

FORM 13
BRIEF OF APPELLANT*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

George E. Brown, Circuit Court Judge

Case No. 2017-CP-00-00000

Stephen L. Doe, as Personal
Representative of the Estate of
John B. Doe, Respondent,

v.

Jane C. Roe, Appellant.

[INITIAL] BRIEF OF APPELLANT

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* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Standard of Review 1

Facts 1

Arguments

1. BECAUSE RESPONDENT COULD HAVE RAISED FRAUD IN HIS PRIOR BREACH OF CONTRACT SUIT AGAINST APPELLANT, HE IS BARRED BY RES JUDICATA FROM BRINGING THIS SUIT2

2. BECAUSE FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE COURT ERRED WHEN IT CHARGED THE JURY THAT THE RESPONDENT MUST PROVE FRAUD BY A PREPONDERANCE OF THE EVIDENCE.....2

Conclusion2

TABLE OF AUTHORITIES*

CASES

Able v. Brown, 17 S.C.L. (1 Bail.) 345 (1828).....2
Cates v. Doon, 234 S.C. 567, 90 S.E. 123 (1902).....2
State v. Ebert, 456 S.C. 789, 123 S.E.2d 456 (1963).....2

STATUTES

S.C. Code Ann. § 11-22-300 (1976).....2
S.C. Code Ann. § 22-33-400 (1985).....2
S.C. Code Ann. § 33-44-500 (Supp. 2000).....2

OTHER AUTHORITIES

RESTATEMENT (SECOND) OF CONTRACTS Section 100 (1981)2
RESTATEMENT (SECOND) OF PROPERTY Section 200 (1981).....2
RESTATEMENT (SECOND) OF TORTS Section 300 (1981)2

*The authorities cited are fictitious and intended to show the form of citation only.

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND THIS ACTION IS BARRED BY RES JUDICATA?
2. DID THE TRIAL COURT ERR IN CHARGING THE JURY THAT FRAUD MUST BE PROVED BY A PREPONDERANCE OF THE EVIDENCE?

STATEMENT OF THE CASE

On February 1, 2017, John B. Doe brought this action alleging fraud against Jane C. Roe. Roe answered alleging Doe's claim was precluded by judgment in a prior contract action between the parties. The contract action was tried on November 15, 2007, and judgment was entered on December 1, 2007.

Doe died before the trial of this case. By order of the court dated February 15, 2017, Stephen L. Doe, as personal representative, was substituted as plaintiff.

On August 15, 2017, the case was tried by a jury which found for Doe and awarded him \$10,000.00 in damages. On September 15, 2017, Roe served the Notice of Appeal on Doe.

STANDARD OF REVIEW

[Set forth appropriate standard of review with citation(s) to authority if all issues are governed by the same standard of review; otherwise include a separate section with a heading of "Standard of Review" at the start of the argument on each issue.]

FACTS

[Counsel may wish to set out the facts relevant to the arguments at this point in the brief. This, however, is optional, and the relevant facts may be included in the discussion of each argument. In either case, the brief must contain references to where the salient facts can be found in the Record on Appeal. In Initial Briefs, these references shall be made in the manner specified by Rule 208(b)(4), SCACR. In the Final Briefs, these references shall be to the page and line number of the Record on Appeal (i.e., R.p. 37, lines 7-8). Rules 211(b)(1), SCACR.]

ARGUMENTS

- I. BECAUSE RESPONDENT COULD HAVE RAISED FRAUD IN HIS PRIOR BREACH OF CONTRACT SUIT AGAINST APPELLANT, HE IS BARRED BY RES JUDICATA FROM BRINGING THIS SUIT.

[Set out discussion and citations of authority.]

- II. BECAUSE FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE TRIAL COURT ERRED WHEN IT CHARGED THE JURY THAT THE RESPONDENT MUST PROVE FRAUD BY A PREPONDERANCE OF THE EVIDENCE.

[Set out discussion and citations of authority.]

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

January 20, 2018

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