

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2005-CP-10-4101

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NOV 10 2014

SC Court of Appeals

The Milton P. Demetre Family Limited PartnershipAppellant

v.

Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley,
Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr.,
and Annie Ruth Crowley AtkinsonRespondents

**APPELLANT'S RETURN TO
RESPONDENTS' MOTION TO STRIKE**

Respondents, in their Motion to Strike Objectionable Argument of Appellant, argue:

In Appellant's Reply, Appellant repeats and reargues *argument that Respondents did not return to* in Respondents' Return filing. (Emphasis added). The ground for Respondents' Motion is that the Appellant improperly attempts to utilize a Reply filing to have a second chance to repeat arguments from Appellant's Petition for Rehearing. (Respondents' Motion to Strike, p. 3).

However, Respondents put the headings for each of Appellant's subject arguments taken from Appellant's Petition for Rehearing in their Return and, giving the appearance of addressing those arguments, made arguments under those headings which, as they admit in the above quote, actually made no return to Appellant's subject arguments.

Appellant's Reply addressed Respondents' arguments but also pointed out that those arguments failed to make any return to the subject arguments in Appellant's Petition for Rehearing. Respondents' Motion to Strike seeks to strike the parts of Appellant's Reply stating that Respondents made no return to Appellant's subject arguments, asserting that by these statements Appellant was attempting to repeat the arguments from Appellant's Petition for Rehearing. Respondents cite page 215 of Jean Hoefler Toal et al, Appellate Practice in South Carolina (2nd Edition 2002) for the proposition, "Nor should the appellant use the reply brief simply to rehash the arguments originally presented in his brief."

However, the purpose of Appellant's Reply's stating that Respondents made no return to the subject arguments was not to repeat those arguments but rather to point out that, despite Respondents' giving the appearance of addressing the subject arguments by making arguments under the headings taken from Appellant's Petition, Respondents, as they now admit, actually made no return to those arguments.

Appellant's pointing out that Respondents made no return to these argument had legal relevance. Also cited by Jean Hoefler Toal et al, Appellate Practice in South Carolina (2nd Edition 2002) on page 232 is a case standing for the proposition that, "[T]he respondent must remember to address all arguments raised by the appellant. First Union National Bank v. FCVS Communications, 321 S.C. 496, 469 S.E.2d 613 (Ct. App. 1996) (if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed and remanded on other grounds, 328 S.C. 290, 494 S.E.2d 67 (1997)."

CONCLUSION

For the foregoing reasons, Respondents' Motion to Strike should be denied.

RESPECTFULLY SUBMITTED,

Cain Denny, P.A.

By: Cain Denny
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Attorney for Appellant

November 6, 2014

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Case No.: 2005-CP-10-4101

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Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley,
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PROOF OF SERVICE

I certify that I have served a copy of Appellant's Return to Respondents' Motion to Strike on Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr., and Annie Ruth Crowley Atkinson by depositing a copy of it in the United States Mail, postage prepaid, on November 6, 2014, addressed to their attorneys of record, Jefferson D. Griffith, III, Esquire, and Richard L. Witt, Esquire, Austin & Rogers, P.A., Post Office Box 11716, Columbia, South Carolina 29211.

November 6, 2014

Cain Denny, P.A.

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(843) 478-0692
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SC Court of Appeals

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November 6, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: The Milton P. Demetre Family Limited Partnership vs.
Harry Beckmann, III, et al
Appellate Case No. 2012-212136
Charleston County Court of Common Pleas Case No. 2005-CP-10-4101

Dear Ms. Kitchings:

Enclosed please find:

- the original and seven (7) copies of Appellant's Return to Respondents' Motion to Strike; and
- the original and one (1) copy of the Proof of Service.

Please return stamped copies in the self-addressed envelope provided.

Best wishes.

Very truly yours,

Cain Denny

Cain Denny

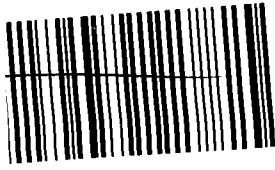
c.c. Jefferson D. Griffith, III, Esquire
Richard L. Whitt, Esquire
Mr. Milton P. Demetre

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