

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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DEC 08 2014

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Stephanie P. McDonald, Circuit Judge for the Ninth Judicial Circuit

Case No. 2013-000407

Alan Sheppard

Appellant,

v.

William O. Higgins, Lynn McCants,
Ronald C. Owens, Russell Bennett,
Charles P. Darby, and Kiawah Resort
Associates, LP,

Respondents.

**RESPONDENTS' RONALD C. OWENS, RUSSELL BENNETT, CHARLES P. DARBY,
AND KIAWAH RESORT ASSOCIATES, LP'S RETURN TO
APPELLANT'S PETITION FOR REHEARING**

Ellis R. Lesemann
Lesemann & Barks LLC
80 Alexander Street, Second Floor
Charleston, South Carolina 29403
(843) 724-5155

December 8, 2014

Respondents Ronald C. Owens, Russell Bennett, Charles P. Darby, and Kiawah Resort Associates, LP (“Respondents”) respectfully request that the Court deny Appellant Alan Sheppard’s Petition for Rehearing. Appellant Alan Sheppard (“Sheppard”) has failed to identify any points that this Court has overlooked or misapprehended. Sheppard’s claims have already been extensively litigated. Although the relative merit of Sheppard’s claims has never changed, the cost incurred by Respondents to address his frivolous proceedings continues to mount.

The purpose of a petition for rehearing is “to aid the court in deciding correctly a case heard by it,” by raising according to the applicable rule “the points supposed to have been overlooked or misapprehended by the Court.” *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933). “The purpose of a petition for rehearing is not to have presented points which lawyers for the losing parties have overlooked or misapprehended, and the purpose of a petition for rehearing is not just to have the case tried in this court a second time,” as it is recognized that “[m]any hours, uselessly spent in the consideration of petitions for rehearing, could be well spent in disposing of cases pending for decision.” *Id.* Although the *Arnold* decision was issued more than 80 years ago, Appellant’s Petition serves to show how current it remains.

In the Petition for Rehearing, Appellant suggests that this Court has failed to consider the “Overview” document submitted by Appellant at the hearing on Respondents’ Motion for Judgment on the Pleadings as an “Amended Complaint.” This is untrue. This Court’s decision affirming the lower court cited Rule 8(a) of the South Carolina Rules of Civil Procedure and related authorities indicating that a complaint “requires a litigant to plead the ultimate facts that will be proved at trial,” indicating that this Court did in fact review Appellant’s submissions to the lower court as a purported claim for relief, i.e., a complaint. The problem for Appellant is that he never made sufficient


allegations to state a claim for fraud, whether in the original pleading or in the Overview. This is understandable as no fraud existed. Furthermore, no other potentially viable claims exist in light of the prior settlement, release, stipulation of dismissal, and passage of time.

Appellant's conduct warrants that an award of sanctions be imposed. He continues to try and pursue claims that can no longer be pursued. In reviewing this appeal, the Court has already taken a generous approach to Appellant's arguments and his former *pro se* status, allowing an Overview brief that Appellant submitted at the hearing of Respondents' Motion for Judgment on the Pleadings to be viewed as an amended complaint. It is not legitimate for Appellant to suggest that the Court is being "over-technical" or depriving Appellant of due process. After six years of litigation, no further process is due. This Court has already given Appellant the consideration that he has requested, which is that the Overview be viewed as a claim for relief instead of a brief in opposition. Even when this dispensation is given, Appellant's claims fail and judgment on the pleadings was properly granted below.

To the extent that Sheppard attempts to pursue a claim for fraud, nothing has changed. Judgment on the pleadings remains proper as neither the pleadings, the Overview, nor the record as a whole include allegations sufficient to state a claim for purposes of Rules 8(a), 9(b) and 12(c) of the South Carolina Rules of Civil Procedure. These rules are not over-technical and do not violate due process. They apply to all litigants, including Appellant.

THEREFORE, Respondents respectfully request that Appellant's Petition for Rehearing be denied and that the remittitur in this action be issued.

Respectfully submitted,

By: 

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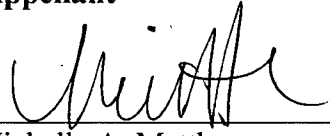
**Attorneys for Respondents Ronald C. Owens,
Russell Bennett, Charles P. Darby, and Kiawah
Resort Associates, LP**

December 8, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this date, mailed, postage prepaid, a true and correct copy of the **Respondents' Ronald C. Owens, Russell Bennett, Charles P. Darby, and Kiawah Resort Associates, LP's Return to Appellant's Petition for Rehearing** to the following counsel of record:

Mark W. Hardee
Hardee Law Firm
2231 Devine Street, Suite 202
Columbia, South Carolina 29205
Attorney for Appellant

By: 
Michelle A. Matthews

This 8th day of December, 2014
Charleston, South Carolina

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December 8, 2014

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court of SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: *Alan Sheppard v. Russell Bennett, Ronald C. Owens, Charles P. Darby, and
Kiawah Resort Associates, LP*
Case No.: 2013-000407

Dear Ms. Kitchings:

Enclosed for filing please find the original and six (6) copies of Respondents' Ronald C. Owens, Russell Bennett, Charles P. Darby, and Kiawah Resort Associates, LP's Return to Appellant's Petition for Rehearing in connection with the above-referenced appeal. Please file the original of this pleading with the Court and return a file-stamped copy to me via my courier.

Thank you for your assistance with this matter.

With best regards,



Ellis R. Lesemann

ERL/mam
Enclosures

cc: Mark W. Hardee, Esq.