

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

MAY 30 2014

L. Casey Manning, Circuit Court Judge

S.C. Supreme Court

Case No. 2004-CP-40-1915

Allegro, Inc., Respondent/Petitioner,

v.

Emmett J. Scully, Synergetic, Inc., George Corbin,
and Yvonne Yarborough Defendants,

Of Whom Emmett J. Scully, George Corbin, and
Yvonne Yarborough are Petitioners/Respondents.

PETITIONERS'/RESPONDENTS' RETURN TO MOTION TO CLARIFY

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Petitioners/Respondents Emmett J. Scully, George Corbin and Yvonne Yarborough ("Petitioners/Respondents") hereby submit their Return in opposition to Allegro, Inc.'s ("Allegro") Motion to Clarify.

Contrary to Allegro's assertion in its motion, this Court's Opinion No. 27391 was absolutely clear in its rulings. In an attempt to create a lack of clarity, Allegro re-characterized the Opinion by reordering its rulings. Specifically, Allegro's motion focuses first upon the disposition of Petitioners/Respondents' petition stating that this Court granted the petition, dispensed with further briefing, and remanded the case to the Court of Appeals for it to address the directed verdict and JNOV issues. Allegro then suggests that the denial of its own petition on the separate issue of the grant of a new trial

was merely a technical result of the other certiorari ruling and not a final disposition of that issue. *See* Motion to Clarify at p. 2 (“In so ruling, this Court also denied Plaintiff’s certiorari petition without further comment.”). Allegro is mistaken.

This Court’s concise Opinion resolved Allegro’s petition at its outset. The first matter decided in the Opinion was the denial of Allegro’s petition. Opinion No. 27391 (“We deny Allegro’s petition, ...”). Only after Allegro’s petition was denied does the Court address Petitioners’/Respondents’ petition.

Despite the fact that this Court directly and definitively ruled on Allegro’s petition at the outset of its Opinion, Allegro’s motion suggests that this Court was actually engaging in a four-point analysis that did not intend to rule on Allegro’s petition at this time, but rather reserved a dispositive ruling for some subsequent appeal. Allegro’s suggestion ignores the realities of this appeal and this Court’s Opinion.

The “new trial” issue that was the subject of Allegro’s petition was wholly separate from the “directed verdict/JNOV issues” that were the subject of Petitioners’/Respondents’ petition. The Court of Appeals properly reversed the judgment in this matter and ordered a new trial based solely on the “new trial” issue of the improper admission over objection of the temporary injunction. Allegro’s petition for rehearing was denied, and its petition for certiorari, which was denied by this Court, focused on this issue.

In contrast, Petitioners’/Respondents’ petition did not involve the “new trial issue” and instead only sought rulings on the directed verdict/JNOV issues that were not addressed by the Court of Appeals. This Court’s remand to the Court of Appeals on the directed verdict/JNOV issues serves only to potentially limit the new trial to the proper

claims and parties that survived. Put simply, the new trial issue was ripe for final determination, and this Court's denial of certiorari on that issue properly and finally decided the issue. Contrary to Allegro's assertion, "judicial economy" is not served by delaying final disposition of the new trial issue as it is wholly independent of the matters remanded to the Court of Appeals.

Because this Court's Order initially and specifically denied Allegro's petition, Petitioners/Respondents requested that Allegro's counsel take the necessary steps to withdrawal or cancel the Transcripts of Judgment they had filed with various counties' clerks of court. *See* Letter 5/29/14 Letter from Crotty to Morgan and Widener, attached as Exhibit A. These Transcripts of Judgment have been on file for over eight years encumbering Petitioners/Respondents' property to their detriment. Now that the Court of Appeals has reversed that judgment and ordered a new trial, and now that this Court has denied Allegro's certiorari petition as to that reversal, the removal of the judgments from the clerks of court's judgment roles is entirely necessary and proper at this time.

Therefore, because the Opinion in this matter clearly denies Allegro's petition for a writ of certiorari on the new trial issue, Petitioners/Respondents respectfully request that this Court deny Allegro's motion to clarify.

SIGNATURE PAGE ATTACHED

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Attorneys for Petitioners/Respondents Emmett J.
Scully, George Corbin, and Yvonne Yarborough

Columbia, South Carolina

May 30, 2014

Exhibit A

Nelson Mullins

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May 29, 2014

Via E-Mail (rmorgan@mcnair.net & rwidener@mcnair.net) & U.S. Mail

Richard J. Morgan, Esquire
Robert L. Widener, Esquire
McNair Law Firm P.A.
Post Office Box 11390
Columbia, South Carolina 29211

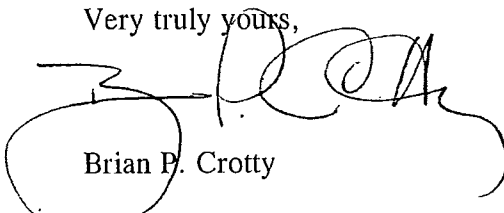
RE: Allegro, Inc. v. Emmett J. Scully, Synergetic, Inc., George Corbin, and
Yvonne Yarborough
Civil Action No. 04-CP-40-1915
SC Court of Appeals Tracking No. 200899926
SC Supreme Court Case No. 2012-213386
Our File No. 28221/01500

Dear Rick & Robert:

Yesterday the South Carolina Supreme Court issued its opinion denying your client's petition for a writ of certiorari. That denial finalized the Court of Appeals' reversal of the judgment and grant of a new trial. As the original trial court judgment no longer exists, we hereby ask you to take whatever steps are necessary to withdraw or cancel the Revised Transcript of Judgment you submitted to the Richland County Clerk of Court, including any other counties where the Transcript of Judgment has also been filed or entered. We further ask that you let us know as soon as possible when this has been accomplished.

Thank you for your attention to this matter.

Very truly yours,



Brian P. Crotty

cc: Amy L. Gaffney, Esq. (via e-mail agaffney@glelawfirm.com)

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PROOF OF SERVICE

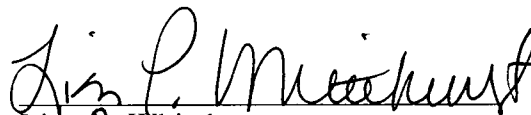
I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail,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

Pleadings: **Petitioners'/Respondents' Return to Motion to Clarify**

Counsel Served:

Robert L. Widener, Esquire - Via Hand Delivery
Richard J. Morgan, Esquire
McNair Law Firm, PA
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Columbia, SC 29211

Amy L. Gaffney, Esquire
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Lisa R. Whitehurst
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May 30, 2014

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The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

S.C. Supreme Court

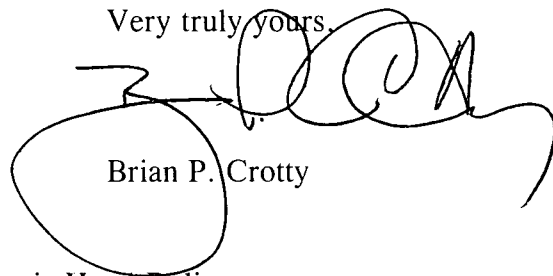
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Yarborough
Civil Action No. 04-CP-40-1915
SC Court of Appeals Tracking No. 200899926
SC Supreme Court Case No. 2012-213386
Our File No. 28221/01500

Dear Mr. Sherouse:

Enclosed for filing is the original and seven (7) copies of Petitioners'/Respondents' Return to Respondent Petitioner's Motion to Clarify in the above matter. We ask that you file the original and return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are serving them with a copy of this Return.

Very truly yours,



Brian P. Crotty

BPC:mws
Enclosure

cc: Robert L. Widener, Esquire, via Hand-Delivery
Amy L. Gaffney, Esquire