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**Jul 20 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2018-CP-26-00789

Roger D. Herrington II .....Respondent,

v.

Roger Dale Herrington and Eunice M. Herrington ..... Appellants,

**APPELLANTS' PETITION FOR REHEARING**

Walker H. Willcox #72608  
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Attorneys for Appellants

Pursuant to Rule 221(a), SCACR, the Appellants respectfully petition the Court for rehearing based on points overlooked or misapprehended by the Court. The Opinion of the Court was filed on July 6, 2022. In particular, the Appellants respectfully contend that the Court incorrectly decided the issue of whether laches barred the Respondent's claim and whether the Trial Court incorrectly allowed expert testimony as to damages.

I. Laches Bars the Respondents' Claims

The equitable doctrine of laches is "the neglect for an unreasonable length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Robinson v. Estate of Harris, 391 S.C. 114, 118, 705 S.E.2d 41, 43 (2011). To establish laches, a defendant must show: (1) delay, (2) unreasonable delay, and (3) prejudice. Hallums v. Hallums, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988).

The Court held that the Appellants failed to show unreasonable delay and material prejudice. However, no dispute exists that the alleged contract which forms the basis of the Respondent's claim would have been breached no later than 2005 or 2006. (R. p. 79, l. 24-p. 80, l. 11). At this point, the Respondent knew the contract was breached.

Even assuming the Respondent's version of the facts are true, the Respondent does not point to any alleged time frame Eunice gave to him to keep the business in her name in 2006. R. p. 88, l. 24-p. 89, l. 4. The legal statute of limitations would have expired in 2009 and the Respondent did not provide any clear or definite terms to indicate that the Appellants either extended the agreement or the Respondent reasonably believed they did not breach the agreement.

Moreover, the Respondent's damages were based on the alleged benefit he provided the business from 1995 to 2005. The passage of time required speculation as to the benefit provided,

which was impossible for the Appellants to defend. This is the precise type of claim the South Carolina Supreme Court held laches applied to preclude in Hallums, 296 S.C. at 198-199, 371 S.E.2d at 528. In addition, the Appellants sold the business based on the reasonable assumption that the Respondent did not believe a breach of a contract or a contract existed. Prejudice is found to exist under these circumstances. Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 432-33, 673 S.E.2d 448, 456 (2009)

II. The Trial Court incorrectly held that the Respondent's valuation of personal property he did not own was admissible lay expert opinion.

The Court held that the Appellants did not preserve the objection to the Respondent's lay opinion as to the value of machinery he did not own. However, no dispute exists that the Appellant objected to the evidence. (R. p. 97, l. 2-p. 98, l. 5). The Trial Court's ground for allowing the evidence was that it was permissible lay opinion testimony. Id. At this point, the Appellants were not required to clarify their stated objection. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731 (1998) (parties are not required to repeat objections to errors that have been ruled upon).

This evidence was the basis of the Jury's damages award. Admitting the evidence was error and was certainly prejudicial to the Appellants. The Appellants request that the Court review the argument and evidence and decide this issue in their favor.

**CONCLUSION**

The Appellants request that the Court grant a rehearing.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: \_\_\_\_\_



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v.

Roger Dale Herrington and Eunice M. Herrington ..... Appellants,

PROOF OF SERVICE

I certify that on July 20, 2022, I served the Petition for Rehearing on the Respondent, through his attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

George E. Graham  
P. O. Box 915  
Conway, SC 29528  
*Attorney for Respondent Roger D. Herrington II*

WILLCOX, BUYCK & WILLIAMS, P.A.

By: 

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Re: Roger D. Herrington II v. Roger Dale Herrington, et al  
2015-CP-26-01262  
Our File: 16079.16663

Dear Ms. Kitchings:

Pursuant to Walker's instructions, enclosed please find a copy of the Petition for Rehearing on the Respondent which was emailed today in the above referenced matter. Enclosed please find a check in the amount of \$50 for the filing fee, made payable to the Court of Appeals. By copy of this letter, I am sending a copy to opposing counsel. Please contact Walker with any questions or concerns.

With kind regards,



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Enclosures  
cc: George E. Graham