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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

SEP 14 2020

SC Court of Appeals

Appeal from Berkeley County
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

Case No. 2018-CP-08-00266
Case No. 2018-CP-08-01008
Appellate Tracking No.: 2019-001169

Aracelis Santos,Appellant,

vs.

Harris Investment Holdings, L.L.C., Respondent,

RETURN TO RESPONDENT’S MOTION TO FILE SUR REPLY

Thomas R. Goldstein, S. C. Bar No. 2186
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Attorneys for Appellant

Pursuant to Rule 240(e) of the *South Carolina Appellate Court Rules*, the Appellant files this brief Return to the Respondent's September 9, 2020, request to file a sur reply. The Appellant objects to the filing of a sur-reply on the following grounds:

1. There is no provision for sur-replies in the *South Carolina Appellate Court Rules*.
2. The 41-page sur reply is unnecessary. On August 28, 2020, the Respondent represented to this Court that it destroyed the Appellant's restaurant/discotheque because the building contained extensive asbestos." See Respondent's Return at page2 and 5:

“[Harris Investments] demolished its building in March of 2019 after making the decision to redevelop the property following the discovery of significant levels of asbestos in the building, remediation of which would have been prohibitively expensive.” . . . “In the meantime, Harris Investments decided to redevelop the property **following its discovery of significant levels of asbestos in the building** and preliminary efforts at remediation. (emphasis added)

The Respondent knew its statements were material misstatements of fact as the Respondent hired an expert materials laboratory to evaluate the building as a precondition to knocking it down. Appellant pointed out these misrepresentations to the Court in further support of his September 2, 2020, request to remand the matter to the trial court to re-evaluate the award of attorney's fees in light of Respondent's post judgment conduct. What the Respondent intends to do with its property after it knocked the building down is unrelated to its previous decision to destroy it while the issue of ejectment was on appeal, which prevents the Court from having an opportunity to examine the record to determine if the Magistrate did or did not err in putting the Respondent out. (For unknown reasons, the Respondent attempts to argue that Appellant “abandoned” her appeal of the ejectment because she tailored her Initial Brief to address the fact that her building no longer exists.

We can all agree that the Appellant is never returning to a building that no longer exists so it is both a futile act and a waste of judicial resources to argue that she should be permitted to hold on to her tenancy in a building the Respondent destroyed.)

3. The reason this case is before the Court is because the Respondent ran up \$55,000.00 in attorney's fee in resolving a non-jury magistrate court ejectment trial that took less than a day. Even though the Respondent's 41-page request to file a sur reply not authorized by the Rules sheds a light on how this happened, the Respondent's post destruction plans for its property does nothing to assist the Court in analyzing whether the attorney's fee award was or was not proper, nor does it shed any light on why Respondent mislead this Court that it knocked the building down to protect the Appellant or the public from exposure to asbestos when it knew no asbestos was present.

For any or all of these reasons, Appellant respectfully requests that the Respondent's application to file a 41-page sur-reply be denied.

Respectfully submitted,

September 9, 2020



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Case No. 2018-CP-08-00266
Case No. 2018-CP-08-01008
Appellate Tracking No.: 2019-001169

Aracelis Santos,Appellant,

vs.

Harris Investment Holdings, L.L.C., Respondent,

PROOF OF SERVICE

I certify that I have served the Appellant's Return to Respondent's Motion for Leave to File a Sur Reply by depositing a copy of it in the United States Mail, postage prepaid, on September 9, 2020, addressed to the attorneys of record, Merritt Abney, 151 Meeting Street, Sixth Floor, Charleston, S. C. 29401-2239.

September 9, 2020



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September 9, 2020

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Hon. Jenny A. Kitchings,
Clerk of Court
S. C. Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

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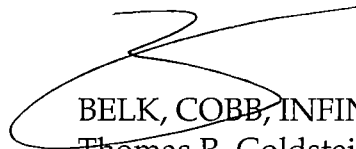
SC Court of Appeals

Re: Aracelis Santos v. Harris Investment Holdings, L.L.C.
Case Nos.: 2018-CP-08-00266 and 2018-CP-08-01008; Appellate Tracking
Number 2019-00169

Dear Ms. Kitchings,

I enclose an original and seven copies of Appellant's Return to Respondent's Motion to File Sur Reply along with a proof of service. Would you be so kind as to file these and return clocked copies to me in the envelope provided? I thank you in advance for your attention to this request. With kind regards, I am

Very truly yours,



BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/

enclosure: Return, return envelope

cc: Merritt Abney, Esq.
Merritt Abney
151 Meeting Street
Sixth Floor
Charleston, S. C. 29401

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