

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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OCT 10 2016

APPEAL FROM HORRY COUNTY

SC Court of Appeals

Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Civil Action No. 2014-CP-26-08367

(formerly 2013-CP-26-02816)

Appellate Case No.: 2016-001328

Gabriel Barnhill and GSB Enterprises LLC Respondents,

v.

J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners LLC, SMS Services LP, William C. Piner, WCP Limited LLC, 809 Holdings LP, QC Financing LLC, Heath Causey, and Sage Financial Group LLC, J. Floyd Swilley, SMG Partners, LLC, Alicia A. Piner, Heath Causey, Sage Advisory Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc. Digics, LLC 9-1-1, Plumbing LLC, and Sage Funding, L.P., Christopher Pitcock, Defendants,

of whom J. Floyd Swilley, Laurel K. Swilley and Heath Wendell Causey are the Appellants.

APPELLANT’S REPLY TO RESPONDENT’S MOTION TO STRIKE

Come now the Appellants, Laurel K. Swilley and J. Floyd Swilley by and through counsel and in response to the Respondent’s Motion to Strike do hereby enter their objection and would state as follows:

Appellants Laurel K. Swilley and J. Floyd Swilley object to said motion on the grounds these Appellants are not seeking to introduce any new matters or evidence into the record on appeal. Rather these Appellants, pursuant to Rule 201(b)(c)(d) of the South Carolina Rules of Evidence, ask that the Honorable Court take judicial notice of adjudicative facts relevant to the

matter on appeal and set forth in Appellant's Motion for Judicial Notice. The subject email referenced in Attorney Fata's motion dated April 18, 2016 was not filed of record in the lower court. The email was simply a confirmation of Attorney Fata's Notary Application.

In the alternative, we request that the Honorable Court take judicial notice of a matter of public record. The Application is a matter of public record and should be admissible pursuant Rule 902(4) of the South Carolina Rules of Evidence. This record speaks for itself and plainly demonstrates the invalidity of Attorney Fata's altered notary of his paralegal's affidavit. It should be noted that reliance and verification of public records is the only avenue open to confirm the veracity of notarizations and the mere fact that Mr. Fata attached his notary to a document of record opens the door for these Appellants as well as this Honorable Court to verify such information. Per the record, Mr. Fata's Notary on the subject affidavit indicates his notary expired in 2020. As indicated by the enclosed, the expiration was actually 2015. See Exhibit A. It is incumbent upon any notary to know when their commission expires and to affix accurate data to every document acknowledged. Mr. Fata knew or should have known that the data was incorrect and now seeks to conceal that fact by seeking to have the email from the Secretary of State's office stricken. Mr. Fata knew or should have known his expiration date was incorrect and rendered the document with the incorrect notary invalid, but filed the document anyway.

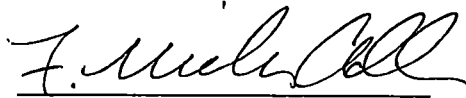
His lack of candor with the tribunal by filing a document which he knew or should have known was invalid is a material component to a pattern of conduct with the trial court that has given rise to the appeal. It should be noted that Mr. Fata does not deny his wrongful acts nor has he taken any steps to correct them. By filing the motion to strike, the Respondent is seeking to divert attention away from the substantive issues on appeal.

The Appellants are not seeking to introduce any new evidence. The acknowledgements are contained in the record. The Respondent knew or should have known the documents filed with the Honorable Court contained invalid notarial dates and as such invalidated the documents. The act of knowingly filing them with the Honorable Court is at a minimum misleading and is absolutely relevant with respect to Appellants' issues on appeal.

For the foregoing reasons, it is prayed that this Honorable Court deny the Respondent's Motion to Strike.

Dated: October 3, 2016

Respectfully submitted,



F. Miles Adler
ADLER LAW FIRM, LLC
SC Bar No.: 70238
Post Office Box 4743
Pawleys Island, SC 29585
T.: 843.314.3204
miles@adlerlaw.partners
Attorney for Appellants

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SC Court of Appeals

CERTIFICATE OF SERVICE

I certify that I have served Response to Respondents' Motion To Strike Material Not in Record on Natale (Nate) Fata, Esquire and Heath Wendell Causey, Pro Se by depositing a copy of same in the United States Mail, postage prepaid, on October 3, 2016, addressed to:

Nate Fata,
Fata Law Firm,
P.O. Box 16620
Surfside Beach, SC 29587

Heath Wendell Causey
1705 N. Oak Street, Suite 2
Myrtle Beach, SC 29577.



F. Miles Adler

Exhibit A

Appellant's Response to Respondent's Motion to Strike

CERTIFIED TO BE A TRUE AND CORRECT COPY AS TAKEN FROM AND COMPARED WITH THE ORIGINAL FILED IN THIS OFFICE

APR 21 2016

ch # 12364

For delegation office use only
Date received

Application/Renewal for Notary Public
SECRETARY OF STATE STATE OF SOUTH CAROLINA
OFFICE OF THE SECRETARY OF STATE
THE HONORABLE MARK HAMMOND

New Renewal

To Governor of the State of South Carolina

I respectfully petition to be appointed Notary Public for this State, and for your information, I herewith submit the following:

PLEASE PRINT

Name NATALE (NATE) FATA

Mailing Address [REDACTED] City [REDACTED] Zip Code [REDACTED]

Home Street Address [REDACTED] Zip Code [REDACTED]

*You must be a registered voter at the home address provided on this application.

County Georgetown Last 4 Digits of your Social Security # [REDACTED] Sex M Date of Birth [REDACTED]

Voter Registration # [REDACTED]

(Voter Registration Number may be obtained from your County Voter Registration and Election Office, or the State Election Commission)

Telephone # (843) 238-2676 E-mail Nfata@fatalaw.com

By checking this box, I hereby certify that I can read and write the English language.

OATH OF NOTARY PUBLIC

I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of South Carolina, to exercise the duties of the office to which I have been appointed and that I will, to the best of my ability, discharge the duties thereof and preserve, protect and defend the Constitution of this State, and of the United States. So help me God.

Nate Fata
Signature of applicant

Print Name Nate Fata Date 12/1/15

*Please sign and print your name exactly as you will sign when you notarize documents. The commission will be issued in this name.

Sworn to and subscribed before me
This 1st day of December, 2015

Sally J. Huffman
Notary Public of South Carolina
My Commission Expires December 1st, 2018
Sally J. Huffman
Printed Name
Notary Public
State of South Carolina

My Commission Expires 12-1-18

Mail application to delegation for required signatures (addresses and telephone numbers are on the front of the application).

This section must be completed by your Legislative Delegation. Please choose one of the three options.

We, the Georgetown Delegation, recommend the appointment of the above named applicant.
(County)

1) [REDACTED]
Signature of the Delegation Chairman OR Secretary

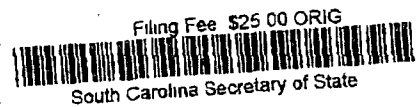
2) Ray Cleary
Signature of Senator / Senate District # 34

Stephen Goldstein
Signature of House Member / House District # 108

3) Signed by at least half of the present Legislative Delegates from applicant:

160112-0118
NATE FATA
REN-RENEWAL
Mark Hammond

FILED. 01/12/2016



Mail

More

1 of man

COMPOSE

(no subject)

Inbox x

People

Inbox (257)

Francene Vereen

4:06 PM (20 hours ago)

Allisc

Starred

Hi Allison, Will you be able to check another signature also Thanks Francine

Add

Important

Sent Mail

Allison Dempsey

4:26 PM (19 hours ago)

Drafts (51)

Yes! Were they attached to the last one? From: Francene Vereen [mailto:fveree.

Circles

Allison Dempsey

8:52 AM (3 hours ago)

INBOX/Follow up

to me

Junk E-mail (222)

Her expiration date can't be right because we did not key any notaries on 12/16/2010. Is there any way that you could figure out her expiration date?

Misc

Allison Dempsey, Program Coordinator

Notes

Authentications, Notaries, Boards and Commissions

Priority

Office of the Secretary of State

More

1205 Pendleton Street

Suite 525

Columbia, SC 29201

803-734-8237

Search people

adempsey@sos.sc.gov

derek-green--14
k23acv@mpoa37af
gxudprvp@publi
c.talk.google.com
wants to be able to
chat with you. Okay?
 yes no

CONFIDENTIALITY NOTICE: This email, including any attachments, contains information from the South Carolina Secretary of State's Office that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, you are not authorized to read, copy, retain or distribute this message. If you have received this email in error, please notify the sender immediately by "reply to sender only" email and destroy all electronic and hard copies of the communication, including attachments.

Allison Dempsey

Bill Piner

edavis1959

Floyd Swilley

Karen Johnson

Laurel K Swilley

Laurel Knuckles S

lks lks

Vincent Coletta

whitcomb knuckles

From: Francene Vereen [mailto:fvereen@sagesc.com]

Sent: Monday, April 18, 2016 4:06 PM

To: Allison Dempsey; lks lks

Subject:

Hi Allison,

Allison Dempsey (sos sc gov)

F. MILES ADLER

ATTORNEY AT LAW

October 3, 2016

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SC Court of Appeals

VIA US MAIL


The Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Gabriel Barnhill and GSB Enterprises, LLC v J. Floyd Swilley et al.
Appellate Case No.: 2016 - 001328

Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of Appellant J. Floyd Swilley and Laurel K. Swilley's Response to Respondent's Motion to Strike Material Not in the Record and Proof of Service of same.

Sincerely,



F. Miles Adler

cc: Nate Fata
Heath Causey, Pro Se

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Pawleys Island South Carolina 29585
T 843.314.3204
F 843.314.3205
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29211

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The Honorable Jenny Abbot Kitchings
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