

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Oct 08 2020

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
ROBERT E HOOD, CIRCUIT COURT JUDGE
Case No. 2019-CP-40-02126

B&B Attorneys, LLC,.....Plaintiffs,

vs.

Overture Eroica Walker, Stoney & Walker, LLC.,
Joy Stoney, and Stoney Law Firm, LLC,..... Defendants

and

Overture Eroica Walker, and
Stoney & Walker, LLC,..... Third-Party Plaintiffs,

vs.

Beth Bernstein and Lowell Bernstein Respondents,

Of Whom Overture Eroica Walker, Stoney & Walker, LLC,
are the Appellants.

**MOTION TO REMAND FOR
ENFORCEMENT OF SETTLEMENT**

Appellants Overture Eroica Walker and Stoney & Walker, LLC (“Appellants”) seek an order of this Court remanding the matter to the trial court for purposes of permitting the trial court to hear and rule on a motion to enforce settlement, the details of which are set forth in the attached Motion to Enforce Settlement (**Exhibit A**), which has been filed this date with the trial court.

Respectfully submitted,

/s/ Desa Ballard
Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169¹
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR APPELLANTS
OVERTURE E. WALKER AND STONEY
AND WALKER LLC

October 8, 2020

¹ Please note new address. Due to difficulties with the Post Office during Covid-19 shutdown we have reverted to our street address.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

B & B Attorneys, LLC,

Plaintiffs,

vs.

Overture Eroica Walker,
Stoney & Walker, LLC,
Joy Stoney, and
Stoney Law Firm, LLC,

Defendants

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2019- CP-40-2126

**MOTION TO ENFORCE
SETTLEMENT
And
PAY SETTLEMENT FUNDS INTO
COURT**

Overture Eroica Walker, and
Stoney & Walker, LLC

Third-Party Plaintiffs,

vs.

Beth Bernstein and Lowell Bernstein,

Third-Party Defendants.

Defendants Overture Eroica Walker, and Stoney & Walker, LLC (who are also “Third-Party Plaintiffs”), together with Defendants Joy Stoney and Stoney Law Firm LLC (referred to collectively as “the moving parties”), move to enforce a settlement which was agreed upon and reduced to writing in July of this year. In support of the motion, the moving parties will show as follows:

1. On July 30, 2020 James E. Smith Jr., counsel for Plaintiff and Third-Party Defendants, spoke by telephone with counsel for Defendants Joy Stoney and Stoney Law Firm LLC, and verbally confirmed the material terms of a settlement among the parties to this

action. On information and belief, James E. Smith Jr. was and is counsel for Plaintiff and Third-Party Defendants and authorized to speak on their behalf. **Exhibit A**
[TEXTS]

2. The material terms of the settlement agreement were reduced to writing and exchanged among counsel via email on July 31, 2020. Mr. Smith requested one provision be deleted from the settlement agreement and it was. *Id.*
3. Counsel for Defendants Joy Stoney and Stoney Law Firm LLC transmitted the revised settlement agreement to Mr. Smith by email on August 24, 2020. **Exhibit B.**
4. For reasons which are unknown, Mr. Smith became difficult to reach and has been unable to provide the moving parties with the signed agreement to which his clients verbally agreed. Mr. Smith has not been relieved as counsel either in this proceeding or in a related appeal currently pending at the South Carolina Court of Appeals, Appellate Case Number 2020.000124. **Exhibit C.**
5. Mr. Smith filed a Motion to Be Relieved as Counsel in the instant matter on August 14, 2020 by attorney James E. Smith Jr. (hereafter “Plaintiff’s counsel Smith. However, by that date, the material terms of the settlement had been reduced to writing and transmitted via email among counsel, which the moving parties are informed and believe constitutes a written confirmation of settlement agreement.
6. Late on October 8, 2020, Mr. Smith attempted to alter substantive terms of the already agreed-to settlement.

The moving parties remain willing to proceed with the settlement, as agreed in August, 2020, and have obtained two (2) extensions of time from the Court of Appeals because Mr. Smith will not respond to them regarding his client’s position. *Id.*

Moving parties are informed and believe they have an enforceable settlement between themselves and the parties represented by Mr. Smith, which agreement is memorialized by written exchanges in July, 2020 between their counsel and Plaintiff's Counsel Smith which constitute a written settlement agreement as to all significant terms. **Exhibit A.** Smith has inexplicably refused to return the signed formal settlement documents, but all material terms have been agreed to in writing, and the matter has been resolved.

Evidence will show that the agreement on the material terms of settlement were reached prior to filing by Plaintiff's Counsel Smith filed his motion to be relieved as counsel. Smith has continued to serve as counsel for Plaintiff in an appeal filed by opposing parties to the South Carolina court of appeals, Appellate Case No. 2020-000124.

The moving parties ask that, pursuant to Rule 67, SCRPC, the settlement funds which form the consideration for the settlement agreement (\$137,000.00) be paid into the Clerk of Court until resolution of this motion. A separate proposed order to that effect will be submitted.

Simultaneously with the filing of this Motion to Enforce Settlement, opposing parties are seeking permission from the Court of Appeals to remand the matter to this court for purposes of considering opposing parties' motion to enforce settlement, a copy of which was attached to the Motion to Remand which was filed this date with the Court of Appeals.

Wherefore, the moving parties request a hearing on the issues presented herein.

[signatures next page]

Respectfully submitted,

/s/ Desa Ballard
Desa Ballard
Harvey M. Watson III
BALLARD & WATSON
226 State Street¹
West Columbia, South Carolina 29169
Telephone 803.796.9299
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harvey@desaballard.com

ATTORNEYS FOR DEFENDANTS AND THIRD-
PARTY PLAINTIFFS OVERTURE E. WALKER
AND STONEY & WALKER LLC

/s/ Paul Reeves
Paul Reeves
Reeves & Lyle, LLC
Post Office Box 11126
Columbia, South Carolina 29211
Telephone 803.929.0001
Facsimile 803.929.0927
paul@reevesandlyle.com

ATTORNEY FOR DEFENDAND JOY STONEY
AND STONEY LAW FIRM, LLC

October 8, 2020

¹ Ballard & Watson has attempted to cease use of its post office box as a result of confusion with mail forwarding that occurred during the Covid-19 shutdown. The forwarding arrangement resulted in undelivered mail which caused significant difficulties, and Ballard & Watson has reverted solely to use of its street address for United States mail. Prior pleadings used the Post Office Box in the signature block.

B & B Attorneys LLC vs Overture Walker et. al.
Case No.: 2019-CP-40-02126

<u>Date</u>	<u>Time</u>	<u>To</u>	<u>From</u>	<u>Message</u>
2019.07.29	1:26 PM	James Smith	Paul Reeves	Hello. Is this case settled? Please let me know something. Thank you.
2019.07.30	5:56 AM	Paul Reeves	James Smith	Have not gotten confirmation from my clients
2019.07.30	immediately following above	James Smith	Paul Reeves	Can you talk later this morning? 9?
2019.07.30	immediately following above	Paul Reeves	James Smith	Sure, a littler earlier, say 0845 would be better.
2019.07.30	immediately following above	James Smith	Paul Reeves	8:30
2019.07.30	immediately following above	Paul Reeves	James Smith	Ok Thx
2019.07.31	1:33 PM	James Smith	Paul Reeves	Hello James. I am reaching out to tell you that I will forward you a release and settlement agreement that memorializes the payment of \$137,000. I am assuming you wil send me a release and settlement for the benefits of your clients because of the counter claims. Thank you.
2019.07.31	immediately following above	Paul Reeves	James Smith	You have to remove the. Agreement not to report to ODC - it is an impossible provision.
2019.07.31	immediately following above	Paul Reeves	James Smith	You can't place such a provision that violates a lawyers duty. But they are not reporting

2019.07.31	immediately following above	James Smith	Paul Reeves	I will seek advice on that but we can certainly work around that. Just trying to cover all the bases in hindsight that was a poor choice.
2019.07.31	4:27 PM	Paul Reeves	James Smith	Perfect - just send release. Thx
2019.08.31	10:36 AM	James Smith	Paul Reeves	Please let me hear from you concerning the releases. My clients have executed the release and are ready to move forward to closing this matter out.
2019.08.31	immediately following above	Paul Reeves	James Smith	Right - Checking thx
2019.09.18	8:44 AM	James Smith	Paul Reeves	Plesae send the executed documents
2019.09.18	immediately following above	Paul Reeves	James Smith	Will follow up today
2019.09.18	immediately following above	James Smith	Paul Reeves	Appreciate your efforts but we really need to get this done today. I'll to hear from you and receive the documents.

From: [Paul Reeves](#)
To: [James Smith](#)
Cc: [Jennifer Szumilas](#); [Overture Walker](#); [Joy Stoney](#); [Harvey Watson](#)
Subject: Mutual Release and Settlement Agreement
Date: Monday, August 24, 2020 11:30:31 AM
Attachments: [Revised 2nd Release.docx](#)
[2020.08.24 Letter James Smith.docx](#)

Please see the attached correspondence and release document.

I look forward to hearing from you in the next day or two.

Thank you,

Paul

South Carolina Appellate Case Management System

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Case Information: 2020-000124

Court:	Court of Appeals	Classification:	Appeal - Common Pleas - Other
Short Title:	B&B Attorneys, LLC v. Overture Eroica Walker View Full Title	Case Status:	Initial Briefing
Consolidated:			
Filed Date:	01/24/2020	Oral Argument Date:	
Disposition Date:		Disposition Type:	
Remittitur Date:			
Lower Court or Tribunal:	Richland (2019CP4002126)		















- Party Information

Appellate Role	Party Name	Former	Attorney(s)
Appellant	Stoney & Walker, LLC	N	Desa Ballard Harvey M. Watson, III
Appellant	Overture Eroica Walker	N	Desa Ballard Harvey M. Watson, III
Respondent	Beth Bernstein	N	James Emerson Smith, Jr.
Respondent	Lowell Bernstein	N	James Emerson Smith, Jr.
Respondent	Stoney Law Firm, LLC	N	Paul L. Reeves

Views

Display:

Event Information

Filed Date	Event Information	Doc
09/28/2020	Non-Dispositional Decision - 2nd Extension Granted for Appellant's Initial Brief and Designation of Matter	
09/25/2020	Motion - Extension of Time (2nd) for Appellant's Initial Brief and Designation of Matter	
08/31/2020	Non-Dispositional Decision - Extension Granted Appellant's initial brief and Designation of Matter	
08/27/2020	Motion - Extension of Time (1st) Appellants' Initial Brief and Designation of Matter	
07/31/2020	Transcript Documents - Transcript Delivered - Direct Appeal	
05/21/2020	Correspondence - Outgoing (Correct Case Title)	
05/21/2020	Non-Dispositional Decision - Order Allowing Late filing of Transcript Status	
05/12/2020	Transcript Documents - Notification that Transcript has not been Received	
05/12/2020	Motion - Allow Late Filing of Transcript Status	
04/24/2020	Correspondence - Outgoing (Letter - Transcript OverDue)	
02/25/2020	Correspondence - Outgoing (Correct Case Title)	
02/04/2020	Correspondence - Outgoing (Notice of Appeal Initial Letter)	
01/30/2020	Transcript Documents - Transcript Ordered	
01/24/2020	Notice of Appeal (Civil) - Initial	

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APPEAL FROM RICHLAND COUNTY
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SC Court of Appeals

B&B Attorneys, LLC,..... Plaintiff,

vs.

Overture Eroica Walker, Stoney & Walker, LLC.,
Joy Stoney, and Stoney Law Firm, LLC,..... Defendants

and

Overture Eroica Walker, and
Stoney & Walker, LLC,..... Third-Party Plaintiffs,

vs.

Beth Bernstein and Lowell Bernstein Respondents

Of Whom Overture Eroica Walker, Stoney & Walker, LLC,
are the Appellants.

PROOF OF SERVICE

I, Mara Ballard, an employee of Ballard & Watson, Attorneys at Law, do hereby certify that on October 8, 2020, I served a copy of the **Motion to Remand** in the above-captioned case on the following individuals by electronic mail addressed as follows:

James E. Smith, Jr., Esquire
james@jamesmithpa.com

Paul Reeves, Esquire
paul@reevesandlyle.com


Mara Ballard, Forensic Accountant

October 8, 2020
West Columbia, South Carolina



Ballard & Watson
Attorneys at Law
PERSISTENT, UNWAVERING

Desa Ballard
Harvey M. Watson, III

226 State Street West Columbia, SC 29169
Post Office Box 6338, West Columbia, SC 29171
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

October 8, 2020

Via Email (ctappfilings@sccourts.org)
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

Oct 08 2020

SC Court of Appeals

Re: *B&B Attorneys, LLC v. Overture Eroica Walker*
Appellate Case No.: 2020-000124

Dear Ms. Kitchings:

Please find enclosed for filing a Motion to Remand to the trial court.

Thank you in advance for your consideration of this request. If you have any questions, please do not hesitate to contact my office. With warm personal regards, I am,

Sincerely yours,

Desa Ballard

Desa Ballard
Desab@desaballard.com

cc: Via Email
Paul Reeves, Esquire
James E. Smith, Jr., Esquire
Overture Walker, Esq. (via email)