

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-32-00442  
Appellate Case No. 2012-212283

**RECEIVED**

MAR 11 2014

**SC Court of Appeals**

Dr. Joseph G. Carew and Dr. Karen Carew, ..... Appellants,

v.

RBC Centura Bank, RBC Bank as successor in interest  
of RBC Centura Bank, Clifton W. Hall, Hall Builders,  
LLC, Mid Carolina Appraisal Company, LLC, and  
Teresa Addy Haltiwanger, ..... Defendants

Of Whom, RBC Centura Bank, RBC Bank as successor  
in interest of RBC Centura Bank are ..... Respondents.

**Respondents' Return to Appellants' Petition for Rehearing**

Pursuant to Rules 221 and 240(e) of the South Carolina Appellate Court Rules, Respondents RBC Centura Bank and RBC Bank<sup>1</sup>, as successor in interest of RBC Centura Bank, file this Return to Appellants' Petition for Rehearing as to the Panel's unpublished opinion in this matter (Carew v. RBC Centura, et al., Op. No. 2014-UP-069 (S.C. Ct. App. filed February 19, 2014) (Shearouse Adv. Sh. No. 7)). The petition for rehearing should be denied for two reasons, with each reason providing a sufficient independent basis to support denial.<sup>2</sup>

<sup>1</sup> PNC Bank, National Association is successor by merger to Respondent RBC Bank.

<sup>2</sup> Appellants' Petition for Rehearing only advances arguments related to the negligence cause of action. Appellants raise no arguments related to the breach of contract claims addressed in the opinion. Therefore, those arguments are abandoned, and this Court cannot grant rehearing as to those claims. See, e.g., Biales v. Young,

First, the petition for rehearing should be denied because Appellants cannot use a petition to ask the Panel to reconsider arguments previously presented. Appellants raise four arguments in the petition for rehearing. Each argument advances the same argument presented to the Panel in Appellants' appellate briefing and in oral argument.

Appellants first allege that the Panel overlooked the fact "that RBC Bank acted as a mere lender" by continuing "to disburse loan proceeds to the builder." See Petition p. 2-3. This exact argument was presented to the Panel in Appellants' Brief. In fact, Appellants cite the same Record pages and same case law in their petition that they cited in their Appellants' Brief. Compare Petition p. 2-3 with Appellants' Brief p. 8-10, 11. Therefore, the Panel did not overlook these claims.

Appellants also claim that the Panel "failed to recognize that RBC Bank admitted to making mistakes in disbursements of the loan proceeds . . . ." See Petition p. 3. Appellants presented this exact argument on pages 8-10 of their Appellants' Brief. See Appellants' Brief p. 8-10. Notably, the evidence that Appellants now allege was overlooked by the Panel is the same evidence cited in the Appellants' Brief. Compare Petition p. 3 with Appellants' Brief p. 9-10. Thus, the Panel did not overlook this argument when it rejected Appellants' claims in the opinion.

Appellants next allege that the Panel "failed to recognize" evidence of negligent disbursements by RBC. See Petition p. 4. However, Appellants simply repeat the same negligent disbursement argument advanced previously to this Court. See Appellants' Brief p. 9, 10-11. Appellants again cite to the same evidence cited in the Appellants' Brief. Compare

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315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) ("Failure to argue is an abandonment of the issue and precludes consideration on appeal.").

Petition p. 4 with Appellants' Brief p. 9, 10-11. Again, the Panel previously considered this argument and evidence and rejected such claims in the opinion.

Lastly, Appellants claim that the Panel "failed to recognize that Appellants were damaged by RBC Bank's disbursal decisions . . . ." See Petition p. 4. Appellants made this same argument in their Appellants' Brief and again use the same record citation to support the claim. Compare Petition p. 4 with Appellants' Brief p. 11. The Panel considered and rejected these claims in the opinion.

As shown above, the Panel previously had the opportunity to review and weigh the merits of each argument raised in the petition. Accordingly, these grounds cannot constitute a basis for rehearing because they were previously presented to this Court. The Supreme Court has held that a petition for rehearing cannot be used to present previously made appellate arguments. See Kennedy v. South Carolina Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (holding it is not "the purpose of a petition for rehearing to have the case tried in the appellate court a second time"). The petition for rehearing should be denied on this basis alone.

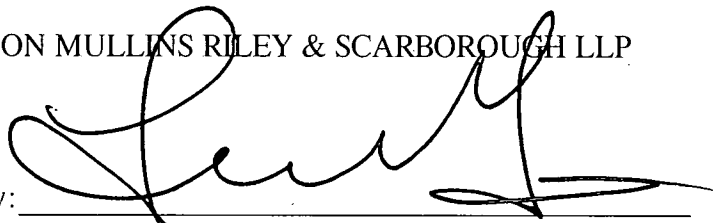
Second, the Panel did not overlook or misapprehend any facts or issues in issuing the unpublished opinion in this matter. As noted herein, the Panel considered each argument advanced by Appellants and rejected each claim. Thus, the Panel did not overlook any argument advanced by Appellants. The Panel also did not misapprehend Appellants' arguments.

Appellants seek a rehearing on the basis that the Panel overlooked certain evidence in considering each claim. Appellants' arguments misapprehend the opinion in this matter. The Panel held that Appellants' negligence claims failed as a matter of law because RBC owed no

duty of care. See Hannson v. Scalise Builders of S.C., 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007) (stating summary judgment is warranted when the non-moving party “fails to...establish the existence of an element essential to the party’s case”); Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006) (providing that “[i]n a negligence action, a plaintiff must show...the defendant owes a duty of care to the plaintiff”); Roundtree Villas Ass’n v. 4701 Kings Corp., 282 S.C. 415, 422, 321 S.E.2d 46, 50 (1984) (holding periodic inspections during construction are “fundamentally for the protection of the lending institution and do [] not impose upon the lending institution a duty to see that the builder is getting a job free of defects”); Regions Bank v. Schmauch, 354 S.C. 648, 669-70, 582 S.E.2d 432, 443-44 (Ct. App. 2003) (holding a lender did not owe a borrower a duty of care “in the regular course of its business”). In so holding, the Panel considered each claim and applied well-settled law to reject each of Appellants’ meritless claims as a matter of law. Appellants advance no argument that the Panel misapplied these settled rules. Therefore, this Court should deny the petition on this basis as well.

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PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for RBC Centura Bank, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **RESPONDENT'S RETURN TO APPELLANTS' PETITION FOR REHEARING**

Served: Eric G. Fosmire, Esquire  
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