

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

RECEIVED

The Honorable Cynthia Graham Howe,
Master-in-Equity for Horry County

JUL 02 2014

S.C. SUPREME COURT

Order (S.C. Ct. App. filed June 6, 2012)

Ex Parte Coastal Designs, Inc. and Tim Wilkes..... Petitioners/Appellants

vs.

In Re: SRB Servicing, LLC, successor by assignment to Synovus Bank,
formerly known as Columbus Bank and Trust Company,
as successor in interest through name change and by merger with
the National Bank of South Carolina..... Respondent

vs.

Myrtle Beach Grande Hotel, LLC, Harvey L. Jones,
Wendy Jones (J.) Bellamy, Billy Joe (J.) Bellamy,
Kersi S. Shroff, Mozingo & Wallace Architects, LLC,
Harvey Levon Jones and Wendy Beth Jones Bellamy
as Personal Representatives of the Estate of Ann L. Jones,
and as Trustee of the Restated and Amended Trust Agreement
of Ann L. Jones, dated October 30, 2006..... Respondents.

**PETITIONERS/APPELLANTS' RETURN TO RESPONDENT'S
MOTION FOR COSTS AND ATTORNEY'S FEES**

This matter is now before the Court based on Respondent's Motion for Costs pursuant to SCACR 242(j)(1). This Rule provides:

(j) Costs When a Writ of Certiorari Has Been Granted.

Unless otherwise ordered by the Supreme Court or agreed to by the parties, costs shall be assessed against the appellant if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals.

In this case, this Court originally granted certiorari and required an expedited briefing schedule. Thereafter, this Court had a hearing. Counsel for Appellants received an Order June 19, 2014 (a copy of which is attached) which provided that the writ of certiorari had been “improvidently granted.” Since this Court has now determined that the writ of certiorari was improvidently granted, SCACR 242(j)(1) does not apply. In effect, this Court in its opinion of June 19, 2014 nullifies the grant of certiorari which means that costs and attorney’s fees should not be allowed.

This Court had the opportunity to explain the meaning of “improvidently granted” in the case of *Hollins v. Wal-mart Stores, Inc.*, 392 S.C. 313, 709 S.E.2d 625 (S.C. 2011).

In that case, this Court ordered briefing and oral argument (just like in our case) and then dismissed the writ as improvidently granted. The Court noted:

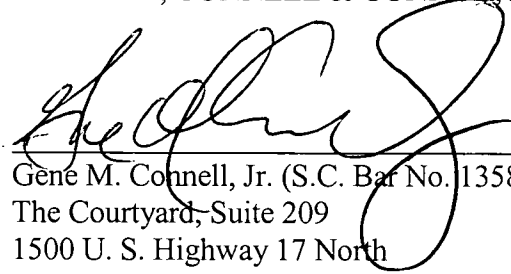
For purposes of Rule 221(a), a dismissal of a writ of certiorari is improvidently granted is equivalent to the denial of a petition for a writ of certiorari since both dispositions indicate this court has determined there is no need to discuss or further review the merits of the case. 709 S.E.2d at 625.

Appellants believe that the effect of the Order of June 19, 2014 is as if the writ of certiorari was never granted. Accordingly, Respondent would not be entitled to costs or attorney’s fees under SCACR 242(j)(1) as the merits of the case were not reached..

Therefore, Appellants request that Respondent’s motion for attorney’s fees and costs be denied since this court has now dismissed the writ of certiorari as improvidently granted.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr. (S.C. Bar No. 1358)

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Attorney for Petitioners/Appellants

July 1, 2014

Surfside Beach, South Carolina.

The Supreme Court of South Carolina

Ex parte Coastal Designs, Inc. and Tim Wilkes,
Petitioners,

In re:

SRB Servicing, LLC, Successor by assignment to
Synovus Bank, formerly known as Columbus Bank and
Trust Company, as successor in interest through name
change and by merger with the National Bank of South
Carolina, Respondent,

v.

Myrtle Beach Grande Hotel, LLC, Harvey L. Jones,
Wendy Jones (J.) Bellamy, Billy Joe (J.) Bellamy, Kersi
S. Schroff, Mozingo & Wallace Architects, LLC, Harvey
Levon Jones and Wendy Beth Jones Bellamy as Personal
Representatives of the Estate of Ann L. Jones, and as
Trustee of the Restated and Amended Trust Agreement
of Ann L. Jones, dated October 30, 2006, Respondents.

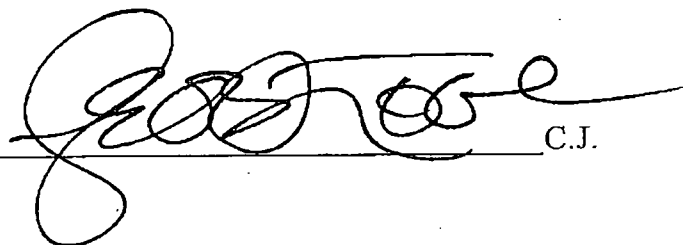
Appellate Case No. 2012-213014

Lower Court Case No. 2009-CP-26-05395

ORDER

The writ of certiorari to review the Court of Appeals' order of dismissal is
dismissed as improvidently granted.

IT IS SO ORDERED.


C.J.

[Handwritten signature]

J.

[Handwritten signature]

J.

[Handwritten signature]

J.

[Handwritten signature]

J.

Columbia, South Carolina

June 19, 2014

cc:

- Gene McCain Connell, Jr., Esquire
- Joseph F. Singleton, Esquire
- Kathryn Harper Sligh, Esquire
- Scott B. Umstead, Esquire
- Susan Pardue MacDonald, Esquire
- Kathryn M. Cook, Esquire
- Melanie Huggins-Ward

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as Personal Representatives of the Estate of Ann L. Jones,
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of Ann L. Jones, dated October 30, 2006..... Respondents.

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., Attorneys at Law, and that she has served the **Petitioners/Appellants' Return to Respondent's Motion for Costs and Attorney's Fees** on the Respondent, through attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

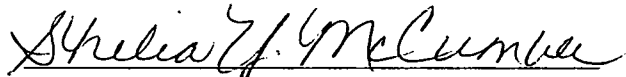
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Conway, SC 29528

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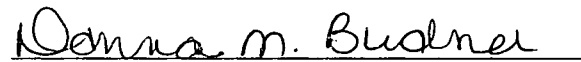
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Cook and Roy, P.C.
PO Box 4086
North Myrtle Beach, SC 29597

DATE OF MAILING: July 1, 2014


Shelia Y. McCumber

SWORN AND SUBSCRIBED before me,
this 1st day of July, 2014


Notary Public for South Carolina
My Commission Expires: 2/14/17