

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

The Honorable Steven H. John

CASE NO. 2011-CP-26-2722

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OCT 6 8 2014

SC Court of Appeals

Nichols Holding, LLC and J. Wade Nichols Respondents-Appellants

vs.

Divine Capital Group, LLC; John S. Divine, IV;
Nathan Anderson; and Divine Dining Group, Inc.Appellants-Respondents

RESPONDENTS-APPELLANTS' RESPONSE
TO APPELLANTS-RESPONDENTS' MOTION
TO SUPPLEMENT THE RECORD ON APPEAL

The Respondents-Appellants, Nichols Holding, LLC and J. Wade Nichols, respectfully reply to Appellants-Respondents' Motion to Supplement the Record as follows:

1. The Respondents-Appellants do not object to adding page 6 of the Order Compelling Settlement dated January 6, 2014 which was inadvertently omitted while copying and preparing the documents for the Record on Appeal.

2. The Respondents-Appellants do object to adding the Memorandum of Law in Support of Motion of John Divine, IV to the Record. First, the Memorandum of Law is duplicative of other material currently offered into the Record. Second, Appellants-Respondents complains about Respondents-Appellants' brief in response to the primary

appeal of Divine. If Divine wanted to appeal this ruling he should have raised it in his primary appeal. The trial court made its ruling clear when it stated on the record its ruling:

Upon proof supplied by the Defendants – I’m sorry, by the Plaintiffs that they have paid those vendors those amounts, that amount can be deducted from the \$62,809.08 which is the responsibility of the Plaintiff. If those -- by the Court’s calculation, if those amounts are correct, I believe the amount due and payable would be the sum of \$53,799.04. But by indicating that the amount owed is the \$62,809.08 with credit after proof of the payment. So, whatever that ends up being (R. p. 820, lines 1-15).

Third, Divine seeks to make this an issue in the appeal when it did not raise this argument in its original appeal. Respondents-Appellants object to this “back door” attempt to do this at this late juncture in this case.

Finally, this Court is being asked to supplement the record after all the briefing has been completed. In effect, this allows Divine to add to the record documents which have not been briefed by Nichols. In order to get this motion granted, Divine must have a good reason. See *State v. Sterling*, 396 S.C. 599, 723 S.E.2d 176 (S.C. 2012) (motion to supplement the record granted with the proviso the court has right to find no objection preserved in the trial court).

In conclusion, Divine’s motion should be denied since it seeks to include materials in the record after the briefing has ended, thus, prejudicing Nichols’ rights. Divine could have simply filed a Reply addressing this issue.

KELAHER, CONNELL & CONNOR, P.A.



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Attorney for Respondents-Appellants

October 2, 2014
Surfside Beach, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John

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Nichols Holding, LLC and J. Wade Nichols Respondents-Appellants

vs.

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Nathan Anderson; and Divine Dining Group, Inc.Appellants-Respondents

PROOF OF SERVICE

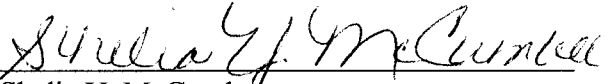
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served **Respondents-Appellants' Response to Appellants-Respondents' Motion to Supplement the Record on Appeal** on the Appellants-Respondents, through their attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Emma Ruth Brittain, Esquire
Leah Montgomery Cromer, Esquire
Thomas & Brittain, P.A.
Post Office Box 1290
Myrtle Beach, SC 29578

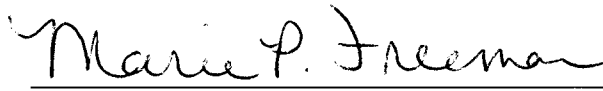
Julio E. Mendoza, Jr., Esquire
Nexsen Pruet, LLC
Post Office Drawer 2426
Columbia, SC 29202

Frederick Miles Adler, Esquire
Post Office Box 4743
Pawleys Island, SC 29585

DATE OF MAILING: October 3, 2014


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 3rd day of October, 2014


Notary Public for South Carolina
My Commission Expires: 6/11/24

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

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* OF COUNSEL

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238-5648
FAX: 238-5050

October 2, 2014

The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nichols Holding, LLC and J. Wade Nichols v. Divine Capital Group, LLC; John S. Divine, IV; Nathan Anderson; and Divine Dining Group, Inc.*
Appellate Case No. 2014-000662
C/A No. 2011-CP-26-2722
Our File No. 2011-0037C

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Respondents-Appellants' Response to Appellants-Respondents' Motion to Supplement the Record on Appeal in the above-captioned case along with Proof of Service.

By copy of this letter, we hereby serve a copy of the above-stated documents on counsel of record.

Thank you for your kind assistance in this matter.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm

Enclosures

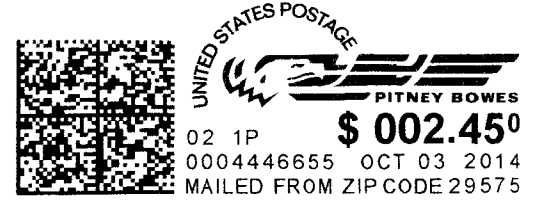
cc w/enc.:

Emma Ruth Brittain, Esquire
Julio E. Mendoza, Jr., Esquire
Frederick Miles Adler, Esquire

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OCT 15 2014

SC Court of Appeals



KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

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OCT 06 2014

The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals **SC Court of Appeals**
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Columbia, South Carolina 29211

