

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

JUN 06 2018

The Honorable Roger M. Young, Circuit Court Judge

**S.C. SUPREME COURT**

Appellate Case No. 2017-001391  
Opinion No. 5471

Joshua Fay,.....Respondent,

v.

Total Quality Logistics, LLC, ..... Petitioner,

**Consent Motion for Clarification and/or Status Conference**

Robert D. Moseley, Jr. (SC Bar #05526)  
Emily I. Bridges (SC Bar #102199)  
SMITH MOORE LEATHERWOOD LLP  
2 West Washington Street, Suite 1100 (29601)  
P.O. Box 87  
Greenville, SC 29602  
(864) 751-7600; (864) 751-7800 (Fax)  
rob.moseley@smithmoorelaw.com  
emily.bridges@smithmoorelaw.com  
Attorneys for Petitioner

Other Counsel of Record:  
Alice F. Paylor  
Rene S. Dukes  
ROSEN ROSEN & HAGOOD, LLC  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
(843) 577-6726  
Attorneys for Respondent

The parties to this appeal are in receipt of the Court's order of May 25, 2018, which was received by Appellant on May 29, 2018. In accordance with the order, Respondent has timely filed his responsive brief. Appellant will file the Reply brief accordingly. The parties respectfully request the Court to revisit that Order based on more complete information from the parties.<sup>1</sup>

Pursuant to Rule 261 (d), the parties approached this Court regarding a settlement and requested the Court vacate the existing opinion of the Court of Appeals to dispense with the parties need to further litigate the matter. With its order of May 25, the Court addressed the request and rejected the request to vacate the appeal. Such a ruling is consistent with the Court's stated policies of public access to justice.

In the past, the Court has been concerned about sealing records based on the public policy of a defendant buying the ability to resolve a claim and seal the record, which resulted in Rule 41.1 in 2003. The vacating of the Court of Appeals decision has no similar concerns.

First, even if the Court were to grant the request to Vacate the Court of Appeals decision, the decision itself would remain available (albeit with the "Vacated" designation), and any future litigant could rely on the same arguments presented in the case. No party is asking that the decision be removed from the public domain.

Second, the parties have simply grown weary of the litigation and are proposing a settlement in which each party "walks away" from the litigation. This is not a situation in which the defendant is buying peace. Mr. Fay has exceeded the period of his noncompete and has moved on to other vocations. However, TQL is not able to walk away from the litigation with the adverse opinion in effect. Thus, both parties continue to litigate a case they would prefer to end.

---

<sup>1</sup> The parties acknowledge the lack of clarity or rule or precedence in support of a motion such as this.



---

Robert D. Moseley, Jr. (SC Bar #08526)  
Emily I. Bridges (SC Bar #102199)  
SMITH MOORE LEATHERWOOD LLP  
2 West Washington Street, Suite 1100 (29601)  
P.O. Box 87  
Greenville, SC 29602  
(864) 751-7600; (864) 751-7800 (Fax)  
rob.moseley@smithmoorelaw.com  
emily.bridges@smithmoorelaw.com

Attorneys for Petitioner

Dated: June 4, 2018.

WE CONSENT:



---

Alice F. Paylor  
Rene S. Dukes  
ROSEN ROSEN & HAGOOD, LLC  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
(843) 577-6726  
Attorneys for Respondent

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

JUN 06 2018

**S.C. SUPREME COURT**

The Honorable Roger M. Young, Circuit Court Judge

Appellate Case No. 2017-001391

JOSHUA FAY.....Respondent,

vs.

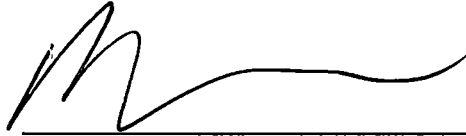
TOTAL QUALITY LOGISTICS, LLC.....Petitioner.

**PROOF OF SERVICE**

The undersigned of the law offices of Smith Moore Leatherwood LLP, attorneys for Petitioner, does hereby certify that service of the Consent Motion for Clarification was made on counsel for Respondent, specified below, by sending a copy via US Postal Service, Priority Mail Express, on June 4, 2018, to the following address:

Alice F. Paylor, Esq.  
Rene S. Dukes, Esq.  
ROSEN ROSEN & HAGOOD, LLC  
151 Meeting St #400  
Charleston, SC 29401  
*Counsel for Respondent Joshua Fay*

Date: June 4, 2018



---

Robert D. Moseley, Jr. (SC ID: 05526)  
Emily I. Bridges (SC ID: 102199)  
SMITH MOORE LEATHERWOOD LLP  
2 West Washington Street, Suite 1100 (29601)  
P.O. Box 87  
Greenville, South Carolina 29602  
Telephone: (864) 751-7600  
Facsimile: (864) 751-7800  
rob.moseley@smithmoorelaw.com  
emily.bridges@smithmoorelaw.com  
*Counsel for Petitioner Total Quality Logistics, LLC*

**RECEIVED**

JUN 06 2018

**S.C. SUPREME COURT**