

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case Nos.: 2010-CP-12-00137; 2010-CP-12-00136; 2010-CP-12-00135; 2010-CP-12-00134; 2010-CP-12-00133

Jane Cherry, Personal Representative of the Estate of Nicholas Wayne Cherry,
Appellant,

v.

Myers Timber Company, Inc, Respondent.

Taylor C., a minor under the age of 14 years, by and through mother and natural
guardian, Jane Cherry, Appellant,

v.

Myers Timber Company, Inc, Respondent.

Carlton Quinton as Personal Representative of the Estate of Hannah Nicole Quinton,
Deceased, Appellant,

v.

Myers Timber Company, Inc, Respondent

Alice Quinton and Carlton Quinton, Appellants,

v.

Myers Timber Company, Inc, Respondent.

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SEP 13 2012

SC Court of Appeals

Carlton Quinton as Guardian for Timothy Q., a Minor under the Age of Eighteen,
Appellant,

v.

Myers Timber Company, Inc, Respondent.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF THE ISSUES ON APPEAL

- I. THE LOWER COURT ERRED IN GRANTING DID THE TRIAL COURT ERR IN FINDING THAT GRANTING MOTION FOR SUMMARY JUDGMENT BY FINDING AS A MATTER OF LAW THAT LEVISTER WAS AN INDEPENDENT CONTRACTOR OF MYERS?
- A. Did the trial court err in finding as a matter of law that Myers had no right or power to control or direct the manner or performance of Levister's work?
 - B. Did the trial court err in finding as a matter of law that Myers had no right to fire Levister's personnel, including George Rogers?
 - C. Did the trial court err in failing to find that Myers' right to and exercise of control over material elements of payment to Levister created a genuine issue of material fact precluding the entry of summary judgment?
 - D. Did the trial court err in failing to find that Myers' right to and exercise of control over Levister's use of equipment created a genuine issue of material fact precluding the entry of summary judgment?

STATEMENT OF THE CASE

The cases arise out of a vehicular collision that occurred on March 26, 2007, in Chester County, SC, where an eighteen wheel tractor-trailer rig hauling long logs ran a traffic light and struck broadside a passenger van that entered the intersection, killing two elementary aged children who were passengers in the van (Taylor Quinton and Nicholas Cherry), and severely injured other three occupants of the van, minor children Timothy Quinton and Hannah Cherry, and the adult driver, Alice Quinton, mother of Taylor and Timothy Quinton.

The log truck that struck the van was owned by Charles Levister, a sole proprietor (d/b/a Levister Logging) ("Levister"). It was being driven by and George Rogers ("Rogers"), an employee of Levister. The log truck was hauling long logs for Respondent Myers Timber Company, Inc. ("Myers Timber").

Myers Timber had contracted with a landowner, Faulkenberry, to purchase

from Faulkenberry standing timber off of the Faulkenberry land in Kershaw, SC, to cut said timber and haul it to market. Myers Timber then entered into a oral contract with Levister to cut and remove the trees from the Faulkenberry land and to deliver the cut logs to local wood mills identified by Myers Timber, and to return to Myers Timber the scale tickets from the mills evidencing the tonnage and type of logs delivered.

On March 25 & 26, 2010, the Quinton and Cherry families (“Appellants”) brought wrongful death, survival and negligence actions against Myers Timber (“Respondent”) alleging, *inter alia*, that Myers Timber was vicariously liable for the negligence of Levister and Rogers. Myers answered the complaints asserting that Levister was an independent contractor of Myers Timber, denying that it was vicariously liable for the negligence of Levister or Rogers. By Consent Order filed July 21, 2010, all of the cases were consolidated for discovery and trial.

Myers Timber brought a Motion for Summary Judgment, which was heard on September 7, 2011, by the Honorable Brooks P. Goldsmith, Circuit Court Judge for Chester County. By Order filed on September 26, 2011, Myers was granted summary judgment, holding: “Charles Levister d/b/a Levister Logging, the employer of George Rogers, was an independent contractor and Myers Timber is not liable or responsible for the acts of Levister Logging’s employees.”

Appellants timely served a Motion to Alter or Amend the Judgment. By Order filed January 18, 2012, the Motion to Alter or Amend the Judgment was denied. On February 9, 2012, Appellants served the Notice of Appeal.

FACTS

Myers Timber was in the business of entering timber harvesting contracts with landowners, requiring it to cut standing timber from the landowner's property and to haul the timber across the public roadways to be sold at mills that would purchase the timber. (R. p. 123, line 10 - p. 124, line 3.) It owned no log trucks or log cutting or log handling equipment. (R. p. 58, line 13 - p. 59, line 11; p. 75, lines 15-25) It would fulfill its responsibilities under the contracts with landowners by hiring loggers like Charles Levister, which owned log trucks and logging equipment. (R. p. 59, lines 2-15) These loggers would cut, load and haul the timber to market to mills identified by Myers Timber (R. p. 38, lines 10-12, p. 39, lines 5-9; p. 84, line 18 - p. 85, line 3), and would collect and return scale tickets from the mills evidencing the tonnage and type of logs delivered. (R. p. 105, lines 6-25; p. 113, line 19 - p. 114, line 2)

Myers Timber would typically have one of its agents, either Fred Myers, Mitch Stines or Paul Davis, visit each logging tract at least every two days. (R. p. 114, lines 3-13) At the time, both Fred Myers and Mitch Stines were the sole stockholders of Myers Timber. (R. p. 72, line 25 - p. 73, line 8) According to Fred Myers, they would inspect the operation to make sure that trees were not being felled across property lines, and other related precautions. (R. p. 114, lines 6-22) He further indicated that if he needed to address a matter with a logger, he did so at that time. (R. p. 114, lines 16-22) If Myers Timber personnel visited a location and found that the logger was not keeping the operation orderly for the landowner, Fred Myers indicated that he would stop the logger and tell him "this relationship's not working." (R. p. 130, line 7-18) Stines testified that Myers Timber had the power to direct the logger to cut off trees closer to the ground. (R. p. 60, line 15 - p. 62, line 1) Myers employee Paul Davis testified that Myers

Timber personnel would also direct loggers where to cut timber if the area where they were cutting was becoming rutted by the equipment. (R. p. 138, line 19 - p. 148, line 19; p. 153, lines 10-20)

In the present case, Myers Timber had entered into a written contract (“Timber Harvesting Contract”) with the landowner, Faulkenberry, to purchase, cut and remove standing timber from Faulkenberry’s land. (R. p. 57, line 20 - p. 58, line 17; pp. 202-203) The terms of the written Timber Harvesting Contract required Myers Timber to cut and remove trees, subject to a list of limitations and restrictions, which included the following: to keep established roads and trails on the land clear of tree debris from the logging operation; to use its best efforts to suppress and control fire on the property; to return the land to the original condition after the logging was completed; to keep equipment from parking on or driving across food plots; to have in force at least \$1,000,000 in general liability insurance; to hold the landowner harmless for any workers compensation claims; and to do all the work in accordance with South Carolina Best Management Practices for Forestry. (R. pp. 202-203) Despite all of these obligations, Myers Timber had no trucks or equipment to carry out these contractual obligations. (R. p. 58, line 13 - p. 59, line 11; p. 75, lines 15-25)

Myers Timber hired Levister to fulfill its contractual obligations to Faulkenberry (R. p. 59, lines 2-11) The agreement between Myers Timber and Levister was an entirely oral agreement. The only terms of which were the cut and haul rates Myers would pay Levister for harvesting and hauling the timber from the tract to mills identified by Myers. (R. p. 40, lines 14-17; p. 41, lines 12-18; p. 45, lines 3-17; p. 133, lines 16-21) The undisputed evidence is that this agreement was terminable at will by either party. (R. p. 43, lines 10-15.)

On the day of the collision, March 26, 2007, Mitch Stines, was on site at

the Faulkenberry tract in Kershaw County, SC, where the trucks were being loaded with long logs that had been cut from the tract. (R. p. 88, line 1 - p. 89, line 18; p. 90, line 22 - p. 91, line 12) While there, Stines learned that the nearby New South mill in Kershaw County, where the cut logs were originally to be sent, had unexpectedly shut down that morning. (R. p. 53, line 13 - p. 54, line 4; p. 91, line 8 - p. 94, line 6) Levister's crew had almost finished loading Rogers' log truck at the loading site on the tract. (R. p. 7, line 6 - p. 8, line 21) Upon learning that the New South mill had shut down, Rogers announced that he would be taking his load to Bowater mill, located in York County, SC. (R. p. 7, line 6 - p. 8, line 21; p. 20, lines 1-13) Mitch Stines overruled Rogers and directed Rogers to take the load to the Chester Wood mill, located in Chester County, SC. (R. p. 7, line 6 - p. 8, line 21; p. 20, lines 1-13) This required the load of logs that was already on Rogers' truck to be cut shorter in order to conform to the log requirements of Chester Wood. (R. p. 21, line 3 - p. 22, line 25; p. 63, lines 5-24).

After the truck was loaded with the long logs, Rogers began driving the truck toward the Chester Wood mill. At approximately 3:20 pm, the Roger's truck, traveling West on SC Hwy 9, approached the intersection with Lewisville High School Road, which was controlled by a traffic light. The Quinton van, in the southbound lane of Lewisville High School Road, was the first vehicle stopped at the traffic light. Mrs. Quinton had just picked up her minor children, Hannah and Timothy, from elementary school, along with their two friends, Taylor and Nicholas Cherry. When her light changed to green, Mrs. Quinton drove her vehicle into the intersection. The Roger's truck slammed into to the driver's side of the Quinton vehicle. Hannah Quinton and Nicholas Cherry were both killed. The other occupants of the Quinton van were severely injured.

Despite Myers Timber being in the business of entering timber harvesting

contracts which required it to cut and haul timber across the public roadways, Myers Timber had never required any logger to provide truck inspection records, safety records for any truck, or driver safety records. (R. p. 125, line 17 - p. 126, line 13; p. 127, line 25 - p. 128, line 2.) Nevertheless, both Fred Myers and Stines testified that they would not permit a truck they knew to be unsafe to haul timber for Myers Timber. (R. p. 56, lines 5-12, p. 64, lines 1-9; p. 121, line 6 - p. 122, line 4)

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING AND CONCLUDING AS A MATTER OF LAW THAT LEVISTER WAS AN INDEPENDENT CONTRACTOR OF MYERS BECAUSE THERE IS EVIDENCE IN THE RECORD AND INFERENCES THEREFROM UPON WHICH A REASONABLE JURY COULD CONCLUDE THAT LEVISTER WAS AN EMPLOYEE OF MYERS.

A motion for summary judgment should only be granted if the pleadings, depositions, and answers to interrogatories, together with affidavits, if any, show that there is “no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56, SCRPC. Accordingly, summary judgment is appropriate only if, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact. *Wilson v. Moseley*, 327 S.C. 144, 488 S.E.2d 862, 863-64 (1997). In deciding whether to grant summary judgment, trial courts must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *Id.* Alternatively stated, “if the pleadings and evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied....” *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). Furthermore, if there are any facts tending to prove an employer-employee relationship, the question of the nature of the relationship is one of fact for the jury. *Gamble v. Stevenson*, 305 S.C. 104, 406

S.E.2d 350 (1991)(citing *Reid v. Kelly*, 274 S.C. 171, 262 S.E.2d 24 (1980)).

Under South Carolina law, the primary consideration in determining the existence of an employer-employee relationship is whether the purported employer has the “right to control” the employee in the performance of the work and the manner in which it is done. *Kilgore Group, Inc. v. South Carolina Employment Sec. Comm’n*, 313 S.C. 65, 437 S.E.2d 48 (1993). “The test is not the actual control exercised, but whether there exists the right and authority to control and direct the particular work or undertaking.” *Id.* at 68, 437 S.E.2d 49. Conversely, independent contractors are not subject to employer control or direction, which negates any employer-employee relationship. *Adamson v. Marianne Fabrics, Inc.*, 301 S.C. 204, 207, 391 S.E.2d 249, 250 (1990)(citing *Chavis v. Watkins*, 256 S.C. 30, 180 S.E.2d 648 (1971)).

South Carolina courts have used four factors in evaluating the right to control: (1) direct evidence of the right to or exercise of control; (2) right to fire; (3) method of payment; and (4) furnishing of equipment. *Chavis v. Watkins*, 256 S.C. 30, 180 S.E.2d 648 (1971). But “the decisive test in determining whether the relation of master and servant exists is whether the purported master has the right or power to direct and control the servant in the performance of his work and in the manner in which the work is to be done.” *Jamison v. Morris*, 385 S.C. 215, 684 S.E.2d 168, 171 (2009). There was ample evidence in the record regarding each of the four factors to give rise to a finding that Myers Timber had sufficient right to control Levister and to make the granting of summary judgment improper.

A. The trial court erred in finding as a matter of law that Myers had no right or power to control or direct the manner or performance of Levister’s work.

The evidence provides ample support that Myers not only had the right to

exercise control over the manner and performance of Levister's work, but actually exercised that right to control in overruling Rogers as to which mill to deliver the truck load of long logs, and in requiring the logs that had already been loaded on to Roger's truck to be cut shorter to comply with the requirements of Chester Wood Products specifications. The relationship between Myers Timber and Levister was terminable at will by either party. (R. p. 43, lines 10-17). The South Carolina Supreme Court has held that where, as here, a contract between a master and a purported independent contractor is terminable at will by either party, it is a reasonable inference that the master has the right to control and direct the means and manner of the purported independent contractor's performance of the work. *Norris v. Bryant*, 217 S.C. 389, 60 S.E.2d 844 (1950). In fact, the court concluded that it is a reasonable inference that such a right to terminate placed the purported independent contractor "in a position of complete subservience." *Id.* It is easy to see how the court reached such a conclusion.

It is not difficult to imagine a scenario in which Myers Timber could threaten to terminate Levister unless Levister performed his work in exactly the manner Myers Timber directed. Faced with this threat, Levister had no choice but to accede to Myers Timber's demands or lose his job, exactly the type of control to which millions of employees are regularly subjected. Myers Timber has admitted to having just such a right of control. (R. p. 43, lines 10-17; p. 89, line 7-18) As in *Norris*, this right to terminate placed Levister "in a position of complete subservience" to Myers Timber, the very essence of an employer-employee relationship.

In fact, it was essential to Myers Timber that it have just such a right of control in the instant case in order to fulfill its obligations to the land owner under the Timber Harvesting Contract. The only terms of the oral agreement between

Myers Timber and Levister were the cut and haul rates Levister was to be paid for the timber it cut and hauled. (R. p. 45, lines 3-17; p. 78, line 4 - p. 80, line 10; p. 81, line 20 - p. 82, line 3) There is no evidence of any additional terms, including any terms that required Levister to conduct its work in a manner that allowed Myers Timber to fulfill its obligations under the Timber Harvesting Contract regarding road location, trash management, property restoration, fire prevention, trees that are not to be cut, using South Carolina Best Management Practices for Forestry, and avoiding food plot land. Thus, Myers Timber had no alternative but to direct Levister to perform its work in such a manner or face being fired. Levister had no alternative but to comply with such directions.

In addition to this total right to control which existed by virtue of Myers Timber' right to terminate Levister at will, and despite any contract terms providing such a right, Myers Timber believed it had the right to control Levister and, in fact, exercised considerable control over Levister's work. Stines testified that Myers Timber had the right to terminate the contract if it found that Levister was not keeping the logging job as neatly as Myers Timber required; that Myers Timber could redirect Levister on how machinery was moved about on the property to prevent any rutting of the ground that Myers Timber employees deemed excessive; and that Myers Timber could require Levister to cut the logs closer to the ground, leaving shorter stumps. (R. p. 60, lines 21 - p. 62, line 1)

Myers Timber was the one notified by the mills when logging trucks were loaded far too heavily. (R. p. 66, lines 2-8) Myers Timber could, and did, redirect delivery to alternate mills in the midst of a logging job. Specifically, on the day of the accident at issue, the New South mill broke down and an alternate route needed to be established. The Levister driver suggested that they "put a load of pulpwood back on and go back to Rock Hill to Bowater." (R. p. 8, lines 10-16) Myers Timber, through Mitch Stines, exercised its authority to control and

rejected this suggestion. (R. p. 8, lines 10 - 16) The Levister driver explained, “that’s when the bossman say, no. He says, logs is already on there. Let’s just measure the rest of them and send them to Chester.” (R. p. 20, lines 9 - 13) This direction by Stines required Levister to cut and resize logs that had already been loaded. (R. p. 21, line 3 - p. 22, line 25; p. 63, lines 5-24; p. 95, line 22 - p. 99, line 8, p. 99, line 22 - p. 101, line 10). The authority of Myers Timber over Levister was sufficiently apparent that a Levister truck driver referred to the Myers Timber representative as Levister’s “bossman”. (R. p. 33, lines 13-17)

There was no written contract between Myers Timber and Levister which defined the relationship. (R. p. 124, lines 22-24; R. p. 40, lines 14-17; p. 41, lines 12-18; p. 45; lines 3-17; p. 133, lines 16-21) There was no written contract which set out the requirements of the work Levister was to perform. (Id.) This required Levister to get directions from Myers Timber about where to locate the roads on the cutting site; directions on the movement of roads on the cutting site if Myers Timber thought there were too many ruts being made; directions on where to locate the wood deck (where the transfer of the trees to the trucks was to take place); directions on the type of wood to be carried to the different mills; directions on the different requirements and size specifications for the wood being hauled to the different mills; directions on the amount of wood that could be hauled on the trucks; directions on the shortest routes from the cutting site to the mills, because these were the routes on which Myers Timber paid mileage (R. p. 110, lines 17-23; p. 112, line 11 - p. 113, line 15); direction from Myers Timber on how to use the tickets Myers Timber gave Levister to deliver wood to the mills (R. p. 49, line 16 - p. 50, line 20); directions on which mills to send particular types of wood and specific loads of wood; directions on the need of the drivers to secure from the mills the weight or scale tickets showing amount and type of wood delivered (R. p.105, lines 6-25; p. 113, line 19 - p. 114, line 2); and

directions on handling the defects, imperfections, and cutting and loading mistakes, causing the mills to deduct payment for the load of wood. (R. p. 51, line 21 - p. 52, line 17; R. p. 116, line 19 - p. 118, line 1)

B. The trial court erred in finding as a matter of law that Myers Timber had no right to fire Levister's personnel, including George Rogers.

Despite the undisputed fact that the agreement between Myers Timber and Levister was terminable at will, the trial court found as a matter of law that "Myers Timber had no right to hire or fire employees of Levister, including George Rogers." (R. p. 5) As the Supreme Court held in *Norris*, the power to terminate the agreement supports a reasonable inference that Myers Timber could control and direct the means and manner of the performance of Levister's work and place Levister in a position of complete subservience. Myers Timber certainly had the right to fire Levister whenever it chose to do so. Moreover, because the nature of the agreement placed Levister in a position of complete subservience to Myers Timber, Myers Timber could require Levister to fire any member of Levister's crew or face being fired himself. Levister would have no choice but to comply. At a minimum, there is a genuine issue of material fact with respect to Myers Timber's right to fire Levister or his personnel precluding the entry of summary judgment.

C. The trial court erred in failing to find that Myers Timber's right to exercise control over material elements of payment to Levister created a genuine issue of material fact precluding the entry of summary judgment.

The trial court apparently concluded that because Myers Timber did not pay Levister a wage or salary, but rather paid Levister based on the end result (the amount of timber harvested and delivered), this factor supports the conclusion of Levister's independent contractor status. As the Supreme Court held in *Norris*, however, this method of payment is not itself conclusive of an independent

contractor relationship. In *Norris*, the Court observed that numerous employees are paid based on production rather than a wage or salary. Moreover, as the Supreme Court stated in *Jamison, supra*, the decisive test in determining whether the relation of master and servant exists is whether the purported master has the right or power to direct and control the servant in the performance of his work and in the manner in which the work is to be done.

Given that the Myers Timber/Levister agreement was terminable at will, Myers Timber had the right to control every activity of Levister affecting payment to Levister. Further, on the day of the wreck and with the actual truck that caused the subject collision, Myers Timber exercised just such control when Mitch Stines overruled George Rogers and directed him to take the load to Chester Wood mill.

Myers Timber paid Levister by the ton of timber delivered to and accepted by the various mills to which Myers Timber directed Levister to haul the timber. Myers Timber also paid Levister an additional flat mileage rate for trips not exceeding 40 miles one way. (R. pp. 78-82, 109-110) Moreover, different mills had different quality and size requirements for accepting timber. (R. pp. 95-104) As such, the amount of labor necessary to prepare a load for hauling, and the amount of time required to prepare such a load, and the number of miles to be driven to the various mills, were all dependent upon the requirements of the specific mill to which Myers Timber directed Levister to haul the load. Thus, Levister's net pay for a load of timber depended upon the size (weight) of the load, the requirements of the specific mill to which Levister hauled the load, and the location of that mill (more fuel cost and wear and tear on the trucks and trailers for mills that were located further away from the tract but still within 40 miles). Levister's net pay for all of its work obviously depended upon the total number of loads hauled from the tract (the more loads hauled the more costs necessarily incurred as a result), providing Levister with a financial incentive to

maximize the size of each load, to minimize the total number of loads required to complete the work, and to minimize the number of miles his trucks would drive to deliver the loads.

Because of Myers Timber's right to terminate Levister at will, Myers Timber had the right to direct Levister with regard to each of these factors affecting Levister's pay. Moreover, on the day of the wreck, Myers Timber exercised this right of control over the very load that was involved in the wreck. Levister had already loaded the truck at issue which was set to deliver its load to New South. Upon learning that the New South mill was down, Rogers announced his intention to deliver the load to Bowater. Myers Timber, through Stines, overruled Rogers and directed that the load be taken to Chester Mill, a direction that required Levister to use additional labor to prepare the load for the more stringent requirements of Chester Mill and to incur additional costs for the longer trip to Chester Mill, thus directly affecting Levister's net pay. This evidence of Myers Timber's right to and exercise of control directly affecting Levister's payment for the work therefore weighs in favor of finding an employer-employee relationship.

D. The trial court erred in failing to find that Myers Timber's right to and exercise of control over Levister's use of equipment created a genuine issue of material fact precluding the entry of summary judgment.

While Myers Timber furnished no equipment to Levister, Myers Timber had the absolute right to control Levister's use of his equipment and exercised such control which resulted in a situation practically the same as if Myers Timber had furnished Levister with equipment. As stated above, the decisive test in determining the existence of a master servant relationship is the right to control the manner and performance of the purported servant's work. *See Jamison, supra*. Because of Myers Timber's right to terminate Levister at will, Levister was in a

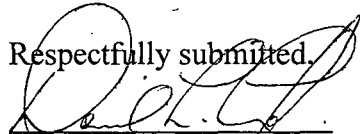
position of complete subservience to Myers Timber. As such, Myers Timber had the right to direct Levister in the use of his equipment in any way Myers Timber saw fit, or else Levister faced being fired. Moreover, Myers Timber personnel believed they had such control over Levister's use of his equipment. As stated above, Myers Timber personnel have testified that they would not have allowed Levister to haul timber in a truck Myers Timber knew to be unsafe; that they directed Levister to reroute the truck involved in the collision that is the subject of this case; that they directed Levister to use his equipment to resize the load of timber at issue for delivery to Chester Wood; that they had the right to redirect how Levister moved his equipment about the tract, and that they had the right to direct Levister to use his equipment to cut trees closer to the ground thereby leaving shorter stumps. The foregoing evidence of the right of Myers Timber to exercise control over Levister's use of his equipment weighs in favor of an employer-employee relationship and, at a minimum, presents a jury question on the issue precluding the entry of summary judgment.

CONCLUSION

Appellants have demonstrated that there exists evidence of material fact supporting that Myers Timber retained sufficient control over operational aspects of Levister's work so that Myers Timber may be liable for negligent acts of Levister. Wherefore, the Order of the court below granting Defendant's Motion for Summary Judgment should be reversed.

September 11, 2012

Respectfully submitted,



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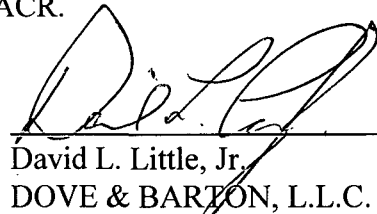
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CERTIFICATE OF COMPLIANCE

I hereby certify that the Final Brief of Appellants and the Final Reply Brief
of Appellants comply with Rule 211(b), SCACR.

September 11, 2012



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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case Nos.: 2010-CP-12-00137; 2010-CP-12-00136; 2010-CP-12-00135; 2010-CP-12-00134; 2010-CP-12-00133

Jane Cherry, Personal Representative of the Estate of Nicholas Wayne Cherry,
Appellant,

v.

Myers Timber Company, Inc, Respondent.

Taylor C., a minor under the age of 14 years, by and through mother and natural
guardian, Jane Cherry, Appellant,

v.

Myers Timber Company, Inc, Respondent.

Carlton Quinton as Personal Representative of the Estate of Hannah Nicole Quinton,
Deceased, Appellant,

v.

Myers Timber Company, Inc, Respondent

Alice Quinton and Carlton Quinton, Appellants,

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SC Court of Appeals

v.

Myers Timber Company, Inc, Respondent.

Carlton Quinton as Guardian for Timothy Q., a Minor under the Age of Eighteen,
Appellant,

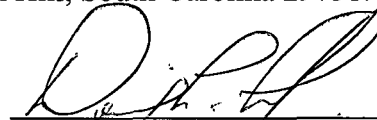
v.

Myers Timber Company, Inc, Respondent.

PROOF OF DELIVERY

I certify that I have served the Final Brief of Appellants and the Final Reply Brief of Appellants on Respondent Myers Timber Company, Inc. by hand delivering a copy of them on September 11, 2012, to its attorney of record, Forrest C. Wilkerson, 223 E. Main St., Suite 402, Rock Hill, South Carolina 29731.

September 11, 2012



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