

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Larry B. Hyman, Jr., Circuit Court Judge

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NOV 17 2016

SC Court of Appeals

CASE NO. 2012-CP-26-3873

Catalina London Limited f/k/a Alea London Limited.....Respondent

vs.

Elisa Narruhn and R.K.C. Entertainment LLC d/b/a The Red Room.....Appellants

RESPONDENT'S RETURN TO APPELLANTS' PETITION FOR REHEARING

Mark V. Gende
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Attorneys for Respondent

“In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument.” *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (citing Rule 221(a), SCACR). “The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” *Kennedy* at 532, 564 S.E.2d at 322.

Appellant contends this Court failed to cite to the facts in its affirmation of the lower court’s grant of summary judgment. However, this Court relied on the Record on Appeal, which contains all facts sufficient to affirm the lower court. Also, this Court specifically cited facts of the case by referencing the existence and sufficiency of the assault and battery exclusion of the insurance policy.

Appellant alleged grounds for reconsideration amount merely to a reiteration of the arguments made in her prior briefing, both before the circuit court and this Court.

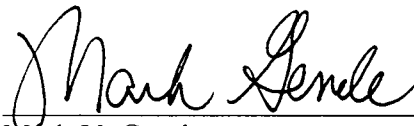
This Court appropriately exercised its authority to affirm without publishing an exhaustive analysis of the record. That is the nature of an affirmation, where no new analysis is required. The appellate courts may affirm a judgment for any reason appearing in the record. *Upchurch v. N.Y. Times Co.*, 314 S.C. 531, 538, 431 S.E.2d 558, 562 (1993) (citing Rule 220(c), SCACR).

Appellant contends that the Court erred in finding that intent is not a required element for battery in a civil matter. (It should be noted that Appellant makes no corresponding assertion of error regarding the elements of an assault.) However, appellant admits in her petition that the South Carolina Law of Torts, upon which she relies, does not contain any South Carolina cases supporting this proposition.

(Appellant's Petition at 4). Appellant also refers this Court to an opinion of the District Court of South Carolina, but makes no argument as to why the opinion is applicable. (*Id.* at 6).

Finally, Appellant contends this Court erred by failing to address all grounds on which the circuit court based its grant of summary judgment, despite the first ground by itself being dispositive. Appellant cites no authority for this proposition.

For these reasons Appellant's motion for reconsideration should be denied.



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November 17, 2016

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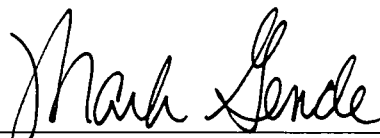
PROOF OF SERVICE

I certify that I have served the Respondent's Return to Appellants' Petition for Rehearing, by depositing a copy of it in the United States Mail, postage prepaid, on November 17, 2016, addressed to their attorneys of record and all counsel of record, listed as follows:

Gene M. Connell, Jr., Esquire
Kelaher, Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, SC 29587
Attorney for Appellant

~Signature page to follow~

November 17, 2016

A handwritten signature in cursive script that reads "Mark Gende". The signature is written in black ink and is positioned above a horizontal line.

Mark V. Gende

John E. Tyler

Mark S. Barrow

SWEENY, WINGATE & BARROW, P.A.

Post Office Box 12129

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Attorneys for Respondent



SWEENEY WINGATE & BARROW P.A.

November 17, 2016

Reply to: Main Office
Mark V. Gende
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Via Hand Delivery

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

RE: Appellate Case No. 2014-002305
Catalina London Limited, f/k/a Alea London Limited v. Elisa Narruhn et. al.
Our File: 4150-7551.001

Dear Sir or Madam:

Pursuant to Rule 240e, SCRAP, please find enclosed the original and six (6) copies of Respondent's Return to Appellants' Petition for Rehearing in the above-referenced matter. Please return one stamped copy of the Return with the courier.

I have also attached a Proof of Service certifying that the Respondent's Return to Appellants' Petition for Rehearing has been served on the Appellant.

Please feel free to contact me should you have any questions or concerns.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

Mark V. Gende

MVG/ljm
Enclosures

cc: Gene M. Connell, Jr., Esquire, Kelaher, Connell & Connor, P.C.