

State of South Carolina
County of Anderson

Court of Common Pleas

RECEIVED
Dec 19 2025
SC Court of Appeals

Hubert H. Smith, Jr.)	
)	
Plaintiff,)	Transcript of Record
v.)	2025-CP-04-00328
)	
Anderson County Planning Commission))	
_____)	
Defendant.)	

August 27, 2025
Anderson, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

A P P E A R A N C E S:

James G. Carpenter, Esquire
Attorney for the Plaintiff

Carter R. Massingill, Esquire
Attorney for the Defendant

Ronald G. Tate, Jr., Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

WITNESS

PAGE

No Witnesses.

E X H I B I T S

NO.

DESCRIPTION

ID.

EVD.

No Exhibits.

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P R O C E E D I N G S

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1
2
3 THE COURT: All right. *Hubert H. Smith v.*
4 *Anderson County Planning Commission.*

5 (Parties approached.)

6 MR. MASSINGILL: Mr. Carpenter was here.

7 THE COURT: I tell you what, I'm going to step
8 out for a minute and I'll be right back.

9 MR. MASSINGILL: Yes, sir.

10 THE COURT: Give me about five minutes.

11 MR. MASSINGILL: Thank you, Your Honor.

12 (From 10:21 to 10:28 a.m., brief recess.)

13 THE COURT: All right. This is defendant's
14 motion; is that correct?

15 MR. MASSINGILL: Yes, Your Honor.

16 THE COURT: All right. I'll be glad to hear
17 from you.

18 MR. MASSINGILL: Thank you, Your Honor. When
19 we were on the brief break, I was just talking with
20 madam court reporter. And she said it might be okay
21 if I could talk from the microphone up here if that
22 would help me and hopefully help me be heard.

23 THE COURT: Okay.

24 MR. MASSINGILL: Thank you, Your Honor. May it
25 please the Court?

1 For the record, Carter Massingill. And this is
2 my law partner, Ron Tate, for the respondents, Spano
3 and Associates. I'll get straight to the point,
4 Your Honor.

5 When we were all last together here back in
6 June, Your Honor dismissed this appeal from a
7 planning commission decision after finding that
8 Spano and Associates had exceeded the legal
9 requirements. And I believe Ms. Alicia Hunter from
10 the planning commission was actually here and
11 assured the Court that the plan that was in place
12 would protect the cemetery area going forward.

13 So now the appellates have appealed that
14 decision to the Court of Appeals, but I don't need
15 to go into rehashing all the things Your Honor has
16 already heard in multiple proceedings.

17 The two motions before Your Honor are actually
18 fairly straightforward. Our first motion, Your
19 Honor, is we're just asking the Court to order that
20 the appellates post a sufficient bond to justify
21 this existential financial threat that they are
22 exposing my client to.

23 THE COURT: Do I have jurisdiction of that or
24 is that a Court of Appeals matter?

25 MR. MASSINGILL: You have jurisdiction, Your

1 Honor. And both cases that we cited in our brief,
2 we actually cited a couple of them.

3 THE COURT: I have not read the brief in all
4 fairness.

5 MR. MASSINGILL: That's completely fair. I
6 mean, a lot of times y'all get things submitted and
7 it settles the day before or the day of, so I get
8 it.

9 But we cite several cases in authority in our
10 brief, Your Honor, that says it is actually
11 appropriate to bring this motion before the trial
12 court in this instance, unless there's some
13 extraordinary circumstance, and that has not been
14 argued by the other side. And I would say it's not
15 an extraordinary circumstance here. And that's not
16 just a conclusory statement, Your Honor, that this
17 is an existential financial threat to my client.

18 We've submitted two unopposed affidavits, one
19 from my client and one from the title insurance
20 company that's underwriting the property. And the
21 affidavit from the title insurance company, and
22 that's Exhibit 4 to our brief. They -- they attest
23 that this particular company and not any other title
24 insurance company in their professional experience
25 would insure real estate involved in ongoing

1 litigation, including decisions under appeal. And
2 he also attests that in his ---

3 THE COURT: What did they say?

4 MR. MASSINGILL: He said that no title
5 insurance -- their title insurance company would not
6 insure it while there's an appeal going on, even if
7 it's -- or while this litigation is going on, even
8 if it's just an appeal. And he said in his
9 professional experience, he's not aware of any title
10 insurance company that would underwrite it while
11 there's a pending appeal.

12 And he also says in his affidavit that it's his
13 experience lenders will not make loans for the
14 purchase of real estate if it's not insurable with
15 the title company. I think that every -- the
16 lawyers in this room, we do not dispute that.

17 And so in his opinion, while the pending appeal
18 is ongoing, the -- the property is unmarketable.
19 And the affidavit from my client, they outline how
20 Spano and Associates has incurred all these costs
21 and professional fees in connection with the
22 property and this litigation. It's already lost at
23 least one prospective purchaser because of the
24 pending appeal, and that resulted in significant
25 financial loss.

1 But getting to our sense of urgency here, Your
2 Honor. My client states in his affidavit that right
3 now they're under contract with another buyer. And
4 because of the pending appeal, they can't sell the
5 property because it's not possible for the buyer to
6 get financing or title insurance. And no one in his
7 experience would even be willing to pay cash under
8 such conditions because no one will insure the
9 property, and then they couldn't sell it to another
10 buyer down the road and so on.

11 So, Your Honor, critically, the affidavit tells
12 the Court that Spano and Associates faces the
13 exceptional likelihood of losing this second
14 prospective purchaser. And in that case, they would
15 suffer financial loss of no less than seven and a
16 half million dollars. According to those two
17 unopposed affidavits, Your Honor, Spano and
18 Associates can't even sell its own land while the
19 appeal is pending, even though the subdivision was
20 unanimously approved by the planning commission.

21 And, Your Honor, there's no question, and I --
22 this is what we touched on earlier that under Rule
23 241 of our appellate court rules, the trial court
24 does have jurisdiction and the authority to require
25 that the appellates post a sufficient bond.

1 THE COURT: So you're asking me to set a seven
2 and a half million dollar bond, or what -- what
3 amount are you asking me to set?

4 MR. MASSINGILL: Yes, Your Honor. That is the
5 amount we ask for.

6 THE COURT: I will not get that high. Okay.
7 Give me another formula that I can look at.

8 MR. MASSINGILL: Okay. Your Honor, I'd be
9 happy to do that. And if it would help Your Honor
10 at all, we're happy to submit the contract that they
11 have for your review. It's just confidential. I
12 did not feel ---

13 THE COURT: I didn't look at it.

14 MR. MASSINGILL: --- I did not feel comfortable
15 attaching that to the motion.

16 THE COURT: Okay.

17 MR. MASSINGILL: And we did attach a case to
18 our brief, Your Honor, that was instructive here,
19 and that's this Moreno case. We attached it as an
20 exhibit, Your Honor.

21 THE COURT: And what does -- what does that
22 tell me?

23 MR. MASSINGILL: It's a -- it was a trial court
24 order where Judge Young dismissed the plaintiff's
25 claims in order that a lis pendens be cancelled.

1 And when the plaintiffs appealed that ruling, judge
2 ordered -- or Judge Young ordered that if the lis
3 pendens was permitted to stay in place for the
4 appeal, the trial court's order would be rendered
5 moot, and I'm quoting from the decision.

6 And the plaintiffs will have received exactly
7 what they are not entitled to, hindering the
8 develop -- the defendant from developing its
9 property. And he says, "This is the precise
10 situation for which Rule 241 creates relief."

11 And his order also walks through how the trial
12 court has broad powers to fashion relief that
13 protects all parties during the course of an appeal,
14 and quotes the language of Rule 241 noting that the
15 granting of supersedeas or lifting of automatic stay
16 may be conditioned upon such terms, including but
17 not limited to, the filing of a bond as the lower
18 court may deem appropriate.

19 And then it goes on to say, "Where that's
20 insufficient to afford complete relief, the lower
21 court may order affirmative relief upon such terms
22 as are deemed appropriate." And I say that, Your
23 Honor, just to highlight the discretion that you
24 have here.

25 And lastly ---

1 THE COURT: But your plans with this
2 property -- let me make sure -- is to develop,
3 right?

4 MR. MASSINGILL: My client does not develop
5 vertically any property. They -- they buy ---

6 THE COURT: The plans that they have
7 submitted ---

8 MR. MASSINGILL: They're selling those plans.

9 THE COURT: Let me finish.

10 MR. MASSINGILL: Thank you, Your Honor.

11 THE COURT: --- is to develop the property,
12 correct?

13 MR. MASSINGILL: Correct.

14 THE COURT: Okay. So that is what is being
15 forwarded at this juncture is the development
16 itself?

17 MR. MASSINGILL: Correct.

18 THE COURT: Not necessarily a buy/sell-type
19 situation.

20 MR. MASSINGILL: Both, Your Honor.

21 THE COURT: I know that you're saying that, but
22 the development is what's being prevented from going
23 forward, right?

24 MR. MASSINGILL: Correct.

25 THE COURT: Okay.

1 MR. MASSINGILL: And, Your Honor, lastly, it
2 just -- in that order, Judge Young finds it's
3 important to note in that case that the plaintiff
4 was impairing the defendant's investment in the
5 property at no cost to itself whatsoever, and that
6 that was going to cause significant harm to the
7 defendant because its business was a development of
8 the land and the sale of the land in question. And
9 he noted that the defendant had submitted
10 uncontested affidavits affirming the significant
11 sales and development of the property was being
12 jeopardized.

13 So back to our case, Your Honor, this delay is
14 likely going to be down in Columbia for a long time
15 causing Spano and Associates catastrophic financial
16 loss. I mean, they have a contract right now where
17 they're -- the price is I think between seven and
18 seven and a half million dollars. And I'm happy to
19 submit that for you for in camera review.

20 And I'm not embellishing at all when I say I do
21 believe it really is going to cost Anderson too
22 because when Spano and Associates purchased that
23 land from AnMed as part of the sale, my clients
24 agreed to gift back 10 acres to AnMed for medical --
25 future medical use. And they did that, and it's

1 right at the corner of Highway 187 and Fants Grove
2 Circle. And Spano and Associates, as part of that,
3 agreed to bring sewer and water to that site for
4 AnMed. And that would not be economically feasible
5 until this issue is resolved.

6 The Court has already, in our view in these
7 proceedings, protected the appellates. They've
8 given them more than ample opportunity to be heard
9 in all of these proceedings and allowed them access
10 to the property, allowed them to conduct their own
11 test with their own experts, which actually resulted
12 in a revised plan that would protect the cemetery
13 going forward. And Ms. Alicia Hunter was here last
14 time with us and confirmed that.

15 But now, the appellates are taking their same
16 arguments down to Columbia. And what's going to
17 happen if they get the relief they seek? I'll tell
18 you. It's going to get remanded back to the
19 planning commission and the approval will have been
20 invalidated and my client will have waited three to
21 five years and lost upwards of ---

22 THE COURT: Say that again.

23 MR. MASSINGILL: I was saying if they get what
24 they want, if they -- if they win on appeal, which
25 we think is exceptionally unlikely based on the

1 evidence standard and all the rulings below, but if
2 they get what they want, we would've had to wait
3 three to five years, lost north of seven million
4 dollars and then come back and start all over.

5 They do this at no cost with no skin in the
6 game, while my clients been waiting almost a year
7 and a half and done everything they could --
8 everything they could to move this forward and then
9 complied with all the laws.

10 So my point is, Your Honor, I really do think
11 the bottom line is if Mr. Hicks and his supporters
12 can lose on appeal twice and then get to expose my
13 client to existential financial loss without having
14 financial risk of their own, then it seems to me as
15 Judge Young said, that this is the precise situation
16 for which Rule 241 creates relief.

17 And considering that there is a unanimous
18 approval of the subdivision by the planning
19 commission, this Court's repeated findings, and the
20 highly deferential and the evidence standard, the
21 appellates, in our view, have an exceptionally low
22 likelihood of prevailing on the merits. And I just
23 don't believe it will be a just or fair result for
24 Mr. Hicks and his supporters to be permitted to
25 continue this interminable delay without any

1 consequence. And so, Your Honor, that's precisely
2 why we think a bond is appropriate here.

3 And I'll also point out, Your Honor, that at
4 some point in all these proceedings before you
5 involving this property, all of the parties,
6 including the appellates and the respondents,
7 started referring to the developer and the owner as
8 Spano and Associates, Inc., instead of Spano and
9 Associates Asheville, LLC. And practically speaking
10 in terms of due process and notice, they are the
11 same for the purposes of this case and we have cited
12 multiple cases. And, Your Honor, and that's our
13 second motion where we're asking to correct the
14 record just to reflect the different LLCs.

15 THE COURT: You don't have any objection to
16 that, do you?

17 MR. CARPENTER: We have a major objection, Your
18 Honor.

19 THE COURT: I'm shocked.

20 MR. MASSINGILL: And I think I can dispense
21 with that very quickly and the case law does as
22 well, Your Honor. Both those companies have the
23 exact same members. It really should've just been
24 called Spano and Associate because it's Ralph Spano.

25 THE COURT: What did you call yourself in front

1 of the planning commission? I mean, you're stuck
2 with ---

3 MR. MASSINGILL: I think it -- I think that --
4 I think the application ---

5 THE COURT: What did you call yourself in front
6 of the planning commission?

7 MR. MASSINGILL: I think the application of the
8 planning commission said like Spano and Associates.
9 And then I think there's other paperwork that says
10 Spano and Associates Asheville, but the point is is
11 that the case law says the only reason that matters
12 in the cases where they talk about it, is where the
13 plaintiff has misnamed the corporate defendant and
14 they -- it's all about notice to the defendant and
15 due process and whether they knew they were being
16 sued and what the case was against them.

17 And Mr. Spano and his only other partner, it's
18 a two-person company, and they were sitting here in
19 the room in June. They're obviously keenly aware of
20 the lawsuits against their company. This is not an
21 issue of due process or notice. For all intents and
22 purposes, this ---

23 THE COURT: Well, why was this matter not
24 brought up sooner?

25 MR. MASSINGILL: It was brought up. I think

1 the day after I figured it out, I filed this motion
2 to correct the record, which it says Your Honor
3 has -- you can do it on your own motion. It says
4 that if there's a mistake or clerical error in a
5 judgment or -- I forgot the language here. I'm
6 getting off track from my outline, but I'll address
7 that sufficiently for Your Honor.

8 As soon as we discovered that error, Your
9 Honor, we filed this motion to correct the record,
10 which is completely appropriate and contemplated
11 under Rule 60. Your Honor can correct any errors in
12 the record due to mistake or oversight. And the
13 rule says you can do it at any time on the motion of
14 any party or on your own motion. It does not affect
15 any of the legal arguments or positions any of the
16 parties had, and it would not change anything that
17 happened in this case.

18 And they're just trying to seize on this now
19 because I pointed it out, and it's really nothing
20 but a distraction. In their own opposition brief,
21 they spend 11 pages pointing out how many times the
22 Spano entity was incorrectly identified, although
23 they gloss over the fact that they brought this case
24 and they decided to file the wrong party.

25 So -- but, Your Honor, they -- they tell the

1 Court that correcting a mistaken corporate name is
2 not a clerical error and incredibly that somehow now
3 my client doesn't have standing, even though the
4 defendant. At the time they filed their brief, they
5 did not cite a single case where any other legal
6 authority for either of those representations to the
7 Court, which we think are demonstrably contrary to
8 the law.

9 They filed a sur-reply this morning while I was
10 driving here that, thankfully, I have a very smart
11 associate that read the cases and called me and we
12 talked through them both. They filed two cases.
13 One -- or they cite two cases, one from 1903 and one
14 from 1931, that when you read the cases, they
15 actually help us.

16 The first one they cite is this Turnstool case
17 from 1931. It states, "As the general rule, the
18 misnomer of a corporation is immaterial if it
19 appears that -- 'it' meaning the corporation --
20 could not have been misled." We know that's not the
21 case here. My clients were not misled. They're not
22 taking that position. They're here in the
23 courtroom. They've had notice of everything.

24 The 1903 case they cite, Your Honor, the
25 Sentill case, also helps us. It states that the

1 whole spirit of the code is -- code is opposed to
2 the disposition of the claim upon technical errors
3 in their regular duties. Hence, the very ample
4 powers of the amendment power conferred upon trial
5 courts. And in that case, the Court said the
6 amendment allowed was not so extensive as to
7 substitute a new defendant, but merely a correction
8 of the mistake in the name of the defendant.

9 And, Your Honor, the most recent case cited by
10 any party is in our brief on page three. It's a
11 1992 Court of Appeals decision. And it says, "If it
12 later appears that the true name of a corporation is
13 different from the name under which it was sued, the
14 misnomer is properly a subject of amendment."

15 And, Your Honor, again, we think they're really
16 just seizing on this. It's nothing but a
17 distraction because a plaintiff, not the defendant,
18 needs standing to bring a case. And this is our
19 reply that was filed after they first brought this
20 argument up, but standing is related to the Court's
21 subject matter jurisdiction.

22 For example, no one in Mr. Carpenter's camp
23 would dispute that a motion to dismiss for lack of
24 standing challenges the Court's subject matter
25 jurisdiction. They brought this action. We

1 asserted no counterclaims. And they do -- they did
2 not challenge their own standing or this Court's
3 subject matter jurisdiction. They specifically pled
4 those exact representations to the Court in their
5 complaint.

6 And just like they responded to our request for
7 the bond, when they filed -- when they first brought
8 up this argument, they had no authority. And then I
9 just walked through authority that they tried to
10 find this morning that actually helps our case, Your
11 Honor.

12 And just like Spano and Associates did cite
13 controlling authority that disposes of this comment
14 about standing, our brief also cites controlling
15 authority establishing the long routine -- or the
16 long history of routine holdings that South Carolina
17 courts regularly allow amendments of the record to
18 substitute one name for the other under Rule 60.

19 And the point of those cases is that the
20 failure to correct a corporate name does not
21 invalidate the process or the judgment or the
22 mistaken name causes the corporation no prejudice.
23 And no one's saying that my client is being
24 prejudiced. That's the only thing those cases talk
25 about.

1 We cite this Tri-County Ice case in our brief
2 where the Court says that a name -- a company called
3 Palmetto Ice Company and a company called PNH
4 Company, Inc., were one in the same for the purposes
5 of the action. And the South Carolina Supreme Court
6 affirmed that.

7 In that case, the Court explained that was
8 because the company was not misled to their
9 prejudice as to the nature of the lawsuit. And that
10 comports with the law in the Fourth Circuit. We
11 cited a case from the Fourth Circuit in our brief,
12 Your Honor. It explains the purpose of process is
13 to bring the parties to court. And my clients were
14 in court with Your Honor last time we were here.

15 The Court -- and they say the Court shouldn't
16 have to put themselves in a position of failing to
17 recognize what's apparent to everyone else, meaning
18 if Your Honor knows that we had notice of the case,
19 they know we had notice of the case, the Court
20 shouldn't have to go into some technicality to put
21 blinders on and not pay attention to that.

22 The mistaken name would only matter if it
23 caused Mr. Spano prejudice. And, obviously, we
24 talked about that. And, actually, in my very first
25 e-mail that I ever sent to Mr. Carpenter ever, like

1 this is the first case we ever had together, and
2 Your Honor was copied on it. It was before you
3 ever ---

4 THE COURT: I'm not familiar, but please go
5 ahead.

6 MR. MASSENGILL: Right. It was before I ever
7 appeared before you. I actually said, "I represent
8 Spano and Associates Asheville." That's the correct
9 entity. And they own the land. I said that to the
10 Court.

11 I say all of that to say, it's clearly a
12 mistake. I never thought when I brought it to the
13 Court's attention that it would be seized upon like
14 this. It was really just for the purposes of
15 they're going down to Columbia. We want the record
16 to be right on what the name of the company is.

17 THE COURT: Right.

18 MR. MASSENGILL: And so, basically, the
19 appellates are telling the Court that they should
20 get the benefit of this error, even though they sued
21 the wrong entity. That's not the law and they've
22 not attempted to cite authority otherwise.

23 THE COURT: Is there a group called Spano and
24 Associates, Inc.?

25 MR. MASSINGILL: Yes.

1 THE COURT: Where are they?

2 MR. MASSINGILL: Florida.

3 THE COURT: Are they registered to do business
4 in South Carolina?

5 MR. MASSINGILL: No. Spano and Associates
6 Asheville is the one that's registered to do ---

7 THE COURT: No. No. I'm looking at the
8 caption that says Spano and Associate, Inc.

9 MR. MASSINGILL: Yeah, they are not registered
10 to do business in South Carolina, Your Honor. Spano
11 and Associates Asheville is the owner. We just --
12 at some point in this litany of proceedings, that
13 name started being used incorrectly. I think I
14 figured out how that happened. That's beside the
15 point. I'll take responsibility for it, but all the
16 parties, including them, used it. They started this
17 new lawsuit.

18 THE COURT: The land in question ---

19 MR. MASSINGILL: Pardon me?

20 THE COURT: The land in question that you're
21 seeking to develop is titled to ---

22 MR. MASSINGILL: Asheville.

23 THE COURT: --- Spano and Associates, right?

24 MR. MASSINGILL: Spano and Associates
25 Asheville.

1 THE COURT: That's the legal title?

2 MR. MASSINGILL: Correct.

3 THE COURT: All right. Thank you, sir.

4 MR. MASSINGILL: And -- and so, Your Honor, my
5 point is is that somehow this started being used and
6 everyone used it. They filed a new lawsuit using
7 it.

8 THE COURT: I got it. It gotcha.

9 MR. MASSINGILL: Okay. And so ---

10 THE COURT: Let me stop you right here. I want
11 to hear from Mr. Carpenter. What is your argument
12 about changing the name? You said you had a big
13 objection. Why?

14 MR. CARPENTER: A defendant does not have a
15 personal interest in this case. The defendant does
16 not own the land. We have proceeded for a year and
17 a half, based on representations of opposing side,
18 that the persons that owned the land was Spano and
19 Associates, Inc.

20 THE COURT: The deed would show that, wouldn't
21 it?

22 MR. CARPENTER: The deed shows it is owned --
23 well, the -- I haven't looked at the deed, but the
24 record shows that the purchaser was Spano and
25 Associates Asheville, LLC.

1 THE COURT: Okay. Let me ask you this: If I
2 change the name, what impact is it going to have on
3 any aspect of your case?

4 MR. CARPENTER: I'm going to argue to the Court
5 that the cases don't allow that.

6 THE COURT: Sir?

7 MR. CARPENTER: I'm going to argue to the Court
8 that the cases don't allow that, and I've got some
9 authorities that I'd like to present to the Court.

10 THE COURT: What change or what effect would it
11 have on your case?

12 MR. CARPENTER: Then -- then the appeal would
13 be just against the planning commission and not
14 against a defendant who doesn't own the property.

15 THE COURT: The property is owned by Spano and
16 Associates -- Spano and Associates Asheville, LLC?

17 MR. CARPENTER: That's right. And they are not
18 a party to this case. Spano and Associates, Inc. is
19 the party and they don't have an ownership ---

20 THE COURT: Then you sued the wrong person.
21 You're the one who brought it up.

22 MR. CARPENTER: No.

23 THE COURT: Yeah.

24 MR. CARPENTER: Well, if I could explain?

25 THE COURT: No. I want you to -- you know,

1 yeah, go ahead. Please explain why you sued the
2 wrong person or entity.

3 MR. CARPENTER: When -- when -- when Spano
4 moved to intervene in the fall of '24, they moved to
5 intervene in the name of Spano and Associates, Inc.
6 They told the Court in pleading after pleading after
7 pleading that Spano and Associates, Inc., owned the
8 property.

9 THE COURT: All right. And so your case --
10 your case ---

11 --- (cross-talking) ---

12 THE COURT: Let me ask you this, Mr. Carpenter.
13 Your case is challenging this subdivision being
14 developed, right?

15 MR. CARPENTER: Yes, sir.

16 THE COURT: So if I allow the amendment to
17 Spano and Associates Asheville, LLC, what impact, if
18 any, will it have on your case?

19 MR. CARPENTER: That will bring in a new
20 defendant that hasn't been in here the whole time.
21 It's a different company.

22 THE COURT: No. I'm not buying that. I think
23 that it's whoever owns the property needs to be made
24 the proper party in this case. And it goes back to
25 the beginning of the case. It's retroactive.

1 MR. CARPENTER: When I have my chance to argue
2 about what the cases say, I'd like to address that.

3 THE COURT: Well, I'm asking you now.

4 MR. CARPENTER: Okay.

5 THE COURT: Have a seat, Mr. Massingill.

6 MR. MASSINGILL: Thank you, Your Honor.

7 THE COURT: Thank you. I want to hear -- I
8 just want to hear on the issue of the name change of
9 the entity.

10 MR. CARPENTER: Alright, sir.

11 THE COURT: Seems to me that it's just a matter
12 of performing.

13 MR. CARPENTER: Opposing counsel cited two
14 cases in support of his name -- so-called name
15 change argument. In both of those cases, a
16 plaintiff sued a defendant as the tradename of a
17 corporation instead of suing the corporation.

18 THE COURT: Let me ask you something,
19 Mr. Carpenter. If I deny the motion, you're going
20 to argue you don't have the right person. You got
21 to go back and start all over again. That's what
22 you're hoping to get, right? You're trying to delay
23 this even further by making them go back and get the
24 proper name. That's what you're trying to do,
25 right?

1 MR. CARPENTER: I -- I haven't thought that far
2 ahead, Your Honor. I'm just dealing with this
3 issue.

4 THE COURT: Oh, yes, you have. I know you much
5 better than that. You thought through this thing a
6 lot further than that. So what you're really trying
7 to do is delay them one more time, right?

8 MR. CARPENTER: We're trying to argue to the
9 Court that the other side has put forward a
10 corporation that doesn't own the property and argued
11 for a year and a half that ---

12 THE COURT: I'm arguing -- I'm asking you what
13 effect is it going to have on your case if I change
14 the name to the real party in interest in this case?

15 MR. CARPENTER: Then there'd be a new defendant
16 in which hasn't participated in ---

17 THE COURT: And you go back to square one.
18 That will not happen. It's not going to happen.

19 MR. CARPENTER: Could I address what I found in
20 the legal authorities?

21 THE COURT: You can, but I'm telling you that
22 I'm not going to let you go back and do that. You
23 -- you guys, you came here in this case. You had a
24 very legitimate concern. And I recognize that it
25 wasn't necessary for the scope of the view for me

1 from a planning commission decision is so now that
2 rarely is it ever changed, but because of the public
3 importance of potential slave graves out there, I
4 took it upon myself to say, "Y'all got to go do
5 that," and they did.

6 MR. CARPENTER: I remember that.

7 THE COURT: And the commission has done that.
8 And they've done what I've asked them and protected
9 that area that was a concern.

10 Now, I asked your client before and I asked
11 you. And they said no. Also, you just got this
12 other one out there. Oh, no, no. That's not the
13 case, but what I'm seeing is the fact that what
14 you're trying to do is thwart this development
15 because you don't want it. That's a whole different
16 scenario than trying to protect slave graves.

17 So trying to stop the name change so that, you
18 know, they have to go back and start at square one
19 seems to me just to be just what you're trying to do
20 is delay this. And I'm not going to let you have
21 that. It seems technical. And first of all, all
22 you had to do was look at the deed and that was
23 where they had the property in their name and
24 correct that in the first place, right?

25 MR. CARPENTER: Your Honor, the -- the --

1 when -- when the Spano came in and moved to
2 intervene, they asserted to the Court repeatedly
3 that -- that Spano and Associates, Inc., was the
4 owner of the property.

5 THE COURT: So what effect does that have on
6 your appeal?

7 MR. CARPENTER: Well, I think that if they
8 don't own the property, then they're not a real
9 party and interest and they can't appeal it.

10 THE COURT: Let me tell you this: I am
11 granting the motion. It's making it retroactive to
12 start. We're not going back to start this all over
13 again. It's not going to happen. If I'm wrong, the
14 Court of Appeals can tell me I'm wrong. I don't
15 think I am. Okay. So I am granting that motion.
16 Now, you can put your brief in the record. You can
17 make your arguments. I am granting the motion.

18 Now, let's go to the other matter.

19 MR. CARPENTER: I filed two briefs, one like
20 three days ago and one this morning that
21 specifically addresses the issue we're talking about
22 right now.

23 THE COURT: Well, if you filed it this morning,
24 I have not read it, Mr. Carpenter.

25 MR. CARPENTER: I understand. I understand.

1 THE COURT: And y'all need to give me more
2 respect than to file briefs the day of the hearing
3 and expect I'm going to read them.

4 MR. CARPENTER: I understand the Court's -- we
5 were responding to one filed last night.

6 THE COURT: Well, that goes to them, as well.
7 My ruling stands. I'm not changing it, okay, with
8 all due respect.

9 Now, what's the other part of your motion?

10 MR. MASSINGILL: For the -- for the bond, Your
11 Honor. You had ---

12 THE COURT: The bond?

13 MR. MASSINGILL: --- you had indicated you
14 would not do the amount we asked for, and I'm ---

15 THE COURT: Yeah, seven million -- seven and a
16 half million dollars is not realistic in this case,
17 but, Mr. Carpenter, I'd like to hear you on the bond
18 issue.

19 MR. CARPENTER: Your Honor, my clients are not
20 wealthy people and we can't afford anything close to
21 seven and a half million.

22 THE COURT: Well, but they are stopping people
23 and costing a lot of money, so they're going to have
24 to put up a bond.

25 MR. CARPENTER: They -- they live across the

1 street from the development.

2 THE COURT: I'm sorry?

3 MR. CARPENTER: They -- they live across the
4 street from the development.

5 THE COURT: Right.

6 MR. CARPENTER: If they could -- I mean, you
7 never asked why we're opposed to it. We think it's
8 way too jammed together. Way too many lots in
9 that -- for that part of the county, but, you know.

10 THE COURT: That's a matter for the planning
11 commission.

12 MR. CARPENTER: I understand, but we can't --
13 we can't afford hardly anything.

14 THE COURT: Well, you're going to have to put
15 up some type of bond because you are costing a lot
16 of money, and you're going to have to do that. I'll
17 think about what an agreeable amount is.

18 MR. MASSINGILL: May I very briefly respond to
19 that right here ---

20 THE COURT: Yeah, please.

21 MR. MASSINGILL: --- on the affordability
22 aspect because I think the door has been opened to
23 this, Your Honor.

24 THE COURT: Well, go ahead and get to it.

25 MR. MASSINGILL: Yes. We have very good reason

1 to believe that it is not just Mr. Hicks backing
2 this appeal, that there are other people with
3 significant means in the community that have
4 political aspirations that are backing this appeal.
5 And I can present that to Your Honor, and you would
6 see exactly what I'm seeing here. What I was just
7 going to suggest is that you've indicated that's not
8 reasonable. Could we submit a proposed order with a
9 formula, and then you determine what the ---

10 THE COURT: I don't want any proposed orders.
11 You know, if you want to give me some kind of
12 memorandum that gives me some formulas ---

13 MR. MASSINGILL: Happy to do that, Your Honor.

14 THE COURT: --- I'll be glad to look at that.

15 Mr. Carpenter, I'll be glad to have you do the
16 same and I'll look at it, but I'm going to give some
17 kind of bond.

18 MR. MASSINGILL: Okay. Thank you, Your Honor.

19 THE COURT: All right.

20 MR. MASSINGILL: So we would present a short
21 memo?

22 THE COURT: Yeah, just informal as it can be.
23 Just give me some kind of idea so I can put my --
24 wrap my arms around it. Okay.

25 MR. MASSINGILL: Thank you, Your Honor.

1 THE COURT: How long do you guys need to do
2 that?

3 MR. MASSINGILL: I can do it by the end of the
4 week for sure.

5 THE COURT: Mr. Carpenter?

6 MR. CARPENTER: Saturday, I'm -- Saturday, I'm
7 going to Austria. I'll be gone for 10 or 11 days,
8 so I -- I -- I don't think I can get it done by
9 Friday.

10 MR. MASSINGILL: I'll do it today.

11 THE COURT: Call me -- okay. Tell you what.
12 Thirty days. How long are you going to be in
13 Austria?

14 MR. CARPENTER: Ten or 11 days. I'm back on
15 the 11th.

16 THE COURT: Why can't you get -- just -- all it
17 is is telling me what -- what formula I should use
18 to come up with it. Today's Wednesday. It's not
19 rocket science.

20 MR. MASSINGILL: Your Honor, I can respond
21 today.

22 THE COURT: Stop, please.

23 MR. CARPENTER: I'll do the best I can.

24 THE COURT: All right. Sir, go ahead.

25 MR. MASSINGILL: Sorry, Your Honor. I was just

1 going to say I can do it today. My client has ---

2 THE COURT: Well, he ---

3 MR. MASSINGILL: --- they're not just studying
4 the contract.

5 THE COURT: They're not a big firm. I'm going
6 to -- I'm going to give them a little time. But if
7 you can't it done, I want you to get me on the
8 phone. We'll have a conference call and talk about
9 it, but it's something that -- it's another way of
10 delaying things. It's not asking for a big
11 memorandum. I'm asking for paragraphs. I mean,
12 this is the formula that you should use or these are
13 the factors you should use. Okay. And that could
14 be something you talk to your client and find out in
15 just a few minutes, I would think, but call me if
16 you can't get it done by Friday at 5:00.

17 MR. MASSINGILL: Thank you, Your Honor.

18 THE COURT: Prepare me an order to that effect.
19 Get that order done. Get it to Mr. Carpenter
20 before. Make it two separate orders, a bond order
21 and then the name changing order. Okay.

22 MR. MASSINGILL: But you don't want me to
23 submit a proposed order for the bond?

24 THE COURT: I don't want a proposed order for
25 the bond, just on the name change at this juncture.

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Thank you.

MR. MASSINGILL: Thank you, Your Honor.

THE COURT: Okay.

(At 11:00 a.m., the proceedings concluded.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 27th day of August, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 13, 2025

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter