

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-22-0889  
(SC Court of Appeals Case No. 2014-001104)

Alexander Mangliardo and Audra Mangliardo.....Appellants,

v.

Blue Ridge Ventures, LLC, Gerald W. Kelly, Elizabeth L. Kelly,  
South Carolina Bank & Trust, NA, Century 21-The Beach Company, LLC,  
Caison Engineering Company Inc., Keith Duncan,  
Attorney’s Title Insurance Fund, Inc. G. Turner Perrow, Jr. and  
Tidelands Law, LLC .....Defendants.

OF Whom Gerald W. Kelly, Elizabeth L. Kelly, Attorney’s Title Insurance Fund, Inc. G.  
Turner Perrow, Jr., and Tidelands Law, LLC are the Respondents.

RESPONDENTS’ BRIEF  
G.TURNER PERROW, JR. and TIDELANDS LAW, LLC

G. Turner Perrow, Jr.  
606 Front Street  
Georgetown SC 29440

Phone: (843) 546-2900  
SC Bar No. 64058

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**SC Court of Appeals**

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court abuse its discretion in not allowing Mangliardos to amend their Complaint in an action that had been pending for three years for the fourth time on the eve of the scheduled trial?

## STATEMENT OF THE CASE

Mangliardos originally filed their Complaint on October 22, 2010. These Respondents were added as Defendants in the Third Amended Complaint on September 11, 2012. Blue Ridge Ventures, LLC, Caison Engineering Company, Inc. and Keith Duncan are in default and have not made an appearance in the case. South Carolina Bank & Trust, NA and Century 21-Beach Company were previously dismissed as parties. On September 12, 2103 the Court granted summary judgment in favor of Gerald W. Kelly and Elizabeth L. Kelley (“Kellys”).

Eight days later, on September 20, 2013, Mangliardos moved to file yet a fourth amended complaint. The Mangliardos provided Respondents a copy of fourth amended Complaint at the motion hearing on October 10, 2013. In the fourth amended Complaint, Mangliardos asserted for the first time new causes of action (agency/bad faith) against Attorney’s Title, Tidelands Law, LLC and G. Turner Perrow. Mangliardos also attempted to assert a new cause of action (negligent construction) against the Kellys who had previously been dismissed on September 12, 2013.

At the time of Mangliardo’s motion to amend hearing, the case was scheduled as the first case (number 1) for trial on the jury roster for the week of November 12, 2013.

### STATEMENT OF THE FACTS

In October 2007, the Mangliardos purchased a home adjacent to Santee Cooper transmission lines. In 2010, Santee Cooper began work to double the number of lines beside the home. On April 12 2010, the Mangliardos had Santee Copper measure the electro-magnetic field (EMF) radiation in and around the home. As a result of the readings, Mangliardos immediately abandoned the home. Mangliardos did not make the May 2010 payment and SCB& T filed foreclosure on the property in October 11 2010.

The attorney representing the Mangliardos in the foreclosure filed their initial complaint eleven days later. The foreclosure order was filed August 15, 2011. SCB& T did not seek deficiency. The Mangliardo's Complaint was subsequently dismissed by Rule 40(j).

This action was re-filed August 22, 2012. On June 12, 2013, nearly two years after the foreclosure, the Mangliardos ordered a survey of the property. Santee Cooper never requested a variance or made a demand the Manglairdos move the home.

## STANDARD OF REVIEW

The decision to allow an amendment is within the sound discretion of the trial court and will rarely be disturbed on appeal. The trial judge's findings will not be overturned without an abuse of discretion or unless manifest injustice has occurred. City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct App. 2004)

## ARGUMENT

**Did the trial court abuse its discretion denying Mangliardos from a fourth amendment of their Complaint in a three year old case on the eve of a scheduled jury trial asserting new causes of action against the last remaining Defendants?**

The Mangliardo's motion to amend was filed three years after the filing of the initial complaint. Three Defendants were in default. Four Defendants has been dismissed by the Court. As of October 2013 only Attorney's Title, G. Turner Perrow and his firm Tidelands Law, LLC remained as viable Defendants..

Extensive discovery was completed and the parties were ready for trial. The case was the first case on the jury trial roster scheduled to commence in 30 days.

“Leave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and freely given when justice so requires and does not prejudice and other party. The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and the lack of opportunity to refute it. The party opposing the amendment has the burden of establishing prejudice. It is well established that a motion to amend is addressed to the sound discretion of the trial judge, and that the party opposing the motion has the burden of establishing prejudice.” Courts have wide latitude in amending pleadings and “while this power should not be used indiscriminately or to prejudice or surprise another party, the decision to allow an amendment is within the sound discretion of the trial court and rarely be disturbed on appeal. The trial judge's finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred.” Duncan v. CRS Sistine Engineers, Inc. 337 S.C. 537, 541, 524, S.E.2d 115, 117-18 (Ct. App. 1999)

Both the agency and bad faith causes of action would have required the Respondents to name additional witnesses and conduct further discovery and depositions. The agency cause of action essentially changed the entire defense strategies of the attorney (his firm) and the title insurance company. Furthermore, the bad faith action would require additional experts from the title insurance industry.

Notice of these new causes of action were not provided to the Respondents until the commencement of the motion hearing. There was no reasonable opportunity to refute the proposed new causes of action. Having to properly defend these new causes of action so close to the scheduled trial clearly prejudiced the Respondents and would further delay the trial of a case that had been pending for three years.

Mangliardos freely amended their Complaint on three previous occasions. Leave shall be freely given when justice so requires and does not prejudice the other party Rule 15(a) SCRCF. However, at some point in the course of litigation, in this instance a month before trial, any new substantial causes of action would surely prejudice the Respondents.

CONCLUSION

The Mangliardos had amply opportunity over the course of three years of litigation to assert their causes of action. The Court did not abuse its discretion not allowing the Mangliardos to amend their Complaint for the fourth time within thirty days of the scheduled trial date. It is clear that doing so would prejudice the Respondents in this case.

Respectfully Submitted,



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606 Front Street  
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S.C. Bar No. 64058

Attorney for Respondents  
G. Turner Perrow, Jr.  
Tidelands Law, LLC

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Alexander Mangliardo and Audra Mangliardo.....Appellants,

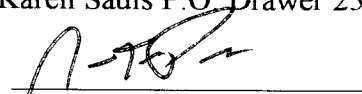
v.

Blue Ridge Ventures, LLC, Gerald W. Kelly, Elizabeth L. Kelly,  
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Attorney's Title Insurance Fund, Inc. G. Turner Perrow, Jr. and  
Tidelands Law, LLC .....Defendants.

OF Whom Gerald W. Kelly, Elizabeth L. Kelly, Attorney's Title Insurance Fund, Inc. G.  
Turner Perrow, Jr., and Tidelands Law, LLC are the Respondents.

**PROOF OF SERVICE**

I certify that I have served a copy of the Respondents' G. Turner Perrow, Jr. and Tidelands Law, LLC Initial Brief on opposing counsel and parties by depositing a copy in the United States Mail, postage prepaid, on November 10, 2014 addressed to Jack Scoville, Post Office Drawer 1228 Georgetown SC 29442, Michael S. Chambers, 121 Manly Street, Greenville SC 29601, Keith Duncan, as Registered Agent for Blue Ridge Ventures, LLC, 627 Little Tony Avenue, Murrells Inlet SC 29576, Albert Caison as Registered Agent for Caison Engineering Company, Inc. 4034 Bayfield Loop, Murrells Inlet SC 29576, Keith Duncan, 635 Little Tony Avenue Murrells Inlet SC 29576, Jeffrey E. Johnson P.O. Box 1829 Conway SC 29528 and Karen Sauls P.O. Drawer 2598 Myrtle Beach SC 29578.



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November 10 2014

**TIDELANDS LAW, LLC**  
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November 7, 2014

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, S. Carolina 29211

Re: Alexander Mangliardo and Audra Mangliardo v. Blue Ridge Ventures, LLC et al.  
Case No. 2012-CP-22-0889  
SC Court of Appeals Case No: 2014-001104

Dear Ms. Kitchings,

Please find enclosed an original and copy of the Respondents G. Turner Perrow, Jr. and Tideland Law, LLC Initial Brief and Proof of Service.

Please file the original with your office and return the clocked copy to me in the SASE provided. By copy of this correspondence I am hereby serving all counsel and unrepresented parties with the same.

Thank you for your assistance in this matter.

Yours Truly,



G. Turner Perrow

Cc: Jeffrey Johnson, Esquire  
Karen Sauls, Esquire  
Jack Scoville, Esquire  
Michael Chambers, Esquire  
Keith Duncan  
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Caison Engineering Company, Inc.

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