUN 21 2013

SC COURT OF APPEALS