

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**RECEIVED**

SEP 15 2014

The Honorable Kristi Lea Harrington, Circuit Court Judge

**S.C. Supreme Court**

Case No: 2008-CP-10-2513  
Appellate 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.

**RETURN TO PETITION FOR REHEARING**

Beechwood Development Group of South Carolina, LLC (hereinafter  
“Appellant”) opposes Clifford Hansen’s Petition for Rehearing. Hansen summarizes his  
argument on page 4 of his petition for rehearing as follows:

At the very essence of the case, and [a]t 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 Field

(and related entities) which enticed Cobb's investment.

This Court did not overlook the facts of this case, nor did it misapprehend the law. Rather, as the argument above demonstrates, it is Hansen who continues to confuse Appellant as being one-and-the-same as Fields. Appellant is an LLC that was formed *after* Fields and Hansen split ways, and it consists of innocent investors who had no fiduciary relationship with Hansen. As an LLC, Appellant is a legal entity that is distinct from its members. No evidence exists that Appellant expressly ratified any preformation contracts or that Appellant benefited from Fields' or his related entities' contracts with Hansen.

Hansen also claims, for the first time in his petition for rehearing, that the contract Appellant supposedly ratified was the contract between Beechwood Advisory Group and Hansen, wherein the Advisory Group agreed to help Hansen obtain capital for purchasing the water company. This argument fails both procedurally and on the merits.

Procedurally, Hansen is prohibited from raising an issue for the first time in his petition for rehearing. *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 ("The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." (internal quotations omitted)). At trial and on appeal, Hansen relied on two alleged contracts between him and Fields, upon which Hansen argued the Appellant was liable. Those two contracts were: (1) the handwritten agreement wherein Hansen would be a 25% owner of any deal to buy the water company that was struck with David Hunt; and (2) an email from Fields to one of Appellant's investor's, Pat Cobb, in which Fields proposed to give

Hansen a ten percent ownership in the water company. Now, Hansen points to a third contract: the contract between him and Beechwood Advisory Group in which the Advisory Group was to help Hansen secure capital.

Even if Hansen were allowed to raise this new argument at the petition for rehearing stage, it would fail on its merits because there was no evidence the Appellant ratified the contract between Hansen and the Advisory Group. Before a corporation can become bound by a contract of its promoter, the contract had to be executed by the promoter on the corporation's behalf. See, e.g., *Illinois Controls, Inc. v. Langham*, 639 N.E.2d 771, 780 (Ohio 1994) (“A corporation is therefore liable for the breach of an agreement executed on its behalf by its promoters where the corporation expressly adopts the agreement or benefits from it with knowledge of its terms.”); *Knop v. McMahan*, 872 F.2d 1132, 1143 (3rd Cir. (Pa.) 1989) (finding the district court did not err in concluding that a partnership was entitled to enforce its promoters’ rights under their contract with the plaintiff where the parties to the contract understood it was being entered into on behalf of the yet-to-be formed partnership). The contract between the Advisory Group and Hansen was not entered into on behalf of the Appellant. At the time that contract was executed, Appellant did not even exist, and there is no evidence Fields intended to create the Appellant or even knew the innocent investors who eventually pooled their money with Fields to form the Appellant. Rather, the only evidence in the Record indicates the Appellant came into existence after Fields and Hansen had a falling out and Hansen knew that Fields was actively seeking investors in competition with Hansen.

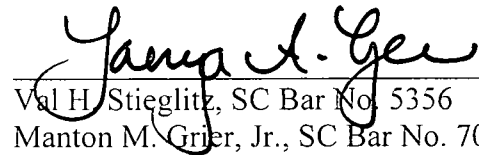
Additionally, Hansen’s argument at trial was that Appellant was contractually bound to give him an ownership interest in the company, not that it was bound to raise

money on his behalf. The contract between Hansen and the Advisory Group related only to raising capital and did not address ownership percentages.

### CONCLUSION

This Court thoroughly addressed the issues presented on appeal, and Hansen has failed to identify any point of fact or issue of law that has been overlooked or misapprehended. Accordingly, Hansen's petition for rehearing should be denied.

Respectfully submitted,



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September 15, 2014  
Columbia, South Carolina

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**PROOF OF SERVICE**

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The undersigned certifies that a copy of the **Return to Petition for Rehearing** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 15<sup>th</sup> day of September, 2014, to the address shown below.

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