

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2005-CP-10-4101

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AUG 05 2013

SC Court of Appeals

The Milton P. Demetre Family Limited PartnershipAppellant

v.

Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley,
Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr.,
and Annie Ruth Crowley AtkinsonRespondents

**APPELLANT'S REPLY TO RESPONDENTS' RETURN
TO APPELLANT'S MOTION TO FILE AND SERVE
SUPPELEMENTAL RETURN OF APPEALLANT
TO RESPONDENTS' MOTION TO COMPEL INCLUSION OF
MATERIAL OMITTED FROM RECORD ON APPEAL**

Appellant respectfully submits this Reply to Respondents' Return to Appellant's Motion to File and Serve Supplemental Return of Appellant to Respondents' Motion to Compel Inclusion of Material Omitted from Record on Appeal.

Appellant previously filed a Reply to Respondents' letter to this Court of July 23, 2013, construing it as a Return. Thereafter Respondents filed a formal Return, to which this submission replies.

Respondents argue that this Court's rules do not permit the filing of a Supplemental Return, and that, if such a filing were permitted, a Supplemental Return should be allowed only within the five days allowed for a Reply, whereas Appellant filed within eight days.

However, while the Appellate Court Rules require the party opposing a motion to file a timely return to avoid being deemed to have consented to the relief sought, and they require the moving party to file a timely reply to avoid being deemed to have abandoned that relief, the rules do not appear to preclude other submissions. Further, Rule 240(e) provides, “The court may in its discretion enlarge or limit the time for filing a return.” Here, Appellant has filed a motion to file and serve a Supplemental Return, which appears to be within the scope of this Court’s discretion.

Respondents argue that Appellant’s Motion is causing Respondents unnecessary expense and wasting judicial resources. However, first, all of these pleadings concern Respondents’ own underlying motion to put a document into the Record on Appeal which was not presented to the trial court below through Respondent’s theory, unsupported by legal authority, that judicial notice is a vehicle to put documents, rather than facts, into the record.

Second, Respondents’ making new and unsupported factual and legal assertions in their Reply left Appellant in a position of moving to file a supplemental return or having no opportunity to be heard as to those assertions. Third, Appellant’s citing the record and Respondents’ own legal authority to show inaccuracies in Respondents’ assertions serves justice and saves, not wastes, judicial resources.

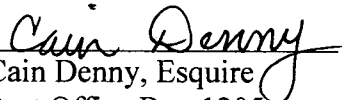
Respondents further argue that Appellant is trying to get a “second bite at the apple” without Respondent having an opportunity to be heard. However, as to Respondents’ Reply’s new and unsupported factual and legal assertions, Appellant never had a first bite at the apple, and Appellant has no objection to all parties having a full and fair opportunity to be heard.

WHEREFORE, Appellant's Motion to File and Serve a Supplemental Return should be granted.

August 2, 2013

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v.

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and Annie Ruth Crowley AtkinsonRespondents.

PROOF OF SERVICE

I certify that I have served a copy of (1) Appellant's Reply to Respondents' Return to Appellant's Motion to File and Serve Supplemental Return of Appellant to Respondents' Motion to Compel Inclusion of Material Omitted from Record on Appeal, (2) Appellant's Reply in Support of Appellant's Motion to Accept the Record on Appeal as Filed, and (3) Appellant's Reply in Support of Appellant's Motion to Extend the Time to Comply with this Court's June 19, 2013 Order Pending Resolution of Appellant's Motion to Accept the Record on Appeal as Filed on Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr., and Annie Ruth Crowley Atkinson by depositing a copy of it in the United States Mail, postage prepaid, on August 2, 2013, addressed to their attorneys of record, Jefferson D. Griffith, III, Esquire, and Richard L. Witt, Esquire, Austin & Rogers, P.A., Post Office Box 11716, Columbia, South Carolina 29211.

August 2, 2013

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August 2, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: The Milton P. Demetre Family Limited Partnership vs.
Harry Beckmann, III, et al
Appellate Case No. 2012-212136

Dear Ms. Kitchings:

Enclosed for filing please find:

- The original and seven (7) copies of Appellant's Reply to Respondents' Return to Appellant's Motion to File and Serve Supplemental Return of Appellant to Respondents' Motion to Compel Inclusion of Material Omitted from Record on Appeal;
- The original and seven (7) copies of Appellant's Reply in Support of Appellant's Motion to Accept the Record on Appeal as Filed;
- The original and seven (7) copies of Appellant's Reply in Support of Appellant's Motion to Extend the Time to Comply with this Court's June 19, 2013 Order Pending Resolution of the Appellant's Motion to Accept the Record on Appeal as Filed; and
- The original and one copy of Proof of Service for the above items.

Please return stamped copies in the envelope provided.

Best wishes.

Very truly yours,

Cain Denny

Cain Denny

c.c. Jefferson D. Griffith, III, Esquire (with enclosures)
Richard L. Witt, Esquire (with enclosures)
John Hughes Cooper, Esquire (with enclosures)
Mr. Milton P. Demetre (with enclosures)

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