

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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NOV 29 2017

APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2017-002165

Jimmy Boykin, Sammy Boykin a/k/a Sandy H. Boykin, Sr., and  
Kenny Boykin, ..... Respondent,

v.

Zady R. Burton, Individually and as Personal Representative of  
the Estate of Helen L. Burton, ..... Petitioner.

Of Whom Zady R. Burton, Individually and as Personal Representative of the Estate of Helen L.  
Burton is the Appellant and Jimmy Boykin is the Respondent.

REPLY

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QUESTIONS PRESENTED

1. DID THE COURT OF APPEALS ERR IN HOLDING THAT A MEDIATION AGREEMENT EXISTED?
2. EVEN IF A MEDIATION AGREEMENT DID EXIST, DID THE COURT OF APPEALS ERR IN HOLDING THAT IT SHOULD BE ENFORCED AS ORDERED?

## PETITIONER'S REPLY

In his Return to the Petition for Writ of Certiorari, Respondent Boykin ("Boykin") makes two arguments. Petitioner Burton ("Burton") replies to those arguments as follows:<sup>1</sup>

1. Boykin's First Argument. Boykin first argues that there is a mediation agreement. However,
  - a) Item a) does not dispute the fact that the handwritten purported agreement prepared by the mediator ("Mediation Agreement") was not signed by the parties' attorneys as required by Rule 6(f), SCADR. *See* ROA at 76. Indeed, the Return does not even refer to Rule 6(f).
  - b) Item b) also does not dispute the fact that the Mediation Agreement was not signed by the parties' attorneys as required by Rule 6(f), SCADR. *See* ROA at 76. Nor does it dispute the fact that no other settlement agreement was ever signed. Nor does it dispute the fact that the Mediation Agreement says nothing whatsoever about any real estate transaction.
  - c) Item c) ignores the fact that Judge Lee's decisions are set forth in Form 4 orders that do not refer to facts of this case or applicable law. Further, aside from other questions, the Mediation Agreement says absolutely nothing about any deed, mortgage payoff, real estate transaction, or proof of insurance, each of which is required by Judge Lee's order. *Cf.* ROA at 2 and ROA at 76.
  - d) Item d) suggests that "Burton's 'settlement agreement and release' " was unacceptable to Boykin because it required tasks to be performed "piecemeal". But this argument simply ignores the fact that, as with the Mediation Agreement, this document was never signed.
2. Boykin's Second Argument. Boykin's next argument is that "There is a basis for the remedy granted by the Court of Common Pleas." The Return then proceeds to argue that inclusion of certain "specific provisions for a deed of distribution, mortgage payoff, etc." in a "proposed 'settlement agreement' " makes Burton's arguments seem "misplaced". The problem here is that, unless falling within a limited exception, communications during a mediation settlement conference are confidential. *See* Rules 8a) and b), SCADR; *see also* Rule 6(e), SCADR.

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<sup>1</sup> This Reply is supplemental to Burton's Petition for Writ of Certiorari.

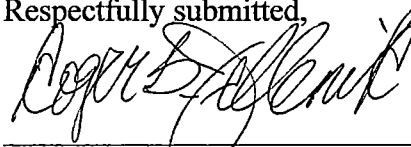
Thus, any expression or implication intended to reveal the contents of a mediation conference violates Rule 8a) unless falling within Rule 8b), and Rule 8b) does not appear to contain any applicable exception. In this context, Boykin's filings and arguments aimed at including a real estate transaction as part of a mediated settlement either truly refer to mediation communications, thereby violating Rules 6(e) and 8, or falsely refer to mediation communications. In either case, it is respectfully submitted that any such argument should, at the very least, not be viewed as meritorious.

As to Boykin's argument related to Patricia Grand Hotel, LLC v. MacGuire Enters., 372 S.C. 634, 638, 640, 643 S.E.2d 692, 695 (Ct. App. 2007), there was nothing unclear or equivocal in the purported mediation agreement that would call for the Court of Common Pleas to interpret the intentions of the parties. *See also* Petition for Writ of Certiorari at 7-8, ¶2c.

#### **CONCLUSION**

Based upon the contents of the Petition, the Return, and this Reply, Petitioner Burton believes that a writ of certiorari is appropriate to address the issues in this case. Accordingly, Petitioner Burton asks the Court to grant his Petition for a Writ of Certiorari.

Respectfully submitted,



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November 29, 2017

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CERTIFICATE OF SERVICE

I, Carole L. Jellenik, Administrator, do hereby certify that, on November 30, 2017, I  
served a copy of the Reply to Respondent's Return in the captioned case on the following  
individuals by U.S. Mail, first class, sufficient postage affixed, addressed as follows:

The Honorable Janet C. Hasty  
Kershaw County Clerk of Court  
P.O. Box 1557  
Camden, SC 29021-8557

Moultrie B. Burns, Jr.  
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Camden, SC 29020

  
Carole L. Jellenik, Administrator

November 29, 2017  
Camden, South Carolina