STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas
Hon. J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-6529
Op. No. (5208)

Amber Johnson.....Petitioner,

v.

Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, P.C.,
of whom Stanley E. Alexander is the .....Respondent.

v.

Mario S. Inglese and Mario S. Inglese, P.C.....Third Party Plaintiffs,

v.

Charles Feeley.....Third Party Defendant.

Appellate Case No. 2014-001167

PETITION FOR WRIT OF CERTIORARI

Justin S. Kahn
jskahn@kahnlawfirm.com
SC Bar No.: 65100
Wes B. Allison
SC Bar No.: 100533
Kahn Law Firm, LLP
P. O. Box 31397
Charleston, SC 29417-1397
(843) 577-2128
(843) 577-3538 - Fax

Mary Leigh Arnold
SC Bar No.: 419
Sammie@maryarnoldlaw.com
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Ste. B
Mt. Pleasant, SC 29464
(843) 971-6053
(843) 971-6055 - Fax
ATTORNEYS FOR PETITIONER AMBER JOHNSON

Charleston, SC
July 16, 2014

Other Counsel of Record:
Robert F. Goings, Esq.
Goings Law Firm, LLC
PO Box 436
Columbia, SC 29202

Joel W. Collins, Jr., Esq.
Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211
ATTORNEYS FOR RESPONDENT STANLEY E. ALEXANDER

Table of Contents

Table of Authorities

Cases

Other Authorities

Rules

Treatises

Certification of Counsel

The undersigned hereby certifies that Amber Johnson filed a petition for rehearing with the Court of Appeals and the Court of Appeals ruled on the petition with finality on May 16, 2014 (App. 400-401).

Questions Presented for Review

I. **Did the Court of Appeals err by creating immunity for a closing attorney who uses a negligently performed title search that results in the client losing real property?**

II. **Did the Court of Appeals err by effectively modifying and limiting the scope of the representation and duties of a closing attorney without the client's informed consent in such a way that he could not be liable if he relies on another's negligently performed title exam?**

III. **In a professional negligence lawsuit against a closing attorney, did the Court of Appeals err in finding questions of fact about the attorney's reasonable reliance and legal relationship with his title examiner were material to the client's claim?**

IV. **Did the Court of Appeals err by holding that a closing attorney's admissions as to the standard of care were subject to a different factual interpretation than what the lower court determined?**

Statement of the Case

Pursuant to Rule 242 of the South Carolina Rules of Appellate Procedure, Appellant-Plaintiff Amber Johnson (hereinafter Johnson) seeks *certiorari* regarding the Court of Appeals' decision in *Amber Johnson v.*

Stanley E. Alexander, Op. No. 5208, (S.C. Ct. App. filed March 19, 2014 (Shearouse Adv. Sh. No. 11 at 74), 408 S.C. 58, 757 S.E.2d 553 (Ct. App. 2014), *reh'g denied* (May 16, 2014). (App. 400-401).

There are special and important reasons *certiorari* should be granted including novel questions of law as to the responsibilities and nondelegable duties of a closing attorney. Rule 242(b)(1), SCACR.

This claim arises out of a closing in which property and a home was purchased by Johnson. Her closing attorney, Respondent-Defendant Stanley Alexander (hereinafter Alexander), failed to discover and report to Johnson prior to closing public records showing the home being purchased had been sold at a tax sale nearly a year earlier. Although the property could have been redeemed at the closing, the period for redeeming the property expired shortly after the closing and Johnson was stripped of title by virtue of a tax deed that was issued.

The lower court granted partial summary judgment as to liability in Johnson's favor after determining the public tax sale records existed at the time of closing and that it was negligence for Alexander to miss them.

In reversing the lower court, the Court of Appeals created a shield from liability for a closing lawyer that has not been recognized by this Court

and that is contrary to established principles. The Court of Appeals did not find the lower court committed any error, but rather declared the focus should have been on issues not previously raised.

Alexander has previously represented Johnson. (App. 80). In August 2006, Alexander agreed to represent Johnson again as her closing attorney for her purchase of a home at 2640 Ranger Drive, N. Charleston, S.C. (the "Property") (App. 80, 112). However, almost 11 months earlier, the Property had been sold to pay delinquent Charleston County taxes. (App. 203-204, 278). This tax sale was documented in the public record (App. 202-206). It is undisputed that neither Alexander nor his title examiner discovered the tax sale, and as a result, did not report the tax sale to Johnson prior to closing. About three months after closing, the Charleston County Delinquent Tax Collector issued a deed for the Property to the highest bidder from the 2005 tax sale. This terminated Johnson's interest in the Property. (App. 26, 124-125).

Johnson filed a complaint against Alexander for professional negligence. (App. 25-36). The gravamen of the complaint was that Alexander was negligent for failing to discover the property she was buying had been sold for delinquent taxes and as a result, she lost the property. The

Complaint also named Mario Inglese, Esq. (hereinafter Inglese), to whom Alexander issued a check for the "title work." (App. 33).

Alexander filed an Answer and Crossclaim seeking indemnity against Inglese. (App. 37-48). Alexander asserted Inglese breached duties owed to him by "failing to properly, thoroughly, and fully examine the title to the subject property and by failing to advise or disclose that title of the subject property was subject to past due taxes or taxes that may be due and subject to lien, tax sale, or execution." (App. 45). Inglese in turn responded and filed a third-party complaint against Charles M. Feeley, Esquire (hereinafter Feeley), to whom he claims he delegated the title search.

After discovery, Johnson filed a Motion for Partial Summary Judgment as to Alexander's liability. (App. 72-94). Alexander filed his affidavit in opposition and stated "[a] real estate closing attorney routinely relies upon the result of a title examination..." (App. 113).

A hearing was held before the Hon. J.C. Nicholson, Jr. (App. 7-20). Because Alexander claimed a question of fact existed as to whether tax records and documents concerning the tax sale were publicly available, Judge Nicholson continued the hearing and ordered the parties to submit

additional information as to what the Charleston County records reflected at the time of closing about the tax sale and delinquent taxes. (App. 8-9).

In response to the court's directive, Alexander filed a memorandum in opposition to Johnson's Motion for Partial Summary Judgment. (App. 95). Alexander also filed Feeley's affidavit stating that he did not see the tax sale when he checked Charleston County records. (App. 127-129). Johnson filed several affidavits, including one from Mary Scarborough, the Charleston County Delinquent Tax Collector. (App. 202-206). A second hearing was held. (App. 214-262).

On July 6, 2011, the Court entered an order granting partial summary judgment as to liability because it found no material question of fact existed that Alexander was liable for the failure to discover the public records showing the prior delinquent tax sale. (App. 7-20). In addition to Johnson's affidavits, the trial court relied on Alexander's deposition admissions about a closing lawyer's duties to his client, including:

- A lawyer handling a closing has the responsibility to make sure the purchaser gets good and marketable title to the property. (App. 84-85). "That would be your job." (App. 85).

- Alexander had a duty to make sure Johnson got the property free and clear with good and marketable title. (App. 91, 84).

- Alexander conducted a closing precisely to ensure that Johnson got good and marketable title. (App. 84).

As to the purported questions of fact Alexander claimed about the public records relating to the tax sale, Judge Nicholson noted:

> In August 2006, when Alexander contends that the title examination of the Property occurred, Charleston County Delinquent Tax records showed the property taxes were delinquent in the years 2003 and 2004, and that the Property had been sold at a tax sale on October 3, 2005. (App. 203-204). Further, during the relevant time, the public records concerning these issues were available either by using the Charleston County On-Line Tax System via the web or the Vista system. (App. 204).

Alexander filed a Notice of Appeal instead of a Rule 59(e) motion to reconsider. The questions Alexander presented for appeal were:

I. The Circuit Court erred in finding that Johnson had proven the elements of legal malpractice as a matter of law and that no genuine issue of material facts existed.

A. Genuine Issue of Material Fact Exists Whether Alexander Breached the Standard of Care.

B. The Circuit Court Erred in Concluding that Alexander Had an Affirmative Duty to Convey Clear and Marketable Title to the Property.

C. The Circuit Court Erred in Granting Summary Judgment Without Sufficient Expert Testimony to Establish Duty and Breach

i. Johnson failed to present sufficient expert testimony to establish Alexander breached a duty of care

ii. The circuit court erred in finding that Brown was competent to testify as an expert that Alexander breached a duty of care as a matter of law.

D. A Genuine Issue of Material Fact Exists As to Damages

E. A Genuine Issue of Material Facts Exists as to Causation

II. The Circuit Court Erred in Denying Alexander's Motion for Continuance

(App. 282).

On March 19, 2014, the Court of Appeals reversed the lower court and remanded for certain factual determinations related to Alexander's use and reliance on title work prepared by another. (App. 380-385). It circumvented the issues raised, and held that the lower court was in error for focusing on what public records existed at the time of the title search:

> To determine Alexander's liability, the issue is not whether a reasonable attorney conducting a title search on property would have found the information, but whether Alexander acted reasonably under the existing circumstances in relying on the title search performed by Feeley. (App. 383)

The Court of Appeals also noted that the Supreme Court has not previously addressed the agency relationship between a title examiner and closing lawyer.[1] Thus, it decided that an issue of fact existed as to whether

[1] Respondent Alexander did not raise any questions concerning reasonable reliance or agency to the lower court or the Court of Appeals. The fact Alexander used Feeley's title exam has never been in dispute. (App. 127-129).

Feeley was Alexander's agent. This was despite the fact that the lower court clearly held that "Alexander was negligent because he (or his agent) failed to determine that public records showed the delinquent taxes on the property..." (App. 15). Alexander did not appeal the "his agent" finding of the lower court.

Johnson filed a Petition for Rehearing on April 12, 2014. She argued Alexander never contended he was not liable for the title exam because he reasonably relied upon Feeley; rather, Alexander simply claimed the public records alerting him to the tax sale were not there to be seen. The Petition for Rehearing was denied on May 16, 2014. (App. 400-401.)

Concise Arguments in Support of the Petition for *Writ of Certiorari*

1. The Court of Appeals erred by creating immunity for a closing attorney who delegates a task within his scope of representation.

The Court of Appeals did not disturb the lower court's finding of fact that the public tax sale records existed and that it was negligent not to discover them as part of the title exam. (App. 380-385). Rather, the Court suggested that if Alexander can show on remand that he reasonably relied on a third-party, Feeley, to perform the title search, then Alexander may not be liable to his client for the negligence of Feeley. (App. 384-385).

The effect of the Court of Appeals' decision is to create a new immunity for attorneys who choose to delegate tasks within the scope of their representation. Taken to its logical conclusion, if a lawyer shows "reasonable reliance" on one to whom he delegated a task within the scope of the representation, that lawyer can be free from liability. The client may be left without recourse for a negligently performed title search for several reasons, including lack of privity with the third party.

"Relying on bad title search doesn't equal malpractice"[2] is the wrong message to send in this case and *certiorari* should be granted to correct this.

---

[2] http://sclawyersweekly.com/news/2014/03/26/sc-court-of-appeals-relying-on-bad-title-search-doesnt-equal-malpractice/ (last checked July 16, 2014).

In addition to bad public policy, discussed *infra*, the ruling conflicts with the dominant South Carolina law regarding nondelegable duty and unilaterally allows an attorney to limit the scope of the representation without the client's knowledge or informed consent.

A. A closing attorney should be liable for a negligently performed title exam.

In order to protect consumers, South Carolina requires that only an attorney may close a real estate sale. This Court should make clear that the same rule of nondelagability that applies to City Hall, hospitals and trucking companies applies to closing attorneys as well. As this Court has held "a person or entity entrusted with important duties in certain circumstances may not assign those duties to someone else and then expect to walk away unscathed when things go wrong." *Simmons v. Tuomey Reg'l Medical Center,* 533 S.E. 2d 312, 317, 341 S.C. 32, 44 (2000).

In a thorough discussion of the doctrine, this Court explained,

> The term "nondelegable duty" is somewhat misleading. A person may delegate a duty to an independent contractor, but if the independent contractor breaches that duty by acting negligently or improperly, the delegating person remains liable for that breach. It actually is the liability, not the duty, that is not delegable. The party which owes the nondelegable duty is vicariously liable for negligent acts of the independent contractor.

Simmons, 533 S.E. 2d at 317, 341 S.C. at 42. *See also Smith v. Regional Medical Center of Orangeburg and Calhoun Counties*, 394 S.C. 110, 113, 713 S.E.2d 656, 658 (Ct. App. 2011) *and* F. Patrick Hubbard & Robert L. Felix, *The South Carolina Law of Torts* p. 654 (S.C. Bar 1997).

This Court has recognized the nondelegable duty in many situations outside of a hospital: an employer has a nondelegable duty to provide a reasonably safe work place; a landlord has a nondelegable duty to undertake repairs through a contract and see that the repair is done properly; a common carrier has a nondelegable duty to ensure cargo is properly loaded and secured; a bail bondsman has a nondelegable duty to supervise the work of his employees; and a municipality has a nondelegable duty to provide safe streets. *Simmons*, 533 S.E. 2d at 317-18, 341 S.C. 42-43, fn. 6-8. *Cf.*, *Singleton v. Stegall*, 580 So.2d 1242, 1244 (Miss. 1991) ("First, each lawyer, by virtue of the positive, substantive law of this state, has a duty of care consistent with the level of expertise the lawyer holds himself out as possessing and consistent with the circumstances of the case. *This duty is non-delegable.*") (internal citations omitted) (emphasis added).

A closing attorney is entrusted with important duties as well, and should not be excluded from this list. In discussing the unique role of a

closing attorney in this state, the Court of Appeals previously explained "the policy determination requiring the use of an attorney to close a real estate sale is necessary to protect the participants in the transaction and the public from the numerous things that can go wrong when transferring real estate." *Inglese v. Beal*, 403 S.C. 290, 296, 742 S.E.2d 687, 690 (Ct. App. 2013), *citing State v. Buyers Serv. Co.*, 292 S.C. 426, 431, 357 S.E.2d 15, 18 (1987). The Court also stated that "[w]hen an attorney is aware of such a potential problem, it is the responsibility of the attorney to ensure that the potential never materializes." *Id.*

One potential problem for which Alexander or any other closing attorney must anticipate and prevent is the loss of the client's property due to delinquent taxes. No one disputes checking tax records for clouds on title is a core duty of the closing attorney. *See* Charles T. Manning, *Handbook for South Carolina Dirt Lawyers* 2d, 22-23 (S.C. Bar 2008). Further, this Court's *Guidelines for a Closing Attorney in a Residential Purchase*, issued Sept. 23, 2009, makes clear that *the closing attorney* is to "[c]ertify the title to the subject property."

It is undisputed that the title exam Alexander used to certify title failed to discover public records showing the property had been sold at a tax

sale nearly a year before Johnson's closing. As a matter of law, Alexander, as Johnson's fiduciary (App. 89) and closing attorney (App. 112), should be held liable for the negligence associated with the scope of his representation, including the tasks he undertook to perform, oversee, and collect a fee.[3]

B. Permitting a closing attorney to escape liability for a negligent title search is anathema to public policy, as it leaves no redress for the injured client.

Permitting immunity from liability for closing attorneys who use someone else's work to complete the essential tasks of their representation is bad public policy. Accordingly, this Court should grant *certiorari* and reverse.

***Quare*: Where does the client who is harmed by a negligent title search find relief, if not from the attorney hired to do the work?**

Under the Court of Appeals' ruling, the client would have no recourse as long as the closing attorney shows "reasonable reliance" on another. The Court of Appeals attempts to solve the problem its ruling creates by suggesting the client could sue someone with whom she has no privity, stating "Feeley is the attorney who failed to discover the contents of the public record. If Feeley was negligent, Feeley is liable." (App. 383).

---

[3] Alexander may (and did) seek indemnification for his losses arising from the negligent title exam from the person he hired or relied upon. (App. 49-52).

How could Feeley be liable to Johnson for legal malpractice? Feeley may be an attorney, but he was not Johnson's attorney. No privity or attorney-client relationship existed between them so as to make Feeley liable to Johnson for his professional negligence or malpractice. *Harris Teeter Inc. v. Moore & Van Allen PLLC*, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010) (to prove liability for legal malpractice, a plaintiff must first show the existence of an attorney-client relationship).

Although the Court of Appeals suggested[4] that Johnson initially retained Mario Inglese, "there is no dispute" Alexander was "her attorney in the closing that's at issue in this case..." (App. 80). Nothing suggests Johnson knew or consented to Alexander delegating the task of performing the title work or certifying title. Alexander was Johnson's closing attorney. He is responsible for the negligence of those to whom he delegated tasks associated with his representation and his certification of the title work.

In deciding to grant *certiorari*, this Court should consider the ramifications of the Court of Appeals' ruling, which essentially blesses the practice of passing the buck. Now, two closing lawyers can avoid liability entirely simply by agreeing to perform each other's tasks. As long as they

[4] (App. 381). There is no dispute that only Alexander was the closing attorney. (App. 80).

"reasonably rely" on each other, the Court of Appeals' ruling means their clients have no recourse for harm resulting from negligence or malpractice.

Johnson urges the Court to adopt a simple and equitable standard:

> A closing attorney is responsible for tasks negligently performed that are within the scope of the representation.

To permit otherwise works confusion and uncertainty on the very people the Rules and law are designed to protect, the clients and the public. Accordingly, this Court should grant *certiorari* to review and address the Court of Appeals' ruling.

2. By effectively limiting the scope of representation and duties of a closing attorney without the client's informed consent, the Court of Appeals erred.

In finding that a closing attorney may not be held liable for a negligent title search if he reasonably relied on the title examiner, the Court of Appeals ignored a distinction inherent in the South Carolina Rules of Professional Conduct: While an attorney may choose to delegate a task within the lawyer's scope of representation, he cannot delegate his liability when that task is performed negligently. Rule 1.8(h), Rule 407, SCACR, Rules of Professional Conduct (RPC).

Under the rules, "[a] lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances *and the client gives informed consent.*" Rule 1.2(c), RPC. (Emphasis added). Informed consent "denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated reasonably adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." *ITC Commercial Funding, LLC v. Crerar*, 393 S.C. 487, 491-92, 713 S.E.2d 335, 337 (Ct. App. 2011), *citing* Rule 1.0(g), RPC.

The improper result of the Court of Appeals' decision to reverse partial summary judgment is to limit the scope of Alexander's representation without his client's knowledge or informed consent. Alexander admitted that he and Johnson had an attorney-client relationship and that, as her closing attorney, he had a duty to see to it that good and marketable title was conveyed to Johnson (App. 84, 91, 268).

Inherent in the job of the closing attorney is to protect the client against discoverable title defects. (App. 84-85, 91)."[T]here was a failure in the title." (App. 83). It the context of a home purchase, even with his client's written informed consent, Alexander could not have limited the

scope of his representation by disclaiming a duty to provide a competent title search without advising his client to consult other counsel. Regardless, Alexander never claims to have limited the scope of his representation.

By creating a way to limit his liability for a matter specifically within the scope of his representation, the Court of Appeals exceeded its bounds and improperly nullified Rule 1.2, RPC. This Court should grant *certiorari* to rectify this result.

3. In a professional negligence suit against a closing attorney, the Court of Appeals erred in finding questions of fact about the attorney's reasonable reliance and legal relationship with his title examiner were material to the claim.

The Court of Appeals reversed partial summary judgment as to Alexander's liability and remanded the case for 1) determination by the lower court on whether Alexander reasonably relied on Feeley and 2) whether Feeley was Alexander's agent because the Supreme Court has not addressed "whether or under what circumstances an agency relationship exists as a matter of law between a real estate closing attorney and a person performing a title search."

The answer to either question is immaterial to Johnson's claim against Alexander. Thus, *certiorari* should be granted and the decision reversed.

A. Reliance is Immaterial.

The Court of Appeals did not disturb the lower court's finding that the tax records showing Johnson's home had been sold were public and that they should have been discovered as part of the title exam. (App. 7-20). As discussed above, Alexander admitted that he owed a duty to Johnson to ensure the title work was performed in compliance with the standard of care such that she got good and marketable title. (App. 84-85, 267). Absent proper consent to delegate the duty, a closing attorney should not be permitted to escape liability by claiming "reasonable reliance" on another.

For example, who is liable when an attorney's competent and trusted paralegal forgets to file a summons and complaint and the deadline passes? The attorney is liable, regardless of whether he reasonably relied on his paralegal. Even if the paralegal delegated the task without the attorney's knowledge to a courier service that was negligent in not delivering the papers to the courthouse in time, the attorney is still liable to his client for breaching the duty to get the matter timely filed. The same should hold true here. Whether Alexander "reasonably relied" on a third party is immaterial to Alexander's duty to ensure that Johnson's title work was performed

correctly. Reversing partial summary judgment on that ground was, as plainly stated, obvious error.

B. Questions of Agency Are Immaterial to Johnson

The "question of fact" as to whether Feeley was Alexander's agent is similarly irrelevant. As the Court of Appeals correctly explained in its ruling, Johnson hired Alexander to close her purchase. Alexander admitted he was her attorney and that they had an attorney-client relationship. (App. 80, 381). Alexander paid Inglese for the "title work." (App. 33). According to Alexander, Inglese hired Feeley who submitted his title exam to Alexander. Alexander then reviewed the report (116) and additional records online to certify the title. (App. 112-113).

The nature of the relationship among Alexander, Feeley and Inglese has no bearing on Johnson's claim against Alexander, who admits Johnson hired only him. As discussed above, the record is devoid of any evidence or argument that Johnson hired Feeley. Further, Alexander admits he did not see the public records of the delinquent tax sale as well. (App. 112). Alexander states he examined Charleston County tax records *after* Feeley performed the title abstract and he also failed to discover the tax sale. (App. 112-113) ("No records were discovered at the time of the title examination or

the closing that would have put me on notice that property taxes were delinquent or that a tax sale had occurred on the property.")

During the summary judgment stage, Johnson presented the trial court with an affidavit from the Charleston County Delinquent Tax Collector, Mary Scarborough, attesting to the publicly available delinquent tax sale records regarding the home Johnson was purchasing. Unsurprisingly, Johnson also presented multiple South Carolina cases holding that public records regarding property are considered public and that someone in Alexander's position shall be held to have actual notice of the information contained therein. *See, e.g.*, *Taylor v. Mill*, 310 S.C. 526, 528, 426 S.E.2d 311, 312 (1992) (delinquent tax records are public as a matter of law). The trial court subsequently determined that public records are public and found that Alexander "was estopped to argue such information was not available to him." (App. 15).

Thus, the facts and Alexander's own testimony show the Court of Appeals erred in finding that the trial court improperly focused its inquiry on whether the Charleston County public records were available and should have been discovered as part of the title search. (App. 20). That was precisely the determinative question of fact presented.

The Court of Appeals' decision to remand for determination of two side issues — Alexander's reasonable reliance and agency — was clearly in error, and this Court should grant *certiorari* to address those issues.

4. The Court of Appeals erred by ignoring the plain meaning of the closing attorney's admissions as to the standard of care.

Alexander told the trial court that he had a duty to ensure Johnson obtained good title to the house she was buying. (App. 84). The Court erred in deciding that Alexander did not mean what he said. Specifically, the Court of Appeals stated:

> We have no doubt these statements by Alexander will be important at trial. For summary judgment purposes, however, we do not believe Alexander's statements can be fairly interpreted as a concession that he had an absolute responsibility to deliver good and marketable title. Rather, considering Alexander's statements in the light most favorable to him, he conceded only that he must act with reasonable care in closing the transaction, including his decision to rely on Feeley's title search and not do a title search himself.

(App. 384). Under the law in South Carolina, a professional in a professional negligence case may establish the standard of care owed to a client. *Sims v. Hall*, 357 S.C. 288, 296, 592 S.E.2d 315, 319 (Ct. App. 2003). *See also Mali v. Odom*, 295 S.C. 78, 81, 367 S.E.2d 166, 168 (Ct. App. 1988) (holding that

defendant, a practicing lawyer, established the applicable standard of care for a closing attorney).

Alexander made several clear admissions, including:

- He represented Johnson in the closing (App. 84);
- He had a duty to convey good and marketable title to Johnson (App. 268);
- As a closing lawyer, he was required to exercise good and prudent judgment and use the tools available. (App. 267); and
- The title work was defective (App. 133) because it did not reveal the delinquent tax sale. (App. 134).

The Court of Appeals erred in finding the attorney's admissions could mean something else. Alexander's truthful testimony established the standard of care and its breach. Under *Sims* it was error to hold otherwise. The Court of Appeals attempted to minimize his admissions by observing, "Alexander also stated in the same discussion, however, that his responsibility was 'to close [Johnson's] transaction for her to the best of my abilities and based on the information I had at the time.'" (App. 384).

"To the best of my abilities" is never the standard of care because it is subjective. For the professional, this Court has held there exists only an objective standard of care. *State v. Brown*, 240 S.C. 590, 595, 533 S.E.2d 308, 310 (2000). The Court of Appeals attempted to free Alexander from his

admissions by his subjective "best of my abilities" comment to somehow create a question of fact. This is in error, and the Court should grant *certiorari* to address it.

Conclusion

Because of the novel questions of law raised by the Court of Appeals and for the reasons given, this Court should grant this petition for *writ of certiorari*. The decision of the Court of Appeals should be reversed, the judgment of the Circuit Court reinstated and such other and further relief as is deemed just and proper should be granted.

Respectfully submitted,

Justin S. Kahn
jskahn@kahnlawfirm.com
SC Bar No.: 65100
Wes B. Allison
SC Bar No.: 100533
Kahn Law Firm, LLP
P. O. Box 31397
Charleston, SC 29417-1397
(843) 577-2128
(843) 577-3538 – Fax

Mary Leigh Arnold
SC Bar No.: 419
Sammie@maryarnoldlaw.com
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Ste. B
Mt. Pleasant, SC 29464
(843) 971-6053
(843) 971-6055 – Fax

ATTORNEYS FOR PETITIONER AMBER JOHNSON

Charleston, SC
July 16, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas
Hon. J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-6529
Op. No. (5208)

Amber Johnson.....Petitioner,

v.

Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, P.C.,
of whom Stanley E. Alexander is the .....Respondent.

v.

Mario S. Inglese and Mario S. Inglese, P.C.....Third Party Plaintiffs,

v.

Charles Feeley.....Third Party Defendant.

Appellate Case No. 2014-001167

PROOF OF SERVICE

Justin S. Kahn
jskahn@kahnlawfirm.com
KAHN LAW FIRM, LLP
SC Bar No.: 65100
P. O. Box 31397
Charleston, SC 29417-1397
(843) 577-2128
(843) 577-3538 – Fax
ATTORNEYS FOR RESPONDENT AMBER JOHNSON

Mary Leigh Arnold
Sammie@maryarnoldlaw.com
Mary Leigh Arnold, P.A.
SC Bar No.: 419
749 Johnnie Dodds Bovd., Ste. B
Mt. Pleasant, SC 29464
(843) 971-6053
(843) 971-6055 - Fax

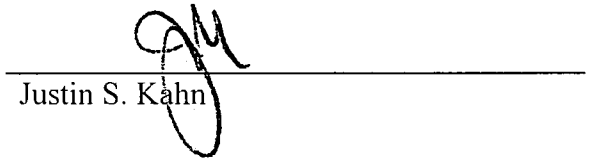
I, Justin S. Kahn, do hereby affirm that on July 16, 2014, I served one copy of the Petition for Writ of Certiorari and Appendix on the following named individuals by placing a copy in the United States Mail, first class, postage prepaid addressed to the following:

Joel W. Collins, Jr.
Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Robert F. Goings
Goings Law Firm, LLC
PO Box 436
Columbia, SC 29202

Attorneys for Appellant
Stanley E. Alexander

I further affirm that on this same date, I placed one copy of the Petition for Writ of Certiorari in the mail for filing with the Clerk of Court of the South Carolina Court of Appeals.



Justin S. Kahn

Charleston, South Carolina
July 16, 2014