

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Steven H. John, Circuit Court Judge

Civil Action No.: 2011-CP-26-2722

RECEIVED

OCT 13 2014

SC Court of Appeals

Nichols Holding, LLC and J. Wade NicholsRespondents-Appellants

vs.

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

APPELLANTS-RESPONDENTS' REPLY TO RESPONDENTS-APPELLANTS'
RESPONSE TO APPELLANTS-RESPONDENTS'
NOTICE OF MOTION AND MOTION
TO SUPPLEMENT THE RECORD ON APPEAL

October 8, 2014

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Appellants-Respondents (“Divine”) seek to supplement the Record on Appeal with its Memorandum of Law in Support of its Motion to Enforce Settlement because this document is relevant in that it directly refutes Respondents-Appellants’ (“Nichols”) contention that Divine fails to argue its position as to the amount of trade debt at issue in its Motion. (Respondent Brief of Respondents-Appellants, p. 9). The trial transcript is unrefuted that Divine’s counsel moved at the beginning of the hearing on the Motion to Enforce Settlement to submit the Mendoza and Divine Affidavits into evidence (which the Court specifically noted were filed and “part of the record”), and provided the Court with a copy of the Memorandum of Law (“Memorandum”) filed with the Court. (R. pp. 745, line 24 – p. 746, line 10). Nichols’ belated contention that Divine made no argument as to the trade debt amount is belied by Divine’s Memorandum, which contains specific arguments, supported by the submitted Affidavits, addressing the amount of trade debt owed to Divine in Arguments I, I.A. and I.B. and which it seeks to add to the record. (Supp. R., pp. 863-872).

The trial court record proceeding clearly establishes that Divine entered argument into the record as to the trade debt amount; in fact, this was a primary issue in dispute. The trial Judge specifically stated for the record that he had examined “all of the matters submitted” and relied upon “the entirety of the record . . . as reflected in the Clerk of Court’s file and through the testimony. . . .” (R. p. 819, lines 21-23).

Counsel for Divine respectfully submits that, in the interest of fair consideration of this appeal, its Motion to Supplement the Record should be considered by the Court. Because Rule 212(b), SCACR, specifically allows Nichols’ counsel to designate any

supplemental material should the motion be granted, Divine contends there is no prejudice to Nichols should the motion be granted.

October 8, 2014

Respectfully submitted,


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PROOF OF SERVICE

I certify that I have served the Appellants-Respondents' Reply to Respondents-Appellants' Response to Appellants-Respondents' Notice of Motion and Motion to Supplement the Record on Appeal by depositing a copy of it in the United States mail, postage prepaid, on October 8, 2014, addressed to the following:


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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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October 8, 2014



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October 8, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1205 Pendleton Street
Columbia, South Carolina 29201

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
Civil Action No.: 2011-CP-26-2722

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the Appellants-Respondents' Reply to Respondents-Appellants' Response to Appellants-Respondents' Notice of Motion and Motion to Supplement the Record on Appeal in the above-referenced case. Please return a stamped copy of the Reply to our office in the enclosed self-addressed stamped envelope.

Please do not hesitate to contact our office if you have any questions.

Sincerely yours,

THOMAS & BRITTAIN, P.A.



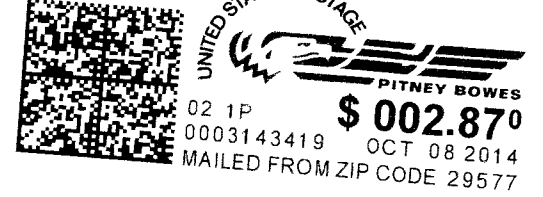
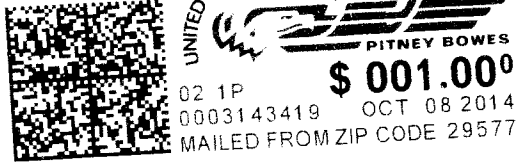
Emma Ruth Brittain

ERB/kwn
Enclosures
cc: Julio E. Mendoza, Jr., Esquire
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