

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-06482

Appellate Case No. 2013-000329

Harrison Partners, LLC, Appellant,
v.
Renewable Water Resources, Respondent.

RESPONDENT'S REPLY TO APPELLANT'S RETURN TO MOTION TO
DISMISS, OR ALTERNATIVELY, TO REQUIRE APPELLANT TO CONFORM
ITS INITIAL BRIEF TO THE SOUTH CAROLINA APPELLATE COURT RULES

Rivers S. Stilwell
Lane W. Davis
104 South Main Street
Poinsett Plaza, Suite 900
P.O. Box 10084 (29603)
Greenville, SC 29601
(864) 250-2300

Attorneys for Respondent

RECEIVED

MAR 03 2014

SC Court of Appeals

Respondent Renewable Water Resources ("ReWa") would respectfully show that Appellant has failed to respond to ReWa's Motion in a meaningful fashion:

- Appellant does not deny that its Initial Brief contains over a hundred (100) factual assertions unsupported by any citation to the Record as mandated by SCACR 208(b)(4). Appellant instead portrays such factual assertions as fair inferences to be drawn from the facts (although Appellant's brief nowhere discloses them as such)—but in so doing—Appellant tacitly admits it never furnished record citations to those "facts" from which it purports to draw such inferences. Moreover, the sheer volume of Appellant's unsupported assertions belies Appellant's rationalizations. It is fundamentally contrary to the intent of SCACR 208(b)(4) to require ReWa to sort argument from fact and to comb a thousand page transcript hoping it correctly guesses what Appellant references without citations. Allowing such practice deprives ReWa of a full, fair, and meaningful opportunity to defend itself on appeal.

- Appellant's Return persists in its troubling practice of incorrectly portraying disputed issues as uncontroverted fact.¹ The baseless assertion that Respondent conceded the application of the Vulcan case to the dispute at hand is reflected in neither the testimony nor the numerous legal memoranda filed in the proceedings below. Yet, without hesitation or any citation to the Record, Appellant's initial brief represents such fact as true, although Appellant now tries to downplay the same. Similarly, Appellant errantly cites DHEC's refusal to allow private sewer line

¹ ReWa invites the Court to compare what Appellant represented in its brief to what the actual record says and how Appellant now tries to characterize its factual assertions. They are irreconcilable. It is for that exact reason Appellant should be required to identify record citations for all factual assertions in its initial brief.

ownership as support for the "fact" that Respondent changed its sewer pump station policy. Other citations are just flat wrong (*e.g.*, testimony at R 491 (incorrectly cited as 490) expressly refers to the local legislative delegation rather than to Respondent's Board). Only by requiring Appellant to disclose what it purports to rely upon when making such factual assertions can Respondent discern and reply to these and the other serial mis-statements contained in Appellant's initial brief. Indeed, affording Respondent a fair opportunity to respond is the very purpose behind SCACR 208(b)(4).²

- Appellant's Return to ReWa's Motion is itself a painful demonstration of the confusion an un-cited Record will cause if left un-remedied in this appeal. In defending merely the 3 examples (among more than a hundred) cited in Respondent's pending Motion, Appellant randomly alternates its citations between the Hearing Transcript and the Record on Administrative Appeal, designating both with the prefix "R. ____." In some instances, the citations are to both the top and the bottom of the page numbers within the same string cite. Even when forced to provide citations, the Appellant's effort is a jumbled mess.

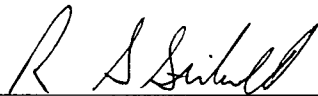
- Appellant argues in its Reply that the eight page excess of its Initial Brief was caused by formatting errors. Further, Appellant warrants that the length overrun will be corrected in its Final Brief. How? This reassurance must indicate that Appellant intends to substantially re-write its brief from one version to the next, which would be wholly improper and prejudicial to ReWa. Such effort should be expended in

² Under Appellant's logic, ReWa is entitled to make over 100 factual assertions in its initial brief and never identify any record citations. This is clearly not the rule and Appellant's flaunting of the rule substantially prejudices ReWa.

the course of correctly providing citations to the Record in a re-submitted Initial Brief which conforms to the Rules in both this respect, and in terms of length.

The South Carolina Appellate Court Rules were promulgated in order to ensure the integrity and fairness of South Carolina's appellate process. Allowing Appellant to end-run such rules imperils ReWa's right to a full and fair opportunity to defend itself. Accordingly, the Court should either dismiss Appellant's appeal or require Appellant to resubmit its initial brief in full compliance with the appellate court rules.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: 

Rivers S. Stilwell
SC Bar No. 02108
E-Mail: rivers.stilwell@nelsonmullins.com
Lane W. Davis
SC Bar No. 68796
E-Mail: lane.davis@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for Renewable Water Resources

Greenville, South Carolina

Feb 26, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-06482

Harrison Partners, LLC, Appellant,
v.
Renewable Water Resources Respondent.

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondents, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Respondent's Reply to Appellant's Return to Motion to Dismiss, or Alternatively, to Require Appellant to Conform Its Initial Brief to the South Carolina Appellate Court Rules

Counsel Served:

Robert C. Childs, III
2100 Poinsett Hwy, Suite D
Greenville, SC 29609

J. Faulkner Wilkes
114 Whitsett Street
Greenville, SC 29601

RECEIVED

MAR 03 2014

SC Court of Appeals



Rivers S. Stilwell

February 26, 2014

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
104 South Main Street / Ninth Floor / Greenville, SC 29601
Tel: 864.250.2300 Fax: 864.232.2925
www.nelsonmullins.com

Lane W. Davis
Tel: 864.250.2245
lane.davis@nelsonmullins.com

February 26, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
PO Box 11629
Columbia, SC 29211

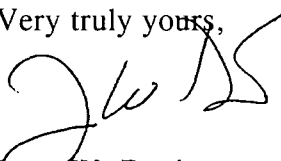
RE: Harrison Partners, LLC v. Renewable Water Resources
Case No. 2011-CP-23-06482
Appellate Case No. 2013-000329
Our File No. 06769/01511

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondent's Reply to Appellant's Return to Motion to Dismiss, or Alternatively, to Require Appellant to Conform Its Initial Brief to the South Carolina Appellate Court Rules in the above-referenced matter.

Please return a file stamped copy in the self-addressed, stamped envelope provided.

Very truly yours,



Lane W. Davis

LWD:ap
Enclosures
cc: Robert C. Childs, III (w/enclosure)
J. Falkner Wilkes (w/enclosure)

RECEIVED

MAR 03 2014

SC Court of Appeals

The South Carolina Court of Appeals

Harrison Partners, LLC, Appellant,

v.

Renewable Water Resources, Respondent.

Appellate Case No. 2013-000329

The Honorable The Edward W. Miller
Greenville County
Trial Court Case No. 2011CP2306482

ORDER

Appellant's request for an extension of time for serving and filing the return to the motion to dismiss is hereby granted and the return to the motion to dismiss is accepted as filed.

FOR THE COURT

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

FILED

2/28/14 EAC

cc:

Robert Clyde Childs, III, Esquire
J. Falkner Wilkes, Esquire

Rivers Samuel Stilwell, Esquire
Lane Whittaker Davis, Esquire