

6

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

OCT 02 2019

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Roger M. Young, Circuit Court Judge

Appellate Case No. 2019-000797

James E. Carroll, Jr., Appellant,

v.

Isle of Palms Pest Control, Inc., SPM Management Company, Inc.
and Terminix Service, Inc., Defendants,

Of which Isle of Palms Pest Control, Inc. and SPM Management Company, Inc. are, ... Respondents.

APPELLANT'S REPLY BRIEF TO RESPONDENTS

Robert T. Lyles, Jr. (SC Bar # 10299)
Rose Beth G. Smith (SC Bar # 100623)
Lyles & Associates, LLC
342 East Bay Street
Charleston, SC 29401
843.577.7730
rtl@lylesfirm.com / rbgs@lylesfirm.com

-and-

Jody V. McKnight (SC Bar #66354)
McKnight Law Firm
1156 Bowman Road, Suite 200
Mt. Pleasant, SC 29464
843.577.6040
jody.mcknightlawfirm@gmail.com
Attorneys for Appellant

Other Counsel of Record:

Trent Kernodle (SC Bar #10441)
Stephen M. Kozick (SC Bar #78343)
Kernodle Coleman
914 Folly Road, Suite 2
Charleston, SC 29412
843.795.7800
tkernodle@kernodlelaw.com
skozick@kernodlelaw.com

Attorneys for Respondent Isle of Palms Pest Control, Inc.

R. Michael Ethridge (SC Bar #016892)
Mary Willis (SC Bar #102411)
Ethridge Law Group
1100 Queensborough Blvd, Suite 200
Mount Pleasant, SC 29464
843.614.0007
methridge@ethridgelawgroup.com
mwillis@ethridgelawgroup.com

Attorneys for Respondent SPM Management Company, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

ARGUMENT.....1

 I. THE TRIAL JUDGE ERRED IN GRANTING PARTIAL SUMMARY
 JUDGMENT WHEN, ON THE EVE OF TRIAL, THE TRIAL JUDGE WAS
 IN POSSESSION OF EVIDENCE THAT MAY CREATE AN ISSUE OF
 FACT1

CONCLUSION.....2

TABLE OF AUTHORITIES

Cases

Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)2

S.C. Prop. & Cas. Guar. Ass'n v. Yensen, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001)...2

ARGUMENT

I. THE TRIAL JUDGE ERRED IN GRANTING PARTIAL SUMMARY JUDGMENT WHEN, ON THE EVE OF TRIAL, THE TRIAL JUDGE WAS IN POSSESSION OF EVIDENCE THAT MAY CREATE AN ISSUE OF FACT

The crux of the Respondents' Initial Brief rests with whether or not Carroll's Memo in Opposition was made a part of the record. Whether the Memo in Opposition was filed or not is immaterial to the Order Granting Partial Summary Judgment and to this appeal. The Memo was available to the trial court, which received it via email, and it was referenced at the hearing. Stating that the trial judge did not consider the Memo in his ruling is simply false.

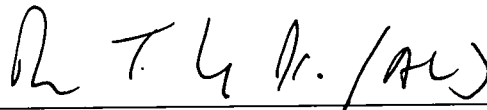
Furthermore, the timing of the hearing on the motion for summary judgment cannot be ignored and supports reversal of the trial court. The trial court heard the motion for summary judgment when the parties were in court for the trial of this matter. Counsel, the parties and the witnesses were present or available. For the Respondent to argue that it would have been prejudiced, at that time, to have to respond to facts offered in opposition to summary judgment, is disingenuous. The Respondents were absolutely not prejudiced by the judge's consideration of the Memo that was emailed to him. The parties were in court to try the case, and they were all in possession of the same evidence that Carroll presented in his Memo. By claiming prejudice, Respondents would have this Court believe that they were not prepared for trial.

If the trial judge indeed did not consider the Memo in Opposition that was in his possession, with counsel, the parties and all witnesses available for trial at the time the motion was heard, then the judge improperly declined to consider evidence that was submitted and available to him when considering the motion before him and his grant of summary judgment should be reversed. While the parties were present and prepared for a full trial on the merits, rather than allow the case to proceed, the Respondents now argue that the trial judge correctly cut off relevant factual inquiry

to grant partial summary judgment, which is improper. To the contrary, when the trial judge knows that evidence that may create an issue of fact not only exists but abounds, particularly when the parties are in court for a trial, he should allow that evidence into the record. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (“Summary judgment is a drastic remedy to be invoked cautiously and must be denied if [the non-moving party] demonstrates a scintilla of evidence in support of [his] claims.”) S.C. Prop. & Cas. Guar. Ass’n v. Yensen, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001) (“[S]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.”)

CONCLUSION

For all of the foregoing reasons, this Court should reverse the circuit court’s order granting partial summary judgment as to Carroll’s negligence claim because material questions of fact precluded summary judgment.



Robert T. Lyles, Jr. (SC Bar # 10299)
Rose Beth G. Smith (SC Bar # 100623)
Lyles & Associates, LLC
342 East Bay Street
Charleston, SC 29401
843.577.7730
rtl@lylesfirm.com / rbgs@lylesfirm.com

-and-

Jody V. McKnight (SC Bar #66354)
McKnight Law Firm
1156 Bowman Road, Suite 200
Mt. Pleasant, SC 29464
843.577.6040
jody.mcknightlawfirm@gmail.com
Attorneys for Appellant

September 30, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Appellate Case No. 2019-000797

RECEIVED

OCT 02 2019

SC Court of Appeals

James E. Carroll, Jr., Appellant,

v.

Isle of Palms Pest Control, Inc., SPM Management Company, Inc. and Terminix
Service, Inc., Defendants,

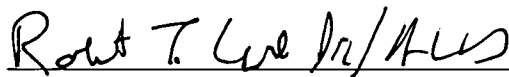
Of which Isle of Palms Pest Control, Inc. and SPM Management Company, Inc. are,
..... Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the Appellant’s Reply Brief on counsel for the Respondents by depositing a copy in the United States Mail, First Class postage prepaid, this 30th day of September 2019, addressed to the following:

Trent Kernodle (SC Bar #10441)
Stephen M Kozick (SC Bar #78343)
Kernodle Coleman
914 Folly Road, Suite 2
Charleston, SC 29412
843.795.7800
tkernodle@kernodlelaw.com
skozick@kernodlelaw.com
Attorneys for Respondent Isle of Palms Pest Control, Inc.

R. Michael Ethridge (SC Bar #016892)
Mary Willis (SC Bar #102411)
Ethridge Law Group
1100 Queensborough Blvd, Suite 200
Mount Pleasant, SC 29464
843.614.0007
methridge@ethridgelawgroup.com
mwillis@ethridgelawgroup.com
Attorneys for Respondent SPM Management Company, Inc.



Robert T. Lyles, Jr. (SC Bar # 10299)
Rose Beth G. Smith (SC Bar # 100623)
Lyles & Associates, LLC
342 East Bay Street
Charleston, SC 29401
843.577.7730

Attorneys for Appellant

Charleston, South Carolina

LYLES & ASSOCIATES, LLC
ATTORNEYS AT LAW
342 East Bay Street
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

September 30, 2019

RECEIVED

OCT 02 2019

SC Court of Appeals

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
Post Office Box 11629
1220 Senate Street (29201)
Columbia, SC 29211

Re: *James E. Carroll, Jr. vs. Isle of Palms Pest Control, Inc., SPM
Management Company, Inc. and Terminix Service, Inc.*
Appellate Case Number: 2019-000797

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy each of the Appellant's Reply Brief to Respondents with Proof of Service for filing in the above-referenced matter.

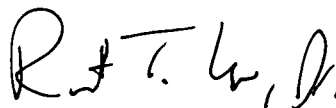
By copy of this correspondence and as indicated on each Proof of Service, a copy of the enclosed Reply Brief has been served on opposing counsel.

Should you have any questions regarding the enclosed, please give me a call.

Thank you for your assistance, and with kindest regards, I am

Very truly yours,

LYLES & ASSOCIATES, LLC



Robert T. Lyles, Jr.

RTL/cw

Enclosures

cc: Trent M. Kernodle, Esquire (Via Email & U.S. Mail)
Stephen M. Kozick, Esquire (Via Email & U.S. Mail)
R. Michael Ethridge, Esquire (Via Email & U.S. Mail)
Mary S. Willis, Esquire (Via Email & U.S. Mail)
Jody V. McKnight, Esquire (Via Email & U.S. Mail)

LYLES & ASSOCIATES, LLC

ATTORNEYS AT LAW

342 East Bay Street

Charleston, South Carolina 29401



PITNEY BOWES

\$ 000.950

02 1P

0001921445 SEP 30 2019

MAILED FROM ZIP CODE 29401

RECEIVED

OCT 02 2019

SC Court of Appeals

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

