THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No: 2011-CP-07-5059
Court Of Appeals Number:

CoastalStates Bank, Respondent,

v.

Hanover Homes of South Carolina, LLC; Hanover Homes, Inc.; George Cosman, Defendant,

Of Whom George Cosman is the Appellant.

George Cosman, Third-Party Plaintiff,

v.

Phillip Petruzzelli, Third-Party Defendant

APPELLANT'S RETURN TO RESPONDENT'S PETITION FOR REHEARING

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Pursuant to Rule 240(e) SCACR, the Appellant, George Cosman ("Cosman"), respectfully submits his Return to Respondent's Petition for Rehearing served on Appellant on April 10, 2014. The Respondent filed its Petition on the grounds that the Court's reliance upon South Carolina statutory law, case law, and secondary authority was either inappropriate, unwarranted, or confusing. None of these assertions are correct. Further, the arguments presented are not grounds for rehearing under South Carolina law.

I. **Respondent misconstrues the Courts ruling in arguing the Court relied upon the decision in *Poole.***

The assertions made by Respondent fail to state a fact that has been overlooked or misapprehended by the court and should therefore be denied. Contrary to the assertions by Respondent, the Court's Order did not hold that the release of other guarantors released Cosman, but rather that satisfaction of the underlying obligation of the borrower could be reasonable interpreted under the guarantee to result in the release of the obligations of the guarantor. The citations in the Order of which the Respondent initially complains related to the Court's explanation of the general rule in South Carolina regarding the release of guarantors when another obligor is released, citing 38A C.J.S. Guaranty, § 111, 720 – 21 (2008) and *Poole v. Brabham*, 143 S.C. 156, 144 S.E. 267 (1927). After these citations, the Court then immediately goes on to explain that said general rules have since been tailored by decisions of the South Carolina Courts such as in *Transouth Fin. Corp. v. Cochran*, 324 S.C. 290, 478 S.E.2d 63 (Ct.App. 1996). The Order goes on to further hold that while the decision in *Cochran* and its facts are not parallel to the present facts, the legal precedent of looking to the language of the Guarantee to determine the effect of a subsequent release is controlling. The Respondent's

assertion that such analysis of the law in South Carolina is grounds for rehearing is patently false. See *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011) (a petition for rehearing must state with particularity the points supposed to have been ***overlooked or misapprehended by the court***).

The Respondent's attempt to reargue the Court's reading of the Guarantee and Agreement are similarly inappropriate in a petition for rehearing, and Respondents petition should therefore be denied. As Respondent duly points out in its petition, the court explicitly considered the language contained in the Guarantee and the Agreement when considering what a reasonable interpretation of said agreements would be. South Carolina law dictates that Respondent's attempt to reassert its arguments regarding the proper reading of the Guarantee and the Agreement is not appropriate in a petition for rehearing. See *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) ("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"). Thus, the Respondents petition should be denied.

II. Respondent erroneously argues that the citations of the Court create confusion and erroneously argues that the Order is poorly worded but these arguments are not correct and are not grounds for rehearing.

The Respondent asserts that the Court's consideration of the development of the law in South Carolina is unnecessary or confusing. Such assertions are not true. Similarly, such assertions are not grounds for rehearing. Therefore, the petition should be denied.

Respondent goes to some length to recolor the Order to stand for something outside of the words of the Order itself. The Respondent asserts that the Order somehow states that South

Carolina law has "radically changed". The requirement to read a contract in determining its meaning has always been the law of South Carolina. Nothing has changed that requirement.

Even though the Court considered South Carolina's adoption of Article 9 of the Uniform Commercial Code and its references to the law of sureties, such references cannot be interpreted as "radically changing" the law of South Carolina. Even if one considers these developments as a "radical change", such a ruling is not grounds for rehearing. Thus, the petition should be denied.

The citations complained of by Respondent within the order correctly stress the importance of considering the current statutory law regulating guaranties in considering application of prior rulings. Similarly, the Order appropriately considers how other forms of authority, such as the comments to the promulgated code, interpret such changes to the law in applying such regulations to guarantees and compromise agreements. Contrary to Respondents assertions, such considerations are not only appropriate, but necessary under South Carolina law. See *Sloan v. S. Carolina Bd. of Physical Therapy Examiners*, 370 S.C. 452, 468-69, 636 S.E.2d 598, 606-07 (2006) (A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers), citing *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992) and *Caughman v. Columbia Y.M.C.A.*, 212 S.C. 337, 341, 47 S.E.2d 788, 789 (1948); see also *Bryant v. City of Charleston*, 295 S.C. 408, 368 S.E.2d 899 (1988); *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). The Supreme Court in *Emerson Elec. Co. v. Wasson*, 287 S.C. 394, 339 S.E.2d 118 (1986) went as far as holding that certain opinions or comments to statutes are entitled to deference in interpreting statutes. In *Wasson*, the Court held that the construction of a statute by

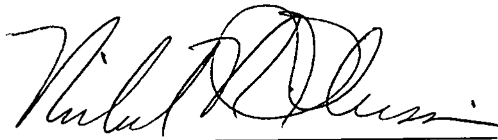
an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons. *Id.* Such considerations made by this Court in its Order cannot be considered unnecessary or confusing, let alone grounds for rehearing. Therefore, the petition should be denied.

III. Respondent's final argument demanding the Order state that South Carolina law does not apply to or was not considered in this decision is neither comprehensible or grounds for rehearing.

Finally, the Respondent's third argument requests that this Court rehear this matter in order to reissue its Order and explicitly hold that the decision in *Cochran* was not applied or considered in this matter. The Respondent asserts that while both parties cited and discussed the decision in *Cochran* at length in their briefs and at oral argument, the decision is no longer pertinent to this Order. As discussed earlier, the Order succinctly lays out the arguments of both the Respondent and Appellant in how the *Cochran* decision should be applied to the present facts. Similarly, the Order concisely states why the present facts are distinct from those in *Cochran* and how the law as applied in *Cochran* is still the law enforced in this decision. The Order plainly holds that the satisfaction of the underlying obligation of the borrower could be reasonable interpreted under the guarantee to result in the release of the obligations of the guarantor. Thus, the trial courts order granting summary judgment to the contrary was reversed. The Respondent fails to cite any authority for its demand that this Court rehear the matter based upon the Respondent's confusion. Similarly, the Respondent cannot point to such authority. This Court should not be required to further explain its decision to reverse the trial court in part and affirm in part simply because the Respondent is confused. Therefore, the petition for rehearing should be denied.

CONCLUSION

The assertions made by Respondent fail to state a fact that has been overlooked or misapprehended by the court. The Court did not rely upon the holding in *Poole* that the release of one guarantor released another guarantor. The Court properly discussed the development of the law of sureties in its order and properly found that the law of South Carolina has always been that the Court will interpret contracts as they are written. Lastly, the Court properly analyzed *Cochran* and properly distinguished the ruling in *Cochran* from the facts of this case. Simply, the Respondent did not establish that anything was overlooked or misapprehended by this Court and therefore the Petition should be denied.

By: 

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Of Whom George Cosman is the Appellant.

George Cosman, Third-Party Plaintiff,

v.

Phillip Petrozzelli, Third-Party Defendant.

PROOF OF SERVICE

I certify that I have served a copy of the Appellant's Reply to Respondent's Petition for Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on April 16, 2014, addressed to its attorney of record as follows:

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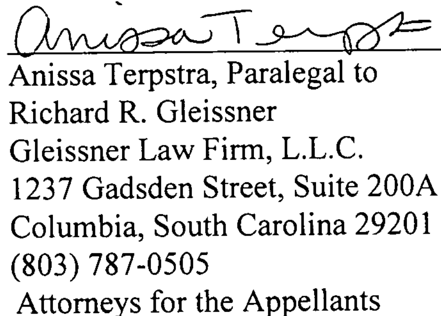

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Dated: 4-16-14