THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2012-CP-42-00346
Appellate Case No. 2013-001454

James Luther Plemmons and Wanda Sue Clark Plemmons, ... Appellants,

v.

State Farm Mutual Automobile Insurance Company, Plaza Insurance Company, The Stover Company, Inc., and Howard E. Newton, III, ... Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is . . . . . .Respondent.

APPELLANTS' REPLY TO RESPONDENT'S RETURN TO PETITION FOR REHEARING

Appellants have identified with particularity in their Petition for Rehearing the points that the Court of Appeals overlooked or misapprehended, and which are summarized and stated thoroughly therein. In particular, Appellants have pointed out that the case of Hite v. Hartford Accident & Indemnity Co., 288 S.C. 616, 344 S.E.2d 173 (Ct. App. 1986), upon which the Court of Appeals has rested its decision, does not control the outcome of this case because the fact pattern in Hite is completely different from the fact pattern in this case.

Respondent wrongfully claims that Appellants have raised a new issue not preserved for appeal. This is not true, and the record bears this out.

At the hearing on the motion for summary judgment, Respondent argued that James Plemmons responded to a tow call and "began the process of connecting the front of the Mills' vehicle to the back of his tow truck so he could tow both vehicles to his garage," and that he was injured "[w]hile he was in the process of I think operating the lever at the back of his tow truck, he was standin' at the, at the right rear of the tow truck." Respondent also admitted that the Diaz vehicle crashed into the tow truck, amputating Mr. Plemmons's leg, and that the Carson (insured) vehicle was also on the tow truck, and was knocked off the tow truck during the accident, sustaining damage. (R. pp. 310-311). These are facts of record that were raised to and relied upon by the trial judge in rendering the summary judgment order in this case.

The summary judgment order itself states that "[t]his lawsuit arises out of an accident on July 31, 2010 in which James Plemmons was injured while operating a tow truck." (R. p. 1).

Appellants also raised and preserved for appeal the issue that a towed vehicle is a vehicle in use. Therefore, the issue of whether Mr. Plemmons was using the Carson vehicle at the time of the accident is very much a live issue in this case.

Further, Respondent's admitted version of the facts presented to and relied upon by the trial judge clearly differentiate this case from the Hite decision, where the injured party was dealing with a situation completely remote from the insured vehicle, which Hite had parked and walked away from across a parking lot, and was subsequently injured by another vehicle. Here, Mr. Plemmons was actively involved in the towing operation – which is reflected in the trial court's order - and Appellants' position has been throughout this case and continues to be that Mr. Plemmons's use of the tow truck

constituted use of the towed vehicles as well. This is not a newly raised issue, but an issue that is on point in this case and misapprehended or overlooked by the Court of Appeals.

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned, hereby certify that the Reply to Respondent's Return to Petition for Rehearing in the above referenced matter was mailed, postage prepaid, to Respondent's Attorney, Charles Norris, by sending to Nelson Mullins Riley & Scarborough, LLP, PO Box 1806, Charleston, SC 29402, on December 10, 2014.

SIGNATURE PAGE TO FOLLOW

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