THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-001266

PERSONAL CARE, INC.,

Appellant,

vs.

Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC,

Respondents.

REPLY BRIEF OF APPELLANT TO INITIAL BRIEF OF RESPONDENTS CHERYL D. SHOUN AND TAYLOR, SHOUN, BOWLEY & BYRD, LLC

Thomas A. Pendarvis, J.D.
Christopher W. Lempesis, Jr., J.D., LL.M.
PENDARVIS LAW OFFICES, P.C.
710 Boundary Street, Suite A1
Beaufort, SC 29902-4188
843.524.9500 Tel.
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Appellant, PERSONAL CARE, INC.

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REPLY ARGUMENTS

Appellant's claims are predicated on an injury or damage caused by the failure of an underlying suit due to Respondents' alleged legal malpractice.

The trial court's duties to hear and decide matters under a Rule 40(j) motion do not provide the trial court with prerogative to address the merits of Appellant's claims, or to rule on any affirmative defenses asserted by any Respondents, especially when no Respondent had filed any dispositive motions. The only purpose for a hearing on a Rule 40(j) motion to restore is to determine whether the one-year statute of limitations tolling under Rule 40(j) is available. Determining whether Respondents had met their burden on a motion for summary judgment to establish an affirmative defense of statute of limitations through undisputed facts was simply not available under a Rule 40(j) motion. Therefore, it was reversible error to deny Appellant's motion to restore pursuant to Rule 40(j), which effectively granted a motion for summary judgment that was never filed by Respondents on their affirmative statute of limitations defense.

Even if a motion for summary judgment had been filed, it would have been error to grant it because discovery had not started and therefore was incomplete.

Even if a motion for summary judgment had been before the trial court, it was also reversible error to grant the motion based on the trial court's factual findings on the limited and disputed "facts" available.

Even if Respondents had filed a motion for summary judgment based on a claim that Appellant knew or should have known of Respondents' errors more than three years before Appellant filed the Rule 40(j) motion to restore, based on the Supreme Court's rulings in *Stokes-Craven* overruling *Epstein v. Brown*, it would have an error for the trial court to grant summary judgment.

Even if a motion for summary judgment had been filed, it was error for the trial court to make factual findings on disputed facts as to when Appellant knew or should have known or Respondents' errors.

Even if a motion for summary judgment had been filed, it would have been error to grant it because the motion to restore was filed well within three years of the first even arguable "adverse verdict, judgment, or ruling" or within three years of the date of the first allegation of damage in the Verified Amended Complaint resulting from Respondents' errors. *See Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016). The critical chronology is as follows:

1. **May 2012** was the general time when the first damage occurred resulting from Respondents' errors , which would be the time when Appellant's malpractice claims first accrued. (R. 259, Verified Amended Complaint, ¶ 30).

2. On **November 1, 2012**, an Order was entered in the underling *Askew* case relieving Respondents as counsel for Appellants in the underlying case.

3. On **March 8, 2013**, a little more than six months after the Order relieving Respondents as counsel was filed, this lawsuit was commenced.

4. On **August 28, 2013**, the Consent Order Striking Case From Docket [Rule 40(j), SCRCP] was entered in this lawsuit.

5. In **November 2013**, Appellant settled the underlying claims with payments made to the underlying *Askew* defendant / counterclaim plaintiff.

6. On **December 13, 2013**, a Stipulation of Dismissal was filed in the underlying *Askew* lawsuit.

7. On **September 22, 2014**, Appellant filed a motion to restore this lawsuit, which was two years and four months after the first damage occurred resulting from Respondents' errors and Appellant's malpractice claim first accrued , and well within the three year statute of limitations.

The statute of limitations did not expire before Appellant filed the motion to restore the case. The first damage resulting from Respondents' errors occurred in May 2012 and the motion to restore

was filed two years and four months later, well withing the three-year statute of limitations. The trial court's Order should be reversed and this matter should be remanded for trial.

I. IT WAS REVERSIBLE ERROR TO DENY APPELLANT'S RULE 40(J) MOTION TO RESTORE BASED ON FACTUAL FINDINGS THAT THE STATUTE OF LIMITATIONS HAD EXPIRED.

Respondents point to procedural history to shift focus from the fact that the trial court should have never engaged in the fact-finding inquiry that it did; and that the trial court effectively dismissed this case finding the statute of limitations had expired through an *unauthorized* procedure that is not contemplated or provided in Rule 40(j), SCRCP, which was the Rule governing the only motion before the trial court. Regardless of Respondents' smokescreen and pejorative commentary, the simple fact is that this case should be remanded and restored because the trial court's orders are not proper.

A. It was reversible error for the trial court to determine whether the statute of limitations expired under a Rule 40(j) motion to restore.

Respondents' arguments wholly misapprehend Rule 40(j), SCRCP, and the scope of a hearing on a Rule 40(j) motion to restore. The only purpose for a hearing on a Rule 40(j) motion to restore is to determine whether the one-year statute of limitations tolling under Rule 40(j) is available. *See Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (2003) ("**A party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of Rule 40(j); the party simply cannot take advantage of the one year tolling period provided by the rule.**") (emphasis added). Rule 40(j) SCRCP, therefore, does not provide the trial court with prerogative to impose a limited method to present "facts" to support or oppose a motion to restore. The trial court was required to, but failed, to hear and decide Appellant's Rule 40(j) motion to restore within the confines of language in the Rule.

> Courts should consider not only the particular clause in which a word may be used, but the word and its meaning in conjunction with the purpose of the whole rule and the policy of the rule. ... In construing a rule, language in the rule must be read in a sense which harmonizes with its subject matter and accords with its general purpose.

Ex parte Wilson, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005) (internal citations omitted).

As the general Comment for Rule 40 states: "... Rule 40 is substantially a compendium of present Circuit Court Rules governing preparation of trial rosters, setting the order of cases for trial, and granting postponement or continuance." Rule 40, SCRCP. Rule 40, in and of itself, governs rosters, order of cases and postponement or continuance - not the rubrics by which a trial court can judge the merits of an affirmative defense. Obviously, the trial court had no guidance in this situation, after all, in an attempt to justify its effective grant of summary judgment, the Court concocted an *unauthorized* process whereby it provided Appellant an "opportunity" to submit an affidavit to oppose the affirmative defense argued by Respondents. The Affidavit submitted, by the way, clearly called into question whether the estoppel argument precluded Respondents from defending on the basis of a statute of limitations; and clearly illustrated that there was no objective evidence of actions or perceptions on the part of Appellant that a legal malpractice claim accrued in 2010. (R. 773, Aff. of Cignavitch, filed Jan. 7, 2016).

Respondents contend that–within the context of a Rule 40(j) motion to restore–the trial court properly considered whether the statute of limitations expired, citing *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (2003) and *Graham v. Dorchester Cnty. Sch. Dist.*, 339 S.C. 121, 125, 528 S.E.2d 80, 82 (Ct. App. 2000).

In *Graham*, "[t]he School District moved to dismiss the case ..." *Id.* at 122, 528 S.E.2d at 81 (Ct. App. 2000). No such motion was filed in this case. While acknowledging *Graham*, the South Carolina Supreme Court clearly interpreted Rule 40(j) and concluded that "... Rule 40(j) does

not have a deadline during which a motion to restore must be filed." *Maxwell,* 356 S.C. at 622, 591 S.E.2d at 28. The holding in *Maxwell*, was actually limited to the fact that "Rule 6(b) is not applicable to Rule 40(j)." *Id.* at 621, 591 S.E.2d at 28.

In *Maxwell,* the trial court and the appellate courts utilized appropriate mechanisms for review, and the record available was properly developed through the benefit of discovery. The same is true in *Graham*, where the defendant filed a motion to dismiss. In the present case, there was no motion to dismiss or a motion for summary judgment was before the trial court and no discovery had been conducted - none at all. Respondents obviously rely on matters outside of the pleadings, including an email string concerning filing deadlines and insurance carrier contact information, to argue their affirmative defense of statute of limitations so the only available dismissal would have been through either a motion to dismiss converted to a motion for summary judgment, or a motion for summary judgment filed at the outset. Respondents never filed a motion of any kind - they only argued an affirmative defense alleged by co-defendants in an Answer, which the trial court forced the Appellant (under protest to the process) to contest on factual and legal grounds.

Respondents contend that under *Goodwin v. Landquest Dev., LLC*, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015), *reh'g granted* (Dec. 16, 2015), *cert. denied* (Oct. 20, 2016), the trial court's failure to restore was proper. Yet, *Goodwin* explicitly states that "[t]he effect of the rule is not to set a new deadline, but to extend the statute of limitations' deadline by applying the rule's tolling provision when the motion to restore is made within a year." *Id.* at 630, 779 S.E.2d at 830 (Ct. App. 2015). The question presented in *Goodwin* was whether or not the tolling provided in Rule 40(j) applied. The Court in *Goodwin* concluded that because Rule 40(j)'s tolling provision was not at issue, Rule 40(j) was simply not applicable. *Id.* The present case presents a similar result: the tolling provision of Rule 40(j) is not at issue so Rule 40(j) cannot provide the trial court a context

to investigate and conclude that the case is time-barred. Appellant complied with the other terms of Rule 40(j), in that the reinstatement fee was made, the motion was filed, and a hearing on the tolling provisions of Rule 40(j) occurred. On these bases, the trial court should have reinstated the case.

Given the Supreme Court's clear pronouncement in *Maxwell* that there is no deadline in which to file a motion to restore, the trial court had no basis upon which to deny a motion to restore based on an affirmative defense of statute of limitations. Respondents have failed to cite authority that contradicts the Supreme Court's interpretation in *Maxwell* that (aside from the tolling provision) there is no deadline enforceable under Rule 40(j).

The trial court should have granted Appellant's motion to restore pursuant to Rule 40(j) with a finding that the one year statute of limitations tolling provision under this Rule was not available to Appellant. All of the additional findings and conclusions reached by the trial court in the subject Orders were in error, and should be reversed.

II. *EVEN IF* A MOTION FOR SUMMARY JUDGMENT HAD BEEN FILED, IT WOULD HAVE BEEN ERROR TRIAL COURT TO GRANT IT.

The fact chronology outlined on page 2 of this Reply Brief of Appellant shows that the case was timely filed and the subject Rule 40(j) motion to restore was timely filed long before the statute of limitations would have expired. *Even if* Respondents had filed a motion for summary judgment after discovery had been completed, such a motion should have been denied based on the date the first damage and the accrual date of the malpractice claim and the date the lawsuit was commenced and the date the motion to restore was filed.

Where a proper motion is filed, the trial court must review the facts and circumstances to make a decision as to events triggering the discovery rule. It is undeniable that the trial court in this

matter looked outside of the pleadings to make findings of fact to address this inquiry - that is why Respondents look to a string of emails to substantiate their position. The only available procedural mechanism in this case that would allow a court to look outside of pleadings to issue a decision that concludes an action with finality based on the facts of the case is summary judgment under Rule 56, SCRCP.

A. Discovery had not started and therefore was incomplete.

It is undeniable that a non-moving party has the right to a full and fair opportunity to develop the record on the issue under consideration before summary judgment analysis can be conducted. "[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baird v. Charleston Cty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999) (citing *Baughman v. AT & T*, 306 S.C. 101, 410 S.E.2d 537 (1991)); *see also George v. Empire Fire &Marine Ins. Co.*, 344 S.C. 582, 594, 545 S.E.2d 500, 506 (2001) (where non-moving party had a full and fair opportunity to develop the record on the issue under consideration summary judgment maybe appropriate); *Spence v. Spence*, 368 S.C. 106, 131, 628 S.E.2d 869, 882 (2006) (where nonmoving party has not asserted or shown the need for additional time to discover facts pertaining to another party's potential liability summary judgment may be appropriate). Appellant never had such an opportunity to develop the record before the trial court conducted its *de facto* summary judgment analysis.

It was reversible error for the trial court to effectively make a summary judgment ruling before Appellant had a full and fair opportunity to complete discovery.

B. Trial court did not apply proper standard of review when it construed facts and inferences from those facts in favor of Respondents on the statute of limitations and estoppel to assert statute of limitations issues.

Respondents argue substantive law generally defining a statute of limitations but neither the

trial court nor Respondents have actually explained the standard of review that should be applied in this case to the *de facto* motion for summary judgment ruled upon by the trial court. In determining whether any triable issues of fact exist concerning the affirmative statute of limitations defense, the trial court should have considered all inferences which can be reasonably drawn from the email string, the invoice and the Affidavit of Mr. Cignavitch in the light most favorable to Appellant. *See Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1984). Even if the trial court concluded that Appellant was on notice of the counterclaim, the email string and invoice on the one hand and the Affidavit of Mr. Cignavitch on the other create dispute as to the inferences to be drawn from those documents as to whether notice of the counterclaim is also notice of a legal malpractice claim, and so no judgment should be granted on a summary basis. *See Rice v. School Dist. of Fairfield*, 317 S.C. 87, 452 S.E.2d 352 (Ct. App. 1994); *Koester*, 313 S.C. at 493, 443 S.E.2d at 394.

To send this legal malpractice claim to the jury, the trial court need only find a scintilla of evidence, viewed in the light most favorable to Appellant, from which a juror could reasonably conclude that the lawsuit was commenced and motion to restore was filed within three years of the date Appellant first sustained injuries as a result of Respondents' legal malpractice. *See Huffman v. Sunshine Recycling, LLC*, 417 S.C. 514, 524, 790 S.E.2d 401, 407 (Ct. App. 2016), *reh'g denied* (Sept. 15, 2016).

Also, contrary to Respondents' arguments that Appellant's notice of the counterclaim in the underlying lawsuit constitutes constructive notice of a legal malpractice claim and therefore that the statute of limitations began to run, in *Stokes-Craven*, the Supreme Court made it clear that client must have known or should have known of a damage that occurred as a proximate result of the lawyer's error. Here, there is no actual knowledge of in damages proximately resulting from

Respondents' errors, rather there is only knowledge that a counterclaim was filed and defended; and the trial court applied inferences from the email string, the invoice in the light most favorable to Respondents and seemingly ignored the Affidavit of Mr. Cignavitch to conclude that actual knowledge of the counterclaim was also constructive knowledge of a legal malpractice claim.

To bolster its' conclusion, Respondents and the trial court turned to subjective evidence, including reference to the Verified Complaint and its allegations and arguments from counsel for Appellant. Yet none of this discussion has anything to do with the information before the trial court that Respondents argue serves as the facts upon which to apply the objective standard - the string of emails and the invoice. The question presented to the trial court by Respondents was whether the trial court could determine that the string of emails and the invoice objectively place Appellant on notice of ***actual damages*** sufficient to begin the accrual of a legal malpractice claim. Even in *Stokes-Craven* where a principal of the malpractice plaintiff went so far as to state that he knew of short-comings of counsel and serious errors, even in that situation, the Supreme Court found that an objective assessment of actual damages is required to trigger the statute of limitations on a malpractice claim. *Id.* at 523, 787 S.E.2d at 488.

Also, in contrary to the factual basis of Respondent's position, Appellant submitted the Affidavit of the principal of Appellant which indicated that there was no information available at the time of the string of emails or the invoice to indicate that a malpractice claim existed until sometime in May or June 2012. (R. 773, Aff. of Cignavitch, filed Jan. 7, 2016). Yet neither Respondents nor the trial court properly construed this evidence using the standard of review required on motion for summary judgment.

Also, Appellant raised the issue of an estoppel argument concerning whether or not Respondents can even argue application of the statute of limitations defense where Respondents

encouraged Appellant that the counterclaim was meritless. Respondents seem to argue that estoppel can only be asserted to defend a statute of limitations argument where first the statute has expired, citing *Hedgepath v. Am. Tel. & Tel Co.*, 348 S.C. 340, 360, 559 S.E.2d 327, 338 (Ct. App. 2001); *Dillon Cty. Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 218, 332 S.E.2d 555, 561 (Ct. App. 1985). Here, there was evidence before the trial court of the conduct of Respondents warranting estoppel as presented in the Affidavit signed by Mr. Cignavitch; and summary judgment was not proper in light of such evidence because of the questions of fact raised by the affidavit as to whether Respondents' actions lulled Appellant into a false sense of security. The trial court's orders subject of this appeal are silent as to the issue of estoppel and for this reason as well, this Court should reverse or remand the decisions of the trial court that Rule 40(j) requires that this case not be reinstated because the trial court improperly found Appellant's claims were time-barred.

C. Trial court committed reversible error by applying the overruled *Epstein* standard for accrual of a legal malpractice claim rather than the governing *Stokes-Craven* standard.

In *Stokes–Craven Holding Corp. v. Robinson*[1], our Supreme Court expressly overruled the standard to apply the accrual date for a legal malpractice claim announced in *Epstein v. Brown*, 363 S.C. 372, 610 S.E.2d 816 (2005), under which a client was tasked with ascertaining when they "might have had some claim against" their lawyer. *See Epstein*, 363 S.C. at 382, 610 S.E.2d at 821. In *Stokes–Craven*, the Supreme Court noted the complications a client is facing that are driven " by the seemingly endless factual scenarios surrounding the underlying claim of a legal malpractice cause of action," 416 S.C. at 532, 787 S.E.2d at 493, and also noted the general predicate that legal malpractice claims require "an injury or damage to a client caused by an alleged breach of duty by

1. 416 S.C. 517, 787 S.E.2d 485 (2016).

the client's attorney." 416 S.C. at 533–34, 787 S.E.2d at 493–94. The Court announced the new rule for accrual of the legal malpractice claim as follows:

> However, the case that we address today is a legal malpractice cause of action that is predicated on an injury or damage caused by the failure of an underlying suit due to an attorney's alleged malpractice. In that particular scenario, there can be no legal malpractice cause of action without an adverse verdict, judgment, or ruling.

Stokes–Craven Holding Corp. v. Robinson, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016).

Like the plaintiff in *Stokes–Craven*, Appellant's "legal malpractice cause of action that is predicated on an injury or damage caused by the failure of an underlying suit due to an attorney's alleged malpractice."

Respondents interestingly rely on *Stokes–Craven* in their brief arguing that the trial court committed no error in this case. In *Stokes–Craven*, the defendant filed a motion for summary judgment. 416 S.C. at 521, 787 S.E.2d at 487. In this case, Respondents never filed a motion for summary judgment or any other dispositive motion. In *Stokes–Craven*, testimony was taken and discovery was conducted. 416 S.C. at 525, 787 S.E.2d at 489. No discovery was conducted in the present matter and no deposition testimony was available for review. In *Stokes–Craven*, the Supreme Court noted the trial court's review of testimony that indicated a much greater awareness of the malpractice committed than is illustrated in the email string that Respondents cite:

> [t]he court determined that Craven's testimony as a whole indicated that he was aware that he might have a legal malpractice claim against Respondents because Craven: knew at the time of trial that counsel had not contacted and interviewed crucial witnesses prior to trial; was not shown the defendants' interrogatory responses until the day of trial; had not been prepared for cross-examination; and knew that counsel failed to settle the case despite the admission by Stokes–Craven that it 'had done something wrong.' The court also noted that Craven acknowledged the jury's verdict presented a 'serious problem' for Stokes–Craven. Citing *Epstein*, the court found that Craven's knowledge of counsel's "shortcomings" and other

> 'actionable errors' constituted evidence that Craven knew at the time of the verdict that he might have a claim against trial counsel.

416 S.C. at 523, 787 S.E.2d at 488.

Notwithstanding the detailed deposition testimony reflecting Stokes–Craven's awareness of errors by counsel during the representation, the Supreme Court held that Stokes–Craven's malpractice claim did not accrue because there were no damages "without an adverse verdict, judgment, or ruling," 416 S.C. at 534, 787 S.E.2d at 494, and further that if an appeal is taken the statute of limitations does not begin to run until an appellate court issues a remittitur 416 S.C. at 535, 787 S.E.2d at 494.

In this case, Respondents point to a string of emails that discuss the existence of a counterclaim, extensions to respond to the counterclaim, and notification information for the Appellant's insurance carrier, all to suggest Appellant was aware of the errors by Respondents and that the statute of limitations was running. (Resp. Br. at 4-5). Clearly, *Stokes-Craven* dictates that Appellant's claim could not accrue, and therefore the statute of limitations could not begin to run, "without an adverse verdict, judgment, or ruling." 416 S.C. at 534, 787 S.E.2d at 494. The trial court's fact finding mission was not available under Rule 40(j) and there was no dispositive motion before the court to allow the decision reached; and even if a dispositive motion had been filed, on the merits, the trial court erred in its application of *Stokes-Craven*.

D. The trial court committed reversible error by finding the statute of limitations had expired, even though the motion to restore was filed within three years of the first date Respondents' errors causing damage to Plaintiff.

A legal malpractice claim against a lawyer handling a litigation matter does not exist until there are damages, including damages resulting from "an adverse verdict, judgment, or ruling." 416 S.C. at 534, 787 S.E.2d at 494. "Under the discovery rule, the limitations period commences when

the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist." *Stokes-Craven*, 416 S.C. at 525-26. In other words, even though a client might be aware of an error by the lawyer, no claim exists and the limitations period does not begin to run until damages are sustained as a result of the lawyer's error, such as when the client knows or should know that "an adverse verdict, judgment, or ruling" has been entered.

As shown by the fact chronology on page two of this brief, the motion to restore Appellants' case was filed long before the statute of limitations expired on Appellant's claims. The trial court's Orders should be reversed, and this case remanded for trial.

CONCLUSION

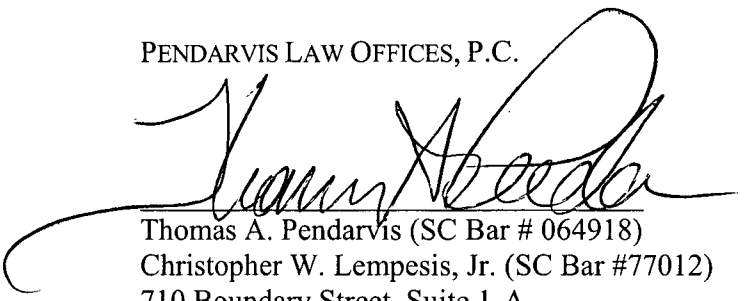
The trial court committed reversible error in its failure to grant Appellant's motion to restore pursuant to Rule 40(j), SCRCP; and in holding that, in the context of only a Rule 40(j) Motion to Restore before the Court, *Maxwell v. Genez*, 356 S.C. 617, 620-621, 591 S.E.2d 26, 28 (2003) provided the trial court the authority to conduct an inquiry into the merits of the claims and/or defenses of the parties. The proper standard of the trial court's review in the context of a Motion to Restore pursuant to Rule 40(j) is limited to whether such a Motion has been properly filed and whether the tolling provisions of Rule 40(j) are applicable. The trial court did not properly apply the standard under Rules 40(j), nor 41, SCRCP.

Even if a motion for summary judgment had been filed, it should not have been granted. Discovery was not complete, and what factual evidence was before the trial court raised disputed questions of material fact as to a statute of limitations defense, precluding the trial court's *de facto* grant of summary judgment in favor of Respondents delivered as a decision not to reinstate a case. It was error for the trial court to make the factual determinations necessary to find Appellant's

claims time-barred or that Respondents should not be estopped to raise the statute of limitations defense. The trial court's orders should be reversed.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
710 Boundary Street, Suite 1-A
Beaufort, SC 29902
843.524.9500 Tel.
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.Com

Counsel for Personal Care, PERSONAL CARE, INC.

Beaufort, South Carolina

May 30, 2017

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Respondents.

PROOF OF SERVICE

I, Thomas A. Pendarvis, a lawyer with PENDARVIS LAW OFFICES, P.C., certify that I have served one (1) copy of the BRIEF OF APPELLANT; REPLY BRIEF OF APPELLANT TO INITIAL BRIEF OF RESPONDENTS CHERYL D. SHOUN AND TAYLOR, SHOUN, BOWLEY & BYRD, LLC; REPLY BRIEF OF APPELLANT TO SUPPLEMENTAL BRIEF OF RESPONDENTS JERRY N. THEOS AND URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK, THEOS & KEITH, P.A.; RECORD ON APPEAL and APPELLANT'S CERTIFICATE OF COMPLIANCE on counsel for Respondents, by depositing a copy of the same in the

United States Mail, postage prepaid, on the 7th day of June, 2017, addressed to:

M. Dawes Cooke, Jr., J.D.
Phillip S. Ferderigos, J.D.
BARNWELL, WHALEY, PATTERSON & HELMS, LLC
PO. Drawer H
Charleston, SC 29402
mdc@barnwell-whaley.com
pferderigos@barnwell-whaley.com

Attorneys for Defendants Jerry N. Theos and URICCHIO, HOWE, KRELL, JACOBSON, TOPOREK, THEOS & KEITH, P.A.

George J. Kefalos, J.D.
GEORGE J. KEFALOS, PA
46A State Street
Charleston, SC 29401
george@kefaloslaw.com

Attorney for Defendant TAYLOR BOWLEY AND BYRD, LLC

Jennifer H. Thiem, J.D.
Karen E. Spain, J.D.
K&L GATES LLP
134 Meeting Street, Suite 200
Charleston, SC 29401
jennifer.thiem@klgates.com
karen.spain@klgates.com

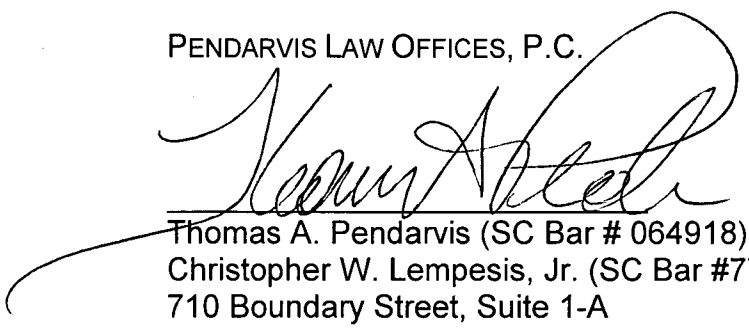
Attorney for Cheryl D. Shoun

Oana D. Johnson, J.D.
Attorney at Law
215 East Bay Street, Suite 406
Charleston, SC 29401
oana@odjlaw.com

Attorney for Defendant TAYLOR BOWLEY AND BYRD, LLC

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
710 Boundary Street, Suite 1-A
Beaufort, SC 29902
843.524.9500 Tel.
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.Com

Counsel for PERSONAL CARE, INC.

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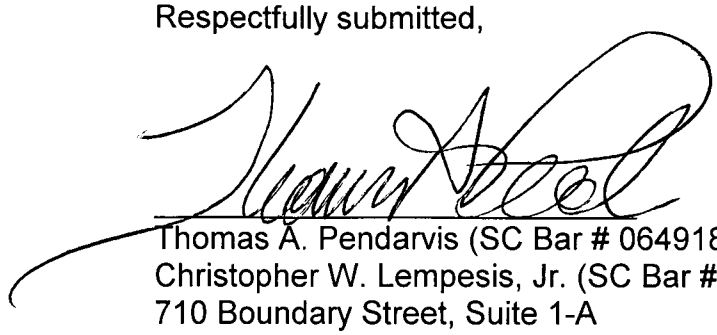
APPELLANT'S CERTIFICATE OF COMPLIANCE

I, Thomas A. Pendarvis, J.D., counsel for Appellant, hereby certify pursuant to Rule 211(b), SCACR, that BRIEF OF APPELLANT; REPLY BRIEF OF APPELLANT TO INITIAL BRIEF OF RESPONDENTS CHERYL D. SHOUN AND TAYLOR, SHOUN, BOWLEY & BYRD, LLC; REPLY BRIEF OF APPELLANT TO SUPPLEMENTAL BRIEF OF RESPONDENTS JERRY N. THEOS AND URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK, THEOS & KEITH, P.A.; and RECORD ON APPEAL comply with the Supreme Court's Order dated August 13, 2007.

Respectfully submitted,



Thomas A. Pendarvis (SC Bar # 064918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
710 Boundary Street, Suite 1-A
Beaufort, SC 29902
843.524.9500 Tel.
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for PERSONAL CARE, INC.

Beaufort, South Carolina

June 7, 2017

PENDARVIS LAW OFFICES, PC

June 7, 2017

VIA US MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: *Personal Care, Inc., v. Jerry N. Theos, et al.*
Appellate Case No. 2016-001266

Dear Ms. Kitchings:

Enclosed for filing, please find the original and ten(10) copies of each of the following:

1. Brief of Appellant;
2. Reply Brief of Appellant to Initial Brief of Respondents Cheryl D. Shoun and Taylor, Shoun, Bowley & Byrd, LLC;
3. Reply Brief of Appellant to Supplemental Brief of Respondents Jerry N. Theos and Uricchio, Howe, Krell, Johnson, Toporek, Theos & Keith, P.A.;
4. Record on Appeal;
5. Appellant's Certificate of Compliance; and
6. Proof of Service.

Please return a clocked copy of the each in the postage pre-paid, self-addressed return packaging, enclosed for your convenience.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, PC

Thomas A. Pendarvis

THOMAS A. PENDARVIS, J.D.
Admitted in SC and GA
Thomas@PendarvisLaw.com
Board Certified in Legal Malpractice
by the American Board of
Professional Liability Attorneys

710 BOUNDARY STREET, UNIT A1
BEAUFORT, SC 29902-4188
PendarvisLaw.com
843.524.9500

CHRISTOPHER W. LEMPESIS, JR.
Juris Doctor and Master of Laws
Chris@PendarvisLaw.com

TAP/ses
Enclosures

cc w/encls: M. Dawes Cooke, Jr., J.D.
Phillip S. Ferderigos, J.D.
George J. Kefalos, J.D.
Jennifer H. Thiem, J.D.
Karen E. Spain, J.D.
Oana D. Johnson, J.D.

ec w/encls: Bernard Cignavitch

THOMAS A. PENDARVIS, J.D.
Admitted in SC and GA
Thomas@PendarvisLaw.com
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by the American Board of
Professional Liability Attorneys

710 BOUNDARY STREET, UNIT A1
BEAUFORT, SC 29902-4188
PendarvisLaw.com
843.524.9500

CHRISTOPHER W. LEMPESIS, JR.
Juris Doctor and Master of Laws
Chris@PendarvisLaw.com