

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

RECEIVED  
DEC 09 2013  
SC Court of Appeals

The Milton P. Demetre Family Limited Partnership .....Appellant

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 Atkinson .....Respondents

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**APPELLANT'S MOTION FOR EQUITABLE RELIEF**

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COMES NOW Appellant and respectfully moves this honorable Court for (1) an order finding that the two subject statements in Appellant's final briefs are not misleading to this Court, or, if that relief is denied, then (2) leave to amend those statements in Appellant's final briefs as indicated herein, or (3) such other relief as the Court may deem appropriate.

Facts

1. On June 18, 2013, Appellant filed his final briefs.
2. By Order dated October 3, 2013, this Court required Appellant to serve a supplemental record on appeal including the 1786 Grant and Plat and further required the parties to

serve and file their final briefs within twenty days of the filing of the supplemental record.

3. Appellant served the Supplemental Record on October 18, 2013.
4. Appellant's initial and final briefs discuss the 1786 Grant and Plat but do not cite to it. On November 6, 2013, Appellant served and filed Appellant's Notice of Reliance on Appellant's Final Brief and Final Reply Brief previously served and filed on June 18, 2013.
5. The 1786 Grant and Plat is in the Supplemental Record but was not presented to the trial court, was not in evidence at trial, and was not in the trial record.
6. By letter dated November 18, 2013, Respondents' counsel wrote to Appellant's below-signed counsel asserting that Appellant's counsel has, "an ethical duty to correct erroneous statements in both the Final Brief and the Final Reply Brief," which "contain two misleading statements, which incorrectly state that the 1786 Grant and Plat was not in evidence and the Record before the Court." The two statements Respondents cite are the following:

Statement #1, Final Brief of Appellant, p. 23

The 1786 Plat the Master cites was not presented at trial, is not in the record, and the Master erred by considering evidence not presented at trial or in the record.

Statement #2, Final Reply Brief of Appellant, p. 1, n. 1

The 1786 Plat, which the Master cited in his Order on Remand at Page 4, was not in evidence.

### Argument

1. Appellant contends that neither of the two statements is misleading. From their contexts, it appears obvious that the statements refer to the trial record and the trial evidence, not the Record on Appeal, since the Master would have relied on the trial record and trial evidence, not the Record on Appeal.
2. Further, there has been extensive briefing on the issue of the 1786 Grant and Plat, which would seem to preclude this Court's being misled in any way by the statements.

### Law

1. Rule 211(b), SCACR, provides, "**Content.** The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following . . . (1) *References to the Record.* The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. (2) *Correction of Typographical Errors and Misspellings . . .*" In the present case, since Appellant did not cite the 1786 Grant and Plat in his initial brief, per Rule 211(b), he did not cite it in his Final Brief. That is why Appellant gave notice that he was relying on his final briefs previously filed on June 18, 2013.
2. Rule 11, SCRCP, provides, ". . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay." Here, to the best of Appellant's counsel's knowledge, the 1786 Grant and Plat was not presented to the trial court, was not in the trial record, and was not in evidence at trial. Respondents have pointed to no evidence otherwise.

3. Respondents have made the argument that the trial court took judicial notice of the 1786 Grant and Plat in his Orders, but this Court's October 3, 2014 Order did not include that as a finding. Further, this Court's Order of October 3, 2014 did not find that the 1786 Grant and Plat was in the trial record. Further, even if the trial court took judicial notice of the facts shown by the 1786 Grant and Plat, Respondents have cited no authority - and Appellant is aware of no authority - that taking judicial notice of a fact acts as a mechanism to place the document evidencing that fact into the trial record.
4. Rule 407, Rule 3.3, provides, "CANDOR TOWARD THE TRIBUNAL. (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Here, Appellant's counsel has not knowingly made a false statements of fact or law to the tribunal. However, should this Court deem the subject statements to be false, Appellant seeks herein as alternative relief leave to correct those statements.
5. Rule 407, Rule 4.5, provides, "THREATENING CRIMINAL PROSECUTION. A lawyer shall not present, participate in presenting, or threaten to present criminal or professional disciplinary charges solely to obtain an advantage in a civil matter." In the present case, there seems to be little purpose in Respondents' counsel's November 18, 2013 letter to Appellant's counsel other than to coerce Appellant's counsel into changing the appearance of what evidence was presented to the trial court through the threat of professional disciplinary charges.
6. The South Carolina Appellate Court Rules do not appear to provide a remedy in this situation. A court may grant equitable relief where there is no adequate remedy at law. *See Shaw v. Coleman*, 373 S.C. 485, 498-99, 645 S.E.2d 252, 259 (Ct. App. 2007).

Relief Requested

To be clear that Appellant's counsel does not intend to mislead the Court and to minimize the risk to Appellant that could result from a ruling that the subject statements are unethical, Appellant respectfully requests (1) an order ruling that the Court is not misled by the two statements, or if that relief is denied, then alternatively (2) leave to amend the statements as indicated below, or (3) such other relief as the Court may deem appropriate.

Proposed Amendments

Statement #1, Final Brief of Appellant, p. 23

The 1786 Plat the Master cites was not presented at trial, is not in the trial record, and the Master erred by considering evidence not presented at trial or in the trial record.

Statement #2, Final Reply Brief of Appellant, p. 1, n. 1

The 1786 Plat, which the Master cited in his Order on Remand at Page 4, was not in evidence at trial.

December 5, 2013

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70618

The Milton P. Demetre Family Limited Partnership .....Appellant,

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Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr.,  
and Annie Ruth Crowley Atkinson .....Respondents.

PROOF OF SERVICE

I certify that I have served a copy of Appellant's Motion for Equitable Relief 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 December 5, 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.

December 5, 2013

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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 Motion for Equitable Relief;
- The original and one (1) copy of the Proof of Service for the foregoing; and
- A \$25 Motion Fee.

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)