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Nov 28 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Lancaster County Civil Action Number 2018-CP-29-01191

The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate No. 2019-001143

J.A. Seagraves d/b/a J.A. Seagraves City Wide Paving,Appellant,

v.

North Regional III, LLC; Edgewater Corporate Center Association, Inc.; J&S Inc.; Loan Trust,
LLC; Sharestores Investments, LLC, Defendants,

Of which North Regional III, LLC,Respondent.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

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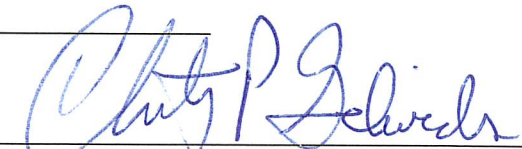
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ARGUMENT

In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument. Kennedy v. South Carolina Retirement System, 349 S.C. 531, 532, 564 S.E. 2d 322 (2001) citing Rule 221(a), SCACR. The Kennedy case involved the Petitioner's request that the Supreme Court rehear the case, asserting, as the majority opined, "one significant argument was not considered by the Court." The Court stated, that the "argument was not considered because it was never presented to this Court." Id. (emphasis added) "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Id.

The principles discussed in the Kennedy opinion are akin to the situation in this case. Appellant had an opportunity to present the record from the Circuit Court to this Appellate Court. It presented it without objection from Respondent. That record did not contain the Complaint. As Appellant indicates, this Court specifically requested it to provide the Complaint and other documents from the trial court, as shown by Appellant's Exhibit D to its Petition for Rehearing, on or about July 21, 2022. Whether through oversight, negligence, or other reason, the Appellant failed to provide the requested documents.¹ After providing Appellant multiple opportunities to provide the Complaint, this Court affirmed the circuit court's decision.² This Court, as in the Kennedy case, provided Appellant the additional opportunity to provide every reason, with supporting document, as to why it should have prevailed in the circuit court. Finally, as this Court noted in its decision affirming the Circuit Court's dismissal of this matter,

¹ Appellant's Counsel labels the failure to provide the documents an "inadvertent mistake" and "error".

² The Appellant did not request leave to supplement the record pursuant to S.C.R.A.P. 212.

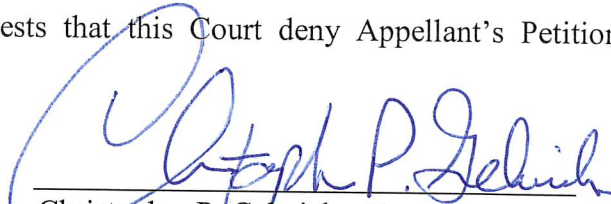
the Appellant carries the burden to present a record sufficient to allow for appellate review. This Petition for Rehearing asks this Court to revisit an argument that this Court already decided based upon Appellant's failure to provide the document requested. Having had multiple opportunities to provide this Court with its argument and supporting documentary basis for it, and after overlooking and failing to provide the Court with that information, Appellant should not be allowed to have the matter reconsidered by the Court.

Even if this Court were to now review the Complaint and other documentation attached to the Petition, as the Record reflects, the necessary elements sufficient to constitute a cause of action were not pled. The language in section S.C. Code 40-11-370 (c) is clear; an unlicensed or unregistered contractor cannot bring an action to enforce provisions of a contract. The code section is prohibitive, and thus it is essential for any such contract enforcement cause of action to survive that such licensure or registration be properly pled. Further S.C. Code Section 29-5-15(A) requires that a contractor be licensed or registered to file a mechanic's lien, and provide proof of such license or registration by recording the license or registration number on the lien. No such licensure or registration was pled. The Circuit Court did not review anything outside of the "four corners" of the complaint but, in dismissing the case, found that the "Complaint does not allege that the Plaintiff is a contractor licensed in South Carolina." Order Granting Motion to Dismiss Defendant North Regional III, LLC, (R. p. 1), and thus, the Appellant was prohibited from bringing this cause of action. (R. pp. 1-2). The Complaint lacked the required element showing licensing, (R. p. 18 lines 1-4) (R. p.1), and therefore, the Circuit Court properly dismissed the action pursuant to SCRCF 12(b)(6).

CONCLUSION

This Court properly affirmed the Circuit Court's decision based upon the Appellant's failure to provide the necessary documentation to allow for appellate review. The Petition for Rehearing asks this Court to overlook the Appellant's failure and rehear the matter. Having been given multiple opportunities to provide the Complaint, including this Court's specific requests for the Complaint, and failing to comply, Appellant should be precluded from having this Court consider this matter further. Even if this Court does decide to rehear the matter, for the reasons stated above and in the Respondent's brief, the Circuit Court was correct in its dismissal of the matter pursuant to SCRCP 12(b)6 and rehearing would result in the affirmation of the Circuit Court's decision. Thus, Respondent requests that this Court deny Appellant's Petition for Rehearing.

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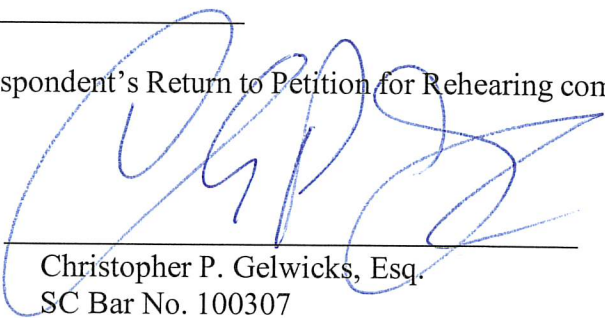
North Regional III, LLC; Edgewater Corporate Center Association, Inc.; J&S Inc.; Loan Trust, LLC; Sharestores Investments, LLC, Defendants,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Respondent's Return to Petition for Rehearing complies with Rule 240, SCACR.

November 28, 2022



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PROOF OF SERVICE

The undersigned certifies that he has served this Respondent's Return to Petition for Rehearing upon counsel for said Appellant by placing said copy in a postpaid envelope addressed as follows, which is the last known address, and by depositing said envelope and its contents in the United States mail:

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