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Jul 22 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Milton G. Kimpson, Administrative Law Judge
Trial Court Case No. 22-ALJ-07-0010-CC
Appellate Case No. 2022-001792

T. Tree Farms RV Park (Blue Sky Associates, LLC), Respondents,

v.

South Carolina Department of Health and Environmental Control, Enclave at Fairview Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, and North Pacolet Association, Inc.,

of which Enclave at Fairview Homeowners' Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc. and Golden Hills of Fairview Homeowner's Association, Inc., are the Appellants and South Carolina Department of Health and Environmental Control is a Respondent.

RESPONDENT'S MOTION FOR COSTS

Respondent T. Tree Farms RV Park (Blue Sky Associates, LLC) hereby moves that costs be taxed against Appellants Enclave at Fairview Homeowners' Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc. and Golden Hills of Fairview Homeowner's Association, Inc. pursuant to Rule 222, SCACR. This motion is supported by the attached Itemized Statement of Costs.

Respondent T. Tree Farms notes that counsel for Appellants have tried to file an untimely Petition for rehearing. The Court of Appeals issued its opinion on July 3, 2024. Pursuant to Rule 221 (a), SCACR, "Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court. In this case, the fifteenth day after the filing of the opinion fell on Thursday, July 18, 2024. Appellants failed to file a petition for rehearing by 11:59 pm on July 18, and so the petition is untimely and

must be denied. In addition, the petition was actually filed after issuance of the remittitur in this case. The remittitur was issued July 22, 2024 at 1:59 pm, via email from the Court. Appellants did not file their untimely petition until 2:03 pm on July 22, 2024. The Court of Appeals no longer has jurisdiction over the action. *See Wise v. South Carolina Dept. of Corrections*, 642 S.E.2d 551 (S.C. 2007); *Mickle v. Blackmon*, 255 S.C. 136, 177 S.E.2d 548 (1970); *Thomas v. Lynch*, 87 S.C. 44, 68 S.E. 817 (1910); *Carpenter v. Lewis*, 65 S.C. 400, 43 S.E. 881 (1903); *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893)¹. Respondent requests that the Court reject Appellants' untimely Petition and issue an order granting Respondent's costs.

/s/ Alexander G. Shissias

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*Counsel for Respondent T. Tree
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July 22, 2024

¹ The only exception to this rule is when the remittitur is sent down "by mistake, error or inadvertence of the Court..." *Wise v. South Carolina Dept. of Corrections*, 642 S.E.2d 551 (S.C. 2007). In this case there is no allegation of mistake- apparently, only inadvertence on behalf of counsel for Appellants. As in the case below, Appellants have filed yet another late request for relief where the Court lacks jurisdiction to consider it.

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PROOF OF SERVICE

This is to certify that I, Alexander G. Shissias, have this day caused to be served upon the person(s) named below the **Respondent's Motion for Costs** in the foregoing matter by emailing a copy of same to the Attorney Information System provided email addresses below, and in the case of pro hac vice counsel per Supreme Court Order:

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/s Alexander G. Shissias
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July 22, 2024

² See Supreme Court Order on Electronic Service dated April 24, 2024 Section (d)(3). Service on local counsel is service on *Pro Hac Vice* counsel.