

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2011196386

Mark F. Teseniar and Nan M. Teseniar, on
behalf of themselves and others similarly
situated, and Twelve Oaks at Fenwick
Property Owners Association, Inc.,
Respondents,

v.

Professional Plastering & Stucco, Inc., Maria
Arias, and Miquel Rosales,
Defendants,

Of whom Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant

v.

Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc., Third-Party
Plaintiffs,

Of whom APS Unlimited, Inc. is Respondent.

**APPELLANT'S RETURN TO RESPONDENT APS UNLIMITED, INC.'S
PETITION FOR REHEARING**

Pursuant to Rule 240(e), SCACR , Appellant Professional Plastering & Stucco, Inc. (hereinafter "Appellant") hereby submits this Return to Respondent APS Enterprises Unlimited, Inc.'s (hereinafter "Respondent APS") Petition for Rehearing.

STANDARD FOR REHEARING

"The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." *Kennedy v. S.C. Retirement System*, 349 S.C. 531, 532 (2001) (citing Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999)). In order to prevail on a petition for rehearing, the moving party "must demonstrate the Court overlooked or misapprehended their argument." *Id.* (citing Rule 221(a), SCACR).

ARGUMENT

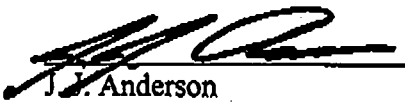
After extensive briefing and oral argument, this Court correctly reversed the judgment of the trial court based on (1) the trial court's error in refusing to qualify Christian Dawkins, P.E. as an expert on behalf of Appellant Professional Plastering and (2) the granting of summary judgment in favor of APS Enterprises Unlimited, Inc. In response to the Court's reversal of the trial court decision, Respondent APS filed a Petition for Rehearing. Respondent APS' petition is simply a restatement of legal arguments and facts previously presented at length to the Court. Appellant submits that Respondent's contentions are without merit and their Petition for Rehearing should be denied.

The Court did not overlook or misapprehend any evidence or argument of counsel for APS when the Court correctly found that since Appellant was not required to have a license

under Chapter 11 of the statute, Appellant is not precluded by §40-11-370(c) from bringing a claim against Respondent APS. Therefore, in response to Respondent APS' Petition for Rehearing, Appellant relies on and invites the Court's attention to the arguments and facts set forth in Appellant's Final Brief, Final Reply Brief, and Record on Appeal.

Respectfully submitted,

ANDERSON REYNOLDS
& STEPHENS, LLC



J. J. Anderson
Danielle B. Wegener
37 ½ Broad Street
P O Box 87
Charleston, SC 29402
843-723-0185

And

SWEENY WINGATE
& BARROW, PA
Everett A. Kendall
Christy E. Mahon
1515 Lady Street
P O Box 12129
Columbia, SC 29211
803-256-2233

*Attorneys for Appellant
Professional Plastering & Stucco, Inc.*

February 3, 2014

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2011196386

Mark F. Teseniar and Nan M. Teseniar, on
behalf of themselves and others similarly
situated, and Twelve Oaks at Fenwick
Property Owners Association, Inc.,
Respondents,

v.

Professional Plastering & Stucco, Inc., Maria
Arias, and Miquel Rosales,
Defendants,

Of whom Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant

v.

Maria Ariasm, Miquel Rosales, and APS Enterprises Unlimited, Inc., Third-Party
Plaintiffs,

Of whom APS Unlimited, Inc. is Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's Return to Respondent APS Unlimited, Inc.'s Petition for Rehearing by depositing a copy in the U. S. mail, postage paid and via electronic service on February 3, 2014 addressed to Respondents' attorneys as set forth below:

Phillip W. Segui, Jr., Esquire
Segui Law Firm, LLC
864 Lowcountry Boulevard, Suite A
Mt. Pleasant, South Carolina 29464
psegui@seguilawfirm.com:


John T. Chakeris, Esquire
The Chakeris Law Firm
Post Office Box 397
Charleston, South Carolina 29402
john@chakerislawfirm.com

W. Jefferson Leath, Jr., Esquire
Michael S. Seekings, Esquire
Leath, Bouch & Seekings, LLP
Post Office Box 59
Charleston, South Carolina 29402
jl@leathbouchlaw.com
mseekings@leathbouchlaw.com

Jesse A. Kirchner, Esquire
Michael A. Timbes, Esquire
Thurmond, Kirchner & Timbes, P.A.
15 Mid-Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
jkirchner@tktylawfirm.com
mtimbess@tktylawfirm.com

Justin O. Lucey, Esquire
Justin O'Toole Lucey, P.A.
Post Office Box 806
Mount Pleasant, South Carolina 29465-0806
jlucey@lucey-law.com

Roy P. Maybank, Esquire
Amanda Maybank, Esquire
Jason A. Daigle, Esquire
Maybank Law Firm, LLC
P O Box 12579
Charleston, South Carolina 29407
roy@maybanklaw.com
jason@maybanklaw.com
amanda@maybanklaw.com



Jonathan J. Anderson
Danielle B. Wegener
ANDERSON REYNOLDS &
STEPHENS, LLC
37 1/2 Broad Street
P O Box 87
Charleston, SC 29402
843-723-0185

AND

Everett A. Kendall
Christy E. Mahon
SWEENY WINGATE &
BARROW, PA
1515 Lady Street
P O Box 12129
Columbia, SC 29211
803-256-2233

*Attorneys for Appellant Professional
Plastering & Stucco, Inc.*