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DEC 23 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William E. Lawson, Special Referee

CASE NO. 2011-CP-26-4758

Monroe E. Cook and Lynn S. CookeAppellants

vs.

Nealy Lynn Taylor..... Respondent

**APPELLANTS' RETURN TO
RESPONDENT'S MOTION TO STRIKE**

The Respondent argues that Argument I contained in the Reply Brief of Appellants is a new argument and as a result should be stricken from the Brief.

In fact, Respondent raised this argument in Respondent's Brief for the first time and Appellants are only responding to Respondent's argument. As an example, Respondent argues that Appellants' trial counsel failed to object (Brief of Respondent, p. 6); failed to argue a directed verdict motion on the unclean hands theory (Brief of Respondent, p. 7); failed to cross-examine certain witnesses on the unclean hands doctrine (Brief of Respondent, p. 7); and failed to argue for a directed verdict motion at the close of the evidence (Brief of Respondent, p. 10). Further, Respondent in her brief argues that

Appellants' trial counsel did not argue waiver or constructive trust (Brief of Respondent, p. 8 and p. 15). In effect, Respondent in her briefs argue that Appellants' trial counsel was incompetent when in fact trial counsel had previously agreed to join Respondent's law firm. This conflict was not presented to the trial court prior to the commencement of the trial.

A review of the transcript indicates that Appellant was at least concerned enough to speak up for himself when he asked: "...there is a option for appeal on this. Right?" (Tr. p. 7, lines 12-13). It is disingenuous for Respondent to argue now that the attorney they hired to join Respondent's law firm was incompetent and failed to preserve error.

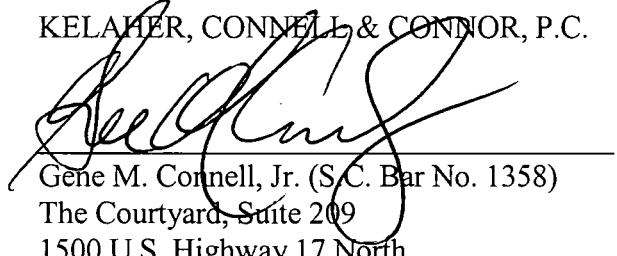
This issue was raised directly by Respondent in her brief. Appellants have only replied to Respondent's previous argument. Further, Appellants question how there could be a record of this issue, when Appellants' trial counsel failed to advise the Court of an issue which was material to the case and which was raised by the Respondent in her brief.

Appellants point out that this issue is important since this case is an action at equity, and in an appeal of a case tried without a jury, this Court may make findings in accordance with its own view of the preponderance or greater weight of the evidence. *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (S.C. 1976) (this is especially true in a case in equity such as this one).

Finally, if Respondent is correct in her assessment, the remedy in this case is not to strike this argument, but for the Court not to consider it. The use of a motion to strike Appellants' Reply to issues raised by the Respondent in its brief is a drastic remedy and Appellants can find no case law which would allow a preemptive strike of an argument before hearing by the Court especially in light of the fact that Respondent brought us these issues in her brief.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.



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Attorneys for Appellants

December 20, 2013
Surfside Beach, South Carolina.

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PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., Attorneys at Law, and that she has served **Appellants' Return to Respondent's Motion to Strike** on the Respondent, through her attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Phillip C. Thompson, Esq.
Thompson & Henry, P.A.
P. O. Box 1740
Conway, SC 29528

DATE OF MAILING: December 20, 2013

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 20th day of December, 2013.

Marie P. Freeman
Notary Public for South Carolina
My Commission Expires: 6/24/14

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

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SC Court of Appeals

Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Monroe E. Cook and Lynn S. Cook v. Nealy Lynn Taylor*
Appellate Case No. 2013-000926
Our File No. 2013-0111C

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of our Appellants' Return to Respondent's Motion to Strike and Proof of Service in the above-captioned matter. Please return a filed copy to me in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated documents on counsel of record.

With best regards, I am

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm

Enclosures

cc w/enc.: Phillip C. Thompson, Sr., Esquire
Monroe E. and Lynn S. Cook