

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
In The Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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Case No. 04-CP-40-1915  
Appellate Case No. 2008-099926  
S.C. Ct. App. Opinion No. 5245 (filed June 30, 2014)

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Allegro, Inc., .....Respondent,

v.

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

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RESPONDENT'S REPLY TO RETURN TO PETITION FOR REHEARING

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Appellant's return to Respondent's Petition for Rehearing ignores the arguments made in the Petition. As noted in the Petition, Appellant Scully manifestly had a duty to speak when he knew that employees were compiling company documents to take when they left, and that employees were using company time and company resources for their own purposes and to the detriment of Allegro. There is evidence that Scully knew all of these things and more, and there is no evidence that he disclosed it to Allegro. (See, *e.g.*, R. 283-311; 313-328; 577; 584-599).

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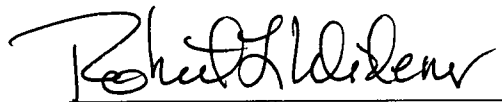
**SC Court of Appeals**

Thus, there is evidence of a misrepresentation, which was the only issue raised on appeal as to the claims for fraud and misrepresentation. Appellants never respond to this. (Return, *passim*).<sup>1</sup>

As also set forth in Respondent's Rehearing Petition, this Court's ruling that "fraud by silence" was limited to claims for fraudulent concealment was erroneous for four reasons: (1) this Court reversed the trial court on a ground never argued to the trial court or this Court; (2) this Court overlooked controlling Supreme Court precedent to the contrary; (3) there is no logical or jurisprudential basis for limiting evidence of "fraud by silence" to claims for fraudulent concealment; and (4) any such limitation should be prospective only, and Respondent should be granted leave to amend its complaint on remand. Appellants never respond to any of these arguments.

For all of the foregoing reasons, and for all of the reasons set forth in Respondent's Petition for Rehearing, it is respectfully submitted that this Court should grant rehearing and issue an amended opinion as requested in Respondent's Petition for Rehearing.

Respectfully Submitted,



Robert L. Widener  
Richard J. Morgan  
McNAIR LAW FIRM, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

Attorneys for Respondent

August 14, 2014  
Columbia, South Carolina

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<sup>1</sup> In their footnote 1, Appellants argue that Respondent's letter regarding the filing of a Return to Appellants' Petition for Rehearing waived any challenge by Respondent to this Court's ruling. This is a silly argument. The letter clearly related to Appellants' Petition only. Moreover, the letter expressly stated this Court had properly decided the issues that were properly before it. As set forth in Respondent's Rehearing Petition, the issue of whether "fraud by silence" is limited to claims for fraudulent concealment was not properly before this Court. Thus, the letter has no bearing on the issues raised in Respondent's Rehearing Petition.

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CERTIFICATE OF SERVICE

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I certify that I have served a copy of the Respondent's Reply to Return to Petition for Rehearing by depositing a copy of same in the United States Mail, sufficient postage prepaid, on August 14, 2014 addressed to the attorneys for the Appellants, as follows:

Amy L. Gaffney, Esquire  
Gaffney, Edwards & Lewis  
3710 Landmark Drive, Suite 109  
Columbia, SC 29204

C. Mitchell Brown, Esquire  
Brian Crotty, Esquire  
Nelson Mullins Riley & Scarborough LLP  
P. O. Box 11070  
Columbia, SC 29211

  
Ann Shuler

MCNAIR  
ATTORNEYS

August 14, 2014

Robert L. Widener  
SC Bar No. 6089

rwidener@mcnair.net  
T 803.799.9800  
F 803.753.3278

Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Allegro, Inc. -v- Emmett J. Scully, Synergetic, Inc., George C. Corbin,  
and Yvonne Yarborough  
Case No. 04-CP-40-1915  
Appellate Case No. 2008-099926  
S.C. Ct. App. Opinion No. 5245 (filed June 30, 2014)

Dear Madam Clerk:

Enclosed for filing, please find the original and seven copies of Respondent's Reply to Return to Petition for Rehearing, along with the original and one copy of the Certificate of Service. Please file the Reply in your office and return the file stamped extra copy to me in the return envelope provided.

By copy of this letter, we are serving counsel of record with a copy of the Reply.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as  
Enclosures

cc: C. Mitchell Brown, Esq.  
Amy L. Gaffney, Esq.  
Brian P. Crotty, Esq.  
Richard J. Morgan, Esq.

McNAIR LAW FIRM, P.A.  
1221 Main Street  
Suite 1800  
Columbia, SC 29201

Mailing Address  
Post Office Box 11390  
Columbia, SC 29211

mcnair.net

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