

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

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App. Case No. 2013-000020  
Case No. 2011-CP-10-3241

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Keith Roberts and LOT 12 YELLOW HOUSE, L.L.C.. . . . . Appellants,

vs.

Randall J. Drew . . . . . Respondent.

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**PETITION FOR REHEARING**

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Lawyers for Appellants

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**SC Court of Appeals**

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## ARGUMENT FOR REHEARING

Pursuant to Rule 221, SCRCP, Appellants, Keith Roberts and LOT 12 YELLOW HOUSE, L.L.C., respectfully petition the Court for rehearing on the Opinion issued on July 16, 2014, affirming the circuit court's order finding that Appellants' claims were barred by the statute of limitations and finding that the circuit court did not err in failing to make any findings on Appellants' claims that Respondent, Randall J. Drew, was equitably estopped from claiming the statute of limitations as a defense. Respectfully, Appellants believe the Opinion overlooked or misapprehended one particular point of law with regard to the circuit court's failure to make any findings on the issue of equitable estoppel.

### **I. RESPONDENT IS BARRED BY THE DOCTRINE OF EQUITABLE ESTOPPEL FROM CLAIMING THE DEFENSE OF STATUTE OF LIMITATIONS.**

The circuit court failed to rule on Appellants' claim that Respondent was barred by the doctrine of equitable estoppel from claiming the defense of statute of limitations. In its Opinion, the Court referenced this issue: "Roberts also contends the circuit court failed to rule on the application of equitable estoppel." Opinion at 4. In addressing this claim, the Court goes on to note that "[h]owever, the circuit court found that Roberts was aware prior to May 5, 2008, of the Navy's claim and its threats of legal action against him, and therefore Roberts knew or should have known of a claim against Drew. Additionally, all litigation regarding the legality of the Navy's claim to the property and the dock has been dropped. Thus, Roberts has not established that whatever assurances Drew made amounted to false representations or concealments of material facts." *Id.*

Appellant respectfully suggests this Court's Opinion overlooked or misapprehended the fact that the circuit court never made a finding that Roberts "has not established that whatever assurances Drew made amounted to false representations or concealments of material facts." This was a finding for the circuit court to make and it failed to do so. The circuit court's finding that Roberts knew of the Navy's claims prior to May 5, 2008 and therefore should have known of his claims against Drew and the fact that the litigation with the Navy has been dropped cannot be sufficient basis in the record for the Court to find that the circuit court made findings on the issue of equitable estoppel. The final results of the litigation with the Navy have no bearing on Appellants' equitable estoppel claims and Appellants' knowledge of the Navy's claims prior to May 5, 2008 goes to the statute of limitations defense and whether Roberts knew or should have know of his claims against Drew. In fact, Roberts' equitable estoppel claims argue that when he knew or should have known of his claims against Drew is irrelevant because Drew should be equitably estopped from bringing a statute of limitations defense.

Further, the Court erred in finding that Roberts had "not established that whatever assurances Drew made amounted to false representations or concealments of material fact." *Id.* However, "[u]nder South Carolina law, a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct." *Kleckley v. Northwestern Nat. Cas. Co.*, 338 S.C. 131, 136, 526 S.E.2d 218, 220 (2000). "Such inducement may consist of . . . conduct that suggests a lawsuit is not necessary." *Id.* at 136-37. Drew's conduct over the

course of years in continuing to represent Roberts' interests, performing an additional title search, assisting with hiring counsel to fight the Navy's claims, providing deposition testimony and generally denying the Navy's claim of ownership all amount to conduct which would suggest a lawsuit was not necessary. Therefore, Appellant respectfully suggests that they did establish that Drew's conduct and assurances induced Robert into believing that a lawsuit against Drew was unnecessary and therefore Drew should be equitably estopped from using a defense of statute of limitations.

The circuit court focused its entire opinion on the statute of limitations issue and did not make any findings on the issue of equitable estoppel. In addition, the circuit court made several erroneous findings of fact that distorted the record and collectively served to cause erroneous conclusions of law including the conclusions that Appellants knew or should have known about their claims against Drew prior to May 5, 2008.

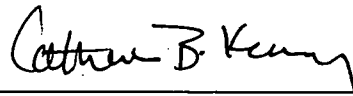
(CONCLUSION AND SIGNATURE ON FOLLOWING PAGE)

**CONCLUSION**

Based upon the foregoing, Appellants, Keith Roberts and LOT 12 YELLOW HOUSE, L.L.C., respectfully request this Court grant their petition for rehearing.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



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Lawyers for Appellants

July 30, 2014

Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
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W. Jeffrey Young, Circuit Court Judge

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**PROOF OF SERVICE**

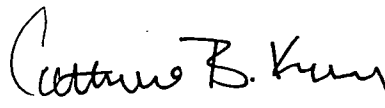
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I, Catherine B. Kerney, a lawyer with PNDARVIS LAW OFFICES, P.C., certify that I have served one (1) copy of the PETITION FOR REHEARING upon counsel for Respondent, Randall J. Drew by depositing a copy of the same in the United States Mail, postage prepaid, on the 30<sup>th</sup> day of July, 2014 addressed to David W. Overstreet, J.D. and Andrew W. Countryman, J.D., CARLOCK, COPELAND & STAIR, L.L.P., 40 Calhoun Street, Suite 400, Charleston, South Carolina, 29401.

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**SC Court of Appeals**

Respectfully submitted,

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LOT 12 YELLOW HOUSE, LLC

July 30, 2014

Beaufort, South Carolina

PENDARVIS LAW OFFICES, PC



July 30, 2014

**VIA UPS OVERNIGHT MAIL**

Jenny Abbott Kitchings, Clerk of Court  
COURT OF APPEALS FOR THE STATE OF SOUTH CAROLINA  
PO Box 11629  
Columbia, SC 29211

**Re: Keith Roberts and Lot 12 Yellow House, L.L.C. vs. Randall J. Drew  
Lower Court Case No. 2011-CP-10-3241  
Appellate Court Case No. 2013-00020**

Dear Ms. Kitchings:

Enclosed for filing, please find the original and seven copies of the PETITION FOR REHEARING and the original and one copy of the PROOF OF SERVICE in reference to the above matter. Also enclosed is our check for \$25.00 to cover the filing fee. Kindly return clocked copies in the enclosed postage prepaid envelope.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Catherine B. Kerney

CBK/lat  
Enclosures  
cc w/enc:  
ec w/enc:

David W. Overstreet, J.D.  
Andrew W. Countryman, J.D.  
Keith W. Roberts  
LOT 12 YELLOW HOUSE, L.L.C.

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**SC Court of Appeals**

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