

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Appellate Case No. 2016 – 001266

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

Case No. 2013-CP-10-1396

**RECEIVED**  
OCT 17 2018  
SC Court of Appeals

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.

---

RESPONDENTS' REPLY TO APPELLANT'S RETURN TO RESPONDENTS' JOINT  
MOTION FOR LEAVE TO SUPPLEMENT RECORD ON APPEAL

---

M. Dawes Cooke, Jr.  
Phillip S. Ferderigos  
Barnwell Whaley Patterson & Helms, LLC  
288 Meeting Street, Suite 200  
Charleston, SC 29401  
843-577-7700  
mdc@barnwell-whaley.com  
pferderigos@barnwell-whaley.com

Jennifer H. Thiem  
Karen E. Spain  
K&L Gates, LLP  
134 Meeting Street, Suite 500  
Charleston, SC 29401  
843-579-5600  
[jennifer.thiem@klgates.com](mailto:jennifer.thiem@klgates.com)  
[karen.spain@klgates.com](mailto:karen.spain@klgates.com)

Oana D. Johnson  
Attorney at Law  
151 King Street  
Second Floor  
Charleston, SC 29401  
843-709-1025  
[oana@odjlaw.com](mailto:oana@odjlaw.com)

The Respondents, by their respective counsel, file this Reply to Appellant's Return to Respondents' Joint Motion to Supplement the Record on Appeal. In its Return, Appellant acknowledges that it was damaged by the failure of its prior attorney, Thomas Pendarvis, to timely restore the instant action in the court below, (Return at p. 3); that the denial of Pendarvis's untimely motion to restore is the basis of the instant Appeal, (*id.*); and that Appellant was "under a compulsion" to file the malpractice complaint against Pendarvis, the same complaint with which Respondents now seek to supplement the Record ("Malpractice Complaint"), (*id.* at p. 7).

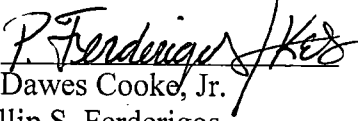

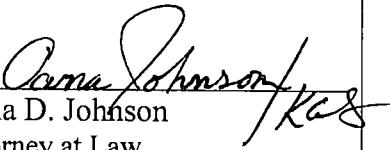
Contrary to Appellant's arguments, the Malpractice Complaint is directly related to the issues on appeal. At issue in this Appeal is whether the circuit court, upon finding that the statute of limitations had expired because it had not been tolled following the Rule 40(j) dismissal, properly denied the untimely motion to restore. In the Malpractice Complaint, Appellant avers that Pendarvis's failure to file the motion to restore within the one-year deadline made it "impossible for [Personal Care] to pursue its valid claims against the [Respondents]." (Ex. A to Respondents' Joint Motion to Supplement, p. 7, Complaint ¶ 23.) Thus, in its Malpractice Complaint, Appellant admits that the claims at issue in the instant Appeal were rendered impossible once the one-year tolling deadline had passed, which is precisely what the court below found in the orders on appeal.

In Clay v. Burckle, 369 S.C. 651, 633 S.E.2d 173 (Ct. App. 2006), this Court granted a motion to supplement the record with court filings that were not only from a different case but also from a different state's court. Here, Respondents seek to supplement the record with a filing by Appellant in the Charleston County Court of Common Pleas, the same court that heard this case below and rendered the decision that is the basis of both this Appeal and the Malpractice Complaint. Just as the underlying subject matter of the Florida filings at issue in Clay was the

same as the issue on appeal in Clay, the underlying subject matter of this Appeal and the Malpractice Complaint—that is, whether Appellant’s claims were no longer viable following the failure to timely restore the case to the docket—is the same. Because Appellant’s admission in the Malpractice Complaint affects the outcome of this Appeal, supplementation is appropriate.

For the foregoing reasons, and for the reasons set forth in their Motion for Leave to Supplement the Record on Appeal, Respondents respectfully request that the Court grant their Motion for Leave to Supplement the Record on Appeal.

Respectfully submitted,

<p>Barnwell Whaley Patterson &amp; Helms, LLC</p> <p>By:   M. Dawes Cooke, Jr.  Phillip S. Ferderigos  288 Meeting Street, Suite 200  Charleston, SC 29401</p> <p><i>Attorneys for Jerry N. Theos and Uricchio, Howe, Krell, Jacobson, Toporek, Theos &amp; Keith, P.A.</i></p>	<p>K&amp;L Gates, LLP</p> <p>By:   Jennifer H. Thiem  Karen E. Spain  134 Meeting Street, Suite 500  Charleston, SC 29401</p> <p><i>Attorney for Cheryl D. Shoun</i></p>	<p>By:   Oana D. Johnson  Attorney at Law  215 East Bay Street  Suite 406  Charleston, SC 29401</p> <p><i>Attorney for Taylor Bowley and Byrd, LLC</i></p>
--	--	---

Date: October 15, 2018

Date: October 15, 2018

Date: October 15, 2018

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Appellate Case No. 2016 – 001266

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

**RECEIVED**

OCT 17 2018

SC Court of Appeals

\_\_\_\_\_  
Case No. 2013-CP-10-1396  
\_\_\_\_\_

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.

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I hereby certify that on the 15th day of October, 2018, I served a copy of the foregoing Respondents' Reply to Appellant's Return to Respondents' Joint Motion for Leave to Supplement the Record on Appeal on counsel for the Appellant via U.S. Mail with sufficient postage, correctly addressed as follows:

COLLINS & LACY, P.C.  
Christian Stegmaier, Esq.  
Kelsey J. Brudvig, Esq.  
1330 Lady Street, Sixth Floor.  
Columbia, SC 29201

BLINCOW GRIFFIN LAW FIRM  
John K. Blincow, Esq.  
126 Meeting Street  
Charleston, SC 29401

K&L Gates LLP

By: 

October 15, 2018

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

**RECEIVED**  
OCT 17 2018  
SC Court of Appeals

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

Dear Ms. Kitchings:

Enclosed herewith please find the original and seven (7) copies of Respondents' Reply to Appellant's Return to Respondents' Joint Motion For Leave To Supplement Record on Appeal in connection with the above-referenced matter. Please file the original and return a file-stamped copy to me in the enclosed self-addressed stamped envelope. By copy of this letter, we are serving all counsel of record.

Thank you for your assistance with this matter. Please do not hesitate to contact me if you have any questions.

With kind regards, I remain

Very truly yours,



Karen E. Spain

KES/glm  
Enclosures

cc: John K. Blincow, Esq.  
Kelsey J. Brudvig, Esq.  
Christian Stegmaier, Esq.  
M. Dawes Cooke, Jr., Esq.  
Phillip S. Ferderigos, Esq.  
Oana D. Johnson, Esq.  
(all via US Mail, w/encl.)

