

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson

Case No.: 2008-CP-22-00466
Published Opinion No. 5055
Filed November 28, 2012

Hazel Jeisel Rivera,

Respondent,

v.

Warren Jared Newton, Newton's Farm,
J&J Logging, Inc. and Edgar Rivera,

Appellants.

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SC Court of Appeals

**APPELLANT EDGAR RIVERA'S
REPLY TO RESPONDENT'S RETURN TO
APPELLANTS' PETITIONS FOR REHEARING AND
SUPPORTING MEMORANDUMS**

Appellant Edgar Rivera ("Rivera") replies to Respondent's Return to Appellants' Petitions for Rehearings and Supporting Memorandum. As with Respondent's case at trial, Motion for a New Trial and Reply to Appellants' Briefs, Respondent focuses almost

entirely on her case against the Newton Appellants. Rivera previously noted that the Respondent, herself, testified that this Appellant had no liability for the subject accident. The Respondent focused virtually her entire case and her appellate submissions of the liability of the Newton Appellants. Respondent's Return, as it could pertain to Rivera, does no more than simply reiterate that two of the three members of the Court of Appeal's panel found correctly and that the dissent found incorrectly. Respondent does not expound on any argument in response to Rivera's Petition for Rehearing. As such, the undersigned is limited in any specific reply to her Return.

Rivera properly raised arguments as to why this Court erred in upholding the Trial Court's granting of the Respondent's initial Motion for New Trial. This Appellant would again contend that the dissent reached the correct conclusion. The dissent accurately noted that the Respondent clearly failed to carry her burden of proof against the original defendants at trial. This failure to carry her burden of proof is most evident as it relates to Respondent's claim against Rivera. In that regard, this Appellant has repeatedly distinguished the facts of this case from cases such as *Howard v. Roberson*, 376 S.C. 143, 148-149, 654 S.E.2d 877 (Ct. App. 2007). *Howard* involved a factual scenario in which the evidence in the record allowed for a finding that at least one of the defendants had to be found to have breached a duty of care to the Plaintiff. Here, in addition to the fact that Respondent failed to carry her necessary burden of proof against Rivera in her case-in-chief, this Appellant submitted ample evidence of the potential negligence of an unnamed tortfeasor. As a result, the trial court should have granted Rivera's directed verdict motion after the Respondent's case-in-chief. Even if Respondent's case against Rivera

could have proceeded to the jury's deliberation, the jury's verdict in favor of Rivera should not have been disturbed for the reasons set forth herein.

Rivera additionally takes issue with Respondent's insinuation that the Georgetown County jury based its verdict on ethnic or racial prejudices. The ethnic make-up of the jury is not known and is not relevant. Again, this is especially true as it relates to the Respondent's case against Rivera, the Respondent's brother, *who is of the same ethnic and racial background.*

Finally, Rivera objects to Respondent's improper swipe at Rivera's insurance carrier. Respondent clearly included this language in an attempt to play to perceived prejudices against insurance companies. The Respondent's position is irrelevant, as it is not related to the issues on appeal and is not in response to anything submitted in any appellate filings. Rivera is confident that this Court cannot be moved by such tactics.

WHEREFORE, Appellant Edgar Rivera again moves this Court for a hearing on his Petition for Rehearing.

Respectfully submitted,

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