

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2018-CP-40-01434

Southeast Payphone Group, Inc., a
South Carolina corporation,

Appellant,

v.

Water Flow Business Brokers, LLC, a
South Carolina limited liability company;
and Ryan Cannon,

Defendants,

Ryan Cannon,

Respondent.

RECEIVED
MAR 05 2019
SC Court of Appeals

REPLY BRIEF OF APPELLANT

Jeffrey A. Long
Charles J. Bridgmon
BRAY & LONG, PLLC
2820 Selwyn Ave., Suite 400
Charlotte, NC 28209
Phone: (704) 523-7777
Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities	ii
Argument	1
Conclusion	3

TABLE OF AUTHORITIES

CASES

16 Jade St., LLC v. R. Design Constr. Co., LLC, 398 S.C. 338, 728 S.E.2d 448 (2012),
withdrawn by 405 S.C. 384, 747 S.E.2d 770 (2013) 1, 2

Collins v. Johnson, 242 S.C. 112, 130 S.E.2d 185 (1963) 2

STATUTES

S.C. Code Ann. § 33-44-303 cmt. 1, 2

OTHER AUTHORITIES

Revised Uniform Limited Liability Company Act § 304 cmt. 2

ARGUMENT

Regrettably (and candidly, embarrassingly), Respondent is correct that Appellant failed to recognize that one of the cases upon which it relied – specifically, 16 Jade St., LLC v. R. Design Constr. Co., LLC, 398 S.C. 338, 728 S.E.2d 448 (2012) – was withdrawn and substituted. See 16 Jade St., LLC v. R. Design Constr. Co., LLC, 405 S.C. 384, 747 S.E.2d 770 (2013). Appellant’s counsel certainly regrets this oversight.¹

That said, although the Supreme Court saved for another day the discussion of whether the Uniform Limited Liability Company Act shields an LLC member for personal liability for his own torts, id. at 405 S.C. 386, 747 S.E.2d at 771, Appellant contends the Supreme Court’s analysis in its initial opinion nevertheless was correct. Specifically, two of the components of the Supreme Court’s analysis were items the Court could not withdraw, substitute, or otherwise change – namely, the General Assembly’s comments in the very statute Respondent and the trial court relied upon in moving for and granting, respectively, Respondent’s motion to dismiss: S.C. Code Ann. § 33-44-303. See 16 Jade St., 398 S.C. at 347, 728 S.E.2d at 453, nn. 8 and 9.

The first comment to Section 33-44-303 provides as follows:

A member or manager, as an agent of the company, is not liable for the debts, obligations, and liabilities of the company simply because of the agency. ***A member or manager is responsible for acts or omissions to the extent those acts or omissions would be actionable in contract or tort against the member or manager if that person were acting in an individual capacity.***

S.C. Code § 33-44-303, cmt. (emphasis added). As noted by the Supreme Court, “[w]e believe this is evidence of the General Assembly’s intent that he should be liable for his torts.” 16 Jade St., 398 S.C. at 347, 728 S.E.2d at 453, n. 8.

¹ While the Supreme Court withdrew the previous opinion, it did not reverse or overrule its analysis regarding personal liability of an LLC member; rather, the Supreme Court simply held that the LLC member in question did not owe any duty to the plaintiff and, thus, had committed no actionable tort such that its personal liability analysis was necessary.

Next, the Supreme Court noted that “[t]hese comments similarly note that *nothing in the current version of the provision under scrutiny in this case [§ 33-44-303] was intended to ameliorate the common law principle that a tortfeasor is always responsible for his own tortious conduct.*” *Id.*, n. 9, citing Revised Uniform Limited Liability Company Act § 304 cmt. (“This paragraph shields members and managers only against the debts, obligations and liabilities of the limited liability company and is irrelevant to claims seeking to hold a member or manager directly liable on account of the member’s or manager’s own conduct.”) (emphasis added).

Thus, while the Supreme Court withdrew its initial opinion in 16 Jade St., the comments to Section 33-44-303 speak to legislative intent and make it abundantly clear that a member of an LLC can be personally liable for his own tortious conduct. As such, Appellant’s allegations of tortious conduct by Respondent were sufficient to survive Respondent’s motion to dismiss.

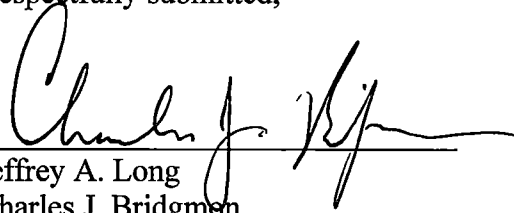
Next, Respondent continues to argue that because Appellant alleged in its Complaint that “[t]he actions of [Respondent] are also imputed to Water Flow under the doctrine of *respondeat superior*,” Complaint, ¶37, there can be no personal liability against Respondent. This is not an accurate statement of the doctrine of *respondeat superior*; rather, as in this case, the allegations against Respondent, in his personal capacity, are alleged to be imputed to Water Flow as additional grounds for liability against Water Flow. In other words, the allegations set forth in ¶37 do not absolve Respondent of liability for his own tortious conduct, but rather, to allege the liability of both Respondent and Water Flow for the acts and omissions of Respondent. See, e.g., Collins v. Johnson, 242 S.C. 112, 122-23, 130 S.E.2d 185, 190 (1963) (“We have held that the identification of master and servant is so complete that a joint action is maintainable against the two, even though liability of the master rests upon the principle of respondeat superior. Where a servant is guilty of negligence or willfulness while acting for a master within the scope of his employment, the liability is joint and several.”).

Thus, regardless of whether Respondent was acting in a representative capacity as an officer and agent for Water Flow, a cause of action is maintainable against both. Therefore, the trial court erred in dismissing Respondent on the grounds he could not be personally liable for damages for his actions as an agent of Water Flow. To the contrary, as alleged and contended by Appellant, both Respondent and Water Flow can be liable for the actions of Respondent.

CONCLUSION

As argued in Appellant's brief and reply, Respondent is not protected from personal liability simply because he is a member of Water Flow. Stated differently, just because Respondent is a member of Water Flow does not insulate him personal liability for his actions. Appellant alleged facts sufficient to justify personal liability against Respondent, and the trial court's Order dismissing Respondent should be reversed.

Respectfully submitted,



Jeffrey A. Long
Charles J. Bridgmen
BRAY & LONG, PLLC
2820 Selwyn Ave., Suite 400
Charlotte, NC 28209
Phone: (704) 523-7777
Attorneys for Appellant

March 4, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2018-CP-40-01434

Southeast Payphone Group, Inc., a
South Carolina corporation,

Appellant

v.

Water Flow Business Brokers, LLC, a
South Carolina limited liability company;
and Ryan Cannon,

Defendants,

Ryan Cannon,

Respondent.

RECEIVED

MAR 05 2019

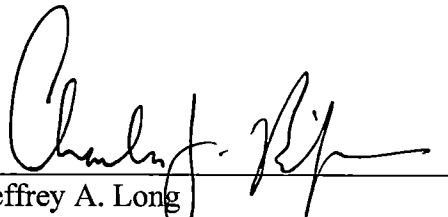
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the following on Defendants/Respondent, by depositing a copy in the United States Mail, postage prepaid, on March 4, 2019, addressed to their attorney of record, Dennis N. Cannon, Jr., 512 Rutledge Street, Post Office Box 532, Camden, South Carolina 29021-0532:

1. Reply Brief of Appellant

March 4, 2019



Jeffrey A. Long
Charles J. Bridgmon
BRAY & LONG, PLLC
2820 Selwyn Ave., Suite 400
Charlotte, NC 28209
Phone: (704) 523-7777
Attorneys for Appellant

BRAY & LONG, PLLC
ATTORNEYS AT LAW

William P. Bray *
Jeffrey A. Long * †
Brendan G. Dillashaw
Charles J. Bridgmon *
Simon J. O'Brien
Robert J. Lack

* Also licensed in South Carolina
† NC Superior Court Mediator &
Certified SC Circuit Court Mediator

March 4, 2019

VIA UPS OVERNIGHT

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
MAR 05 2019
SC Court of Appeals

Re: Southeast Payphone Group, Inc. v Water Flow Business Brokers, LLC et al.
Appellate Case No. 2018-001827

Dear Ms. Kitchings:

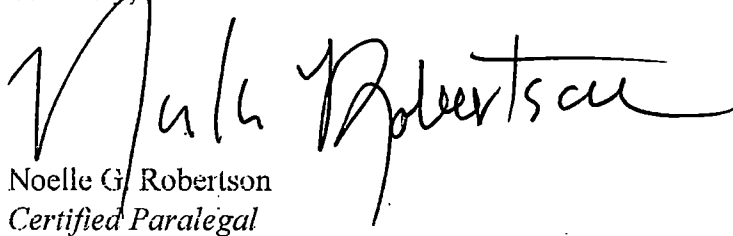
Enclosed for filing in the above-referenced matter is an original and a copy of the following:

- (1) Reply Brief of Appellant; and
- (2) Proof of Service of the Reply Brief of Appellant on the Defendants/Respondent.

If the enclosed meet with your approval, please file the originals with the Court, and return the file-stamped copies to our office in the enclosed self-addressed, stamped envelope.

Please do not hesitate to contact us with any questions, and thank you for your assistance with this matter.

Sincerely,


Noelle G. Robertson
Certified Paralegal

Encl.

cc: Dennis N. Cannon, Jr.
512 Rutledge Street
Post Office Box 532
Camden, South Carolina 29021-05321

UPS Internet Shipping: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.

2. Fold the printed label at the solid line below. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.

3. **GETTING YOUR SHIPMENT TO UPS**
Customers with a Daily Pickup
Your driver will pickup your shipment(s) as usual.

Customers without a Daily Pickup

Take your package to any location of The UPS Store®, UPS Access Point™(TM) location, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. Items sent via UPS Return Services®(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the 'Find Locations' Quick link at ups.com.
Schedule a same day or future day Pickup to have a UPS driver pickup all of your Internet Shipping packages. Hand the package to any UPS driver in your area.

UPS Access Point™
THE UPS STORE
2820 SELWYN AVE
CHARLOTTE, NC 28209

UPS Access Point™
THE UPS STORE
338 S SHARON AMITY RD
CHARLOTTE, NC 28211

UPS Access Point™
THE UPS STORE
7804-C FAIRVIEW RD
CHARLOTTE, NC 28226

FOLD HERE

LAURA STEFANELLI 704-523-7777 BRAY & LONG, PLLC 2820 SELWYN AVENUE CHARLOTTE NC 28209	0.0 LBS LTR	1 OF 1
SHIP TO: HON. JENNY A. KITCHINGS, CLERK SC COURT OF APPEALS 1220 SENATE STREET COLUMBIA SC 29201-3769		
	SC 292 9-01 	
UPS NEXT DAY AIR		1
TRACKING #: 1Z Y49 4A8 01 9458 0903		
		
BILLING: P/P		
Reference#1: Southeast Phone/Water Flow		
UIS 21.0.23. WNTINV50 09.0A 01/2019		

RECEIVED

MAR 05 2019

SC Court of Appeals