

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
Edward W. Miller, Circuit Court Judge

Case Nos. 2012-CP-23-06209 & 2012-CP-23-06211  
Appellate Case No. 2016-000130

RECEIVED

MAY 25 2016

SC Court of Appeals

Emil P. Kondra, individually, and as Trustee of the Emil P. Kondra Revocable Trust, Emil P. Kondra, LLC, Emil P. Kondra Family Trust, Eileen Saxton and Douglass E. Kondra, Helen Perry and Lawrence F. D'Alessio, ..... Respondents,

v.

Robert A. Nitsch and Veronica G. Nitsch, Individually, and as Trustee of the Amended and Restated Veronica G. Nitsch Revocable Trust and the Amended and Restated Robert A. Nitsch Revocable Trust, ..... Petitioners.

John M. Campbell, Jr., Esquire, ..... Respondent,

v.

Robert A. Nitsch and Veronica G. Nitsch, Individually, and as Trustee of the Amended and Restated Veronica G. Nitsch Revocable Trust and the Amended and Restated Robert A. Nitsch Revocable Trust, ..... Appellants.

RESPONDENTS' DESIGNATION OF MATTER  
FOR THE RECORD ON APPEAL

Pursuant to Rule 209, SCACR, Respondents designate the following material for inclusion in the record on appeal. These designations are in addition to the matters designated by opposing counsel in Appellants' Designation of Matter, which are incorporated as if set forth herein. Undersigned counsel certifies pursuant to Rule 209(c), SCACR, that the designation contains no matter irrelevant to the appeal.

**ORDERS**

1. Order denying the Nitsches' Motion to Dismiss the Kondra suit (Feb. 6, 2013).
2. Order denying the Nitsches' Motion to Dismiss the Campbell suit (Feb. 6, 2013).

3. Order assigning the Kondra suit to the business court pilot program (May 6, 2013).
4. Order assigning the Campbell suit to the business court pilot program (May 6, 2013).

#### **TRANSCRIPTS**

5. Transcript of Dec. 13, 2012 trial court hearing.
6. Transcript of Jan. 20, 2015 trial court hearing.
7. Transcript of April 1, 2015 hearing before Referee.

#### **MOTIONS AND MEMORANDA**

8. Kondra Respondents' Motion to Stay Arbitration (Oct. 22, 2012).
9. Campbell's Motion to Stay Arbitration (Oct. 22, 2012).
10. Nitsches' Motion to Dismiss the Kondra suit (Nov. 2, 2012).
11. Nitsches' Motion to Dismiss the Campbell suit (Nov. 2, 2012).
12. Kondra Respondents' Memorandum in Support of the Motion to Dismiss the Nitsches' Counterclaims (Sept. 13, 2013).

#### **EXHIBITS**

13. By-Laws of Ellcon-National, Inc., attached to Exhibit C of the Campbell complaint.<sup>1</sup>
14. Stock Book of Ellcon National, Inc., attached to Exhibit C of the Campbell complaint.
15. Exhibit A to the Kondra Respondents' Memorandum in Support of the Motion to Dismiss the Nitsches' Counterclaims (Sept. 13, 2013)
16. Exhibits to the Kondra's Reply to the Counterclaims (March 25, 2013); including:
  - a. Exhibit A: 1964 Stock Purchase Agreement.
  - b. Exhibit B: 1964 Shareholders Agreement.
  - c. Exhibit C: Ellcon Stock Book Pages of the Former Owners and of Emil Kondra.
  - d. Exhibit D: Minutes of Nov. 10, 1964 Special Meeting of the Board of Ellcon.

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<sup>1</sup> Exhibit C is the Nitsches' Demand for Arbitration, which the Nitsches have designated for inclusion in the Record on Appeal as one of the attachments to the Kondra's Complaint.

- e. Exhibit E: Ellcon Shareholder Meeting Minutes.
- f. Exhibit F: Schedule 5.4(a) of the Merger Agreement.

17. Exhibits to the Referee's Report & Recommendation, including:<sup>2</sup>

- a. Exhibit A: Affidavit of Emil Kondra (May 17, 2013).
- b. Exhibit B: Affidavit of Veronica Nitsch (Oct. 2, 2013).
- c. Exhibit D: Exemplars of the "Disputed Documents" at issue in the R&R.

18. Affidavit of Veronica Nitsch (Oct. 14, 2012), attached as Exhibit B to the letter sent by the Nitsches' counsel to the Referee on May 15, 2015.<sup>3</sup>

**Nelson Mullins Riley & Scarborough, LLP**

By: 

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Attorneys for Respondents

Columbia, South Carolina  
May 25, 2016

<sup>2</sup> Exhibits C and E to the R&R, which are affidavits of Veronica Nitsch dated March 19, 2015 and May 12, 2015, have already been designated by the Nitsches for inclusion in the Record.

<sup>3</sup> This letter and Ms. Nitsch's affidavit were also appended to an affidavit of the Nitsches' counsel filed with the trial court on October 12, 2015.

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Kondra Family Trust, Eileen Saxton and Douglass E. Kondra,  
Helen Perry and Lawrence F. D'Alessio,..... Respondents,

v.

Robert A. Nitsch and Veronica G. Nitsch, Individually, and as  
Trustee of the Amended and Restated Veronica G. Nitsch  
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John M. Campbell, Jr., Esquire, ..... Respondent,

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Nitsch Revocable Trust,..... Appellants.

PROOF OF SERVICE

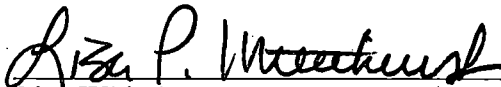
I, the undersigned Administrative Assistant of the law offices of Nelson  
Mullins Riley & Scarborough LLP, attorneys for the Respondents, do hereby certify that  
I have served all counsel in this action with a copy of the pleading(s) hereinbelow  
specified by mailing a copy of the same by United States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

Pleadings:

Respondents' Designation of Matter for the  
Record on Appeal

Counsel Served:

Jeffrey P. Dunlaevy, Esquire  
Stephenson & Murphy, LLC  
207 Whitsett Street  
Greenville, SC 29601



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Lisa Whitehurst  
Administrative Assistant

May 25, 2016

# Nelson Mullins

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May 25, 2016

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

RECEIVED  
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SC Court of Appeals

RE: Emil P. Kondra v. Robert A. Nitsch  
Appellate Case No. 2016-000130

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Initial Brief of Respondents and Respondents' Designation of Matter for the Record on Appeal in regard to the above-referenced matter. 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 them with copies of the brief and designation.

Very truly yours,



Miles E. Coleman

MEC:lpw  
Enclosures

cc: Jeffrey P. Dunlaevy, Esquire  
A. Martin Quattlebaum, Esquire  
Sam W. Outten, Esquire