

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
John C. Hayes III, Circuit Court Judge

Appellate Case No. 2015-001053  
Case No. 2010-CP-46-02267

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DEC 14 2015

SC Court of Appeals

Marjorie Cato Burton as Trustee of the Sloan Marvin  
Burton and Marjorie Cato Burton, AB Living Trust by  
and through David A. Burton as Attorney-in-Fact,  
Individually and in the right and on behalf of T.E. Cato  
Estate, LLC, ..... Appellant,

v.

Carroll M. Pitts, Jr., Esq. and Robinson Bradshaw &  
Hinson, P.A., ..... Respondents.

**Designation of Matter to be Included in the Record on Appeal**

Pursuant to Rule 209, SCACR, Respondents designate the following material for inclusion in the record on appeal. Undersigned counsel certifies, pursuant to Rule 209(c), SCACR, that the designation contains no matter which is irrelevant to this appeal.

**Orders**

1. Order Denying Motion to Reconsider Final Order, filed April 30, 2015
2. Final Order finding for Defendants, filed April 3, 2015
3. Order Denying Motion to Reconsider, filed November 15, 2013
4. Order Denying Motion to Amend Complaint, filed October 24, 2013
5. Order Granting Motion to Reconsider and Denying Motion to Dismiss, filed December 14, 2011
6. Order Granting Motion to Dismiss and Denying Motion for Substitution of Parties, filed August 29, 2011

## **Pleadings**

7. Defendants' Answer, filed July 20, 2010
8. Plaintiff's Complaint, filed May 27, 2010

## **Motions, Supporting Memoranda, & Other Filings**

9. Plaintiff's Motion to Reconsider, filed April 16, 2015
10. Plaintiff's Reply to Defendants' Trial Briefs, filed March 11, 2015
11. Defendants' Trial Brief and Attachments – No Attorney-Client Relationship Existed between the Burton Trust and RBH, filed February 4, 2015
12. Defendants' Trial Brief and Attachments – This Court Previously Ruled that No Attorney-Client Relationship Existed with the Burton Trust, filed February 4, 2015
13. Defendants' Trial Brief and Attachments – The Actions of the Burton Trust Caused the Partition Action, filed February 4, 2015
14. Defendants' Trial Brief and Attachments – The Plaintiff's Recovery in the Underlying Action Acts as a Setoff, filed February 4, 2015
15. Defendants' Trial Brief and Attachments – The Plaintiff's Ratification of the Underlying Transaction Precludes this Claim, filed February 4, 2015
16. Defendants' Trial Brief and Attachments – This Claim was Extinguished by the Settlement Agreement, filed February 4, 2015
17. Defendants' Trial Brief and Attachments – Plaintiff Cannot Assert a Claim on behalf of the T.E. Cato Estate, LLC, filed February 4, 2015
18. Defendants' Trial Brief and Attachments – The Plaintiff Cannot Prove it was Damaged by any Act or Omission of RBH, filed January 30, 2015
19. Defendants' Trial Brief and Attachments – The Plaintiff Cannot Assert this Assigned Claim, filed January 30, 2015
20. Defendants' Oral Motion for Non-suit, argued January 26, 2015 (pp. 860-885 of Trial Transcript)
21. Plaintiff's Memorandum in Opposition to Motion in Limine, filed November 21, 2014

22. Plaintiff's Memorandum in Opposition to Motion to Exclude Testimony of Michael J. Virzi, filed November 21, 2014
23. Defendants' Motion in Limine, filed July 18, 2014
24. Defendants' Motion to Exclude Testimony of Michael J. Virzi, filed July 18, 2014
25. Plaintiff's Motion to Reconsider Order Denying Motion to Amend, filed November 7, 2013
26. Plaintiff's Amended Motion to Amend Complaint, filed October 17, 2013
27. Defendants' Memorandum in Opposition to Motion to Amend Complaint, filed October 7, 2013
28. Plaintiff's Motion to Amend Complaint, filed September 9, 2013
29. Defendants' Memorandum in Opposition to Motion to Reconsider, filed October 26, 2011
30. Plaintiff's Motion to Reconsider Order Granting Motion to Dismiss, filed September 9, 2011
31. Defendants' Memorandum in Support of Motion to Dismiss, filed July 8, 2011
32. Defendants' Memorandum in Opposition to Motion for Substitution of Parties, filed May 16, 2011
33. Plaintiff's Motion for Substitution of Parties, filed May 10, 2011
34. Defendants' Motion to Dismiss, filed January 28, 2011

### **Transcripts**

35. Trial Transcript, December 16, 2014 – December 18, 2014 and January 26, 2015 – January 27, 2015; pages: 21-28, 31-38, 71-74, 88-92, 92-95, 96-99, 101-104, 108-111, 122-125, 128-131, 139-141, 151-153, 163-164, 167-169, 171-174, 189-193, 199-201, 231-233, 244-247, 279-282, 307-310, 313-317, 320-322, 370-373, 384-389, 394-401, 455-457, 468-471, 479-483, 485-487, 507-509, 524-527, 533-535, 610-612, 637-643, 655-659, 737-739, 817-821, 858-1034
36. Transcript of Hearing on Plaintiff's Motion to Amend, October 9, 2013
37. Transcript of Hearing on Plaintiff's Motion for Substitution of Parties and Defendants' Motion to Dismiss, July 20, 2011

## **Trial Exhibits**

38. Plaintiff's Exhibit 2, Revocation of Trust
39. Plaintiff's Exhibit 3, Deed of Roadbed Tract from SCDOT to Cato Heirs
40. Plaintiff's Exhibit 4, Declaration of Trust for the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust
41. Plaintiff's Exhibit 5, Deed of New Roadbed to South Carolina Department of Transportation
42. Plaintiff's Exhibit 6, Certificate of Existence and Articles of Organization of T.E. Cato Estate, LLC
43. Plaintiff's Exhibit 7, Operating Agreement of T.E. Cato Estate, LLC
44. Plaintiff's Exhibit 8, Deed into T.E. Cato Estate, LLC
45. Plaintiff's Exhibit 9, Letter of Intent
46. Plaintiff's Exhibit 11, Amendment to Contract
47. Plaintiff's Exhibit 13, Closing Documents
48. Plaintiff's Exhibit 14, Petition for Partition (Partition Action)
49. Plaintiff's Exhibit 18, August 1, 2007 Email
50. Plaintiff's Exhibit 20, August 20, 2007 Email
51. Plaintiff's Exhibit 22, Letter dated October 22, 2007
52. Plaintiff's Exhibit 24, December 12, 2007 Email
53. Plaintiff's Exhibit 32, Attorney Invoices
54. Plaintiff's Exhibit 38D, Assignment Agreement (Partition Action)
55. Plaintiff's Exhibit 48, November 24, 2007 Email
56. Plaintiff's Exhibit 53, August 2007 Emails between Burton Trust and Tommy Cato
57. Defendants' Exhibit 4, November 30, 2007 Email

58. Defendants' Exhibit 5, Cancelled Check in the amount of \$124,000
59. Defendants' Exhibit 6, Articles of Termination for T.E. Cato Estate, LLC
60. Defendants' Exhibit 7, Amended Appraisal of George E. Knight, Jr., MAI
61. Defendants' Exhibit 8, Complaint in *Burton v. Vann*
62. Defendants' Exhibit 12, Release and Settlement Agreement (Partition Action)
63. Defendants' Exhibit 14, Motion to Disqualify (Partition Action)
64. Defendants' Exhibit 17, Order Denying Motion to Disqualify (Partition Action)
65. Defendants' Exhibit 18, Quitclaim Deed to Thomasson Apartments, LLC signed by all Cato heirs except the Burton Trust
66. Defendants' Exhibit 19, Third-Party Complaint (Partition Action)
67. Defendants' Exhibit 20, Amended Third-Party Complaint (Partition Action)
68. Defendants' Exhibit 21, Fourth-Party Complaint (Partition Action)
69. Defendants' Exhibit 24, Order Denying Motion to Amend
70. Defendants' Exhibit 25, Appraisal of H. Corbin Haskell, MAI

**Other Documents**

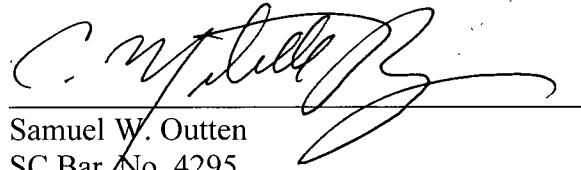
71. Plaintiff's Notice of Appeal and Certificate of Service, filed May 15, 2015
72. Plaintiff's Motion to Reconsider, Certificate of Service, filed April 16, 2015
73. Emails dated April 3, 2015 between J. Alferis and R. Jellenik, *et. al.*

**Signature on Following Page**

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP.

By:



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Attorneys for Respondents Carroll M. Pitts, Jr., Esq.  
and Robinson Bradshaw & Hinson, P.A.

December 14, 2015  
Columbia, South Carolina

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Estate, LLC,, ..... Appellant,

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PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins  
Riley & Scarborough LLP, attorneys for Respondents, do hereby certify that I have  
served all counsel in this action with a copy of the pleading(s) hereinbelow specified by  
mailing a copy of the same by United States Mail, postage prepaid, to the following  
address(es):

Pleadings:

Designation of Matter to be Included in the Record on  
Appeal

Counsel Served:

Matthew B. Rosbrugh, Esquire  
MBR Law, LLC  
Post Office Box 292290  
Columbia, SC 29229

*Lisa P. Whitehurst*

\_\_\_\_\_  
Lisa P. Whitehurst  
Administrative Assistant

December 14, 2015

# Nelson Mullins

## Nelson Mullins Riley & Scarborough LLP

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Marjorie Cato Burton as Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust by and through David A. Burton as Attorney-in-Fact, Individually and in the right and on behalf of T.E. Cato Estate, LLC v. Carroll M. Pitts, Jr., Esq. and Robinson Bradshaw & Hinson, P.A.  
Civil Action No. 2010-CP-46-2267.  
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NMRS File No. 03297/01500

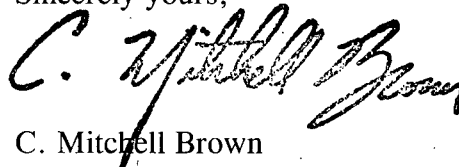
Dear Ms. Kitchings:

Enclosed please find the original and one copy each of the Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal. We would ask that you file the originals and return clocked-in copies to us via our courier.

By copy of this letter to counsel of record, we are serving him with copies.

With kind regards, I remain

Sincerely yours,



C. Mitchell Brown

CMB:lpw

Enclosures

cc: Matthew B. Rosbrugh, Esquire