

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2021-000804

**RECEIVED**

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**SC Court of Appeals**

Johnnie Cordero .....Appellant

v.

Matthew Kisner, in his official capacity as  
Chair of The Richland County Democratic  
Party; The Richland County Democratic Party;  
Trav Robertson, Jr., in his official capacity as  
Chair of The South Carolina Democratic  
Party; The South Carolina Democratic Party..... Respondents.

**APPELLANT'S REPLY TO  
RESPONDENTS INITIAL BRIEF**

Appellant, acting on his own behalf, hereby replies to Respondents Initial Brief pursuant to S.C.App. Ct.R 208(3).

Appellant received Respondents Initial Brief on February 22, 2022. This Reply is filed within 10 days of receipt of the Initial Brief to address inaccuracies and/or misstatements and other issues raised by Respondents' Initial Brief.

## INACCURACY NUMBER ONE

Brief at page 7

Respondents state that "Appellant . . . contends that the proper date of remand was September 25, 2020, which he maintains, *without evidence*, is the date the circuit court "received" the federal court's order." Brief at page 7. (Italics mine). Without evidence?

The foregoing statement is an attempt to mislead the court. Included in Appellant's Designation of Matter to Be Included on Appeal is the following email addressed to Richland County Clerk of Court [Jeanette W.] McBride dated September 25, 2020, and simultaneously emailed to Nekki Shutt and Grant Lefever, and paralegals of their law firm, which reads, in pertinent part:

"Dear Ms. McBride:

Pursuant to an order entered today by the Honorable Joseph F. Anderson, Jr., United States District Judge, the above mentioned case has been remanded to your court. *Attached to this email is a certified copy of the order of remand. Also, attorneys and parties in the case have been notified they are responsible for supplementing the state record with all documents filed in Federal Court.*" (Italics added) *Cordero v. Kisner, 3:20-cv-02195-JFA Date Filed 09/25/20 Entry Number 41 Page 1 of 1. See also Cordero v. Kisner, 3:20-cv-02195-JFA Date Filed 09/25/20 Entry Number 40.*

This is prima facie evidence of Appellant's assertion. It also indicates that the Respondents' attorneys knew or should have known that the position they have taken both in the Circuit Court and now this Court is inaccurate.

This Court should also note that Respondents in their Designation of Matter to Be Included in the Record on Appeal at item #8 refer to Remand Order September 30, 2020. (R.p. \_\_\_). There is no Remand Order dated September 30, 2020. The Remand

Order referred to is dated 9/25/20 and indicates a certified copy of the remand was attached. The attached Remand Order is signed and dated September 25, 2020.

According to the Electronic Case Filing Policies and Procedures District of South Carolina 2.4 Consent to Electronic Service Registration constitutes consent to electronic service of all documents (except service of a summons and complaint under Fed. R. Civ. P. 4). See *infra* § 11 (Service).

In the instant case it is clear that the Remand Order was both filed and a certified copy of the order was electronically mailed to counsel for the Respondents and the Richland County Clerk of Court on 9/25/20.

Moreover, Respondents argued at the hearing on June 9, 2021, that the date of the remand was September 30, 2020, when they knew that the information they presented was false having received this information on September 25, 2020.

"MS. SHUTT: Yes, Your Honor, and just so there is no confusion, Judge Anderson issued his order on the dispositive motions on September 30 and simultaneously something was filed with the state court on the same day, but those dates are one and the same." (Trans. Page 7, lines 14 -17)."

Because Counsel knowingly made a false statement of fact to the tribunal and failed in more than a year to correct the false statement of material fact previously made to the tribunal amounts to a violation of Rule 407 South Carolina Rules of Professional Conduct: Rule 3.3 Candor Toward the Tribunal and should be sanctioned accordingly.

Appellant also notes that Respondents have failed to comply with the requirement contained in the Remand Order that parties are responsible for supplementing the state record with all documents filed in Federal Court. Because

Respondents never complied with the order of Federal District Court cited above the record before this court is incomplete.

In their Notice of Removal, a document filed under strictures of Rule 11, Respondents averred that "Defendants have not yet responded to the Complaint or Amended Complaint, as a response is not due until June 17, 2020, under the South Carolina Rules of Civil Procedure and by agreement of the parties." Notice of Removal page 2 para 5 (R. p \_\_). This court may logically ask whether Respondents are dishonest with this court or the federal district court?

## INACCURACY NUMBER TWO

Brief Page 6

"Appellant's service of the FAC resets Respondents' trial court filing deadline, as provided by Rule 15(a), SCRPC, and thereby implicates the automatic thirty-day extension in effect at the time. This made Respondents' deadline to answer or otherwise respond to Appellant's FAC July 17, 2020." (R.p.\_\_).

By the above statement Respondents' appear to argue that pursuant to Rule 15(a) Appellant's filing of an amended complaint somehow "reset" its filing deadline to July 17, 2020. This is a clear misreading of Rule 15(a). The Rule provides in pertinent part, that: "[a] party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the amended pleading, *whichever period is longer, . . . .*" (Italics added).

When the rule is applied in this case it provides no extension of time beyond the stipulated date of June 17, 2020, which is the longer period. (May 29, 2020 + 15 days =

June 13, 2020). Appellant also notes that the Rule 15(c) covering Relation Back of Amendments is instructive here.

Appellant recognizes that this Rule 15(c) is intended to cover statute of limitations problems when an amended complaint is received after the running of the statute to determine if the amended complaint is timely filed. Appellant argues however, that the rule should also apply when any question arises as to the date an amended complaint relates back to. In the instant case Respondents have apparently created a “reset” rule out of whole cloth.

Implicit in Respondents' argument is a recognition and acceptance of the enforceability of the stipulation of the parties entered on May 14, 2020. It seems that in this case the Respondents recognize the stipulated date of June 17, 2020, and add 30 days to it while elsewhere they ignore the stipulated date.

In fact, Respondents have been silent on the matter of the enforceability of a stipulation entered while the Emergency Order was in place. Respondents' silence on this important point should be considered agreement. In any event, if the stipulation is enforceable as Appellant argues the Circuit Court's calculation is inaccurate and therefore an incorrect reading of the law and an abuse of discretion warranting reversal.

In “An abuse of discretion occurs either when a court is controlled by some error of law, or where the order is based upon findings of fact lacking evidentiary support. *Townsend v. Townsend*, 356 S.C. 70, 587 S.E.2d 118 (Ct.App. 2003).”

In the instant case the Circuit Court order was based on an error of law in that the stipulation of the parties entered while the Emergency Order was in place was and remains enforceable. In spite of this fact the court concluded “[d]espite parties agreeing to a date of June 17, 2020 the Supreme Court Order applied to all statutory filing deadlines.” (R. p\_\_). This was not only an error of law but it also led to a miscalculation of the time for timely filing of the responsive pleading after remand. It is therefore an abuse of discretion warranting reversal.

### **Inaccuracy Number Three**

Brief page 7

Respondents argue that “Upon removal, Respondents had thirty-eight days remaining to answer or otherwise respond to the FAC.” In their Notice of Removal Respondents averred under strictures of Rule 11 that “Defendants have not yet responded to the Complaint or Amended Complaint, as a response is not due until June 17, 2020, under the South Carolina Rules of Civil Procedure and by agreement of the parties.” Which means that (1) on the date of removal Defendants had eight days left to the deadline for a response and (2) that the date was by agreement of the parties. Appellant contends that the court’s refusal to enforce the agreement was an abuse of discretion warranting reversal.

### **Inaccuracy Number Four**

Brief page 7

Respondents argue that the “. . . legality of the Coronavirus Emergency Order, the operation of the parties’ agreement as to Respondents deadline to respond to the original complaint, and Respondents’ “constructive notice” of the Summons and

Complaint are not preserved for appellate review or are not supported by legal authority or both.” (R. p\_\_).

Curiously, the Coronavirus argument was raised initially by the Respondents both in the Circuit Court and the Federal District Court. In the Circuit Court Defendants raised the Emergency Order argument on February 3, 2020 in their Joint Memorandum in Opposition to Plaintiff’s Motion for Default Judgment at page 3, para 3. (R. p\_\_), and in their Memorandum in Support of Defendant’s Joint Motion to Dismiss Pursuant to Rule 12(b)(6), SCRPC at page 1, para 2, and n1; and page 2, para 1 and 2 and n2, also dated February 3, 2020. (R. p\_\_). In each case Respondents argued that the Defendant’s acts or omissions were the result of their response to the pandemic.

In each case Appellant filed responses in opposition specifically opposing the Emergency Order argument. See. Plaintiff’s Memorandum in Opposition to Defendants’ Joint Motion To Dismiss Pursuant to Rule 12(b)(6) dated February 16, 2021, page 1, para 1 (R. p\_\_) and Plaintiff’s Response to Memorandum in Opposition to Motion for Default Judgment Pursuant to Rule 55 SCRP, (R. p \_\_).

Respondents also raised the identical argument in the Federal Court in their Joint Reply to Plaintiff’s Response in Opposition To Defendants’ Motion to Dismiss at page 1 para 2 and page 2, para 1. (R. p \_\_) dated July 27, 2020. *Cordero v. Kisner*, 3:20-cv-02195-JFA Date Filed 07/27/20 Entry Number 24.

In light of these facts Appellant is amazed that Respondents would raise this clearly meritless argument.

## Inaccuracy Number Five

Brief page 7

Respondents argue that Appellant's constructive notice argument was not raised below. Appellant concedes that it was not. However, it is all over the record and this court can take judicial notice of it even though it was not explicitly raised in the court below.

Respondents raised this argument themselves when they admitted that "Respondents Matthew Kisner and the Richland County Democratic Party ("RCDP") were served with a copy of the Summons and Complaint on or about April 17, 2020." Respondents Initial Brief page 2 para 2. (R.p \_\_).

Also in their Notice of Removal to federal court Respondents indicated "Defendants Matthew Kisner and The Richland County Democratic Party were served with the Summons and Complaint on or about April 17, 2020." Notice of Removal page 1 para 2 (R. p \_\_).

Clearly that was constructive notice when it is considered that Respondents held an Emergency Meeting of its Executive Committee on April 20, 2020 to discuss the lawsuit. As to whether or not this matter was raised in the court below, Appellant concedes that it was not. See Plaintiff's First Amended Complaint p. (R. p\_\_).

Appellant contends and urges this court to find that because these matters appear throughout the record and were raised by Respondents and responded to by the Appellant this court can take judicial notice of them even if they were not explicitly raised in the court below. "A court can take judicial notice of adjudicative facts at any

stage of the proceedings. A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records. 31 C.J.S., Evidence, Section 50(1), p. 1018-1021. "Adjudicative facts are "facts about the particular event which gave rise to the lawsuit and ... [help] explain who did what, when, where, how and with what motive and intent.'" S.C.R. Evid. 201. See also, *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct.App. 1984).("a court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.")

The reason Appellant did not raise the issue below is because Appellant had a signed, filed agreement and in good faith believed that it was enforceable. Appellant could not have anticipated that the agreement would not be enforced by the court. Nor could Appellant anticipate that Respondents would not honor the agreement.

The court below simply did not rule on the enforceability of the agreement. However, it is clear as indicated above that Respondents admit that Defendant Kisner was served on April 17, 2020. But this date does not alter the outcome. If the Respondents are forced to use April 17, 2020, as the commencement date and add sixty days it would still be June 17, 2020 in which case they would still have eight days from September 25, 2020 or until October 3, 2020 to file their response. The response was filed on October 26, 2020.

Appellant argued in the circuit court that the plaintiff is the master of the complaint lawsuit and defendants are not permitted to determine what the lawsuit is about.

"MR. CORDERO: Okay. First of all, I think almost by way of motion in limine, the Court should recognize as I'm sure you will, the Plaintiff is the master of the complaint and not the Defendants, and with all due respect to the Defendants, I would argue that they don't get to determine what this lawsuit is about, just as an initial proposition." (Trans. P.12, lines 5-9) (R. p. \_\_)

Appellant also indicated in both his original complaint and his First Amended Complaint that the gravamen of his lawsuit was "... the generational, incremental, continued disenfranchisement of the African American Democratic Electorate of South Carolina in an attempt to maintain white supremacy." Appellant also raised this issue in the hearing on June 9, 2021. Where he stated as follows:

[MR. CORDERO:] "They don't want to answer this lawsuit, because they understand what this lawsuit is about, and this is important for the record that Your Honor must - and I hope Your Honor will understand this. This issue is not about the South Carolina laws. This issue is about the disenfranchisement of a whole host of African-Americans in Richland County and the - and the South Carolina Democratic Party's continued refusal to acknowledge and - to acknowledge the importance of the African-American vote in South Carolina and within the Democratic Party and to do everything that yte can to prevent the majority electorate in the South Carolina Democratic Party from getting a leadership role in the South Carolina Democratic Party, and I would argue, Your Honor, that this is no more than Elmore v. Rice revisited, the case that overturned the white primary in South Carolina. They're doing the same thing now that they did then. In fact, they're making the same arguments; fait accompli, there's nothing you can do. We've taken care of it. That's what their argument is about." (Trans. 6/9/21. Page 15, lines 17-25, page 16, lines 1-6. (R. p. \_\_).

Thereafter, at Page 16 lines 7-25, page 17, lines 1-25; page 18, lines 1-25; page 19, lines 1-17 Appellant sets forth the entire history underlying the cause of action and the gravamen of the cause of action.

Appellant contends that these matters were never addressed by the circuit court and that this court can take judicial notice of these adjudicative facts and either render judgment accordingly or remand the matter to the circuit court for further proceedings.

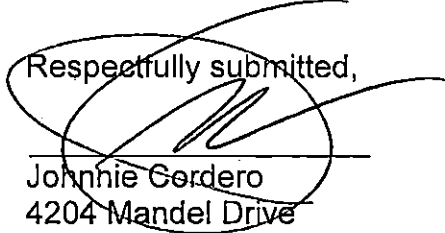
Finally, the Respondents filed a Notice of Constitutional Question indicating that "Defendants raised a question concerning the constitutionality of South Carolina Code Ann. §§ 7-9-70,-80 and -100 as set forth fully in Defendant's Memorandum In Support of their Motion to Dismiss Pursuant to Rule 12(b)(6) (ECF9-1, pp.4-5). Pursuant to Rule 5.1(a)(2), Defendants' counsel has served the South Carolina Attorney General with a copy of this Notice and the pertinent motion and memorandum via certified mail. *Cordero v. Kisner*, 3:20-cv-02195-JFA Date Filed 07/27/20 Entry Number 23 Page 1 of 2. (R. p\_\_).

Appellant contends that by Respondents' own admission they have raised a question concerning the constitutionality of a South Carolina statute requiring the South Carolina Attorney General to be joined as a necessary party. Appellant is aware that the Rule 5.1(a) of the Federal Rules of Civil Procedure only requires notice to the Attorney General. Appellant argues however that the mere fact that Defendants raised the issue is instructive and that this court may take judicial notice of this matter as well.

### Conclusion

For the foregoing reasons Appellant respectfully argues that the above referenced matters should be considered by this court.

Dated: March 3, 2022  
Columbia, SC 29210

Respectfully submitted,  
  
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Tel.: (803)753-8091  
Appellant, pro se

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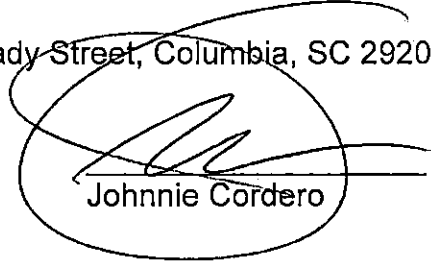
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**CERTIFICATE OF SERVICE**

I, Johnnie Cordero, hereby certify that I did serve an exact copy of  
APPELLANT'S REPLY TO RESPONDENTS INITIAL BRIEF on the attorneys for the  
Respondents by mailing a copy of same via USPS first-class mail, and addressed as  
follows: BURNETTE SHUTT & MCDANIEL, PA, 912 Lady Street, Columbia, SC 29202.

Dated: March 3, 2022  
Columbia, South Carolina

  
Johnnie Cordero