

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

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Civil Action No. 2007-CP-07-3212  
**Appellate Case No. 2013-000647**

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H. Marshall Hoyler.....Appellant,

v.

The State of South Carolina  
Merry Land Properties, LLC and  
Nancy Deering Carey.....Respondents.

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**APPELLANT'S RETURN  
TO  
RESPONDENT MERRY LAND PROPERTIES, LLC'S AND  
RESPONDENT STATE OF SOUTH CAROLINA'S  
MOTIONS TO DISMISS APPEAL**

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JUN 06 2013

**SC Court of Appeals**

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**ARGUMENT IN RETURN**

Appellant, H. Marshall Hoyler, hereby returns to the Motions to Dismiss of Respondent Merry Land Properties, LLC, and Respondent State of South Carolina, (hereinafter the Motions are designated together as, "Motions to Dismiss").

Appellant's exceptions in his Initial Brief filed with this Court, were:

- I. THE LOWER COURT LACKED **SUBJECT MATTER JURISDICTION** TO ADD ADDITIONAL DEFENDANTS, BECAUSE THE APPELLANT'S ACTION WAS BROUGHT PURSUANT TO *SECTION 48-39-220, S.C. CODE ANN., (1976, AS AMENDED)*. (Emphasis supplied)
- II. THE LOWER COURT ERRED IN ADDING DEFENDANTS, BECAUSE **NO JUSTICIABLE CONTROVERSY** EXISTS BETWEEN THE APPELLANT AND THE CLASS OF DEFENDANTS PROPOSED TO BE ADDED BY THE LOWER COURT, OTHER THAN THE STATE OF SOUTH CAROLINA. (Emphasis supplied)
- III. THE LOWER COURT **ERRED IN FINDING THAT THE APPELLANT HAS STANDING** TO ASSERT CLAIMS AGAINST ADDITIONAL DEFENDANTS. (Emphasis supplied).
- IV. THE LOWER COURT **ERRED IN FAILING TO FOLLOW RULE 17(B), RULE 19 AND RULE 20(a)** OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE. (Emphasis supplied).

Respondents' Motions to Dismiss fail to substantively address the Appellant's exceptions, above, raised in Appellant's Initial Brief. Instead, the Motions to Dismiss address at length, the notion of an interlocutory Appeal, and Respondents' Motions to Dismiss are inapposite.

**ARGUMENT IN RETURN, (Cont.)**

Subject Matter Jurisdiction.

Appellant's first exception in this Appeal is that the lower Court lacked subject matter jurisdiction, because the Appellant's action was brought pursuant to *Section 48-39-220, S.C. Code Ann. (1976, as amended)*. Appellant's Initial Brief argued that this Statute contemplates an action against the State of South Carolina, and no other party.

*Section 48-39-220, S.C. Code Ann., (1976, as amended)*.

To determine the ownership of tideland, as between the State of South Carolina and an individual or corporate claimant, the State of South Carolina has established a specific statutory procedure which is set forth in *Section 48-39-220*. Once the South Carolina General Assembly has established a statutory scheme, a lower Court lacks subject matter jurisdiction to fashion a remedy outside the clear parameters of a specific Statute such as *Section 48-39-220*. *Byrd v. Irmo High School*, 468 SE 2d 861 (1996), stated that "[w]here a statute expressly enumerates the requirements on which it is to operate, additional requirements are not to be implied." Citing, *Trayco, Inc. v. United States*, 994 F.2d 832 (Fed.Cir.1993), *Byrd supra* at 865. Therefore, the lower Court cannot arbitrarily add Defendants beyond those anticipated under *Section 48-39-220*.

Subject Matter Jurisdiction May Be Raised At Any Time.

Respondents' Motions do not refute the line of cases, which hold that, "The issue of subject matter jurisdiction may be raised at any time including when raised for the first time to an appellate court." *Linda Mc Co., Inc., v. Shore*, 390 S.C. 543, 703 SE2d 499 (2010). Respondents' Motions do not substantively address Appellant's arguments. Appellant did not previously raise the subject matter jurisdiction argument before this Court and this Appeal and the previous Appeal are not essentially the same, as the Respondents allege in their Motions to Dismiss.

**ARGUMENT IN RETURN, (Cont.)**

Appellant's Remaining Exceptions.

Likewise, Respondents' Motions to Dismiss do not substantively address Appellant's remaining exceptions as to, justiciable controversy, standing and violations of the South Carolina Rules of Civil Procedure, cited by appellant in his Initial Brief.

Respondent Merry Land's Argument On The Timing of Appeal.

Respondent Merry Land argues in their Motion to Dismiss and attempts to assign importance to the fact that Appellant filed a Motion for Reconsideration with the Trial Court, which was never scheduled and heard by the trial Court prior to Petitioner filing his first Notice of Appeal.

"Mr. Hoyler sought reconsideration of the Joinder Order which the Circuit Court had not yet considered as of the date Mr. Hoyler initiated his first appeal. Notwithstanding the still outstanding consideration motion, Mr. Hoyler filed his Notice of Appeal on 21 April 2011." (page "3" of Respondent Merry Land's Motion).


South Carolina Appellate Courts have ruled that the filing of a Rule 59(e) Motion does not stay the time for filing an Appeal in all circumstances. Elam v. South Carolina Dept. of Transp., 602 S.E.2d 772 (2004). No prudent litigant would rely on the filing of a Rule 59(e) Motion, because the filing does not stay for the time for filing an appeal, unless the Rule 59(e) Motion meets certain criteria. Elam v. South Carolina Dept. of Transp., 602 S.E.2d 772 (2004).

In the case *sub judice*, the Trial Court gave no indication that the Appellant's Rule 59(e) Motion would be scheduled and heard before the time for Appeal expired, counting thirty days from the date of the Trial Court's Order. Accordingly, Appellant filed his first Notice of Appeal, just prior to the expiration of the thirty day window to file his Appeal.

**CONCLUSION**

Based on the foregoing, applicable Statutes and applicable South Carolina case law, Respondent Merry Land Properties, LLC's and Respondent State of South Carolina's Motions to Dismiss the Appeal, should be denied.

**AUSTIN & ROGERS, P.A.**

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June 6, 2013

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

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**PROOF OF SERVICE**

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I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have caused a copy of Appellant's Return to Respondent Merry Land Properties, LLC's and Respondent State of South Carolina's Motions to Dismiss Appeal and this Proof of Service, to be served, via U.S. Mail, on June 6, 2013, as addressed below.

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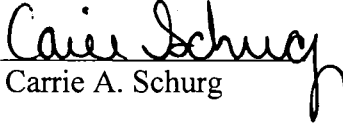
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Proof of Service  
June 6, 2013  
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Carrie A. Schurg

June 6, 2013  
Columbia, South Carolina

# Austin & Rogers, P.A.

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June 6, 2013

**VIA, HAND-DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

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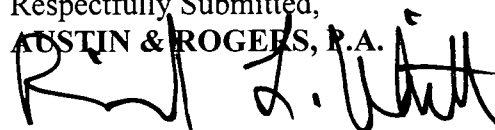
- Re: • H. Marshall Hoyler v. The State of South Carolina, et. al.  
• Appellate Case No.: 2013-000647  
• **Appellant's Return to Respondents' Motions to Dismiss Appeal**

Dear Ms. Kitchings:

Enclosed for filing please find Appellant's Return to Respondent Merry Land Properties, LLC's and Respondent State of South Carolina's Motions to Dismiss Appeal, the required six (6) copies of the Return and Proof of Service, in the above-referenced matter.

Please accept these documents for filing and acknowledge receipt of the same by file-stamping the extra enclosed copies and returning them to me, via our courier. If you have any questions or need additional information, please don't hesitate to contact the undersigned. With best regards, I am,

Respectfully Submitted,  
AUSTIN & ROGERS, P.A.



Jefferson D. Griffith, III  
Richard L. Whitt

Enclosures

cc: J. Emory Smith, Jr., Esquire  
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