

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2023-000760

Karen K. BaberAppellant,

v.

Summit Funding, Inc.; Appraisal Innovations, LLC; Brian L. Blue; The Gillen Law Firm,
P.A.; Michael F. Gillen; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert
Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom

Summit Funding, Inc.; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert
Ouzts; and Connie Delaney are the..... Respondents.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Attorney for Summit Funding, Inc

Pursuant to Rule 242(f), SCACR, Respondent Summit Funding, Inc. (Summit) hereby submits the within return to the petition for certiorari filed by Appellant (Petition).

Rule 242(d)(2), SCACR, states “[o]nly those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.” No other issues can be raised by a petition for writ of certiorari.

In the Opinion of the South Carolina Court of Appeals, the Court affirmed summary judgment in favor of Summit based upon Appellant’s failure to appeal the grounds for awarding summary judgment. Specifically, her failure to address “(1) the NHA did not create a private right of action for alleged breaches of regulations and (2) even if such a private right of action existed, the statute of limitations in this case expired before Baber filed her complaint.” (S.C. Court of Appeals, Unpublished Opinion 2023-UP-064, p.4.) Appellant’s failure to do so is dispositive of the appeal and required affirmance of the trial court’s granting of summary judgment.

Appellant attempts to sidestep the private right of action question by framing this as a contractual dispute in her Petition. (Petition, pp. 14-16.) That ignores two things. First, she cannot raise an issue in this Petition that was not raised to and ruled on by the Court of Appeals. Even if she could, it does not eliminate or erase her failure to appeal the holding the NHA did not create a private right of action for alleged breaches of regulations. Because she failed to appeal that ground for summary judgment, it is the law of the case and cannot be unwound by filing this Petition.

As to the statute of limitations issue, Appellant never addressed the ruling of the trial court on that issue in either the issues on appeal listed in her brief, or in the arguments contained therein. It was never mentioned. Once again, she cannot raise an issue for the first time in this Petition. That is black letter law in South Carolina. It is literally *in the words of* Rule 242(d)(2), SCACR.

The Petition contains none of the five considerations listed in Rule 242(b), SCACR, or anything close to the character of those reasons to grant certiorari and review the decision of the Court of Appeals. It is, quite simply, the latest attempt by Appellant to delay the dismissal of a case that was wholly and completely frivolous when filed.

WHEREFORE, Summit asks that the Petition be denied.

Respectfully submitted,

Date: 06/07/2023

s/ Susan E. Driscoll
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