

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Edward W. Miller, Circuit Court Judge

Appellate Case No.: 2019-000601

**RECEIVED**  
SEP 23 2019  
SC Court of Appeals

Stone International, LLC and Eugene E. Stone, IV.....Appellants,

V.

Byte Software, LLC; Byte Software Services, LLC; Benjamin Gause;  
Janice Gause, f/k/a Janice Archer, f/k/a Janice Barnett; Carolina First Bank; Branch Banking and  
Trust Company; Greg Corbitt; Contemporary Solutions-USA, Inc.; International Modapts  
Association, Inc.; and South Carolina Department of Employment and Workforce, Defendants,

Of Which Byte Software, LLC, Byte Software Services, LLC, Benjamin Gause, and Janice Gause  
are the.....Respondents.

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

The Respondent respectfully submits that the Appellant has included material that is not a part of the Court file nor made an exhibit at any of the proceedings leading up to and including the trial court's decision to dismiss the action which is the subject of this appeal.

Specifically, Appellant's Designation of Matters number 15 purports to include within the Record a "Plaintiff's Response to Defendant's Motion to Modify or Amend, filed March 13, 2019" and number 16 entitled "Letter to Circuit Court and Defendant's Counsel, March 15, 2019".

Neither of these documents were filed in the official electronic records file of the Clerk of Court for Greenville County (see attached EMF docket sheet) and were submitted only after the original order of dismissal was filed on March 7, 2019. Accordingly, they were not, and could not have been, relied upon the Court or considered by the Court prior to its entry of the original order of dismissal. Accordingly, Respondent was not requested to, is not required to nor did Respondent file any response to the email communications which the Appellant seeks to include in the Record on Appeal.

This Court and the Supreme Court have long held that a Court may only consider evidence properly presented into the record and cannot consider statements of fact appearing only in arguments of counsel or even statements about testimony appearing in depositions not otherwise introduced into evidence. See McManus v. Bank of Greenwood, 171 SC 473 (SC 1933); Gilmore v. Ivey, 348 SC 2<sup>nd</sup> 180 (Ct. App. 1986); SC Department of Transportation v. Thompson, 590 SC 2<sup>nd</sup> 511 (Ct. App. 2003).

Accordingly, the items numbered 15 and 16 of the Appellant's Designation of Matter to be Included on Record on Appeal should be stricken from the Record and the Respondent should be allowed thirty (30) days from the date of the order striking the matter from the record for filing and serving its Initial Brief.

**RESPECTFULLY SUBMITTED,**

**RANDALL S. HILLER, P.A.**



Randall S. Hiller (SCB#2513)  
850 Wade Hampton Blvd.  
Greenville, SC 29609  
864-232-0026  
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Attorney for Respondents

September 18, 2019



2009CP2305000 : Stone International LLC , plaintiff, et al vs. Byte Software LLC , defendant, et al  
Common Pleas

**Case Number** 2009CP2305000  
**Case Subtype** Debt Collection 110  
**Filed Date** 06-12-2009  
**Status** Appeal

**Plaintiff** Stone International LLC et al  
**Defendant** Byte Software LLC et al  
**Assigned Judge** Edward W. Miller  
**File Type** Jury

Show/Hide Participants

Name	Description	Type	File Date
Stone International LLC	Amended Notice of Appeal to Court of Appeals	Action	04-09-2019 01:17:06 PM
Stone International LLC	NEF(04-08-2019 01:17:06 PM) Appeal/Notice of Appeal to C...	Filing	04-08-2019 02:29:57 PM
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Byte Software LLC	Order/Dismissal-Amended	Order	04-05-2019 09:35:21 AM
Byte Software LLC	NEF(04-05-2019 08:43:57 AM) Order/Order Cover Sheet \$25...	Filing	04-05-2019 09:06:08 AM
Byte Software LLC	Order/Order Cover Sheet \$25.00	Filing	04-05-2019 08:43:57 AM
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Byte Software LLC	Defs/Byte Software Motion/Alter and/or Amend	Motion	03-08-2019 09:47:37 AM
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Jacob Michael Hughes	10/9/2017_MOTION_Roster/Notice of Motions Roster Publication	Action	09-06-2017 10:27:20 AM
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	Service/Proof Of Service on Janice Gause	Filing	06-22-2012
	Amended/Summons	Filing	06-06-2012 04:50:00 PM
	Service/Affidavit Of Non Ser S/C on Byte Software	Filing	05-25-2012
	Service/Certificate Of Service	Filing	05-24-2012 12:49:06 PM
	Petition/Order Of Publication	Filing	05-24-2012 12:48:38 PM
	Order/Publication	Order	05-24-2012 12:47:57 PM
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	Service/Affidavit Of Non Ser S/C on Byte Software LLC	Filing	05-23-2012
	Service/Affidavit Of Non Ser S/C on Janice Gause	Filing	05-23-2012
	Accept of Serv of Third Amend C of Secretary of State	Filing	05-14-2012
	Plts' Reply/Service To Third Amended Answer & Counterclaim	Filing	12-09-2011
	Answer/Ans & Counterclaim And Ser To Third Amended Complaint	Filing	10-26-2011
	Summons To Answer Counterclaim	Filing	10-26-2011
	Service/Cert Of Ser By Mail Third Amend Comp On Atty Hiller	Filing	10-13-2011
	Amended/Third Amended Complaint	Filing	10-13-2011
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	Plt's Reply/Ser To Cnterclms Of Byte Software, LLC And Gause	Filing	01-04-2011
	Jury Trial Requested	Filing	12-16-2010
	Ans, Cnterclaim & Third Party Comp And Ser Of Byte And Gause	Filing	12-02-2010
	Summons To Answer Counterclaim	Filing	12-02-2010
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Stone International LLC	RESERVE TIME	Event	11-05-2010 09:30:00 AM
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Stone International LLC	Plaintiff's Motion/Substitution of Counsel	Event	05-25-2010	10:00:00 AM
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	Plaintiff's Motion/Substitution of Counsel	Motion	04-08-2010	10:20:37 AM
Stone International LLC	Notice/Appearence	Filing	04-08-2010	09:28:17 AM
	Documents Received at 11/18/09 Hearing	Filing	11-30-2009	08:15:23 AM
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	Motion/Order For Substitution Of Counsel	Motion	09-02-2009	10:10:47 AM
Stone International LLC	Motion/Motion Filing Fee	Filing	08-25-2009	11:38:22 AM
Stone International LLC	Affidavit/William M Hogan	Filing	07-21-2009	09:31:20 AM
	Plt's Reply/Service To Counterclaim Of Byte Software, LLC	Filing	07-02-2009	
	Answer/Answer & Counterclaim And Ser Of Byte Software, LLC	Filing	07-01-2009	
	Summons To Answer Counterclaim	Filing	07-01-2009	
	Service/Affidavit Of Service S/Amend C On GrandSouth Bank	Filing	06-24-2009	
	Affidavit Of Ser S/Amend C On Contemporary Solutions-USA Inc	Filing	06-24-2009	
	Affidavit Of Service S/Amend C On Carolina First Bank	Filing	06-24-2009	
	Service/Affidavit Of Service S/Amend C On Byte Software LLC	Filing	06-24-2009	
	Service/Affidavit Of Service S/Amend C On BB&T,CT Corp	Filing	06-24-2009	
	Letter/Letter From CT	Filing	06-18-2009	
	Amended/Summons And Amended Complaint	Filing	06-13-2009	
Stone International LLC	Summons & Complaint	Filing	06-12-2009	10:46:45 AM
Stone International LLC	ADR/Alternative Dispute Resolution (Workflow)	Action	06-12-2009	10:46:45 AM

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Edward W. Miller, Circuit Court Judge

Appellate Case No.: 2019-000601

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SEP 23 2019  
SC Court of Appeals

Stone International, LLC and Eugene E. Stone, IV.....Appellants,

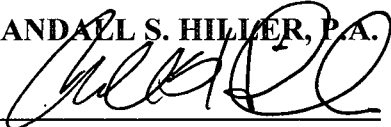
V.

Byte Software, LLC; Byte Software Services, LLC; Benjamin Gause;  
Janice Gause, f/k/a Janice Archer, f/k/a Janice Barnett; Carolina First Bank; Branch Banking and  
Trust Company; Greg Corbitt; Contemporary Solutions-USA, Inc.; International Modapts  
Association, Inc.; and South Carolina Department of Employment and Workforce, Defendants,

Of Which Byte Software, LLC, Byte Software Services, LLC, Benjamin Gause, and Janice Gause  
are the.....Respondents.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion for Extension, Motion to Strike and  
Memorandum on Jacob M. Hughes, Esq., attorney for Appellants, by depositing a copy of it in the United States  
Mail, postage prepaid, on September 19, 2019 to 1616A W. Paris Ave., Port Royal, SC, 29935.

**RANDALL S. HILLER, P.A.**  
  
Randall S. Hiller (SCB#2513)  
850 Wade Hampton Blvd.  
Greenville, SC 29609  
864-232-0026  
864-242-4692 Fax  
Attorney for Respondents

September 19, 2019

**RANDALL S. HILLER, P.A.**  
ATTORNEYS AT LAW

850-B WADE HAMPTON BOULEVARD  
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER  
EMAIL: rsh@rshpa.org

(864) 232-0026  
FAX (864) 242-4692

September 19, 2019

SC Court of Appeals  
Attn: Clerk  
1220 Senate St.  
Columbia, SC 29201

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SC Court of Appeals

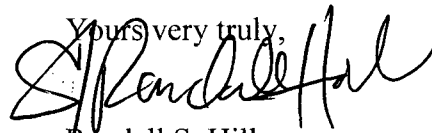
**Re: *Stone International, LLC v. Byte Software, LLC, et al***  
**2019-000601**

Dear Madam Clerk:

Please find enclosed one original and 6 copies of Respondents Motion for Extension, Motion to Strike and Memorandum regarding the above. I have also enclosed one extra copy in order for you to stamp and return to my office in the envelope provided.

By copy of this letter I am providing opposing counsel with same.

Yours very truly,

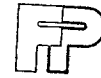
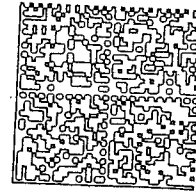


Randall S. Hiller

RSH/ak

Enclosure.

Cc: *Jacob Hughes, Esq.*



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Mailed From 29609

09/19/2019

032A 0061832136

**RANDALL S. HILLER, P.A.**  
ATTORNEYS AT LAW

850-B WADE HAMPTON BOULEVARD  
GREENVILLE, SOUTH CAROLINA 29609

SC Court of Appeals  
Attn: Clerk  
1220 Senate St.  
Columbia, SC 29201

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