

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM AIKEN COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE DOYET A. EARLY, III
CIRCUIT COURT JUDGE

CASE NO. 2016-000106

RECEIVED

JUN 20 2016

SC Court of Appeals

Harold Raynor a/k/a Harold
Reynor and Michael Caldwell,

Respondents,

v.

Charles C. Byers, John T. Bakhaus,
Kurt Kasler and Kenneth Smith,

Appellants,

of whom

Charles C. Byers, John T. Bakhaus and Kenneth Smith are the Appellants,

INITIAL REPLY BRIEF OF APPELLANTS

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STATEMENT OF ISSUE ON APPEAL

The Trial Court erred in awarding attorney fees for services performed after the judgment was issued.

ARGUMENT

The Respondents have elected to rely on a legal dictionary definition and the opinion in Renaissance III. Renaissance Enterprises v. Ocean Resorts, 326 S.C. 460, 483 S.E.2d 796 (Ct. App. 1997).

As noted in Appellants' brief, the decision in Renaissance did not address the issue of merger and the Court went out of its way to comment on the cursory nature of the Appellants' argument. Given its later reversal, the decision in Renaissance is hardly persuasive.

More significant, however, is Respondents' failure to address the Appellants' argument on merger.

The Respondents could have presented an argument that the Court should not accept Section 18 of the Restatement of Judgments with regard to merger.

The Respondents could have conceded a general rule of merger but argued that the general rule should not apply to this case based on the facts of this case.

The Respondents could have stated an additional sustaining ground but did not do so..

Instead, the Respondents simply ignored this issue.

If an Appellant fails to file a Brief, the appeal will be dismissed Rule 208(a)(4), SCRAP.

If an Appellant fails to present an argument in its brief or presents only a cursory argument concerning an issue presented for consideration, the Appellant will be deemed to have abandoned that issue. First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994)

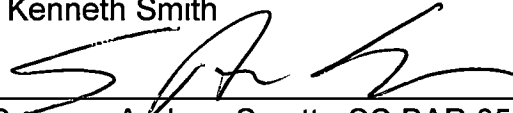
Although Rule 220(c) SCRAP, allows the Court to affirm on any ground in the record, there ought to be some consequence to the Respondent in the rare case when the Respondent utterly fails to respond to the Appellant's argument

CONCLUSION

The Court should find that the Respondents have waived argument on the issue of merger. The Court should also adopt the Restatement and find that the note merged into the judgment. The Court should then reverse the lower court and vacate the award of post-judgment attorney fees. To the extent that this Court has the power to do so, it should reverse or overrule its holding in Renaissance.



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June 20, 2016

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v.

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Defendants,

of whom

John T. Bakhaus and Charles C. Byers are Appellants,

Appellants.

PROOF OF SERVICE

I certify that I have served the Appellants' Initial Reply Brief on the Respondents, Harold Raynor a/k/a Harold Reynor and Michael Caldwell, by depositing a copy of it in the United States Mail, postage prepaid, on June 20, 2016, addressed to the attorneys of record:

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