

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, Master In Equity
and Special Circuit Court Judge for Beaufort County

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SEP 04 2014

SC Court of Appeals

Appellate Case No. 2012-212486

Madeline R. Arata and Kenneth C. Arata Appellants,

Village West Owner' Association, Inc.
d/b/a Village West Horizontal
Property Regime Respondent,


PETITION AND MOTION FOR REHEARING
AND TO CORRECT ERROR IN OPINION

Respondent, Village West Owner' Association, Inc., d/b/a Village West
Horizontal Property Regime, (hereinafter "Village West") hereby moves for the Court of
Appeals to correct its Opinion in the within case filed August 20, 2014 in that it appears
to contain an inadvertent error in how it characterizes one of the rulings of the lower
court.

In the first sentence on the second page of the Opinion, the Court states "[w]e find
the master did not err in ruling the documents recovered from the box of records made
available during the pendency of the appeal of the original litigation (Arata I) provided

the required evidence of extrinsic fraud". In actuality, the master ruled that the documents recovered from the box did not provide the required evidence of extrinsic fraud, and Respondent believes that the Court of Appeals meant to write as follows: "[w]e find the master did not err in ruling the documents recovered from the box of records made available during the pendency of the appeal of the original litigation (Arata I) ~~provided~~ **did not provide** the required evidence of extrinsic fraud". This would be consistent with the lower court's ruling, as well as the conclusions and holdings of the Court of Appeals in affirming the lower court's determination that there was no evidence of extrinsic fraud.

September 3, 2014

SMOOT & PITTS
By: 

Brian C. Pitts
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Hilton Head Island, SC 29925-3439
(843) 681-3200
Attorneys for Respondent

Other Counsel of Record:

None. Appellants Pro Se

THE STATE OF SOUTH CAROLINA
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Honorable Marvin H. Dukes, III
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SC Court of Appeals

Kenneth C. Arata and Madeline R. Arata..... Appellants,

v.

Village West Owners' Association, Inc.
d/b/a Village west Horizontal Property Regime..... Respondent.

MEMORANDUM OF LAW IN SUPPORT OF PETITION AND
MOTION FOR REHEARING AND TO CORRECT ERROR IN OPINION

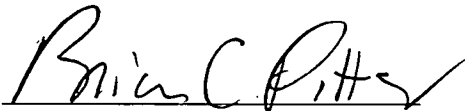
The Per Curiam Opinion of the Court of Appeals issued in the within case on August 20, 2014 should be withdrawn and corrected in that it appears to contain an inadvertent error in how it describes one of the rulings by the master in the lower court. In the first sentence on the second page of the Opinion, the Court states “[w]e find the master did not err in ruling the documents recovered from the box of records made available during the pendency of the appeal of the original litigation (Arata I) **provided** the required evidence of extrinsic fraud”. The master, in fact, ruled the opposite. See Order for Judgment dated April 5, 2012 set forth at pages 1 through 9 of the Record on Appeal, and specifically paragraph 1 on page 7 which, in part, reads as

follows: "I conclude that there was no extrinsic fraud on the part of the Association necessary to support setting aside the judgment in Arata 1".

The Court of Appeals statement the master did not err in finding that the documents recovered from the box did provide the required evidence of extrinsic fraud is inconsistent with the master's ruling, and all of the rulings of the Court of Appeals in its opinion affirming the master and concluding, as the master did, that there was no extrinsic fraud.

Respectfully submitted.

SMOOT & PITTS

By: 

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P.O. Drawer 23439
Hilton Head Island, SC 29925
(843) 681-3200
Attorneys for Respondents

September 3, 2014

Other Counsel of Record:

None. Appellants Pro Se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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and Special Circuit Court Judge for Beaufort County

Appellate Case No. 2012-212486

Madeline R. Arata and Kenneth C. Arata Appellants,

Village West Owner' Association, Inc.
d/b/a Village West Horizontal
Property Regime Respondent,

CERTIFICATE OF SERVICE

I, Brian C. Pitts, Attorney with the Law Firm of Smoot & Pitts do hereby certify that on September 3, 2014, I sent a copies of the Petition and Motion for Rehearing and to Correct Error in Opinion, and Memorandum in Support of Petition and Motion for Rehearing and to Correct Error in Opinion to the person(s) named below by overnight mail as follows:

Kenneth Arata
6 Village North Drive
#6 Governors Harbour
Hilton Head Island, SC 29926

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SEP 04 2014

Madeleine Arata
6 Village North Drive
#6 Governors Harbour
Hilton Head Island, SC 29926

SMOOT & PITTS

September 3, 2014

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WILLIAM M. SMOOT*
BRIAN C. PITTS
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+ Also Admitted in Virginia

15C LAFAYETTE PLACE
HILTON HEAD ISLAND, SC 29926

September 3, 2014

VIA OVER NIGHT DELIVERY

The Honorable Jenny Kitchings,
Clerk of The South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: Madeline R. Arata and Kenneth C. Arata v. Village West Owners' Association, Inc. d/b/a
Village West Horizontal Property Regime; Case No. Case No. 2012-212486

Dear Ms. Kitchings:

In connection with the above referenced matter, enclosed please find the original and seven (7) copies of the following:

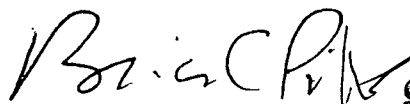
1. Petition and Motion for Rehearing and to Correct Error in Opinion;
2. Memorandum of Law in Support of Petition and Motion for Rehearing and to Correct Error in Opinion; and
3. Certificate of Service.

Please return a set of clocked copies in the return envelope.

Also, enclosed is my firm's check in the amount of \$25.00 to cover costs.

Thanking you in advance for your attention to this matter, I remain

Sincerely yours,



Brian C. Pitts

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SC Court of Appeals

c/w/enc: Kenneth Arata
Madeline R. Arata
Village West Owners' Association, Inc.