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

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APPEAL FROM AIKEN COUNTY  
IN THE COURT OF COMMON PLEAS  
THE HONORABLE DOYET A. EARLY, III  
CIRCUIT COURT JUDGE  
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CASE NO. 2016-000106  
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Harold Raynor a/k/a Harold  
Reynor and Michael Caldwell,

Respondents,

v.

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

Defendants,

of whom

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

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**PETITION FOR REHEARING**  
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**RECEIVED**

JAN 04 2018

SC Court of Appeals

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TREATISES

Restatement of Judgments §18 1,2

## STATEMENT OF POINTS OVERLOOKED OR MISAPPREHENDED

1. The Court failed to address the adoption of the merger doctrine in Family Court Orders as set forth in Moseley v. Mosier, 279 S.C. 348, 306 S.E. 2d 624 (1983) and find that South Carolina has adopted merger..
2. The Court failed to state why it could not adopt the Restatement's provision on merger.

## ARGUMENT

The Court was correct in finding that the Courts of this state have not expressly adopted the Restatement of Judgments on merger of civil court cases. This case is apparently a case of first impression. The Court overlooked and failed to address the impact of Moseley v. Mosier, 279 S.C. 348, 306 S.E. 2d 624 (1983) in which the Supreme Court clearly adopted the doctrine of merger of Family Court agreements into decrees of divorce.

The same rationale expressed by the Supreme Court in Moseley should also apply in the case of judgments arising from promissory notes.

It is certainly possible that the Court takes the position that if the doctrine of merger is to be adopted by South Carolina, then it is the sole province of the Supreme Court to do so,. If that is the case, the Court should so state and indicate that it defers to the judgment of the Supreme Court.

## CONCLUSION

The Court should vacate its ruling and enter an opinion finding that merger is the law of South Carolina.

Failing that, the Court should address the merger adopted in Moseley and distinguish this case from Moseley.

Finally if the Court finds that this issue is one that the Supreme Court should solely have the power to decide, it should so state.



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January 4, 2018

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Defendants,

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

-----  
**PROOF OF SERVICE**  
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I certify that I have served the Appellants' Petition for Rehearing 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 January 4, 2018, addressed to the attorneys of record:

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