

**PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

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**Unpublished Opinion No. 2013-UP-247 (S.C. Ct. App. filed June 12, 2013)**

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Joseph N. Grate,

Petitioner.

v.

Waccamaw E. O. C. Inc,

Respondent,

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**PETITION FOR A WRIT OF CERTIORARI**

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Joseph N. Grate, Pro Se  
Post Office Box 1294  
Pawley's Island, South Carolina 29585  
(843) 742-0696

Other Counsel of Record:  
1411 First Avenue  
Conway, South Carolina, 29528  
Attorney for Respondent  
(843) 381-0765)

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**SC Court of Appeals**

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## CERTIFICATE OF COUNSEL

Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 29, 2013.

### AUTHORITIES

Borough of Ridley, 506 A 2<sup>nd</sup> 862 (Pa. 1986)

George A. Fuller Co. v United States, 69 F. Supp., 409 (Ct. Cl. 1947)

SCACR RULE 201

SCACR Rule 220 (b)

SCACR 501 CANON 1

SCACR 501 CANON 3

### QUESTIONS

1. DID THE JURY ERR IN FINDING FOR RESPONDENT, GIVEN THE GLARING EVIDENCE OF RESPONDANCE'S TOTAL FAILURE AND NEGLECT, REGARDING THE CONTRACT?
2. SHOULD NOT THE JURY HAVE FOUNDED FOR PETITIONER, GIVEN THE ABUNDANCE OF CONCISE EVIDENCE SUPPORTING APPELLLANT'S POSITION?
3. DOES NOT PETITIONER HAVE A RIGHT TO THE PROVISIONS OF SCACR RULE 201?
4. DOES NOT THE RULE REGARDING DETAIL PER SCACR RULE 220 (B). APPLY IN THIS CASE?
5. SHOULD NOT THE COURT OF APPEALS HAVE REVIEWED ISSUES OF THE CLAIMED BREACH?

## STATEMENT

1. The parties entered into a contract.
2. Respondent failed to perform on the Contract.
3. Plaintiff initiated Breach of Contract action against Respondent.
4. Respondent issued a letter terminating the contract.
5. Respondent Countersued for Breach of Contract.
6. The Breach of Contract case was tried before a Jury.
7. The Jury found for Respondent; erroneously, in Plaintiff's opinion.
8. Plaintiff appealed to the Court of Appeals.
9. The Court of Appeals affirmed the circuit court's decision. Joseph N. Grate v. Waccamaw E. O. C. Inc., Unpublished Opinion No. 2013-UP-247 (S.C. Ct. App. filed June 12, 2013). Petitioner seeks a writ of certiorari to review that decision.

## ARGUMENTS

### **1. DID THE JURY ERR IN FINDING FOR RESPONDENT, GIVEN THE GLARING EVIDENCE OF RESPONDANCE'S TOTAL FAILURE AND NEGLIGENCE, REGARDING THE CONTRACT?**

Petitioner contested the breach the contract verdict. Petitioner was committed to the contract. He was ready, available and was proactive towards the accomplishment of the contracted elements. (R. pp. 215- 247; - pp. 329-349). To that end, Petitioner acted alone; totally without any input or feedback from Respondent; Respondent's position clearly and totally prevented Petitioner's performance. (R. p. 369, lines10-25; – p. 370, lines 1-19; – p. 308, lines 14-23)

Consequently, Respondent pushed forward with the Choppee Head Start Center, in total disregard for Petitioner's initial input and ended up with a Government shut down of the Construction within two month of its start. (R. pp. 350 -351; – p. 289, lines 17 – 25; – p. 290, lines 1 – 14; - p. 385, lines 22 – 25; p. 387, lines 1 - 19). **Borough of Ridley, 506 A 2<sup>nd</sup> 862 (Pa. 1986) ; George A. Fuller Co. v United States, 69 F. Supp., 409 (Ct. Cl. 1947)**

**2. SHOULD NOT THE JURY HAVE FOUNDED FOR PETITIONER, GIVEN THE ABUNDANCE OF CONCISE EVIDENCE SUPPORTING APPELLANT'S POSITION?**

At the very least, the Court should have considered the presented evidence and addressed same in its opinion, per Rule 220 (b): *In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case.* Also, the court has a mandate under SCACR 501 CANON 1: *Although judges should be independent, they must comply with the law, including the provisions of this Code.* Petitioner contends that the Court's opinion exhibits non compliance with these rules.

**3. DOES NOT PETITIONER HAVE A RIGHT TO THE PROVISIONS OF SCACR RULE 201?**

Petitioner contends that he has a right to appeal, per this rule: *Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.* The Court of Appeals has, in essence robbed him of his legal right under

the law.

**4. DOES NOT THE RULE REGARDING DETAIL PER SCACR RULE 220 (b). APPLY IN THIS CASE?**

The Court's decision does not reflect the provisions of the rule in that it exhibits no indication of having addressed the central issue of the case: the Breach of Contract. The rule specifically states: *In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case.* The Court of Appeals did not comply with this rule, thus deprived Petitioner of the provisions of SCACR Rule 201.

**5. SHOULD NOT THE COURT OF APPEALS HAVE REVIEWED ISSUES OF THE CLAIMED BREACH OF CONTRACT?**

The issue before the court was the claimed Breach of Contract. Yet, the court chose to totally disregard the central and main issue of the case. The Court, so not performing its duty, has resulted in severe harmful error for Petitioner and at the very minimum having deprived him of his very basic and legal right under SCACR Rule 201.

**CONCLUSION**

1. Because the issue of Contract Default raised in the Appellate Court is the same issue raised in the Circuit Court, Ulmer does not apply in this case.
2. There is no issue of a New Trial therefore Lites does not apply in this case.
3. In this case, Petitioner s contended that all of the evidence supports his position so of course he did not object to its presentation and appealed for a review of the judgment on the ground that the verdict does not reflect the evidence presented. Therefore, Peay has no application in this case. Appealing here because verdict and opinion does not reflect the evidence in the case.
4. The Court, in its Opinion, did not give any indication of correspondence between the Cited Cases and This Appeal. Therefore, the Opinion does not reflect Rule 220 (b).
5. Petitioner request that the case and the opinion be review, from a legal perspective.
6. To datè, Petitioner has been victimized and deprived of Justice.

September 26, 2013

Respectfully submitted,

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Joseph N. Grate, Pro Se  
Post Office Box 1294  
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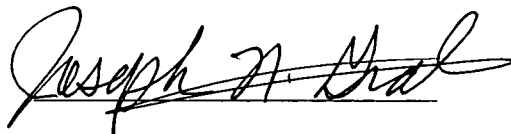
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**PROOF OF SERVICE**

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I certify that a copy of the PETITION FOR A WRIT OF CERTIORARI  
was filed with the Court of Appeals on the date indicated below.

September 26, 2013



Joseph N. Grate, Pro Se  
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Pawley's Island, South Carolina 29585  
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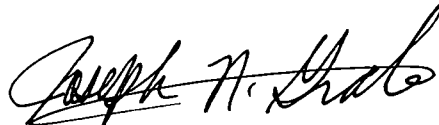
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I certify that a copy of the PETITION FOR A WRIT OF CERTIORARI was personally delivered, to Respondent's Attorney, on the date and at the address indicated below.

Ralph J. Wilson, Sr.  
1411 First Avenue  
Conway, South Carolina, 29528  
Attorney for Respondent  
(843) 381-0765)



Joseph N. Grate, Pro Se  
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Pawley's Island, South Carolina 29585  
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September 26, 2013

The Honorable Rosalyn W. Frierson  
Director, South Carolina Court Services  
Calhoun Building  
1015 Sumter Street, Suite 200  
Columbia, South Carolina 29201-3739

RE: Grate, Joseph v. Waccamaw EOC  
**Unpublished Opinion No. 2013-UP-247 (S.C. Ct. App. filed June 12, 2013)**

Dear Ms. Frierson:

This is to notify you that I have filed a PETITION FOR A WRIT OF CERTIORARI, for the referenced case.

Sincerely,



Joseph N. Grate, Pro Se  
P.O. Box 1294  
Pawley's Island, S.C. 29585  
(843) 742-0696

CC: Ralph J. Wilson, Sr.  
1411 First Avenue  
Conway, South Carolina, 29528  
Attorney for Respondent  
(843) 381-0765

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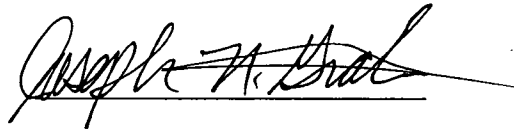
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Grate, Joseph v. Waccamaw EOC  
**Unpublished Opinion No. 2013-UP-247 (S.C. Ct. App. filed June 12, 2013)**

Dear Ms. Kitchings:

Enclosed for filing, please find, the PETITION FOR A WRIT OF CERTIORARI  
for the referenced case.

Sincerely,



Joseph N. Grate, Pro Se  
P.O. Box 1294  
Pawley's Island, S.C. 29585  
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CC: Ralph J. Wilson, Sr.  
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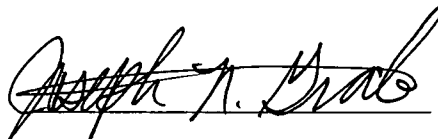
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