

Return to Petition for Rehearing

1. This Court is correct in affirming because the Petitioner failed to establish evidence of the *prima facie* elements of slander of title.

The Opinion for which Petitioner seeks a rehearing found that “the trial court also 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. This ruling was not challenged before the Court of Appeals and, therefore, is the law of the case. See *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010) (“An unappealed ruling is the law of the case and requires affirmance.”).

Upon reaching that conclusion, this Court found 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 Trial Court did make that ruling and this Respondent agrees with this Court’s analysis and this Court has authority under Rule 220 (c) to “affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”

2. Regardless of what the Trial Court did, this Court can reach its own analysis of the record and find no evidence of the *prima facie* elements of slander of title.

If this Court were to find the Trial Court did not rule there was no evidence of the *prima facie* elements of slander of title, this Court itself still has the authority under Rule 220(c) to reach its own conclusion that there is no evidence to satisfy the *prima facie* elements of slander of title and affirm on that basis because it appears in the record.

Rule 220 Opinions

(c) Affirmance on Any Ground Appearing in Record. The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.

3. If this Court were to reverse itself on the lack of evidence, then it would become necessary to address the novel question of the whether the *lis pendens* has absolute privilege.

The Petitioner appears to treat the novel question of whether the *lis pendens* is entitled to absolute privilege as having disappeared from the case, but it has not. It is simply an unnecessary issue to reach under the Trial Court and the Supreme Court's finding that Petitioners failed to establish any facts that would satisfy any of the *prima facie* elements of slander of title.

However, if the basis of this Court's Opinion is ripped out, then by this Court's own conclusion, it would then become necessary to reach the novel question of law of whether the *lis pendens* is entitled to absolute privilege.

Additional Sustaining Grounds Appearing in the Record

4. The Appellants' counterclaim for slander of title also fails because they cannot show a false statement made with malice or diminished property value in the eyes of third parties.

Even if the first *lis pendens* is not afforded the protection of the absolute privilege, the Appellants have not shown evidence supporting any of the six elements of a slander of title claim. *Huff v. Jennings*, 319 S.C. 142, 146, 459 S.E.2d 886, 889 (Ct. App. 1995):

"(1) [T]he publication of

(2) a false statement

(3) derogatory to the individual's title,

- (4) with malice,
- (5) which causes special damages, and
- (6) as a result, diminished value in the eyes of a third party."

There must be proof of each of the six elements and a claim that lacks evidence on any one of the six fails. There has been no evidence of a false statement, made with malice, when the first *lis pendens* was filed, that diminished the value in the eyes of a third party.

5. Wescott no longer owns the Property and does not have standing to maintain a slander of title claim.

Wescott transferred the property to Hawkins and has no ownership interest so it has no standing to bring a slander of title action. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881, 897 (Ct. App. 2002).

6. Hawkins cannot maintain a slander of title claim because no *lis pendens* or lawsuit has been filed against him by D.R. Horton.

D.R. Horton never filed a *lis pendens* or lawsuit against Hawkins so he has no basis for an action.

Conclusion

The Petition for Rehearing should be denied.

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Dated this 27th day of October 2014.

Respectfully submitted,



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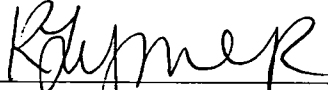
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CERTIFICATE OF SERVICE

The undersigned employee of WALL TEMPLETON, HALDRUP, P.A. hereby certifies that on this 21st day of October 2014, she served a copy of **RETURN TO PETITION FOR REHEARING** by placing a copy in a postpaid envelope for collection and processing for mailing, following this business's ordinary practice, with which she is readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to the persons hereinafter named, at the places and addresses stated below, which are the last known address, in Charleston, South Carolina:

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October 27, 2014

VIA U.S. MAIL

Honorable Daniel E. Shearouse
Clerk of Court, The Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

Re: *D.R. Horton v. Westcott Land Company, LLC, et al*
Appellate Case No.: 2012-212895

Dear Mr. Shearouse:

Enclosed please find an original and six (6) copies of D.R. Horton, Inc.'s Return to Petition for Rehearing in the above-referenced matter. I would ask that you please file the original and return one (1) filed-stamped copy to me in the self-addressed, stamped envelope provided for your convenience.

By copy of this correspondence to opposing counsel, I am serving them with the enclosed.

Thank you for your professional assistance in this matter. Should you have any questions, please feel free to contact me.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

RECEIVED

OCT 30 2014

S.C. SUPREME COURT


Neil S. Haldrup

RECEIVED

OCT 30 2014

S.C. SUPREME COURT

NSH/klr

Enclosures

cc: K. Michael Barfield (via U.S. mail w/ encl.)