THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington

Case No. 2011-190886

Clifford C. Hansen .....Respondent/Appellant,

v.

Fields Company, LLC; Beechwood Advisory Group, Inc.; Beechwood Development Group of South Carolina, LLC; and Beechwood Development Group, Inc.....Defendants,

Of Whom Beechwood Development Group of South Carolina, LLC is the .....Appellant/Respondent.

RESPONDENT/APPELLANT'S PETITION FOR REHEARING

Respondent/Appellant, Clifford C. Hansen, pursuant to South Carolina Appellate Court Rule 221(a), hereby respectfully petitions the Court for a rehearing of Opinion No. 27436 dated August 20, 2014. Rehearing is warranted when the Court has overlooked or misapprehended an argument. *Kennedy v. S.C. Retirement System*, 349 S.C. 531, 564 S.E.2d 322 (2001).

ARGUMENT

Hansen has no issues with the law as stated by the Court. The Court notes the legal issues presented, i.e. whether and when a limited liability company can be held liable for its promoter's pre-incorporation contracts or torts, presents issues of first impression in South Carolina. The Court goes on to hold that "[W]hile initially not liable for a promoter's contracts, a corporation may become liable for a promoter's pre-formation contract either through expressly ratifying the contract or through implicitly ratifying it by accepting its benefits with full knowledge of its terms." (Op. at p. 6). This holding of the law supports Hansen's theory or position presented at trial and on appeal.

The Court goes on to find, however, contrary to the trial court and jury's findings, that "[T]here was no evidence that Appellant expressly ratified any preformation contract" and there was "no evidence to show that Appellant benefited or accepted any benefits of Fields' or his related entities' contract with Hansen." (Op. at p. 6). To the contrary, by buying the water company (Hickory Springs) from Milner out from under Hansen and to his total exclusion, Appellant received the ENTIRE benefit from Fields' and Advisory Group's contract with Hansen.

Hansen contracted with Fields and Advisory Group to help him obtain capital to purchase and operate Hickory Springs Water Company. Although it purported to "cease" representing him in January 2004, it is undisputed Field and Advisory Group and Development Group continued to represent Hansen, signed a "new" agreement with him and sent out a prospectus, identified as an "Executive Summary" to potential

investors. The Court appears to recognize and accept all these facts, which are largely undisputed.

As the Court states, Appellant can and should be liable if it ratified the contract(s) between Fields, Advisory Group and Development Group by "accepting its benefits with full knowledge of its terms." It is difficult to understand or accept how it can be concluded there was "no evidence" Appellant accepted the benefits of the agreements with full knowledge. The prospectus upon which investor Pat Cobb invested and agreed to provide capital clearly stated throughout that Hansen would be the Chief Executive Officer, a member of the Board of Directors, provided contact information for Hansen and clearly stated its purpose was to obtain capital for Hansen's company Carolina Springs. There can be no doubt that there is at least "some evidence" from which a reasonable jury could infer Cobb and the other members of Appellant, who were all members of Fields' related entities except for Tom Finnegan, had "full knowledge" of the terms of Hansen's contracts in whicg Fields and his related entities were representing Hansen in obtaining capital for the purchase of Hickory Springs Water Company for Hansen's benefit. To suggest Appellant got or accepted "no benefit" from Hansen's contract(s), when the capital and the water company were the whole benefit, seems illogical and appears that an argument or facts were overlooked or misapprehended.

In fact, Appellant purchased Hickory Springs on the exact terms upon which Hansen and Fields (and related entities) had negotiated as part of their contract(s). Appellant received and accepted the benefit of that part of the Hansen's contact(s) as

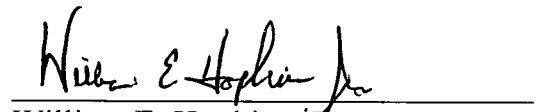
well. This fact is very important in determining whether Appellant simply ratified the deal struck by Hansen and Fields with Milner or whether it negotiated its own deal after formation, which, of course, did not happen and there is no evidence to suggest it.

Oddly, the Court's opinion seems to indicate Hansen either knew or should have known Fields and his related entities were actually a competitor or competing against him for the purchase of the water company. This would, at the very least, be a question of fact to be determined by a jury in light of the evidence that as late as April Fields was still sending out the Executive Summary prospectus to Cobb and others. As of April, Hansen had every reason to believe Fields and related entities were raising capital for HIM to purchase Hickory Springs, not themselves or Appellant. At the very essence of the case, and it its most simplistic form, Hansen contracted with Fields (and related entities) to raise capital and purchase Hickory Springs Water Company for his benefit and for him to operate. Appellant ratified this contract by providing the very capital and consummating the purchase of the very water company which were the subject of the contract(s), only to Hansen's exclusion. Appellant had full knowledge of Hansen's involvement by virtue of the very document sent by Fields (and related entities) which enticed Cobb's investment. It cannot be said Appellant had no knowledge of Hansen's deal, and the jury so found, and to suggest there is "no evidence" of Appellant's knowledge is a mistake. This is not a case where Appellant is being held liable for actions "it neither aided nor were aware of . . . " (Op. at p. 7). Pat Cobb, the majority owner of Appellant, was fully aware of Hansen.

While the Court seems to acknowledge throughout the Opinion that Fields and his related entities were, at various times and in various ways, representing Hansen in trying to obtain capital to purchase Hickory Springs, footnote 6 states Hansen failed to specifically point to a contract which was either expressly or impliedly ratified by Appellant. Perhaps Hansen and counsel were "too close to the forest to see the trees" and did not artfully articulate it, but the entire case and trial centered on the agreement (contract) between Hansen and Fields (and related entities) in which they agreed to assist Hansen in getting capital and helping him negotiate and purchase Hickory Springs. That is THE agreement or contract. There were two (2) separate written agreements signed by Hansen and Fields both of which provided Fields would assist Hansen in negotiating and getting capital to purchase Hickory Springs and that Hansen would have some ownership and operational control. Even if the Court somehow finds these two agreements not applicable, there is more than ample evidence from which a jury could infer or find that Fields must have been acting in accord with **some** agreement between him and Hansen when he sent the Executive Summary prospectus to Cobb and other potential investors. To suggest there is "no evidence" of an agreement, or benefits to Appellant, or knowledge of Hansen is completely contrary to the evidence in the Record and the findings of the trial court and jury.

Respectfully submitted,

HOPKINS LAW FIRM, L.L.C.



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September 3, 2014

Pawleys Island, South Carolina

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **Respondent/Appellant's Petition for Rehearing** has been served upon counsel of record by depositing a copy of the same, first class mail, postage prepaid, on this 3rd day of September, 2014, to the addresses shown below.

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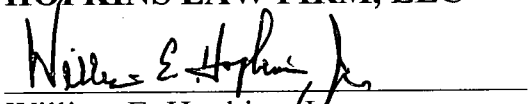

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