

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY  
In The Court of Common Pleas

Marvin H. Dukes, III, Master in Equity and Special Circuit Judge

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Unpublished Opinion No. 2011-UP-199  
Filed May 3, 2011

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Amy Davidson, Petitioner,

v.

City of Beaufort, Branch Banking & Trust of South Carolina, Collins Engineers, Inc.,  
Brantley Construction Company, Inc., and Tidal Wave 23, LLC  
Defendants

Of Whom Collins Engineers, Inc., Brantley Construction Company, Inc., and Tidal Wave  
23, LLC are Respondents.

and

Phillip Davidson, Petitioner,

v.

City of Beaufort, Branch Banking & Trust of South Carolina, Collins Engineers, Inc.,  
Brantley Construction Company, Inc., and Tidal Wave 23, LLC  
Defendants

Of Whom Collins Engineers, Inc., Brantley Construction Company, Inc., and Tidal Wave  
23, LLC are Respondents.

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RESPONDENTS' JOINT MOTION TO STRIKE

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**Cases**

*Hollins v. Wal-Mart Stores, Inc.*, 392 S.C. 313, 709 S.E.2d 625 (S.C. 2011)..... 6

**Rules**

Rule 221(a), SCACR ..... 6

Respondents respectfully submit their Joint Motion to Strike Petitioners' Petition for Rehearing filed on or about April 29, 2014, on the grounds set forth herein.

### **PROCEDURAL HISTORY**

The Petitioners, Amy and Phillip Davidson, filed lawsuits on October 23, 2006, alleging negligence claims against the City of Beaufort ("Beaufort"), Branch Banking and Trust of South Carolina, ("BB&T"), Collins Engineers, Inc. ("Collins"), Brantley Construction Company, Inc. ("Brantley"), and Tidal Wave 23, LLC ("Tidal"). The Plaintiffs' allegations revolve around the May 26, 2006 abduction and assault of the Plaintiffs by alleged criminals not parties to the lawsuits. (R. pp. 000038-000044, pp. 000100-000107).

Tidal Wave filed its initial Motion to Dismiss pursuant to Rule 12(b)(6) on December 14, 2006, concerning the legal classification of the Petitioners. (R. pp. 314-325). On May 8, 2007, the trial court heard these motions, and on May 24, 2007, denied such motions with leave to refile to allow the parties to conduct discovery. (R. pp. 34-35). After ample time for discovery, each Respondent filed a motion for summary judgment. On April 8, 2008, Judge Dukes issued an order granting Respondents' dispositive motions. (R. pp. 03-25). Petitioners moved for reconsideration on April 17, 2008 (R. pp. 167-174). Judge Dukes denied Petitioners' motion on August 27, 2008 and issued a written denial order on September 2, 2008. (R. pp. 01-03). Thereafter, Petitioners appealed to the Court of Appeals. After receiving and reviewing briefs and the Record on Appeal, the Court of Appeals affirmed the grant of summary judgment to the Respondents in

a May 3, 2011 Order (Unpublished Opinion No. 2011-UP-199).

On May 25, 2011, Petitioners filed a Motion to Recall Remittitur and Accept Motion for Rehearing for Filing. (Supplemental Appendix, pp. 21-31). On June 16, 2011, the Court of Appeals recalled the remittitur with no explanation and advised Petitioners that their Petition for Rehearing was due on or before July 1, 2011. (Supplemental Appendix, p. 32). On June 28, 2011, Respondents filed their Joint Motion/Petition for Reconsideration and Motion to Dismiss for Lack of Jurisdiction. (Supplemental Appendix, p. 33-43). While this motion was still pending, Petitioners filed their Motion for Rehearing. (Supplemental Appendix, p. 44-49). On July 19, 2011, the Respondents filed their Joint Opposition to Petitioners' Motion for Rehearing. (Supplemental Appendix, pp. 50-63). On August 24, 2011 the Court of Appeals issued an Order denying the Respondents' June 28, 2011 Motion, but also denying the Petitioners' Petition for Rehearing on August 24, 2011, stating, "the court is unable to discover any material fact or principle of law that has been overlooked or disregarded and hence, there is no basis for granting a rehearing." (Supplemental Appendix, pp. 64-67).

On September 15, 2011, the Petitioners petitioned this Court to issue a Writ of Certiorari to review the decision of the Court of Appeals. On September 6, 2013, this Court granted the Petitioners' petition. On March 19, 2014, this Court heard oral argument. On April 16, 2014, this Court dismissed the writ of certiorari as improvidently granted.

## ARGUMENT

### I. SCACR RULE 221(a) PROHIBITS PETITIONERS' PETITION FOR REHEARING.

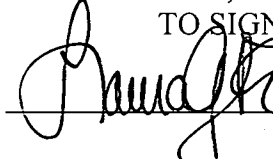
Rule 221(a), SCACR, prohibits the filing of petitions for rehearing after the denial of a writ of certiorari. This Court has held that the dismissal of a writ of certiorari as improvidently granted “is equivalent to the denial of a petition for a writ of certiorari since both dispositions indicate this Court has determined there is no need to discuss or further review the merits of the case.” *Hollins v. Wal-Mart Stores, Inc.*, 392 S.C. 313, 709 S.E.2d 625 (S.C. 2011). Therefore, as this Court has clearly stated, “no petition for rehearing is permitted from a dismissal of a writ of certiorari as improvidently granted.” *Id.*

## CONCLUSION

For the reasons stated above, Respondents respectfully request that this Court strike Petitioners' Petition for Rehearing.

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[RESPONDENTS HAVE EXPRESSLY GRANTED  
LAURA J. EVANS, ESQUIRE, PERMISSION  
TO SIGN ON THEIR BEHALF]



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May 8, 2014  
Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing RESPONDENTS' JOINT MOTION TO STRIKE has been sent to all counsel of record via U.S. Mail, correctly addressed with sufficient postage, this 8th day of May, 2014.



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