

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM Horry COUNTY
Court of Common Pleas

William H. Seals, Jr. Circuit Court Judge

Case No. 2009-CP-26-5782

RECEIVED

APR 26 2012

S.C. Supreme Court

City of North Myrtle Beach.....Respondent,

v.

East Cherry Grove Realty Co., LLC,
the State of South Carolina and John Doe.....Defendants,

of whom, East Cherry Grove Realty Co., LLC, isAppellant,

and, the State of South Carolina isRespondent.

STATE’S RETURN TO PETITION FOR REHEARING

The State requests that Respondent’s Petition for Rehearing be denied for the following reasons:

1. This Petition should be denied because it fails to meet the standards of Rule 221, SCACR. Under that Rule, a petition for rehearing is to be based upon “points supposed to have been overlooked or misapprehended by the court.” Appellant does not identify any such points in his Petition. Instead, Appellant requests that this Court engage in a review of documents not in the Record which is not within the scope of Rule 221.

If Appellant wants to request relief based upon the documents, the proper means to attempt to bring the matter before a court would be a motion for a new trial in Circuit Court based upon after discovered evidence under Rule 60(b), SCRCP. Although “[d]uring the pendency of an appeal, leave to make the motion must be obtained from the appellate court” (*Id.*), this Court has already issued its Opinion. Appellant has not raised grounds in its Petition that warrant rehearing under Rule 221. Therefore the Opinion in this case should not be stayed or suspended while Appellant pursues a new trial motion in Circuit Court. In fact, Appellant has not even said that it wants to request a new trial.

2. For the information of the Court, the State is producing those four documents itemized in the April 13, 2012 letter to counsel (Exhibit A) for Appellant and counsel for North Myrtle Beach with service of this Return. Counsel is not filing these documents with this Return because Appellant’s request that he do so falls outside the scope of Rule 221, but counsel will file the documents if requested by the Court. *See*, Paragraph 4, *infra*. The State is also providing counsel with one other file document not previously itemized which may relate to other matters but whose acquisition date is not presently known. In providing the documents and referencing the located file, the State does not waive any claims or defenses as to the litigation that has concluded, that file or the documents provided.

Appellant’s request that the Supreme Court order the documents to be produced is puzzling and unnecessary because the April 13 letter expressly offered to send the documents to counsel upon request, but he never asked for them. That letter was emailed as well as mailed that same day to counsel for Appellant. Counsel for Appellant did not request a copy of those documents prior to his filing this Petition although eleven days had passed after he

was notified of their existence.¹

3. The scope of the request for production in Appellant's Petition for Rehearing is unclear as to whether it is limited to the four itemized documents or extends to other documents in the file. Appellant's previous Freedom of Information Act request and related Request for Production were limited to documents prior to the Quit Claim deed. *See*, Exhibits B,C and D to Petition. Therefore, post-quitclaim deed documents in the file at issue should not be produced because they were not previously requested by Appellant in Circuit Court.² Moreover, Appellant's request for production is not one within the scope of a petition for rehearing. *See*, Paragraph 1, *supra*.

4. The reason why the four itemized documents were not produced during litigation is provided in the letter of April 13, 2012. While looking for an unrelated file, counsel found the documents in a file that had slipped under other files in a cabinet. Counsel regrets that they were not located before then, but further inquiry should not be necessary and does not come within the scope of a petition for rehearing. *See also*, Note 1.

¹ The State anticipates taking the position that all of the itemized documents should have been, at least, in the files of the Circuit Court in the 1960's litigation and therefore equally accessible to Plaintiff long before now. The State also anticipates taking the position that the documents are not of significance as indicated in the April 13 letter, but neither access to nor the substance of the documents is a matter for consideration in the Petition for Rehearing.

² Although the file is labeled on the side with a reference to State v. East Cherry Grove, it has initials on the label of former Assistant Attorney General Ken Woodington, who was not counsel in the 1960's litigation, and also contains file material regarding subsequent matters, including 1989 litigation to which East Cherry Grove was not a party.

CONCLUSION

For the foregoing reasons, the State of South Carolina respectfully requests that this Court deny the Petition for Rehearing.

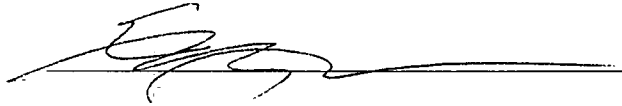
Respectfully submitted,

ALAN WILSON
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By:



ATTORNEYS FOR THE STATE

April 26, 2012

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CERTIFICATE OF SERVICE

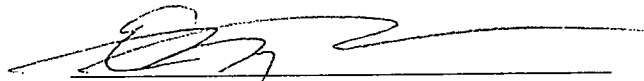
I hereby certify that I have served the State's Return to Petition for Rehearing on counsel for the other parties by mailing copies to them at the addresses on the next page via the United States Mail this April 26, 2012. I have also mailed counsel for the other parties copies of the four itemized documents that are referenced in the Petition and Return and identified in my

Certificate of Service
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letter of April 13, 2012 which is attached as an exhibit to the Petition:

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