

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Feb 07 2023**  
S.C. SUPREME COURT

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Appellate Case No.: 2021-001339

R. Keith Kelly, Circuit Court Judge

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Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes,  
Petitioner,

v.

Bank of America National Association,  
Respondent

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MOTION TO ARGUE AGAINST PRECEDENT

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Pursuant to Rules 217 and 240 of the South Carolina Appellate Court Rules, Petitioner Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes (“Hughes”), hereby moves the Court to allow Petitioner to argue against precedent during oral argument in this matter, which is scheduled for March 28, 2023 at 9:30am. In support of the motion, Petitioner would show the Court that:

1. The issues on appeal are:
  - a. Whether this Court should abolish the common law rule excepting fraud-based actions from South Carolina’s survival statute;

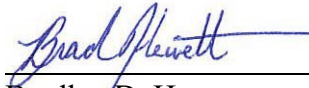
- b. Whether the doctrine of *res judicata* bars a state court action challenging existing precedent when claims related to that action were adjudicated in a federal court which lacked the jurisdiction to certify issues of state precedent or change controlling state law; and
- c. Whether the lower court erred in concluding that Petitioner's claims are time-barred.

2. The first issue is one on which Petitioner is arguing against the common-law precedent established by Mattison v. Palmetto State Life Ins. Co., 197 S.C. 256, 15 S.E.2d 117 (1941) and its progeny, which except fraud and fraud-based claims from the South Carolina survival statute.

3. Petitioner's challenge to common law precedent excepting fraud-based actions from South Carolina's survival statute is the core issue on appeal and largely frames Petitioner's arguments on the remaining issues. Thus, Petitioner submits that arguing against the precedent created by Mattison and its progeny will be necessary in order to meaningfully advocate and participate in oral argument and to answer questions which the Court may pose to Petitioner at that time.

WHEREFORE, Petitioner moves the Court to allow him to argue against precedent at oral argument in this matter.

Respectfully submitted,



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