

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JAN 29 2015

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

J. Mark Hayes, II, Circuit Court Judge

Case No. 2008-CP-42-3397

Quentin S. Broom, Jr., Respondent,

v.

Ten State Street, LLP, Timothy D. Scranton,
Mark Broadwater, and H. Hugh Andrews, Defendants,

Of whom

H. Hugh Andrews, Individually
and on behalf of Tri-Star
Communications, Inc. is the, Appellant,

v.

Quentin S. Broom, Jr., Third-party Defendant.

RETURN TO PETITION FOR REHEARING

This return is filed pursuant to Rules 221 and 240(e) of the South Carolina Appellate Court Rules, as well as this Court's communication of January 27, 2015. Rule 221 governs petitions for rehearing. Rule 240(e) governs returns to motions and petitions generally.

Rehearing is not needed. This Court's decision reaches the correct result. The following is a brief response to the argument raised in the petition.

The ultimate point of the petition is to advance the argument that Hugh Andrews failed to obtain a specific ruling denying his request to amend his counterclaims. The respondent took the same position in his brief. He argued that the failure to obtain a detailed ruling meant that any issue about amended pleadings was not preserved. (Resp. Br. p. 19).

First, the respondent told the circuit court that the motion to amend was improper because Mr. Andrews' counterclaims had already been dismissed. (R. p. 294, ll. 2-16). This Court noted this line of argument in its decision. If the concept of judicial estoppel means anything, it would seem to encompass these circumstances. It is one thing to be creative in refining arguments. It is another thing to tell the trial court that the opposing party's filing is a nullity and then argue on appeal that the filing was legitimate and required a ruling.

Second, it is hard to see why the point makes any difference in practice. Yes, Mr. Andrews argued that the only logical effect of a dismissal "with prejudice" is that any request to amend has been denied, but if the respondent is right and the motion was *not* decided, that means the motion is still pending. The respondent cannot honestly contend that there is a legitimate justification for denying the motion to amend. Either way, the respondent loses.

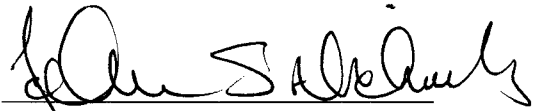
It is time for this waste of everyone's resources to end. The respondent litigated this contentious case for over five (5) years only to wait until the eve of trial to raise an issue about the sufficiency of pleadings. We know that this issue was not legitimate because we know that the purpose of Rule 23 is to filter frivolous suits at the *beginning* of a case—not the end—in order to preserve corporate assets. This was not an effort to filter a frivolous lawsuit; it was an effort to hijack a legitimate one. It was also not an effort to preserve assets. It appears to have been an exercise in delay, and a very successful one at that.

CONCLUSION

Candor requires the appellant to concede that he believed the only logical implication of the circuit court's decision was to deny the motion to amend, see (App. Br. p. 3), but the primary aim of the petition for rehearing is to resurrect an argument that is barred by judicial estoppel. The Court's decision is unpublished and does not have precedential value. This would seem to be an exercise in futility. Mr. Andrews respectfully requests that rehearing be denied so that this case can proceed towards a final resolution.

January 29, 2015

Respectfully submitted,



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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with a copy of the *Return to Petition for Rehearing* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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January 29, 2015

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BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

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SC Court of Appeals

VIA HAND DELIVERY

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

RE: Quentin S. Broom, Jr., v. Ten State Street, LLP, et al.
Case Tracking No.: 2013-000514

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Return to Petition for Rehearing* reference to the above matter. I have also enclosed a proof of service of this document on counsel for the respondent. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges
Paralegal to Blake Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/emb

Enclosures

cc: Rodney F. Pillsbury, Esquire
Susan F. Campbell, Esquire
Whitney B. Harrison, Esquire
Patrick E. Knie, Esquire
James R. Gilreath, Esquire