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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Case No. 2019-CP-26-06550
Appellate Case No. 2023-000451

Tony Giovino, Carter Tackett, Richard Aquino,
Bill West, and Shoreham Towers Homeowners Association, ... Appellants.

v.

Marshall Griffin, ...Respondent,

APPELLANTS' PETITION FOR REHEARING

Henrietta U. Golding, SC Bar #2173
BURR & FORMAN LLP
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Phone: (843) 444-1107
hgolding@burr.com

Attorneys for Appellants Tony Giovino, Carter Tackett, Richard Aquino, Bill West, and Shoreham Towers Homeowners Association

Myrtle Beach, South Carolina

July 30, 2025

PETITION FOR REHEARING & MEMORANDUM IN SUPPORT

I. Standard Of Review.

Per Rule 221(a), Appellants respectfully asks the Court for a rehearing. Rule 221(a), SCACR. A Petition for Rehearing shall be in accordance with Rule 240. Id. Therefore, a Petition for Rehearing shall be written, state the grounds for the petition, and comply with Rule 267. See Rule 240(c), SCACR. The purpose of a Petition for Rehearing is to state with particularity the points that have been overlooked or misapprehended by the Court. Rule 221(a), SCACR.

II. The Court Overlooked And Misapprehended That Its Ruling On The TRO Essentially Overturned The South Carolina Supreme Court *Helsel* Decision and Blessed The Sledgehammer Effect Created By Respondent's Counsel By The Constant References Of The TRO To The Jury.

All issues in a trial must be determined "…without reference to the temporary injunction". Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). The Court's Opinion essentially gutted this crystal clear principal of law. The TRO was a topic in the Respondent's opening statement, in Respondent's counsel's examination of five separate witnesses, and in his closing statement. The first TRO "…reference…" was in Respondent's counsel's opening statement to the jury; thereafter, the TRO reference just picked up steam, being used to shame the Appellants and guide the jury to the finding of liability. To not recognize the prejudice overlooks the undisputed reality that the TRO permeated the entire trial from beginning to end.

One example of the TRO's prejudicial effect on the jury, is the fact finding, by the jury, that the planters were not common elements, despite all evidence to the contrary. The Master Deed, Exhibit A, states the planters are common elements. (R. 01120, 00368, and 00371), and the Respondent, in his testimony, agreed the planters are common. (R. 00368 and 00371). But yet, it

was the closing argument by Respondent's counsel in which he told the jury the TRO saved the plants. (R. 00914).

In other words, there was no evidence the planters were not common elements – even Respondent testified they were common; but yet, the jury found otherwise – only because of the use of the TRO by Respondent's counsel.

III. The Court's Opinion Overlooked And Misapprehended The Undisputed Evidence That Respondent's Deed To His Shoreham Unit Conveyed 2,630 Square Feet Whereas This Court Opinion Significantly Enlarged Respondent's Unit Without Any Accompanying Responsibility For The Area Outside His Dwelling Unit.

The Shoreham Towers Master Deed, without any contradiction from Respondent at trial, established the square footage of Respondent's Unit as being approximately 2,630 square feet. This is in Exhibit A to the Master Deed, third paragraph in Exhibit A. (R. 01120). Respondent admitted the size of his Unit is 2,630 square feet and admitted his Unit size never changed; it is the same size today as the day he bought the Unit. (R. 00345). But this Court's Opinion enlarged the size of his Dwelling Unit by affirming that the planters, roof terrace, and elevator lobby were not common elements. This Opinion even overlooked the fact that in Respondent's Complaint, he alleged in Paragraph 7, the planters and elevator lobby were common elements, therefore, not part of his Dwelling Unit. (R. 00037).

The Shoreham Towers Master Deed, unambiguously stated the size of Respondent's Dwelling Unit. The Court's Opinion overlooked this significant contractual term in the Master Deed. The result is that all other unit owners at Shoreham Towers are disproportionately assessed for the care and maintenance of the planters, roof top terrace, and the elevator lobby, even though these components are no longer classified as common elements.

The fact that all the other 43 unit owners bear the costs of these components was overlooked. Per the Master Deed, all the 44 unit owners share the costs of common elements. But with the Opinion, 43 unit owners now financially contribute to Respondent's Dwelling Unit.

IV. The Court Overlooked And Misapprehended The Fact That The South Carolina Horizontal Property Regime Act Is Part Of The Shoreham Towers Master Deed And As A Result Of The Court's Error, The Court's Opinion Reads As Holding That The South Carolina Horizontal Property Regime Act Is Ambiguous.

In its Opinion, the Court states, in footnote 8 that "…HPA provides little guidance…". It further stated that it "…is almost inconceivable that the roof terrace was intended to be common." This misapprehension that a roof cannot be a terrace is without any support. If the roof terrace is not the roof of the building, the Shoreham Towers building has no roof. This egregious error cannot stand.

The Shoreham Towers Master Deed states the roof is a common element, as does the South Carolina Horizontal Property Regime Act, which Act is specifically incorporated into the Master Deed in Article XXXIV. (R. 01055). Simply because the roof is used as a terrace does not mean it is not a common element.

The Court's Opinion, to its logical conclusion, reads as holding that the term "roof", as stated in the South Carolina Horizontal Property Regime Act, is ambiguous.

V. The Court Overlooked And Misapprehended The Fact That Respondent Voted As A Board Member To Repair The Roof, And That The Turtle Tile Was Removed By The Roofing Contractor With Respondent's Consent.

The Court's Opinion states that it "…is undisputed that Griffin's Turtle Tile and chairs were removed from the roof terrace without his permission." This statement is incorrect; Griffin approved both removal of the furniture and Turtle Tile. At a Board meeting on January 19, 2019, the Board, including Respondent, voted unanimously to accept the roofing contractor's roof repair proposal. (R. 00652-00643). At a second meeting on March 25, 2019, the Board, including Griffin,

approved a special assessment for the needed roof repairs. (R. 00653-00654). For the roofing job, the contractor testified that "…we had to take up the tile called Turtle tile and remove that…". (R. 00730). It was after the conclusion of the roofing repair when the roofing contractor informed the Board that the Turtle Tile should not be re-installed nor should the heavy wooden furniture be returned. (Defendants' Exhibit 30, R. 01201).

VI. The Court Overlook And Misapprehended The Undisputed Facts That Respondent, And Before Him, His Uncle Who Was The Developer, Controlled The Shoreham Board Of Directors For Over 30 Years And That Respondent, In Paying Assessments And Taxes, Never Considered The Roof Terrace As Being A "…Part Of The Unit."

In the Court's Opinion, it is stated that "…we believe most compelling, the roof terrace was, for thirty-six consecutive years (1982-2018), treated as part of the Unit." The Respondent's uncle was a member of the developer, which for a number of years controlled the Board, and then when the Respondent and his wife became the Unit owners, they served as Board members. In fact, Respondent was the Board President for many of those years. These facts were completely overlooked by the Court.

In addition, the unit owners were kept completely in the dark about the changes Respondent made to the Shoreham Towers common elements. Respondent testified that he never obtained approval for the installation of the Turtle Tile on the roof, as required by the Master Deed. (R. 00362). Nor did Respondent obtain approval for any remodeling to the elevator lobby, even though this is a common element, nor did he inform the Board. (R. 00350).

Never did the Respondent consider the roof terrace "…part of his Unit." This Court overlooked the undisputed facts that Respondent never paid any Association assessments on the roof terrace – the assessments he paid were based only on the size of his Unit, being 2,630 square feet. He never paid property taxes on the roof terrace since he never considered this being part of his Unit. Respondent never personally paid for any roof top repairs; and Respondent testified that

the railings around the roof terrace are maintained by the Association. (R. 00388). As testified by the Respondent, his Unit size never changed and it continues to be 2,630 square feet. (R. 00345).

VII. The Court Overlooked And Misapprehended The Fact That The Designation Of The Roof As Roof Terrace Means That It Is Not A Common Element.

In the Court's Opinion, it states that "It is almost inconceivable that the roof terrace was intended to be common…". The Court overlooked that a component of the building, the roof, can be named a roof terrace. The Master Deed unequivocally states that Shoreham Towers Horizontal Property Regime contains two components: Dwelling Units and Common Elements. (R. 01095). The survey (R. 01220), along with testimony of the surveyor (R. 00775-00779), shows that the roof top terrace area footage far exceeds the Respondent's square footage of his Dwelling Unit – no dispute. Finally, because it has always been a common element, this roof top terrace was never subject to association assessments nor local property taxes. (R. 00387 and 00693).

Shoreham Towers has a roof and the Court's affirmation that its roof is not a common element is directly contrary to the Master Deed. No dispute that in the Master Deed, Exhibit A, Respondent's Unit being approximately 2,630 square feet, is not part of the roof terrace. (R. 01120). No dispute that Respondent testified that the roof is a common element. (R. 00359). The Building Plans do not create the fiction that the roof is separate from the roof terrace. (R. 01170-01183). Therefore, the roof terrace is the roof and this Court's Opinion that it is not, wrecks extreme havoc and uncertainty with respect to the maintenance and repair of this roof.

VIII. The Court Overlooked And Misapprehended The Evidence That The Shoreham Towers Directors, Having Been Guided By The Advice Of Legal Counsel, The Roofing Contractor, And The Safety Experts, Should Be Subject To A Finding of Intentional Wrongdoing And Punitive Damages; Instead These Directors Are Protected by The Immunity Granted By The South Carolina General Assembly.

This Court overlooked the fact that at all times, the Board members were guided by experts, with one being an independent South Carolina attorney, with significant legal experience regarding

horizontal property regimes. In its Opinion, the Court stated that the Board members "…intentionally and without reason, excluded Griffin from these meetings." This is incorrect. Any exclusion was due to advice of legal counsel. The evidence was without dispute that the Shoreham Towers directors retained competent, qualified independent legal advice after Respondent, in January 2019, told the Board that he was "going to lawyer up." (R. 00819). As Roger Roy, Shoreham Towers' attorney testified, the Board came to him looking for guidance. (R. 00758). Respondent testified that the Association's lawyer, Roger Roy, instructed the Board that he should not participate in Board calls in April 2019, which calls were to discuss the rules and regulations. Then he testified that he believes they met two times, without him, to discuss the rules. (R. 00294-00295).

The Appellant Board member, Bill West, testified that the reason Respondent was not present was due to legal counsel's advice. (R. 00689-00690). Respondent testified that it was legal counsel's instruction that he not participate. Additionally, this Court overlooked the fact that the Respondent did attend and vote on the rules and regulations. (R. 00365-00366). Finally, through his attorney, Respondent presented his version of rules and regulations.

This Court's affirmation of breach of contract accompanied by fraud, conversion, and the punitive damages sends a message to all non-profit board of directors that legal, expert advice means nothing.

IX. The Court Overlooked And Misapprehended The Master Deed As Being Ambiguous When It Points To The Roof Terrace As Being A Balcony.

The Court overlooked the Building Plans. The Master Deed, which incorporates the Building Plans, clearly shows that there is no balcony on the tenth floor of the Shoreham Towers building. As testified by the Respondent, the Building Plans have balconies on the first through ninth floors, but the Plans show no balcony on the rooftop. (R. 00342; 0355; and 00359). The

provision in the Master Deed, Exhibit A, which states that "[a]ll balconies adjacent to each dwelling, including the railing attached thereto, are part of that dwelling and not common areas…", does not create any ambiguity. This provision is not applicable to the tenth floor, for there is no balcony on this floor. The Court's interpretation of ambiguity is simply unfounded.

CONCLUSIONS

Appellants respectfully petitions the Court to rehear the argument.

Respectfully submitted,

s/Henrietta U. Golding

Henrietta U. Golding, SC Bar #2173
BURR & FORMAN LLP
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Phone: (843) 444-1107
hgolding@burr.com

Attorneys for Appellants Tony Giovino, Carter Tackett, Richard Aquino, Bill West, and Shoreham Towers Homeowners Association

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PROOF OF SERVICE

I, Henrietta U. Golding, attorney for Appellants, hereby certify that **Appellants' Petition for Rehearing** was served on Respondent on July 30, 2025, via email (*see attached*) to counsel of record for Respondent, addressed as follows:

John M. Grantland, Esquire Crawford A. Krebs, Esquire Post Office Box 6648 Columbia, South Carolina 29260 Email: jgrantland@murphygrantland.com ckrebs@murphygrantland.com	Thomas C. Brittain, Esquire Brittan Law Firm 4614 Oleander Drive Myrtle Beach, South Carolina 29577 Email: tommyb@brittainlawfirm.com

Respectfully submitted,

BURR & FORMAN LLP

By: s/Henrietta U. Golding
Henrietta U. Golding, SC Bar #2173

Attorneys for the Appellants

Subject:	Marshall Griffin v. Tony Giovino 2023-000451
Date:	7/30/2025 11:54 AM
From:	"Evans, Sheila" <SEvans@burr.com>
To:	"jgrantland@murphygrantland.com" <jgrantland@murphygrantland.com>, "ckrebs@murphygrantland.com" <ckrebs@murphygrantland.com>, "tommyb@brittainlawfirm.com" <tommyb@brittainlawfirm.com>
Cc:	"rdillon@murphygrantland.com" <rdillon@murphygrantland.com>, "jchitkara@murphygrantland.com" <jchitkara@murphygrantland.com>, "miranda@brittainlawfirm.com" <miranda@brittainlawfirm.com>, "Golding, Henrietta" <HGolding@burr.com>

Good Morning Counselors,

Attached please find Appellant's Petition for Rehearing and Proof of Service, which I will be filing with the Court momentarily.

Sheila

BURR & FORMAN

Sheila Evans
Paralegal

SEvans@burr.com

843-443-3002 (*direct*)

2411 Oak Street, Suite 206
Myrtle Beach, South Carolina 29577