

PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF APPEALS

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**S.C. Supreme Court**

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Unpublished Opinion No. 2013-UP-247 (S.C. Ct.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)

**Appellate Case No. 2013-002046**

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Joseph N. Grate,

Petitioner.

v.

Waccamaw E. O. C. Inc,

Respondent,

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**PLAINTIFF'S REPLY  
TO  
RESPONDENT'S RETURN TO PETITION FOR A WRIT OF  
CERTIORARI**

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TO DISREGARD SCACR RULE 201, SCACR Rule 220 (b), SCACR 501  
CANON 1 AND SCACR 501 CANON 3, AND NOT REVIEW THE  
APPEAL?**

**2. DID NOT THE COURT OF APPEALS COMMIT A VERY SERIOUS  
ERROR BY SUBMITTING ITS DECISION, WITH TOTAL  
DISREGARD FOR SCACR RULE 201 AND SCACR Rule 220 (b)?**

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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**

SCACR RULE 201

SCACR Rule 220 (b)

SCACR 501 CANON 1

SCACR 501 CANON 3

United States v. Spearin, 248 U.S. 132 (1918)

### **QUESTIONS**

- 1. WAS NOT THE COURT OF APPEALS INCORRECT IN ITS  
DECISION TO DISREGARD SCACR RULE 201, SCACR Rule 220 (b),  
SCACR 501 CANON 1 AND SCACR 501 CANON 3, AND NOT  
REVIEW THE APPEAL?**
  
- 2. DID NOT THE COURT OF APPEALS COMMIT A VERY SERIOUS  
ERROR BY SUBMITTING ITS DECISION, WITH TOTAL  
DISREGARDS FOR SCACR RULE 201 AND SCACR Rule 220 (b)?**

## 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 Countersued for Breach of Contract and issued a retaliatory letter terminating the contract.
5. The Breach of Contract case was tried before a Jury.
6. The Jury found for Respondent; erroneously, in Plaintiff's opinion.
7. Plaintiff appealed to the Court of Appeals.
8. 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 Joseph N. Grate v. Waccamaw E. O. C. Inc., Unpublished Opinion No. 2013-UP-247 (S.C. Ct.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. THE COURT OF APPEALS WAS INCORRECT IN ITS DECISION TO DISREGARD SCACR RULE 201, SCACR Rule 220 (b), SCACR 501 CANON 1 AND SCACR 501 CANON 3, AND NOT REVIEW THE APPEAL.**

The matter presented to the Court of Appeals was that of the Contract breach. The appeal was in accordance with SCACR RULE 201.

Respondent and sadly, The Court of Appeals, did not, (in deed, cannot) indicate what matters it deemed as being appealed without having been preserved or that was a new submission for consideration. To not have so indicated places the Court of Appeals in a very feeble, inept and cockeyed position and in violation of the Rules, simply by virtue of it having been so easily bamboozled by Respondent. The procedure demands the application of SCACR Rule 220 (b) and that has not occurred yet. When it does occur, the outcome of this case will be 180 degrees different from the present situation. Until such occurrence, Petitioner is being deprived of justice.

**2. THE COURT OF APPEALS COMMIT A VERY SERIOUS ERROR BY  
SUBMITTING ITS DECISION WITH TOTAL DISREGARDS FOR  
SCACR Rule 220 (b) and for the law.**

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*

with these rules.

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.

### CONCLUSION

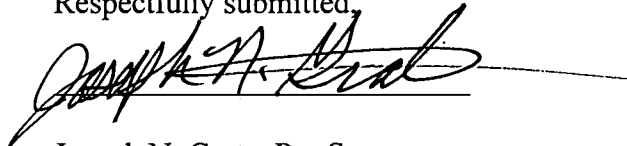
1. The issue of Contract Default raised at the Appellate Court is the same issue raised in the Circuit Court: Breach of Contract.
2. **None** of the cases cited by Respondent and by the Court of Appeals have any relevancy in this case.
3. Petitioner has never tried to suppress any of the presented evidence.
4. Plaintiff is not attempting to introduce any new evidence.
5. In this case, **all** of the evidence supports Petitioner's position and clearly indicate Respondent breached the contract.
6. The Court, in its Opinion, does not reflect Rule 220 (b).
7. The Court did not comply with this the provisions of SCACR Rule 201.
8. Respondent keeps repeating that neither Respondent nor Petitioner was aware of the provisions of 45 CFR 74.44(c); although, that regulation was incorporated into Respondent's Procurement Guidelines, at the time Respondent drafted the contract. (Appendix P. 100,101). However, it is correct that Petitioner was not aware of that

(Appendix P. 100,101). However, it is correct that Petitioner was not aware of that regulation. It is also correct that the Cited Regulation does not apply to Plaintiff.

9. The contents of the Contracting Documents are the sole responsibility of the Contracting Agency. It has as its first duty the accuracy of its contract Documents, predicated upon knowing and being responsible for its Procurement Guidelines and Contracting Procedures. (United States v. Spearin, 248 U.S. 132 (1918))

November 4, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph N. Grate", written over a horizontal line.

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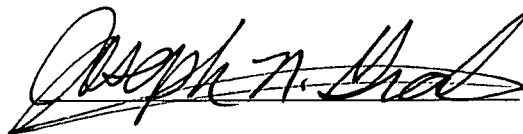
Waccamaw E. O. C. Inc,

Respondent,

**PROOF OF SERVICE**

I certify that a copy of the Reply Brief was personally delivered, to Respondent's Attorney, on the date and at the address indicated below.

November 4, 2013



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