

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2017-002504

Bruce Schultze Respondent,

v.

Stephen A. Brown, Individually and as Manager
of Pure Market Solutions, LLC, and Pure Market
Solutions, LLC, SKL, LLC, and John Doe,

Of Whom Stephen A. Brown, Individually and as
Manager of Pure Market Solutions, LLC and Pure
Market Solutions, LLC, SKL, LLC are the Appellants.

MEMORANDUM IN SUPPORT OF DISMISSAL OF APPEAL
UPON THE FUGITIVE DISENTITLEMENT DOCTRINE

McCulloch & Schillaci, Attorneys at Law

Joseph M. McCulloch (SC Bar No. 3760)
Kathy R. Schillaci (SC Bar No. 17248)
Post Office Box 11623
1513 Hampton Street
Columbia, South Carolina 29201
Telephone: (803) 779-0005
Fax: (803) 779-0666
joe@mccullochlaw.com

ATTORNEYS FOR THE RESPONDENT

Respondent submits this Memorandum in Support of Dismissal of Defendant-Appellants Appeal. This appeal arises from successive lower Court orders finding Respondent failed to produce meaningful discovery, failed to appear at hearings as ordered, actions in apparent violation of the several Court Orders, all resulting in a damage hearing and judgment, during the continuing intentional absence of Appellant, all the while represented by two successive attorneys of record. This appeal by Respondent, during his continuing contrived absence continues to frustrate the orders of the Court and Defendant-Appellants actions and this appeal continue to frustrate the efforts of Respondent to account for assets of Appellant, and to prevent their improper dissipation.

The underlying factual and procedural history of this case is fully outlined in Respondent's Motion to Dismiss or Stay Appeal and attached Exhibits.

ISSUE: Should the appeal of Appellant under the facts here be dismissed pursuant to the recognized Fugitive Disentitlement Doctrine.

The Fugitive Disentitlement Doctrine (FDD) has been acknowledged and applied in the dismissal of three appeals by the South Carolina Court of Appeals since 2000, Scelba, Posner, and Panas.¹

This Court has in each of the three cases, described the FDD as “a discretionary right of an appellate Court to dismiss an appeal by a person who stands in contempt of court in the proceedings in which he seeks to take an appeal.” Scelba, 342, S.C. 228, 535 S.E.2d at 671. This inherent right of the Court to ignore the [appellate] demands of litigants who persist in defying the legal orders and process has long been recognized by the United States Supreme Court in a series of cases including Ortega-Rodriguez v. United States, 507 U.S. 234, 239, 113,

¹ Scelba v. Scelba, 342 S.C. 223, 535 S.E.2d 668 (2000); Posner v. Posner, 383 S.C. 26, 677 S.E.2d 616 (2009); Panas v. Panas, 2010 W.L. 10088164, No. 2010 U.P. 534 (2010).

S.Ct. 1199, 122 L.Ed.2d 581 (1993), and has been recognized and applied in numerous other cases².

The logic for application of this doctrine to deprive those defying and/or ignoring legal orders and processes are described as:

(1) the difficulty of enforcement against one not willing to subject himself to the court's authority, (2) the inequity of allowing the "fugitive" to use the resources of the courts only if the outcome is an aid to him, (3) the need to avoid prejudice to the non-fugitive party, and (4) the discouragement of flights from justice. *Scelba*, 342 S.C. at 228-29, 535 S.E.2d at 671. For an appellate court to invoke the FDD to dismiss an appeal, two requirements must be met: (1) the appellant must be a fugitive; and (2) there must be a connection between the appellant's fugitive status and the appellate process the appellant seeks to utilize. *Id. at 34*.

The Respondents' Motion to Dismiss and/or Stay Appeal filed in opposition to this appeal describes the egregious actions of Defendant – Appellant Brown in his "duck and cover" participation in this litigation from the outset, and through two successive attorneys. The Respondent's motion and attached Exhibits establish a pattern of "studied" avoidance and disobedience by Appellant, resulting in the issuance of a bench warrant, and contempt sanctions, from which Appellant, though represented by counsel, continues to avoid. As in *Posner*, at 621, "matters giving rise to the bench warrant have not fully been adjudicated because of refusal to submit to the Court's jurisdiction." Likewise, here, Appellant continues to avoid scheduled Court dates and service of the bench warrant for contemptuous actions.

As to the second required showing under the FDD, there is a sufficient nexus between the fugitive status and the appellate process Defendant-Appellant seeks to use. From the outset of litigation, Plaintiff-Respondent's efforts to identify assets, track pertinent financial data and to

² *Molinaro v. New Jersey*, 386 U.S. 365, 90 S.Ct. 498, 24 L.Ed 586 (1970); *Degen v. U.S.*, 517 U.S. 820, 116 S.Ct. 1777, 135, L.Ed.2d 102 (1996); *Empire Blue Cross and Blue Shield v. Finkelstein*, 111 F.3d. 278 (2d/Cir. 1997); *Comforte v. CIR*, 692 F.2d 587 (9th Cir. 1982); *U.S. v. Bernette*, 129, F.3d 1179 (11th Cir. 1997)

freeze or otherwise preserve assets have been frustrated by Appellants refusal to cooperate in discovery (despite Court orders and sanctions as demonstrated by Appellant's "overnight disposition" of the single significant asset as established by Plaintiff-Respondent -- the recreational vehicle in which Plaintiff-Respondent had an established legal interest in and which was sold in a "fire sale" on the day following the judicial order requiring him to protect and preserve that very asset, and to appear in court on pain of contempt (Exhibit F, G, and I of Respondent's Motion to Dismiss and/or Stay Appeal).

The egregious actions of Appellant in failing to comply and respect the successive judicial orders, in absenting himself and avoiding imposition of the Court's jurisdiction and Orders through his continuing evasion, should result in his disentitlement to the appellate process. His conduct in frustrating the administration of justice should not be allowed by the continuation of this appeal. The appeal should be dismissed with costs to Plaintiff-Respondent pursuant to the Fugitive Disentitlement Doctrine.

Respectfully submitted,

McCulloch & Schillaci, Attorneys at Law
Joseph M. McCulloch (SC Bar No.: 3760)
Kathy R. Schillaci (SC Bar No.: 17248)
1513 Hampton Street
Post Office Box 11623 (29211)
Columbia, South Carolina 29201
Telephone: 803.779.0005
Facsimile: 803.779.0666
joe@mccullochlaw.com

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Market Solutions, LLC, SKL, LLC are the Appellants.

CERTIFICATE OF SERVICE

I certify that I have served the Respondent's **Memorandum In Support of Appeal Upon the Fugitive Disentitlement Doctrine** on Appellants by email and by depositing a copy of it in the United States Mail, first-class mail, postage prepaid, on **November 19, 2018** to Appellant as addressed below:

Frank Anthony Barton, Esq.
1611 August Road
West Columbia, South Carolina 29169
bartonf@hotmail.com

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Kathy R. Schillaci

1513 Hampton Street

Post Office Box 11623 (29211)

Columbia, South Carolina 29201

Telephone: 803.779.0005

Facsimile: 803.779.0666

ATTORNEY FOR RESPONDENT

McCULLOCH & SCHILLACI

ATTORNEYS AT LAW

1513 HAMPTON STREET
P.O. Box 11623 (29211)
COLUMBIA, SC 29201
(803) 779-0005 • FAX (803) 779-0666

JOSEPH M. McCULLOCH, JR.
joe@mccullochlaw.com

KATHY SCHILLACI
kathy@mccullochlaw.com

November 19, 2018

Delivered Via Hand Delivery


South Carolina Court of Appeals
Attn: Jenny Abbott Kitchings, Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201

RE: Bruce Schultze v. Stephen Brown
Appellate Case No.: 2017-002504

Dear Ms. Kitchings:

Please find enclosed Respondent's **Memorandum in Support of Dismissal of Appeal Upon the Fugitive Disentitlement Doctrine**. By copy of this letter I am notifying Mr. Barton, attorney for the Appellant. Thank you for your attention to this matter, should you have any questions, please do not hesitate to contact the office.

Sincerely,



Joseph M. McCulloch

JMM/erg
Enclosure(s)

cc: Frank Anthony Barton, Esq.
bartonf@hotmail.com

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