

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Appeal from Richland County  
Court of Common Pleas

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The Honorable DeAndrea G. Benjamin  
Circuit Judge.

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Case Number 10-CP-40-7330

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**RECEIVED**  
JUL 08 2013  
**SC Court of Appeals**

H&H of Johnston, LLC.....Appellant,

v.

Old Republic National Title Ins. Co., and  
Henry P. Bufkin, d/b/a Bufkin Title..... Respondents.

Appellate Case No. 2012-211167

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**REPLY TO RETURN OF APPELLANT TO  
PETITION OF OLD REPUBLIC  
NATIONAL TITLE INS. CO.  
FOR REHEARING AND SUGGESTION  
FOR REHEARING *EN BANC***

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In its Return, Appellant, H&H of Johnston, LLC (H&H), says "...Bufkin made an underwriting decision by making the oral contract for coverage as to the three potential claims even though his legal opinion or advice to H&H may have conflicted with the coverages provided." H&H Return at 1.

In affirming the circuit court's grant of summary judgment for Respondent, Henry P. Bufkin, (Bufkin), the Court said, "... Bufkin gave his legal opinion when he made the

alleged oral contract with H&H...” and “[w]e find any advice Bufkin gave H&H regarding potential adverse claims [to title to the property] constituted the practice of law.” (Shearhouse Adv.Sh. No. 25 at 49):

Judge Few, in dissent, said “[b]y finding that ‘any advice Bufkin gave H&H regarding potential adverse claims constituted the practice of law,’ the majority finds – correctly – that Bufkin was providing his legal opinion about the outcome of future disputes, not representing to the insured what the terms of a written policy would be.” (Shearhouse Ad.Sh. No. 25 at 52, Few, C.J. dissenting).

Judge Few’s dissent is in accord with a number of other jurisdictions which have considered similar situations.

The duties of a lawyer who also holds other professional licenses cannot be circumscribed by the fine distinctions that we might draw between the nature of the services performed under a particular license. How is one to tell whether, in advising [his clients] about the tax consequences of the condemnation settlement, respondent acted as an accountant or a lawyer? ... More importantly, how is any client to know when a lawyer *cum* accountant *cum* investment adviser removes one hat and puts on another?

*In re Pappas*, 768 P.2d 1161, 1166 (Ariz. 1988) (Rejecting the contention of an attorney that he was acting only as an accountant and investment adviser in dealing with clients concerning an investment).

*See also, In re Dwight*, 573 P.2d 481, 484 (Ariz. 1977) (an attorney acting as an investment adviser was subject to ethical rules governing attorneys); *Cuyahoga County Bar Ass’n v. Glenn*, 649 N.E.2d 1213, 1214 - 1215 (Ohio 1995) (A sports agent/attorney violated a state attorney ethics code by coaxing some \$20,000.00 from his sports-agent client’s team without his client’s consent. The attorney/sports agent was suspended from the practice of law for one year and ordered to repay the money in full, plus interest); and

*In re Horack*, 224 A.D.2d 47, 52 - 53 (N.Y. App. Div. 1996) (an attorney representing the government of St. Vincent in its bid for the 1988 Olympic Games was operating in the capacity of a lawyer, not a sports agent, and was therefore subject to disciplinary proceedings for misappropriating client funds. The attorney was disbarred).

Old Republic National Title Insurance Company (Old Republic) respectfully submits the law in South Carolina is clear. When a lawyer advises a client regarding title before a real estate closing he is acting as an attorney. When he reviews the closing documents he does so as an attorney. At the closing table, the lawyer is practicing law. After the closing, when he supervises the disbursement of funds and recording documents, he does so as an attorney. A lawyer, regardless of what other professional licenses he may hold, cannot act in any other capacity because only lawyers can provide advice regarding real estate title issues and only lawyers can close real estate transactions.


The Court misapprehended or overlooked the inconsistency of its conclusions Bufkin's actions constituted the practice of law and finding those same acts were sufficient to defeat summary judgment on the alleged oral contract between H&H and Old Republic to issue a title insurance policy without the questioned real estate title exceptions.

### **CONCLUSION**

Old Republic respectfully requests its Petition for Rehearing be granted, the Court vacate the portion of its opinion which reversed the circuit court's grant of summary judgment in favor of Old Republic and the circuit court's grant of summary judgment in favor of Old Republic be affirmed.

Alternatively, Old Republic suggests as to Old Republic, this matter be reheard *en banc* as Issues I and II of its Petition for Rehearing and Suggestion for Rehearing *En Banc* are of exceptional importance and consideration of these issues by the full Court is necessary to secure consistency in this Court's decisions.

CALLISON TIGHE & ROBINSON, LLC

  
Louis H. Lang, Esq., SC Bar # 03127

PO Box 1390

Columbia SC 29202-1390

Telephone: (803) 404-6900

Facsimile: (803) 404-6902

*Attorneys for Respondent, Old Republic  
National Title Insurance Company*

July 8, 2013

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**PROOF OF SERVICE**

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I, Crystal Smith, an employee of Callison Tighe & Robinson LLC, Attorneys for the Respondent, certify I have served a copy of the **Reply to Return of Appellant to Petition for Rehearing of Old Republic Nat. Title Ins. Co. and Suggestion for Rehearing *En Banc***: by depositing a copy in the United States Mail, postage prepaid, addressed to opposing counsel of record, at the following address:

William E. Booth, III, Esq.  
3231 Sunset Blvd., Ste. A  
West Columbia SC 29250



July 8, 2013  
Columbia, South Carolina

**Louis H. Lang, Esq. - Member**  
803-404-6900, ext. 3025  
LouisLang@callisontighe.com

CALLISON  TIGHE

July 8, 2013

Via Hand Delivery

Hon. Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter St.  
PO Box 11629  
Columbia SC 29211

**RECEIVED**  
JUL 08 2013  
SC Court of Appeals

Re: H&H of Johnston, LLC v. Old Republic National Title Ins. Co., and Henry P. Bufkin,  
d/b/a Bufkin Title (2010-CP-40-7330)  
Case Tracking #: 2012-211167  
Our File No: 2529.008

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the following document concerning this matter:

1. Reply to Return of Appellant to Petition of Old Republic National Title Ins. Co. for Rehearing and Suggestion for Rehearing *En Banc*, with attached Proof of Service.

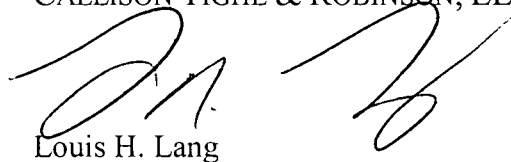
Please file the original and copies, and return a clocked copy to me via my courier.

By copy of this letter, I am hereby serving the same on opposing counsel

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC

  
Louis H. Lang

LHL/cs

Enclosure

cc: William E. Booth, III, Esq. (w/ encl.)  
George Perez, Esq. (w/ encl.)  
Susan T. Wall, Esq. & Amanda C. Williams, Esq. (w/ encl.)  
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