

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

D. R. Horton, Inc., Plaintiff,

v.

Wescott Land Company, LLC, Defendant,

Thomas R. Hawkins and Wescott Land Company, LLC, Petitioners,

v.

D. R. Horton, Inc., Respondent,

Appellate Case No. 2012-212895

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Circuit

James C. Williams, Jr., Circuit Court Judge
Civil Action No. 2007-CP-18-337

South Carolina Court of Appeals Opinion No. 27450

PETITION FOR REHEARING

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OCT 16 2014

S.C. Supreme Court

Petitioners Thomas R. Hawkins and Wescott Land Company, LLC, hereby petition this honorable Court for a rehearing of the single issue addressed by the Court in its opinion filed October 1, 2014 in this matter. The Court found that “it was not necessary for the Court of Appeals to reach the novel issue of whether a Lis Pendens that is filed but does not comply with the time requirements of S.C. Code Ann. §15-11-10 (2005) is entitled to absolute privilege when alleging slander of title.” The Court held that “the trial court found that even if the Lis Pendens at issue was not entitled to absolute privilege, Petitioners failed to establish any facts that would satisfy any of the prima facie elements of slander of title,” and because this ruling by the trial court was not challenged at the Court of Appeals level it became the law of the case. Petitioners respectfully disagree with the Court’s interpretation of the findings of the trial court. While the order granting Summary Judgment in favor of Respondents found “D. R. Horton is entitled to Summary Judgment as to the Counterclaimant’s slander of title claim because counterclaimants have failed to establish any facts which satisfy any of the prima facie evidence of slander of title,” this statement must be taken in context. Trial court later clarified this statement, finding, “Wescott and Hawkins have failed to meet their burden because they have failed to set forth any facts which establish any of the elements of slander of title because the act of filing a Lis Pendens is absolutely privileged in South Carolina.” (emphasis added). Indeed, the only issue discussed in the trial court’s order related to slander of title is whether a Lis Pendens must be afforded absolute privilege.

Petitioners have consistently argued, both at the trial court level and at the Court of Appeals, that absent the protection of absolute privilege, an unperfected *lis pendens* can be grounds for a slander of title claim. Specifically, Petitioners have argued and put forth evidence and testimony that Respondent’s filing of the first, unperfected *lis pendens* was done with the knowledge that it had breached its contract to purchase the subject property from Petitioner and to block Petitioner

from selling the property to third parties, thereby creating factual issues as to the elements of slander of title. For the foregoing reasons, Petitioners respectfully request that this court reconsider the findings of its October 1, 2014 Opinion and grant a rehearing to consider this issue on its merits.

BARNWELL WHALEY PATTERSON & HELMS, LLC

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October 15, 2014
Charleston, South Carolina

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PROOF OF SERVICE

I certify that I have served the Appellants' Petition for Rehearing upon the following by depositing a copy of it in the United States Mail, postage prepaid, on October 15, 2014, addressed as follows:

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S.C. Supreme Court

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