

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 08 2014

SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2009-CP-22-1045

John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and
Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas
Holland and Sharon Louise Holland, Joyce K. Sobel, Robert W.
Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert
Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A.
DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M.
Owens, Fount L. Shults and Lynda M. Shults, Dennis Ridgeway and
Teresa Lynn Ridgeway, Appellants,

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay
Properties, LLC, C.R. Thompson and Sons, LLC, Ronald L. Charlton,
Bonnie N. Charlton, James R. Charlton and Bayside Property Inc.,
The City of Georgetown, Hartford Casualty Insurance Company,
Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a
Source One Communities, LLC, a/k/a Source One Signature
Communities, Respondents.

**MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE PORTION OF REPLY BRIEF**

The Respondent City of Georgetown has moved to strike Section I of the "Reply Arguments" set forth in the Appellants' Initial Reply Brief on the bases that (1) the Appellants have improperly raised a new issue in their reply brief that was not previously addressed in their opening brief and (2) the Appellants have improperly cited to and relied on an unpublished opinion of this Court.

As to the first ground, the Appellants have argued in their reply brief that existing precedent allows for the denial of a motion to restore an action based only on the doctrine of laches. For this proposition, the Appellants cite the 1930 case of *Stribling v. Fretwell*, 157 S.C. 297, 154 S.E.2d 415 (1930). The Appellants further argue that the Respondents did not raise or argue the doctrine of laches as a basis for the denial of the motion to restore, and as a result, Judge Culbertson erred in denying the restoration of the case to the docket.

This Court has repeatedly explained that "[a]n appellant may not use the reply brief to argue issues not argued in the initial brief." *Hunter v. Staples*, 335 S.C. 93, 515 S.E.2d 261, 267 (Ct. App. 1999). *See also, Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993); *Jones ex rel. Jones v. Enterprise Leasing Company-Southeast*, 383 S.C. 259, 678 S.E.2d 819, 824 (Ct. App. 2009) ("no new issues may be raised to this court by the appellant in the reply brief").

In the case at bar, the Appellants made no mention of the doctrine of laches in their opening brief. The *Stribling* case, in fact, is cited for the first time on

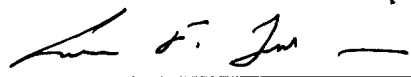
reply. There is no laches case cited or discussed in the opening brief. Moreover, it is worth noting that the Appellants made no mention of the doctrine of laches in the lower court either. Instead, as a new issue raised for the first time on reply, the Appellants argue that only the doctrine of laches may be a proper basis for the denial of a motion to restore. Because that issue is raised for the first time on reply, the Respondents are denied the opportunity to respond to that argument or address the *Stribling* case or even argue laches as an additional sustaining ground. For that reason, the Appellants' arguments based on the doctrine of laches should be stricken from the Initial Reply Brief.

In addition, in the Initial Reply Brief, the Appellants have cited to and rely substantially on the unpublished decision of *Byrd v. Byrd*, Op. No. 2005-UP-141 (2005). Rule 268(d)(2), SCACR, provides that "[m]emorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." *See*, Rule 268(d)(2), SCACR. Likewise, this Court has held that "unpublished opinions have no precedential value." *Lanham v. Blue Cross and Blue Shield of South Carolina, Inc.*, 338 S.C. 343, 526 S.E.2d 253, 256 (Ct. App. 2000). Therefore, the Appellants improperly cited to and relied on an unpublished opinion in making the arguments contained in Section I of their Initial Reply Brief. The discussion of the *Byrd* case should therefore be stricken.

For these reasons, the Court is requested to strike Section I of the "Reply Arguments" set forth in the Appellants' Initial Reply Brief.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:  _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondent
City of Georgetown*

Columbia, South Carolina

July 8, 2014