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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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

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

H. Marshall Hoyler.....Appellant,

v.

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

APPELLANT'S PETITION FOR REHEARING

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PETITION FOR REHEARING

INTRODUCTION

Counsel for Appellant, H. Marshall Hoyler respectfully requests a rehearing of this Court's decision, filed August 20, 2013. Appellant re-alleges his "Statement of the Case" and his "Statement of Facts", in his, "Initial Brief of Appellant", filed with this Court on April 15, 2013. Appellant's Petition for Rehearing follows:

STATEMENT OF ISSUES ON REHEARING

- 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)*.
- 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.
- III.** THE LOWER COURT ERRED IN FINDING THAT THE APPELLANT HAS STANDING TO ASSERT CLAIMS AGAINST ADDITIONAL DEFENDANTS.
- 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.

ARGUMENT

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)*.

In its Order, this Court acknowledged Appellant’s argument that the Lower Court lacked subject matter jurisdiction under *Section 48-39-220, S.C. Code Ann., (1976, as amended)*. This Court then acknowledged that, “...lack of subject matter jurisdiction may be raised at any time, including on appeal....” However, this Court then returned to a reference to the underlying Order, as not being immediately appealable, without recognition of Appellant’s argument on subject matter jurisdiction, *viz-a-viz, Section 48-39-220*, above, which under the facts of this case, removes subject matter jurisdiction from the Lower Court.

Finally, this Court’s Order states that, “In his return, Appellant seeks to argue for the first time that the master lacked subject matter jurisdiction under section 48-39-220 of the South Carolina Code (2008).” Factually, Appellant raised this argument for the first time in his, “Initial Brief of Appellant”, filed with this Court on April 15, 2013, (See, pg. “13” of Initial Brief of Appellant).

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.

This Court's Order contained no discussion of this argument, which argument is re-alleged and reserved by Appellant.

III. THE LOWER COURT ERRED IN FINDING THAT THE APPELLANT HAS STANDING TO ASSERT CLAIMS AGAINST ADDITIONAL DEFENDANTS.

This Court's Order contained no discussion of this argument, which argument is re-alleged and reserved by Appellant.

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.


This Court's Order contained no discussion of this argument, which argument is re-alleged and reserved by Appellant.

CONCLUSION

Based on the foregoing, this Court should reverse its Order granting Respondents' Motion to Dismiss Appellant's Appeal, and allow Appellant to continue the Appellate process.

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September 3, 2013
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PROOF OF SERVICE

I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have caused a copy of Appellant's Petition for Rehearing and this Proof of Service, to be served, via U.S. Mail, on September 3, 2013, as addressed below.

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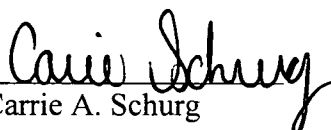
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September 3, 2013
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