

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
OCT 03 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 theRespondents.

**RETURN TO RESPONDENTS'
MOTION TO STRIKE**

Appellants Stone International, LLC, and Eugene E. Stone, IV (collectively "Stone"), submit the following Return to Respondents' Motion to Strike Items 15 and 16 from Stone's Designation of Matter to be Included in the Record on Appeal.

Rule 209(b), SCACR, states that "the Designation [of Matter] may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal" Any matter "which was not presented to the lower court" is excluded from the Record pursuant to Rule 210(c), SCACR. *See, e.g., Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.").

On March 7, 2019, the circuit court dismissed Stone's entire action for failure to prosecute. On March 8, 2019, Respondents filed a "motion to modify or amend" the Order of Dismissal. On Monday, March 11, 2019, the law clerk to the circuit court e-mailed Respondents' counsel. See Ex. A of this Return for the e-mail exchange. Counsel for Stone and Virginia Ritchie, the Greenville County Non-Jury Coordinator, were carbon-copied on the e-mail. In her message, the law clerk sought clarity regarding Respondents' Motion to Modify or Amend: "The Judge would like to know which factual findings specifically you are referring to in the grounds of your motion. If you could please provide the Court with more detail it would be greatly appreciated." (Appellants' Return Ex. A at 1.)

On March 11, 2019, Respondents' counsel replied that he was on vacation, "[b]ut the statement that an order to compel was issued is irrelevant to the relief granted and that it was not complied with is both irrelevant and factually incorrect." (*Id.*)

On March 13, 2019, the law clerk wrote to Stone's counsel in reply, informing him that the circuit court "is considering signing an amended order reflecting the changes voiced by [Respondents' counsel] Would you have any objections to such an amended order?" (*Id.* at 2.) Stone's counsel answered the same day, objecting to the proposed changes. (*Id.*) As an attachment, Stone submitted a formal Response to Defendants' Motion to Modify or Amend. (Appellants' Return Ex. B.) Respondents did not object to Stone's Response. In its Designation of Matter, Stone has proposed this Response as Item 15 to be included in the Record on Appeal.

On March 15, 2019, Stone supplemented its Response with a one-sentence objection, in the form of a letter addressed to the circuit court. (Appellants' Return Ex. C.) Based upon the prior e-mail communications with the law clerk, Stone's counsel replied to the original e-mail thread, sending the letter as a PDF attachment. (Appellants' Return Ex. A at 3.) In the letter, Stone pointed out that Respondents' Motion to Modify or Amend "is explicitly

based on Rules 55 and 60, SCRCF, neither of which appear to have any relevance to . . . [their] motion or to this case.” (Appellants’ Return Ex. C.) Respondents did not object to Stone’s letter. In its Designation of Matter, Stone has proposed this letter as Item 16 to be included in the Record on Appeal.

On April 5, 2019, the circuit court amended the Order dismissing Stone’s case, in effect granting Respondents’ Motion to Modify or Amend. Stone timely filed a notice of appeal on April 5, 2019. Stone filed its Amended Notice of Appeal on April 8, 2019.

It seems apparent that both Item 15 and Item 16 of Stone’s Designation of Matter were “presented to the lower court.” Stone’s counsel e-mailed the circuit court on March 13 and March 15, 2019, answering a direct question and attaching responses with objections. Respondents’ counsel was carbon-copied on all communications. On April 5, 2019, when the circuit court amended the Order of Dismissal, it effectively granted Respondent’s Motion to Modify or Amend and ruled upon the issues, objections, and countervailing arguments raised by Stone.

Stone is aware of no rule or case law that would require such documents to be filed electronically with the clerk of court in order to be preserved for appellate review. Furthermore, Respondents never objected to this evidence at the time it was presented to the circuit court.

Stone respectfully requests that this Court deny Respondents’ Motion to Strike and that the Court permit Items 15 and 16 to be included in the Record on Appeal.

Respectfully Submitted,

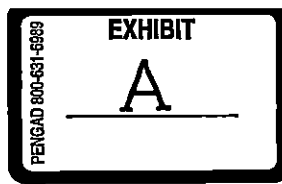
(Signature Block on Following Page)



Jacob Michael Hughes
S.C. Bar No. 100646
HUGHES LAW FIRM, L.L.C.
1616A Paris Avenue West
Port Royal, South Carolina 29935
(864) 569-2498

*Attorney for Appellants Stone
International, LLC, and Eugene E. Stone, IV*

September 30, 2019
Port Royal, South Carolina



Jacob Hughes <jacobmhughes@gmail.com>

Motion to Modify or Amend Inquiry

11 messages

Miller, Edward W. Law Clerk (Mary Grace Carey) <emillerlc@sccourts.org>

Mon, Mar 11, 2019 at 12:07 PM

To: "Randall S. Hiller" <rsh@rshpa.org>

Cc: Jacob Hughes <jacobmhughes@gmail.com>, "Ritchie, Virginia" <VRitchie@greenvillecounty.org>

Good afternoon Mr. Hiller,

The Court has just received your motion to modify or amend the recent order in the Stone International v. Byte Software case. The Judge would like to know which factual findings specifically you are referring to in the grounds of your motion. If you could please provide the Court with more detail it would be much appreciated.

Thank you.

Mary Grace Carey

Law Clerk to the Honorable Edward W. Miller

305 E. North Street, Suite 219

Greenville, South Carolina 29601

(864) 467-8558

(864)- 233-4173 Fax

emillerlc@sccourts.org

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Randall Hiller <rsh@rshpa.org>

Mon, Mar 11, 2019 at 7:51 PM

To: "Miller, Edward W. Law Clerk (Mary Grace Carey)" <emillerlc@sccourts.org>

Cc: Jacob Hughes <jacobmhughes@gmail.com>, "Ritchie, Virginia" <VRitchie@greenvillecounty.org>

I am on vacation and do not have the file. But the statement that an order to compel was issued is irrelevant to the relief granted and that it was not complied with is both irrelevant and factually incorrect.

Randall S. Hiller

Randall S. Hiller, P.A.

Attorney at Law

850-B Wade Hampton Blvd.

Greenville, SC 29609

(864) 232-0026

Randall S. Hiller

Randall S. Hiller, P.A.

Attorney at Law

850-B Wade Hampton Blvd.

Greenville, SC 29609

(864) 232-0026

[Quoted text hidden]

Miller, Edward W. Law Clerk (Mary Grace Carey) <emillerlc@sccourts.org>
To: Randall Hiller <rsh@rshpa.org>, Jacob Hughes <jacobmhughes@gmail.com>

Wed, Mar 13, 2019 at 9:57 AM

Good morning Mr. Hughes,

Judge Miller is considering signing an amended order reflecting the changes voiced by Mr. Hiller below. Would you have any objections to such an amended order?

Thank you,
Mary Grace Carey

[Quoted text hidden]

Jacob Hughes <jacobmhughes@gmail.com>
To: "Miller, Edward W. Law Clerk (Mary Grace Carey)" <emillerlc@sccourts.org>
Cc: Randall Hiller <rsh@rshpa.org>
Bcc: "Parham, Jr., James C." <jparham@wyche.com>

Wed, Mar 13, 2019 at 3:06 PM

Good afternoon, Mary Grace:

I do object to an amended order reflecting the changes voiced by Mr. Hiller.

I am attaching a brief response, as well as copies of two letters sent by Stone's prior counsel, Josh Smith, Esq., to Mr. Hiller. These letters confirm that defense counsel ignored both the rules of discovery and the Court's November 18, 2010 Order to produce the "vital information" sought by Stone. Mr. Smith specifically references the delay caused by such refusal, even after the Court issued its Order. Until this very day, Mr. Hiller has not produced the requested information.

In light of Mr. Hiller's Motion to Modify or Amend and the attached letters, I have also included Stone's previous Proposed Order suggesting a change of two sentences, if the Court agrees. Please see the attached Response to Mr. Hiller's motion.

Thank you.

With kind regards,

Jacob Hughes





[Quoted text hidden]

--

Jacob M. Hughes
Attorney at Law
Hughes Law Firm, L.L.C.
50 Marchbanks Drive
Greenville, S.C. 29617
(864) 569-2498
jacobmhughes@gmail.com

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No privilege is waived by inadvertent transmission.
Thank you.

4 attachments

-  **Response to Defendants' Motion to Modify or Amend.pdf**
97K
-  **December 13, 2010 Letter to Mr. Hiller.pdf**
2014K
-  **January 24, 2011 Letter to Mr. Hiller.pdf**
2448K
-  **Proposed Order_Stone Int'l v. Byte Software.docx**
22K

Jacob Hughes <jacobmhughes@gmail.com>
To: "Miller, Edward W. Law Clerk (Mary Grace Carey)" <emillerlc@sccourts.org>
Cc: Randall Hiller <rsh@rshpa.org>


Fri, Mar 15, 2019 at 4:01 PM

Dear Mary Grace:

Please see attached letter. Thank you.

Kind regards,

Jacob Hughes
[Quoted text hidden]

-
-  **Letter_3_15_19.pdf**
300K

Randall S. Hiller <rsh@rshpa.org>
To: Jacob Hughes <jacobmhughes@gmail.com>, "Miller, Edward W. Law Clerk (Mary Grace Carey)" <emillerlc@sccourts.org>

Mon, Mar 18, 2019 at 3:34 PM

Please see a proposed Amended Order that, in my opinion, reflects the very request made by Mr. Hughes in objecting to my proposed Order in this quote;

"The sole communication from the Court on the subject states that Judge Miller "has decided to dismiss the case for failure to prosecute pursuant to [R]ule 41." Respectfully, the final order should contain a concise statement of the facts and authority for the Court's decision. Arguments beyond this limited scope are irrelevant."

Randall S. Hiller

Randall S. Hiller, P.A.

Attorneys at Law
850 Wade Hampton Blvd.
Greenville, S.C. 29609
(864) 232-0026

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[Quoted text hidden]



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Proposed Order_Stone Int'l v. Byte Software.amended.docx
21K

Jacob Hughes <jacobmhughes@gmail.com>

Fri, Mar 29, 2019 at 1:04 PM

To: "Miller, Edward W. Law Clerk (Mary Grace Carey)" <emillerlc@sccourts.org>

Cc: "Randall S. Hiller" <rsh@rshpa.org>

Good afternoon, Mary Grace:

I am writing to see if Judge Miller has decided whether to amend his recent order of dismissal filed March 7.

I have previously set forth evidence why defense counsel's refusal to cooperate in discovery is not only factual but also relevant to the timeline of this litigation.

Moreover, Mr. Hiller's "Motion to Modify or Amend" cites Rule 55 (Default) and Rule 60, SCRCP. Neither rule appears supportive of his "motion" or relevant to the facts and procedural history of this case. I would appreciate the Court's guidance.

Thank you very much.

With kind regards,

Jacob Hughes

[Quoted text hidden]

Miller, Edward W. Law Clerk (Mary Grace Carey) <emillerlc@sccourts.org>

Thu, Apr 4, 2019 at 11:22 AM

To: Jacob Hughes <jacobmhughes@gmail.com>, "Randall S. Hiller" <rsh@rshpa.org>

Good morning gentlemen,

Judge Miller has considered your proposed orders, and has decided to sign that of Mr. Hiller. Mr. Hiller, would you please submit the proposed order via our e-filing system for signature?

Thank you both.

4

Mary Grace Carey

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Stone International, LLC, and Eugene E.)
 Stone, IV,)
)
 Plaintiffs,)
)
 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.)
)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT
BUSINESS COURT

CIVIL ACTION NO.:
 2009-CP-23-5000

**RESPONSE TO DEFENDANTS'
 MOTION TO MODIFY OR AMEND**

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Plaintiffs, Stone International, LLC, and Eugene E. Stone, IV (collectively, "Stone"), submit the following response to Defendants' Motion to Modify or Amend:

1. Stone objects to an amended order that would eliminate reference to Plaintiffs' Motion to Compel, to this Court's November 18, 2010 Order to Compel Production, and to defense counsel's failure and refusal to comply with said Order.

2. Mr. Hiller claims his non-compliance with the Order is "irrelevant and factually incorrect." Stone strongly disagrees. As evidence, Stone attaches two letters from his prior counsel, Josh Smith, Esq., to Randall S. Hiller, Esq., dated December 13, 2010, and January 24, 2011. Both letters confirm that Mr. Hiller refused to produce the "vital information" requested by Stone, ignoring the rules of discovery and even ignoring an order of this Court:

"Unfortunately, however, the production was incomplete and failed to contain what we have consistently maintained is the most important information for our client to obtain—information and documentation regarding the financial condition of the business since the Defendants locked Stone International out of the Byte facilities on April 9, 2009. Notwithstanding all

the protections for the production of this information already in place, your client appears to refuse to provide this vital information. *We have unfortunately encountered an on-going series of delays during the past seven months regarding this issue.*” (emphasis added)

“You[r] client’s failure to produce the information requested is a violation of the Court’s November 18th Order It is unfortunate that the good faith production of the relevant discovery information and materials we have sought since June continues to be an issue. We are disappointed that we cannot get this basic information even under an Order of the Court.”

“After a careful review of the documents provided, we have found that the production is still incomplete. Defendants have provided virtually no documentation concerning the financial condition of the business since Defendants locked Plaintiff out on April 9, 2009.”

“The Defendants’ continuous failure to provide the documents requested by Plaintiff is a violation of Judge Miller’s Order of November 18, 2010. . . . We have been consistently disappointed by your client’s failure to provide the documents requested even under the Order of the Court.”

3. Mr. Hiller has asked that the Court amend its Order of Dismissal of March 7, 2019.

In light of his Motion to Modify or Amend and the attached letters confirming Stone’s position, Stone respectfully requests that the Order be amended as follows: “Defendants’ counsel not only ignored the relevant rules of discovery but also blatantly ignored the November 18, 2010 Order of the Court to produce this vital information sought by Stone. Such failure and refusal to produce is defense counsel’s contribution to the delay in this case.”

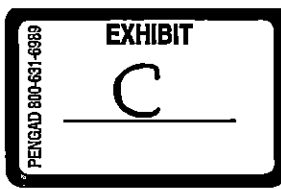
4. Stone submits its previous Proposed Order reflecting the above-suggested alterations.

Respectfully submitted,

HUGHES LAW FIRM, L.L.C.

By: s/ Jacob Michael Hughes
Jacob Michael Hughes, S.C. Bar #100646
50 Marchbanks Drive
Greenville, South Carolina 29617
(864) 569-2498
jacobmhughes@gmail.com
Attorney for Plaintiffs

March 13, 2019
Greenville, South Carolina



HUGHES LAW FIRM, L.L.C.

March 15, 2019

VIA ELECTRONIC MAIL
The Honorable Edward W. Miller
Greenville County Courthouse
305 E. North Street, Suite 219
Greenville, S.C. 29601

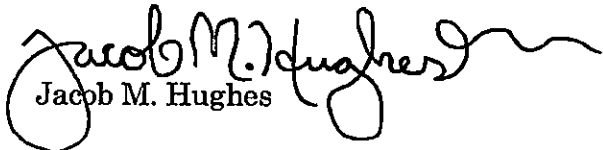
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RE: *Stone International, LLC v. Byte Software, LLC*
Case No.: 2009-CP-23-5000

Dear Judge Miller:

To supplement Plaintiffs' Response of March 13, 2019, Mr. Hiller's Motion to "Modify or Amend" is explicitly based on Rules 55 and 60, SCRPC, neither of which appear to have any relevance to his motion or to this case.

Respectfully,


Jacob M. Hughes

cc: Randall S. Hiller, Esq.

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

v.

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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 theRespondents.

CERTIFICATE OF SERVICE

I certify that, on September 30, 2019, I served the foregoing Return to Respondents'
Motion to Strike upon all other counsel of record, by depositing a copy of the same in the
U.S. mail, first-class postage prepaid, addressed as follows:

Randall S. Hiller, Esq.
RANDALL S. HILLER, P.A.
850 Wade Hampton Blvd.
Greenville, SC 29609
Attorney for Respondents



Jacob Michael Hughes

September 30, 2019
Port Royal, South Carolina

HUGHES LAW FIRM, L.L.C.

September 30, 2019

VIA U.S. MAIL

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

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RE: *Stone International, LLC, et al. v. Byte Software, LLC, et al.*
Appellate Case No.: 2009-000601

Dear Ms. Kitchings:

Enclosed herein for filing is the original and six (6) copies of Appellants' Return to Respondents' Motion to Strike. By copy of this letter, I have served counsel of record for Respondents, as indicated in the Certificate of Service.

With kind regards, I am

Sincerely,


Jacob M. Hughes

cc: Randall S. Hiller, Esq.
850 Wade Hampton Boulevard
Greenville, South Carolina 29609

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Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia SC 29211-1629

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