

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2014-001167

**RECEIVED**

FEB 23 2015

**S.C. Supreme Court**

Amber Johnson.....Petitioner,

v.

Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, P.C.,  
Of Whom Stanley E. Alexander is the.....Respondent.

v.

Mario S. Inglese and Mario S. Inglese, P.C.....Third Party Plaintiffs,

v.

Charles Feeley.....Third Party Defendant.

**BRIEF OF RESPONDENT**

Joel W. Collins, Jr.  
Collins & Lacy, P.C.  
1330 Lady Street, Sixth Floor (29201)  
Post Office Box 12487  
Columbia, South Carolina 29211  
(803) 256-2660

Robert F. Goings  
Goings Law Firm, LLC  
914 Richland Street, Suite A-101  
Post Office Box 436 (29202)  
Columbia, South Carolina 29201  
(803) 350-9230

Attorneys for Respondent

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....iii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE.....2

STATEMENT OF THE FACTS .....4

STANDARD OF REVIEW .....6

ARGUMENT .....7

    I.    The Court of Appeals Properly Reasoned that an Attorney Closing  
          a Real Estate Transaction Cannot be Held Liable for Malpractice  
          as a Matter of Law Simply Because Another Attorney Who  
          Conducted the Title Examination Did Not Discover Information  
          that Court Affect the Title to the Subject Property .....7

        A.    The Court of Appeals’ Decision Does Not Conflict with  
              South Carolina Law Regarding Non-Delegable Duty .....8

            1.    The Title Search Was Not Within the Scope of  
                  Alexander’s Representation .....8

            2.    Alexander Did Not Contract with Feeley .....9

            3.    South Carolina Law Does Not Prohibit a Closing  
                  Attorney From Delegating Certain Duties to  
                  Another Attorney .....11

            4.    The Court of Appeals Did Not Determine that  
                  Feeley was Negligent.....12

        B.    The Standard of Care Applied by the Court of Appeals  
              Does Not Leave an Aggrieved Party Without Recourse .....12

        C.    The Standard of Care Applied by the Court of Appeals  
              Does Not Conflict with the Rules of Professional Conduct .....13

    II.   The Court of Appeals Properly Found that a Material Issue of Fact  
          Exists as to Whether Alexander Acted with Reasonable Care in  
          Relying on Feeley’s Title Search.....15

III.	The Court of Appeals Properly Found the Issue of Whether Feeley was Alexander’s Agent is a Question of Fact to be Resolved on Remand .....	17
IV.	The Court of Appeals Properly Found That, Considering Alexander’s Statements in the Light Most Favorable to Him, He Conceded Only That He Must Act With Reasonable Care in Closing the Transaction .....	19
V.	Additional Grounds Exist for Affirming the Decision of the Court of Appeals .....	20
A.	A Genuine Issue of Material Fact Exists as to Whether Johnson Suffered Damages.....	21
B.	A Genuine Issue of Material Fact Exists as to Causation.....	21
	CONCLUSION.....	25

## TABLE OF AUTHORITIES

### Cases

<u>Bass v. Farr</u> , 315 S.C. 400, 434 S.E.2d 274 (1993).....	7, 11, 12, 20
<u>Berberich v. Jack</u> , 392 S.C. 278, 709 S.E.2d 607 (2011) .....	22
<u>Burnett v. Family Kingdom</u> , 387 S.C. 183, 691 S.E.2d 170 (Ct. App. 2010) .....	21
<u>Calhoun v. Calhoun</u> , 339 S.C. 96, 529 S.E.2d 14 (2000) .....	15
<u>Carlyle v. Tuomey Hosp.</u> , 305 S.C. 187, 407 S.E.2d 630 (1991).....	21
<u>Cianbro Corp. v. Jeffcoat &amp; Martin</u> , 804 F. Supp. 784 (D.S.C. 1992), <u>aff'd</u> , 10 F.3d 806 (4th Cir. 1993).....	7
<u>David v. McLeod Reg'l Med. Ctr.</u> , 367 S.C. 242, 626 S.E.2d 1 (2006). .....	6
<u>Doe v. McMaster</u> , 355 S.C. 306, 585 S.E.2d 773 (2002) .....	8
<u>Eubank v. Eubank</u> , 347 S.C. 367, 555 S.E.2d 413 (Ct. App. 2001) .....	15
<u>Hancock v. Mid-South Mgmt. Co.</u> , 381 S.C. 326, 673 S.E.2d 801 (2009).....	6
<u>Harris Teeter, Inc. v. Moore &amp; Van Allen, PLLC</u> , 390 S.C. 275, 701 S.E.2d 742 (2010) .....	7, 10, 11, 18
<u>Holy Loch Distribs., Inc. v. Hitchcock</u> , 340 S.C. 20, 531 S.E.2d 282 (2000).....	7, 11
<u>In re Broome</u> , 356 S.C. 302, 589 S.E.2d 188 (2003).....	12
<u>In re: Pstrak</u> , 357 S.C. 1, 591 S.E.2d 623 (2004).....	8, 10, 11, 17
<u>Inglese v. Beal</u> , 403 S.C. 290, 742 S.E.2d 687 (Ct. App. 2013).....	9, 10
<u>Jennings v. Lake</u> , 267 S.C. 677, 230 S.E.2d 903 (1976) .....	7, 12
<u>Johnson</u> , 408 S.C. 58, 757 S.E.2d 553 .....	8, 12, 16, 17, 20
<u>Kleckley v. Northwestern Nat'l Cas. Co.</u> , 338 S.C. 131, 526 S.E.2d 218 (2000) .....	18
<u>Lanham v. Blue Cross &amp; Blue Shield of S.C.</u> , 349 S.C. 356, 563 S.E.2d 331 (2002) .....	6
<u>Madison v. Babcock Ctr., Inc.</u> , 371 S.C. 123, 638 S.E.2d 650 (2006) .....	6, 21
<u>Newton v. S.C. Pub. Rys. Comm'n</u> , 312 S.C. 107, 439 S.E.2d 285 (Ct. App. 1993) .....	21
<u>Osborne v. Adams</u> , 346 S.C. 4, 550 S.E.2d 319 (2001) .....	19
<u>Philips v. Pitt Cnty. Mem. Hosp.</u> , 572 F.3d 176 (4th Cir. 2009) .....	6
<u>RFT Mgmt. Co. v. Tinsley &amp; Adams L.L.P.</u> , 399 S.C. 322, 732 S.E.2d 166 (2012).....	7, 10, 11
<u>Scott ex. rel. Scott v. Porter</u> , 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000) .....	21
<u>Sloan v. Dep't of Transp.</u> , 365 S.C. 299, 618 S.E.2d 876 (2005).....	15, 16
<u>Small v. Pioneer Mach.</u> , 329 S.C. 448, 494 S.E.2d 835 (Ct. App. 1997).....	21
<u>Smith v. Haynsworth, Marion, McKay &amp; Geurard</u> , 322 S.C. 433, 472 S.E.2d 612 (1996) ...	13, 20
<u>Spence v. Wingate</u> , 395 S.C. 148, 716 S.E.2d 920 (2011) .....	13
<u>State v. Buyers Serv. Co.</u> , 292 S.C. 426, 357 S.E.2d 15 (1987).....	8
<u>Steven v. Allen</u> , 342 S.C. 47, 536 S.E.2d 663 (2000).....	21
<u>Trivelas v. S.C. Dep't of Transp.</u> , 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001) .....	22
<u>Tuten v. Joel</u> , 410 S.C. 104, 763 S.E.2d 54 (Ct. App. 2014).....	9, 10
<u>Wilson v. Moseley</u> , 327 S.C. 144, 488 S.E.2d 862 (1997).....	22, 23

### Other Authorities

1 S.C. Jur. <u>Attorney and Client</u> .....	12
--	----

**Rules**

Rule 1.0, SCRPC ..... 14  
Rule 1.2, SCRPC ..... 13, 14  
Rule 1.8, SCRPC ..... 13  
Rule 242, SCACR..... 15, 16, 17  
Rule 407, SCACR..... 13, 14  
Rule 56, SCRCP ..... 6

## STATEMENT OF ISSUES ON APPEAL

- I. Did the Court of Appeals properly find that an attorney closing a real estate transaction cannot be held liable for malpractice as a matter of law simply because another attorney who conducted the title examination did not discover information that could affect title to the subject property?
- II. Did the Court of Appeals properly find that a material issue of fact exists as to whether Alexander acted with reasonable care in relying on Feeley's title search?
- III. Did the Court of Appeals properly find that the issue of whether Feeley was Alexander's agent is a question to be resolved on remand?
- IV. Did the Court of Appeals properly find that, considering Alexander's statements in the light most favorable to him, he did not admit liability but rather only conceded only that he must act with reasonable care in closing the transaction?

## STATEMENT OF THE CASE

This action arises out of Petitioner Amber Johnson's purchase of real property located at 2640 Ranger Drive, North Charleston, South Carolina ("subject property") from Carla Anderson. (App. 25-36, 182). Defendant Mario S. Inglese, with Defendant Mario S. Inglese, P.C., (collectively, "Inglese") was the attorney Johnson retained to close the transaction. (App. 140, line 22 – App. 141, line 21). Third Party Defendant Charles Feeley is the attorney Inglese contracted with to perform a title search on the subject property. (App. 128). Respondent Stanley E. Alexander is the attorney who conducted the actual closing after Inglese was unable to do so. (App. 141, lines 11-21).

Johnson filed this lawsuit in the Charleston County Court of Common Pleas on October 15, 2009, asserting causes of action for negligence, breach of fiduciary duty, and breach of contract against Inglese and Alexander on the grounds that they failed to discover or disclose past due taxes for the subject property. (App. 25-36). Alexander answered, denying, *inter alia*, that he breached any standard of care, and in the alternative, asserting cross claims against Inglese. (App. 37-48). Inglese answered the Complaint and joined Feeley as a third party defendant.

Thereafter, Johnson moved for partial summary judgment as to Alexander's liability. (App. 72-94). Arguments on the Motion were heard on May 9, 2011, before the Honorable Judge J.C. Nicholson, Jr., after which Judge Nicholson recessed the hearing and requested the parties submit additional information concerning notice to the public of the tax sale. (App. 21-23). The hearing was scheduled to resume May 26, 2011. Approximately thirty-six (36) hours before the hearing was reconvened, Johnson submitted affidavits of Mary Scarborough, Delinquent Tax Collector of Charleston County, and Todd Balish, a title examiner in Charleston County, neither

of whom had been named as witnesses previously. (App. 202-213). Alexander submitted a Memorandum in Opposition to Johnson's Motion together with supporting documentation, including the Feeley Affidavit. (App. 95-201).

At the May 26, 2011 hearing, Alexander objected to the affidavits of Ms. Scarborough and Mr. Balish under Rules 6 and 56, SCRCF, and moved for a continuance to allow Alexander the opportunity to conduct depositions and discovery with respect to the affiants. (App. 223- 53, 261, 264-265). Judge Nicholson denied Alexander's motion for a continuance, instead affording the parties ten (10) days following the hearing to submit "counter-affidavit[s]" and indicating he would not consider any "opinions" offered by Mr. Balish. (App. 236-237, 243, 260).

By Order filed July 6, 2011, Judge Nicholson granted partial summary judgment in favor of Johnson. (App. 7-20). By opinion filed March 19, 2014, the Court of Appeals reversed the decision of the circuit court and remanded the case for trial. (App. 380-385). Johnson filed a Petition for Rehearing on April 12, 2014. (App. 386-399). The Petition for Rehearing was denied on May 16, 2014. (App. 400-401). This Court granted Johnson's Petition for Writ of Certiorari on December 10, 2014.

## STATEMENT OF FACTS

In 2006, Johnson entered into a contract to purchase the subject property from Carla Anderson.<sup>1</sup> (App. 25-36, 182). Johnson retained Inglese to close the transaction. (App. 140, line 22 – App. 141, line 21). Inglese contracted with Feeley to perform a title search on the subject property. (App. 128; App. 132, lines 13-22). Due to a scheduling conflict, Inglese was unable to conduct the closing and Alexander acted as the closing attorney. (App. 112; App. 132, lines 13-22; App. 141, lines 11-21). Alexander paid Inglese for Feeley's report of the results of his title search. (App. 140, line 22 – App. 141, line 6).

Feeley's report<sup>2</sup> indicated all taxes due on the subject property had been paid, and no encumbrances or liens existed on the subject property. (App. 112, 116). August 2006 documentation from the Charleston County Online Tax System showed all taxes were current and paid, and no taxes were outstanding. (App. 112-113, 118, 120). The escrow ledger from the seller's mortgage company also showed that property taxes were paid each year to the Charleston County Tax Assessor's Office. (App. 113, 122). The seller did not disclose that any property taxes were delinquent or that the subject property had been sold at a tax sale. (App. 112).

---

<sup>1</sup> Johnson purchased the subject property with 100% lender financing. (App. 187-188). To obtain such financing, Johnson submitted a loan application in which she falsely stated she would be the owner-occupier of the subject property. (App. 160-163). In breach of the terms of the mortgage agreement, Johnson did not occupy the subject property as her primary residence, but instead rented the subject property to another party. (App. 172, 188-190, 193, 197-198).

<sup>2</sup> Feeley stated he acted in conformity with the same routine practice and custom he always followed when performing title examinations. (App. 128). As part of his routine practice, Feeley reviewed the Charleston County Online Tax System website. (App. 128). He performed a "Tax Records Search" query by "Parcel ID (TMS)." The first screen that appeared was a ten (10) year history of the property's tax payments. (App. 128). Each line in the history contains a notation that the taxes are either current or delinquent. (App. 128). If a notation was made indicating that the taxes are delinquent, Feeley's customary practice was to conduct further inquiry. (App. 128). Feeley would clearly note on the title abstract any evidence of delinquent taxes or a tax sale. (App. 128). For the subject property, Feeley's review of the ten year history of the tax records contained on the Charleston County Online Tax System website did not reveal the existence of any recorded back taxes or tax sale. (App. 128-129).

The closing occurred on September 14, 2006. (App. 112). Approximately four (4) months *after* the closing, a tax deed was recorded on December 12, 2006, conveying the property to Westwood Properties, LLC, following an October 2005 tax sale by the Delinquent Tax Collector for Charleston County by virtue of tax executions for tax year 2004 against Carla Anderson. (App. 124-125). The existence of the prior tax sale would not have been disclosed in the chain of title for the subject property or made publically available at the Charleston County Register Mesne Conveyance (“RMC”) Office at the time of the 2006 title examination and closing because the tax sale deed was not recorded as a matter of public record with the RMC Office until four months later. (App. 129). Further, no *lis pendens* was recorded at the RMC Office or the Clerk of Court’s Office at the time of the title examination and closing that would have placed the public on notice of an unrecorded tax sale. (App. 129).

Following her purchase of the subject property, Johnson began making her required monthly mortgage payments to the lender. (App. 190-192). However, after making five or six of the required payments, Johnson ceased making mortgage payments. (App. 187-188, 190-192). During this period of time, beginning in October 2006, she rented the subject property to a third party for seven hundred dollars (\$700.00) per month. (App. 189-190, 193-194, 197-198). The subject property was rented continuously and associated rental income received until March 2009, even after Johnson discontinued payment of the mortgage. (App. 193-194). Despite the receipt of the aforementioned rental income, Johnson did not make the required payments, and as a result, the lender filed an action to foreclose on the subject property. (App. 187-188, 193-194, 197-198).<sup>3</sup>

---

<sup>3</sup> Johnson received \$9,608.08 as part of the resolution of the foreclosure action, representing half of the overage from the tax sale. The Court can take judicial notice of this fact as set forth in the Order dated May 26, 2010, and Amended Order entered June 7, 2010, in *The Bank of New York*

## STANDARD OF REVIEW

South Carolina Rule of Civil Procedure 56(c) provides a motion for summary judgment shall be granted only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

“In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Lanham v. Blue Cross & Blue Shield of S.C., 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

---

*Mellon as Trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2006- 23 v. Amber Johnson, et. al.*, 2009-CP-10-4588, as followed by a Consent Order entered January 25, 2012, in the matter of *The Bank of New York Mellon as Trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2006- 23 v. Amber Johnson, et. al.*, 2010-CP-10-4973. See Charleston County, Public Index, <http://jcmsweb.charlestoncounty.org/PublicIndex/PISearch.aspx> (last accessed Aug. 6, 2014). See Philips v. Pitt Cnty. Mem. Hosp., 572 F.3d 176, 180 (4th Cir. 2009) (holding that courts “may properly take judicial notice of matters of public record”).

## ARGUMENT

### I. The Court of Appeals Properly Reasoned that an Attorney Closing a Real Estate Transaction Cannot be Held Liable for Malpractice as a Matter of Law Simply Because Another Attorney Who Conducted the Title Examination Did Not Discover Information that Could Affect the Title to the Subject Property.

An attorney is required “to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession.” Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000). An attorney is not a guarantor of a favorable result to the client, but is liable only if he fails to meet the appropriate standard of care. See RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012); Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 289, 701 S.E.2d 742, 749 (2010). In the specific context of a real estate closing, “[t]he fact that an attorney is incorrect as to the ultimate marketability of a title to real estate does not establish that he was negligent.” Bass v. Farr, 315 S.C. 400, 404, 434 S.E.2d 274, 277 (1993); see also Jennings v. Lake, 267 S.C. 677, 680, 230 S.E.2d 903, 904 (1976) (stating “an attorney, who *negligently* certifies a title to be good, is liable to his client for the damages sustained as a proximate result of such *negligence*” (emphasis added)). An attorney is not required by law to be infallible and there is thus no liability merely because an attorney made a mistake. Cianbro Corp. v. Jeffcoat & Martin, 804 F. Supp. 784 (D.S.C. 1992), aff’d, 10 F.3d 806 (4th Cir. 1993) (mistake does not establish negligence or malpractice as a matter of law). A plaintiff alleging legal malpractice arising out of a real estate closing must establish the standard of care for the particular situation and prove the attorney negligently breached the standard. Harris Teeter, 390 S.C. at 282, 701 S.E.2d at 745. Here, the Court of Appeals properly identified the standard of care in question as that which a real estate closing attorney must meet in relying on a title search performed by

another attorney, and further, properly found a genuine issue of material fact exists as to this issue.

**A. The Court of Appeals' Decision Does Not Conflict with South Carolina Law Regarding Non-Delegable Duty.**

Johnson asserts that the Court of Appeals' decision creates immunity for an attorney who delegates certain tasks and is in contravention to the law concerning non-delegable duty. In so arguing, Johnson ignores a number of key issues: (1) the title search was not within the scope of Alexander's representation; (2) Alexander did not contract with Feeley; (3) no South Carolina law exists that indicates a closing attorney may not delegate certain duties to another attorney; and (4) the Court of Appeals did not determine that Feeley was negligent.

1. The Title Search Was Not Within the Scope of Alexander's Representation.

Johnson's argument regarding the alleged "non-delegable" duties of an attorney is a logical fallacy as the title examination was not within the scope of Alexander's representation. In addressing the practice of law in the context of real estate closings, this Court has divided the purchase of residential real estate into four steps: (1) title search; (2) preparation of loan documents; (3) closing; and (4) recording title and mortgage. Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2002); State v. Buyers Serv. Co., 292 S.C. 426, 357 S.E.2d 15 (1987). Different attorneys may supervise different parts of the real estate transaction, although each has a responsibility to see that another attorney has been involved in the other aspects of the transaction requiring attorney participation. In re: Pstrak, 357 S.C. 1, 4, 591 S.E.2d 623, 625 (2004); see also Johnson, 408 S.C. at 63, 757 S.E.2d at 555 (noting the trial court recognized a closing attorney may rely upon the title examination performed by others); (App. 14-15).

Here, it is undisputed that Feeley, not Alexander, performed the title examination. (App. 127-129). Additionally, the evidence in the Record indicates Johnson knew Alexander did not

perform the title search and was relying on the title work of another attorney. (App. 132-133, 140, 142-144). Alexander was not requested to or paid to perform another title examination. Thus, the scope of Alexander's representation of Johnson did not include performing the title examination and Alexander should not be held liable for a duty he did not undertake to perform.

## 2. Alexander Did Not Contract With Feeley.

Johnson's argument also ignores the fact that Alexander did not contract with Feeley to perform the title search. Rather, Inglese, with whom Johnson had an attorney-client relationship, commissioned Feeley to conduct the title examination. (App. 127-129, 132-133, 140, 142-144). Accordingly, even assuming *arguendo* that a non-delegable duty exists in this context, it was Inglese, not Alexander, who delegated a duty to Feeley.

Despite the fact that Alexander neither performed the title examination nor contracted with Feeley to perform the title examination, Johnson contends Alexander should be liable for the allegedly negligent title examination simply because he was the third of three lawyers to assist Johnson in the purchase of the subject property. In support of this contention, Johnson relies on Tuten v. Joel, 410 S.C. 104, 763 S.E.2d 54 (Ct. App. 2014), and Inglese v. Beal, 403 S.C. 290, 742 S.E.2d 687 (Ct. App. 2013). These cases are readily distinguishable from the case at bar.

In Tuten, 410 S.C. 104, 763 S.E.2d 54, the court held Joel, the defendant attorney, was liable for the negligent acts of his associate that occurred after it was communicated to the client that Joel was discontinuing his practice in South Carolina and the associate would be handling the matter, where Joel did not formally withdraw from the case following that communication. That is, the court found Joel was liable for negligent acts which occurred *after* Joel's attorney-client relationship with the client began, and which were within the original scope of

representation agreed to by Joel. In contrast, here, Johnson seeks to hold Alexander liable for allegedly negligent acts which occurred *prior* to existence of an attorney-client relationship between Johnson and Alexander, and which were outside of the scope of Alexander's representation of Johnson. If anything, Tuten supports a finding that Inglese, not Alexander, is liable for the allegedly negligent title examination.

Johnson's argument regarding the Inglese case is similarly unpersuasive. Johnson cites Inglese for the proposition that "[t]he attorney's role ... is to protect the participants in real estate transactions from the numerous potential problems that may arise." 402 S.C. at 296, 742 S.E.2d at 690. Clearly, the purpose of having an attorney involved in a real estate transaction is to protect the participants in the transaction. This does not mean, as Johnson intimates, that the attorney is a guarantor of a favorable result to the client. See RFT Mgmt. Co., 399 S.C. at 331, 732 S.E.2d at 170; Harris Teeter, Inc., 390 S.C. at 289, 701 S.E.2d at 749. Instead, as discussed *passim*, an attorney is liable only if he fails to meet the appropriate standard of care. It also does not mean that the same attorney must protect the participants in all aspects of the transaction. Rather, as discussed *passim*, different attorneys may supervise different parts of the real estate transaction, although each has a responsibility to see that another attorney has been involved in the other aspects of the transaction requiring attorney participation. In re Pstrak, 357 S.C. at 4, 591 S.E.2d at 625.<sup>4</sup>

---

<sup>4</sup> In her argument regarding the Inglese case, Johnson asserts that a number of facts are undisputed. (Amended Brief of Petitioner, p. 14). Despite Johnson's representations to the contrary, as discussed *infra*, Section I.B., Alexander disputes Johnson's representation that there was no legal relationship between Johnson and Feeley. Alexander also disputes the representation that the title examination missed previously filed records. See (App. 112-113, 118, 120, 122, 124-125, 128-129). Additionally, as discussed *infra*, Section V, Alexander disputes Johnson's conclusion that Johnson lost the subject property due to the issuance of the delinquent tax deed to the tax sale purchaser.

3. South Carolina Law Does Not Prohibit a Closing Attorney From Delegating Certain Duties to Another Attorney.

South Carolina has not established any non-delegable duties in the context of a real estate closing as Johnson suggests. Rather, the law holds that different attorneys may supervise different parts of the real estate transaction, although each has a responsibility to see that another attorney has been involved in the other aspects of the transaction requiring attorney participation. In re Pstrak, 357 S.C. at 4, 591 S.E.2d at 625. In point of fact, none of the cases Johnson cites concern the application of the non-delegable duty doctrine to attorneys, much less closing attorneys. Instead, Johnson relies entirely on cases where there was a risk of physical, not merely economic, injury to the plaintiff. South Carolina courts have not adopted, and should not adopt, the negligence per se, strict liability, or *res ipsa loquitur* theory of liability Johnson seeks to advance. See RFT Mgmt. Co., 399 S.C. at 331, 732 S.E.2d at 170; Harris Teeter, 390 S.C. at 289, 701 S.E.2d at 749; see also Holy Loch Distributions, Inc., 340 S.C. at 26-28, 531 S.E.2d at 285-286 (rejecting rule imposing strict liability for attorneys who promise to achieve particular results). “The fact that an attorney is incorrect as to the ultimate marketability of a title to real estate does not establish that he was negligent.” Bass, 315 S.C. at 404, 434 S.E.2d at 277. Rather, to prove negligence, a plaintiff must establish the standard of care by expert testimony, and prove the attorney breached that standard. Harris Teeter, 390 S.C. at 282, 701 S.E.2d at 745. Here, Johnson simply failed to establish the standard of care for a closing attorney in this case, and further, failed to prove that Alexander breached that standard. Additionally, Johnson’s own expert conceded that Alexander acted with reasonable care. (App. 157, lines 16-22; App. 158, lines 14-18).

4. The Court of Appeals Did Not Determine that Feeley was Negligent.

Johnson's argument also fails because the trial court's findings are not undisturbed as Johnson suggests. The Court of Appeals reversed the decision of the trial court in its entirety because the trial court applied an incorrect standard of care. The trial court's decision was based entirely on the premise that the failure to discover certain records by itself constitutes negligence. That is not the law of this State. See Bass, 315 S.C. at 404, 434 S.E.2d at 277. Rather, the failure must have been the result of negligence. Jennings, 267 S.C. at 680, 230 S.E.2d at 904. The Court of Appeals did not agree that it was necessarily negligent not to discover the tax records. Instead, the Court of Appeals stated, "Feeley is the attorney who failed to discover the contents of the public record. *If* Feeley was negligent, Feeley is liable." Johnson, 408 S.C. at 63, 757 S.E.2d at 555 (emphasis added). Thus, whether Feeley was negligent in conducting the title examination is an issue that remains to be resolved at trial after remand. See (App. 128-129).

**B. The Standard of Care Applied by the Court of Appeals Does Not Leave an Aggrieved Party Without Recourse.**

Johnson asserts, without evidence, that she has no recourse if Alexander is found to have reasonably relied on a negligent title search. This assertion is incorrect for a number of reasons. First, as discussed *supra*, Alexander did not commission Feeley to conduct the title search, Inglese did. (App. 127-129, 132-133, 140, 142-144). So, to the extent Johnson's theory is even tenable, Inglese would be liable to Johnson.

Second, Johnson states Feeley is not her attorney, but offers no support for this assertion. Under South Carolina law the attorney-client relationship is created when the attorney undertakes to perform a particular legal service for the client. 1 S.C. Jur. Attorney and Client § 18; In re Broome, 356 S.C. 302, 589 S.E.2d 188 (2003) (a signed retainer agreement is not necessary to create an attorney-client relationship). Here, the evidence in the Record indicates

Feeley, an attorney, was retained by Inglese for Johnson to act on her behalf in conducting the title search. (App. 127-129, 132-133, 140, 142-144). It was not necessary for Johnson to have a direct relationship with Feeley. As the Court of Appeals properly held, “[i]f Feeley was negligent, Feeley is liable.” Johnson, 408 S.C. at 63, 757 S.E.2d at 555.

**C. The Standard of Care Applied by the Court of Appeals Does Not Conflict with the Rules of Professional Conduct.**

“In order to relate to the standard of care in a particular case... a Bar rule must be intended to protect a person in the plaintiff's position or be addressed to the particular harm.” Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 437, 472 S.E.2d 612, 614 (1996) (citation omitted); see also Spence v. Wingate, 395 S.C. 148, 161, 716 S.E.2d 920, 927 (2011) (“It is the breach of a duty, not the breach of a rule, that is of determinative import.”); Preamble to RPC, Rule 407, SCACR (stating a “[v]iolation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached”).

Johnson asserts that South Carolina Rule of Professional Conduct 1.8(h) stands for the proposition that an attorney cannot delegate his liability. Rule 1.8(h) states, in pertinent part: “A lawyer shall not: (1) make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless the client is independently represented in making the agreement...” Johnson misconstrues the meaning of the rule. Comment 14 to Rule 1.8(h) makes it clear the rule is not intended to be interpreted in the manner Johnson seeks to advance:

[T]his paragraph [does not] limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for *his or her own conduct* and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the

representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

(Emphasis added). The standard of care applied by the Court of Appeals allows that an attorney can be liable for his or her own conduct.

Johnson also contends the Court of Appeals decision runs afoul of Rule of Professional Conduct 1.2(c), which states: “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.” “‘Informed consent’ denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated reasonably adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.” Rule 1.0(g), RPC, Rule 407, SCACR. Again, Johnson ignores the intended purpose of the rules. Comment 6 to Rule 1.0, RPC, provides in part:

*A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.*

(Emphasis added). Comment 7 to Rule 1.0, RPC states in part: “Consent may be inferred... from the conduct of a client or other person who has reasonably adequate information about the matter.”

Here, the evidence in the Record indicates Johnson, an attorney, already knew Inglese had commissioned the title search from Feeley, and that Alexander would be relying on Feeley’s

title work. (App. 127-129, 132-133, 140, 142-144). At the very least, the evidence in the Record indicates Inglese, a person who had reasonably adequate information about the matter, gave informed consent for Alexander to use Feeley's title work. (App. 127-129, 132-133, 140, 142-144). Thus, the evidence before this Court indicates Alexander's representation of Johnson was in accordance with the rules. There is nothing in the standard of care applied by the Court of Appeals that conflicts with the Rules of Professional Responsibility.

**II. The Court of Appeals Properly Found that a Material Issue of Fact Exists as to Whether Alexander Acted with Reasonable Care in Relying on Feeley's Title Search.**

As a threshold matter, Johnson contends issues of reasonable reliance and agency were not properly before the Court of Appeals. Although Johnson raised this issue in the Petition for Rehearing, she did not raise the issue in the Petition for Writ of Certiorari. Accordingly, it is abandoned and not preserved for review. See Sloan v. Dep't of Transp., 365 S.C. 299, 307-08, 618 S.E.2d 876, 880 (2005) (striking from Sloan's brief any argument on issue "as procedurally barred because he failed to include the issue in his petitions for rehearing *and* certiorari" (emphasis added)); see also Rule 242(d)(2), SCACR. Regardless, Alexander strenuously argued to the Court of Appeals that the trial court applied the incorrect standard of care. It is not necessary that Alexander use the particular phrasing "reasonable reliance" or "agency." See Calhoun v. Calhoun, 339 S.C. 96, 529 S.E.2d 14 (2000) (petitioner did not limit the issue on appeal by failing to refer to the term "transmutation" in her statement of issues on appeal, where her argument on the issue contained discussion and authority on transmutation); Eubank v. Eubank, 347 S.C. 367, 555 S.E.2d 413 (Ct. App. 2001) (finding issue read in conjunction with argument adequately raised the issue). Accordingly, the issues of reasonable reliance and agency are properly before this Court.

The Court of Appeals properly reasoned the correct issue is whether Alexander acted with reasonable care in relying on Feeley's title search. Johnson argues such reliance is immaterial because (1) the court found the contents of the public record should have been discovered; (2) absent proper consent a closing attorney should not be able to escape liability by claiming reasonable reliance; and (3) Alexander admitted he owed a duty to Johnson to insure the title work was performed in compliance with the standard of care. Johnson's argument fails as each of the three articulated grounds is based on a misapprehension of the evidence in the Record and the law applicable in this case.

Regarding Johnson's first enumerated ground, as discussed *supra*, the Court of Appeals reversed the decision of the trial court in its entirety and did not agree that it was necessarily negligence to not discover the tax records. At the time that Alexander closed he loan, he printed documentation from the Charleston County Tax Assessors' Office on August 10, 2006, and September 11, 2006 stating that property taxes were "Current(Paid)" and that no back taxes were owed or due, with a past due amount of "0.00." (App. 118, 120). This fact, coupled with the results of the title examination, shows that Alexander acted with reasonable care in closing the transaction. The information before Alexander at the time of the closing did not reveal any tax issues, and Alexander was not engaged to conduct a second title examination. This is why the Court of Appeals properly stated, "Feeley is the attorney who failed to discover the contents of the public record. *If* Feeley was negligent, Feeley is liable." Johnson, 408 S.C. at 63, 757 S.E.2d at 555 (emphasis added). Now, in an effort to distract from this issue, Johnson argues, for the first time, that Feeley was Alexander's sub-agent.<sup>5</sup> According to Comment E of the Third

---

<sup>5</sup> This issue is not properly before the Court as it was not argued in the Petition for Rehearing or the Petition for Writ of Certiorari. See Rule 242(d)(2), SCACR; Sloan, 365 S.C. at 307-08, 618 S.E.2d at 880.

Restatement of the Law Governing Lawyers, a firm may be liable to a client for the acts and omissions of the outside lawyer if the firm assumes responsibility for a matter by assigning work to a temporary lawyer who has no direct relationship to the client. The Undersigned has found no South Carolina cases which support this position. Regardless, Johnson's theory is again undercut by the facts of this case – Inglese, not Alexander, assigned the title search to Feeley. Accordingly, Feeley was Inglese's sub-agent if he was anyone's.

As to the second enumerated ground, as discussed *supra*, the law holds that different attorneys may supervise different parts of the real estate transaction, although each has a responsibility to see that another attorney has been involved in the other aspects of the transaction requiring attorney participation. In re Pstrak, 357 S.C. at 4, 591 S.E.2d at 625. The evidence in the Record indicates that it was Inglese, not Alexander, who commissioned Feeley to perform the title search. Moreover, the evidence in the Record indicates that Johnson, or at least Inglese, a person who had reasonably adequate information about the matter, gave informed consent for Alexander to use Feeley's title work. (App. 127-129, 132-133, 140, 140-142).

Finally, regarding the third enumerated ground, as discussed in more detail *infra*, Alexander conceded only that he must act with reasonable care in closing the transaction, including his decision to rely on Feeley's title search and records from the Charleston County Tax Assessors' Office that presented that no back taxes were owed or due. See Johnson, 408 S.C. at 64, 757 S.E.2d at 556; (App. 111-113, 129, 132-135, 267-268). Accordingly, the decision of the Court of Appeals was proper.

**III. The Court of Appeals Properly Found the Issue of Whether Feeley was Alexander's Agent is a Question of Fact to Be Resolved on Remand.**

Pursuant to Rule 242(d)(2), SCACR, “[o]nly those questions raised in the Court of Appeals *and* in the petition for rehearing shall be included in the petition for writ of certiorari as

a question presented to the Supreme Court.” (Emphasis added). Johnson first raised the issue of Alexander allegedly acting negligently independent of Feeley in the Petition for Rehearing. Compare (App. 391), with Johnson, 408 S.C. 58, 757 S.E.2d 553; and (App. 7-20, 72-94, 214-260). An issue is not preserved where it is raised for the first time in the petition for rehearing and it was not addressed by either the trial court or the Court of Appeals. Kleckley v. Northwestern Nat’l Cas. Co., 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000). Accordingly, this issue is not properly before the Court.

Assuming *arguendo* that this question is preserved for review, the Court of Appeals properly found that the issue of whether Feeley was Alexander’s agent is a question to be resolved on remand. Johnson argues the issue of agency is irrelevant because Alexander committed independent acts of negligence in not discovering the delinquent taxes allegedly in the public records in his own search. Johnson’s argument creates a Catch-22. Under Johnson’s reasoning, even if the standard of care is that articulated by the Court of Appeals – whether the closing attorney was negligent in his reliance on the title search attorney or in his decision not to do the title search – Alexander is still negligent *because he acted in accordance with the standard of care* by checking the results reached by the title search attorney. This court should not overturn the Court of Appeal based on Johnson’s flawed reasoning and tortured application of the law.

Further, there is at least a genuine issue of material fact as to whether Alexander acted negligently. Johnson presented no expert evidence as to the appropriate standard of care for a closing attorney, but instead offered expert testimony as to the standard of care for a title examiner. See Harris Teeter, 390 S.C. at 282, 701 S.E.2d at 745 (stating “a plaintiff in a legal malpractice action must establish this standard of care by expert testimony”). Additionally,

Johnson's own expert witness testified that Alexander was reasonable in relying on Feeley's title examination:

Q Mr. Brown, if you were closing this loan, and you had also performed the title examination, how would you have uncovered this issue?

A Well, I don't know that I would have.

Q So you could have been in the same position as Mr. Alexander?

A Absolutely.

...

Q So based on the scenario as it happened, as it relates to 2640 Ranger Drive, you could, if you were the closing attorney, be sitting in the same seat as Mr. Alexander today, correct?

A I believe I could be.

(App. 157, lines 16-22; App. 158, lines 14-18). **Johnson's own expert admits that Alexander did not violate the standard of care of a similarly situated attorney.** Accordingly, as the Court of Appeals held, the issue of agency is a question that should be resolved on remand.

**IV. The Court of Appeals Properly Found That, Considering Alexander's Statements in the Light Most Favorable to Him, He Conceded Only That He Must Act With Reasonable Care in Closing the Transaction.**

The Court of Appeals properly found that, considering Alexander's statements in the light most favorable to him, he conceded only that he must act with reasonable care in closing the transaction. Alexander presented both affidavit and deposition testimony that at least created a genuine issue of material fact as to whether he acted as a reasonable and ordinary attorney would have acted under the circumstances, and in particular, whether there was any concession that he had an absolute duty to convey good and marketable title. (App. 111-113, 129, 132-135, 267-268). See Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) ("In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom

must be viewed in the light most favorable to the non-moving party. On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.”) (internal citations omitted). His testimony was not a binding admission of liability *per se*, especially in light of disputed evidence. Accordingly, as the Court of Appeals held “we do not believe Alexander’s statements can be fairly interpreted as a concession that he had an absolute responsibility to deliver good and marketable title.” Johnson, 408 S.C. at 64, 757 S.E.2d at 556.

“The fact that an attorney is incorrect as to the ultimate marketability of a title to real estate does not establish that he was negligent.” Bass, 315 S.C. at 404, 434 S.E.2d at 277. Therefore, failing to ensure good and marketable title to the property at closing is not a *per se* breach of the standard of care. To hold otherwise would require this Court to apply the rejected doctrine of *res ipsa loquitur* or create strict liability for real estate closing attorneys.

**V. Additional Grounds Exist for Affirming the Decision of the Court of Appeals.**

To prevail in a claim for legal malpractice, the plaintiff must prove: (1) the existence of an attorney-client relationship; (2) breach of a duty by the attorney; (3) damage to the client; and (4) proximate causation of the client’s damages by the breach. Smith, 322 S.C. at 435, 472 S.E.2d at 613. In reversing the decision of the trial court, the Court of Appeals focused primarily on the standard of care of a closing attorney and whether Alexander could be said to have breached the standard of care. See Johnson, 408 S.C. 58, 757 S.E.2d 553. However, reversal of the decision of the trial court is also proper because a genuine issue of material fact exists as to whether Johnson suffered damages, and if so, whether those damages were proximately caused by the breach of any duty by Alexander.

**A. A Genuine Issue of Material Fact Exists as to Whether Johnson Suffered Damages.**

“[D]amage to the client” is a necessary element of a legal malpractice claim. Smith, 322 S.C. at 435, 472 S.E.2d at 613. The finding of damages is a question of fact for a jury. Scott ex. rel. Scott v. Porter, 340 S.C. 158, 169, 530 S.E.2d 389, 394 (Ct. App. 2000). The circuit court erroneously found that damages existed as a matter of law, despite the fact that Johnson may be unable to prove at trial that any damages were sustained. See Steven v. Allen, 342 S.C. 47, 53, 536 S.E.2d 663, 666 (2000) (holding that “a verdict assessing liability against the defendant but awarding the plaintiff zero damages is inconsistent and contrary to South Carolina law”); Carlyle v. Tuomey Hosp., 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991) (“[N]either the existence, causation nor amount of damages can be left to conjecture, guess or speculation.”).

In this case, the evidence in the Record suggests Johnson suffered no damages proximately caused by any act or omission of Alexander, but instead, Johnson actually profited from this transaction, receiving \$700.00 per month in rent from October 2006 until March 2009 while not making any mortgage payment. (App. 187-194, 197-198). She also received a windfall of an additional \$9,608.08 for half of the overage paid by the purchaser at the tax sale. (App. 108, 197-201). Further, any evidence of alleged damages stemming from the foreclosure action was never presented to the trial court. Accordingly, a genuine issue of material fact exists as to whether Johnson suffered any damages.

**B. A Genuine Issue of Material Fact Exists as to Causation.**

“The question of proximate cause ordinarily is one of fact for the jury.” Madison v. Babcock Ctr., Inc., 371 S.C. 123, 147, 638 S.E.2d 650, 662 (2006). “Only on the rarest occasion should the trial court determine the issue of proximate cause as a matter of law.” Burnett v. Family Kingdom, 387 S.C. 183, 191, 691 S.E.2d 170, 175 (Ct. App. 2010); Newton v. S.C. Pub.

Rys. Comm'n, 312 S.C. 107, 110, 439 S.E.2d 285, 287 (Ct. App. 1993). “[W]hen the evidence is susceptible to only one inference it becomes a matter of law for the court.” Small v. Pioneer Mach., 329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct. App. 1997).

Alexander does not admit causation. In his Answer, Alexander alleges that Johnson’s own conduct and the conduct of others were the cause of her alleged damages. Alexander also pled the defense of comparative fault. (App. 37-48). See Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 607 (2011) (“Under South Carolina’s comparative negligence system, all forms of conduct amounting to negligence in any form, including, but not limited to, ordinary negligence, gross negligence, and reckless, willful, or wanton conduct, may be compared to and offset by any conduct that falls short of conduct intended to cause injury or damage.”). The determination of comparative fault, and apportionment of liability, is an issue for the jury. Trivelas v. S.C. Dep’t of Transp., 348 S.C. 125, 138-39, 558 S.E.2d 271, 277-78 (Ct. App. 2001) (reminding that comparative fault is a jury question and reversing a grant of summary judgment on causation).

Any damages Johnson suffered were the result of her own actions, not the actions of Alexander. In Wilson v. Moseley, 327 S.C. 144, 488 S.E.2d 862 (1997), the appellant purchased real property from an individual who had acquired the property through a tax sale in 1983. Respondent Moseley closed the purchase for the appellant. The appellant refinanced the property through Carolina Investors. Respondent Fayssoux closed the refinancing transaction and issued a title insurance policy. The appellant subsequently defaulted on the note and mortgage held by Carolina Investors and the mortgage was foreclosed. The appellant subsequently sued the attorney respondents for malpractice, arguing *inter alia*, because of an allegedly defective title she was unable to sell the property and she stopped making mortgage payments, consequently the property was foreclosed. The court rejected the appellant’s argument:

Even if there were a cloud, it was not the proximate cause of the foreclosure. *The proximate cause of appellant's loss was her failure to make payments according to the note*, which obligations were separate and independent of any alleged problem with the title.

Id. at 147, 488 S.E.2d at 864 (emphasis added).

Here, as in Wilson, Johnson's failure to make required monthly mortgage payments was the proximate cause of any damages she incurred, including the foreclosure. Johnson *admits* she breached the terms of the mortgage and failed to make the required mortgage payments. (App. 187-188). Johnson *admits* that she discontinued paying on her note and mortgage in April 2007. (App. 188-192). Johnson even received a letter from the mortgagor stating that the foreclosure action resulted from Johnson's refusal "to bring the loan current." (App. 185).

Additionally, Johnson made material misrepresentations in the Residential Loan Application which operated to void the real estate transaction based upon the language of the note and the mortgage. The mortgage agreement states, in part:

Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. *Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.*


(App. 172 (emphasis added)). In the application, she certified that the subject property would only be used as her primary residence. (App. 160-163, 188). However, she admitted in her deposition that she did not occupy, establish, or use the property as her principal residence, nor had *any intention* to use this property as her primary residence. (App. 160-163, 188). The application states that she was moving into this house from her parents' home in Charleston; however, she was living in Florida and attending law school at the time. (App. 160-163, 188). She also made other material misrepresentations, such as falsifying her employment and personal

assets. (App. 270-274). Thus, any damages Johnson sustained were not caused by Alexander, but rather, were the result of Johnson's own actions.

CONCLUSION

For the reasons stated, Alexander respectfully requests the Supreme Court to affirm the decision of the Court of Appeals.

Respectfully submitted,

By: 

Joel W. Collins, Jr.  
Collins & Lacy, P.C.  
1330 Lady Street, Sixth Floor (29201)  
Post Office Box 12487  
Columbia, South Carolina 29211  
(803) 256-2660  
(803) 771-4484 (f)

Robert F. Goings  
Goings Law Firm, LLC  
914 Richland Street, Suite A-101  
Post Office Box 436 (29202)  
Columbia, South Carolina 29201  
(803) 350-9230  
(877) 789-6340 (f)

ATTORNEYS FOR RESPONDENT  
STANLEY E. ALEXANDER

Columbia, South Carolina  
February 23, 2015

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
J.C. Nicholson, Jr., Circuit Court Judge

---

Appellate Case No. 2014-001167

---

Amber Johnson.....Petitioner,

v.

Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, P.C.,  
Of Whom Stanley E. Alexander is the.....Respondent.

v.

Mario S. Inglese and Mario S. Inglese, P.C.....Third Party Plaintiffs,

v.

Charles Feeley.....Third Party Defendant.

---

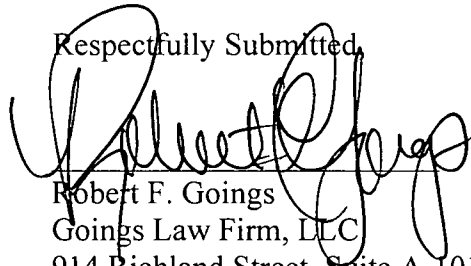
**CERTIFICATE OF COUNSEL 211(b)**

---

The undersigned certifies that the Brief of Respondent complies with Rule 211(b) SCACR and the Supreme Court Order of August 13, 2007.

**[SIGNATURE PAGE TO FOLLOW]**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Robert F. Goings', written over a horizontal line.

Robert F. Goings  
Goings Law Firm, LLC  
914 Richland Street, Suite A-101  
Post Office Box 436 (29202)  
Columbia, South Carolina 29201  
(803) 350-9230

Joel W. Collins, Jr.  
Collins & Lacy, P.C.  
1330 Lady Street, Sixth Floor (29201)  
Post Office Box 12487  
Columbia, South Carolina 29211  
(803) 256-2660

Columbia, South Carolina

February 23, 2015

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2014-001167

**RECEIVED**

FEB 23 2015

**S.C. Supreme Court**

Amber Johnson.....Petitioner,

v.

Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, P.C.,  
Of Whom Stanley E. Alexander is the.....Respondent.

v.

Mario S. Inglese and Mario S. Inglese, P.C.....Third Party Plaintiffs,

v.

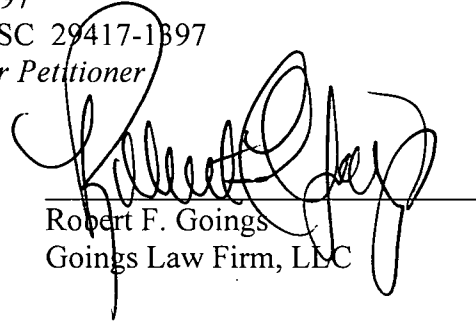
Charles Feeley.....Third Party Defendant.

**PROOF OF SERVICE**

I, Robert F. Goings, do hereby affirm that on February 23, 2015, I served one copy of the Brief of Respondent on the following named individuals by placing a copy in the United States Mail, first class, postage prepaid to the following:

Mary Leigh Arnold (Bar # 419)  
Mary Leigh Arnold, P.A.  
749 Johnnie Dodds Blvd., Suite B  
Mount Pleasant, SC 29464

Justin Kahn (Bar # 65100)  
Wes B. Allison (Bar # 100533)  
Kahn Law Firm, LLP  
PO Box 31397  
Charleston, SC 29417-1397  
*Attorneys for Petitioner*



Robert F. Goings  
Goings Law Firm, LLC

Columbia, South Carolina

February 23, 2015



914 RICHLAND STREET  
SUITE A-101  
POST OFFICE BOX 436 (29202)  
COLUMBIA, SC 29201  
P 803.350.9230  
F 877.789.6340  
E [rgoings@goingslawfirm.com](mailto:rgoings@goingslawfirm.com)

**RECEIVED**

FEB 23 2015

**S.C. Supreme Court**

February 23, 2015

**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse  
Clerk of the South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201


Re: Amber Johnson v. Stanley Alexander  
S.C. Ct. App. Opinion No.: 5208  
Appellate Case No.: 2014-001167

Dear Mr. Shearouse:

Enclosed please find the original and sixteen (16) copies of the Brief of Respondent in the above-referenced matter. Please return the filed stamped copy to me via my courier.

By copy of this letter, I am serving a copy of the same to all counsel of record. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



Robert F. Goings

RFG:lcc  
Enclosures

cc: Justin S. Kahn, Esquire (via U.S. Mail)  
Mary Leigh Arnold, Esquire (via U.S. Mail)  
Joel W. Collins, Jr., Esquire (via U.S. Mail)