

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

74847

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

**RECEIVED**

JAN 26 2015

**SC Court of Appeals**

Appellate Case No. 2013-000514  
Lower Court Case No. 2008-CP-42-3397

Quentin S. Broom, Jr., ..... Respondent,

v.

Ten State Street, LLP, Timothy D, Scranton,  
Mark Broadwater, and H. Hugh Andrews ..... Defendants,

Of Whom

H. Hugh Andrews, Individually  
and on behalf of Tri-Star  
Communications, Inc. is the, ..... Appellant,

v.

Quentin S. Broom, Jr., ..... Third-party Defendant.

**PETITION FOR REHEARING**

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ATTORNEYS FOR RESPONDENT

Respondent Quentin S. Broom, Jr. petitions the Court for rehearing and reconsideration of Unpublished Opinion No. 2015-UP-030 filed January 14, 2015, pursuant to Rule 221(a), SCACR. Respondent asks this Court to reconsider the decision to remand this case to the trial court when Appellant failed to obtain a ruling on its Rule 15, SCRCRCP, motion and Appellant argued it was both (1) impliedly preserved and (2) encompassed within the trial court's order denying the motion to reconsider. As this opinion stands, it creates a second opportunity for Appellant to be heard on an issue that was not properly preserved for this Court's review and resuscitates an argument that should be considered waived for review. In support of the petition, Appellant respectfully submits the following:

**I. Pertinent Facts**

On November 14, 2011, Appellant filed a motion to amend and/or supplement the answer and counterclaims in addition to a motion for reconsideration. (R. 172-189). On February 1, 2013, the trial court entered a written order denying the motion to reconsider. The February 1, 2013 order does not address the November 14, 2011 motion to amend. Appellant's counsel filed a notice of appeal on March 8, 2013. (See attached NOI found on C-track.) Appellant's notice of appeal acknowledges that the motions were denied in written order dated January 30, 2013, and filed February 1, 2013.

Appellant's brief states:

On January 14, 2013, the circuit court issued a form order denying the motions to reconsider. (R. p. 15). On February 1, 2013, the court issued a written order confirming this ruling. (R. p. 17). Neither order expressly mentioned Andrews' motion to amend his answer, but the effect of the orders was to deny the motion.

Appellant's Brief pg. 3.

Respondent argued in his brief that Appellant's position that the trial court erred because it denied Appellant the opportunity to amend his pleadings was unpreserved because the trial court failed to make a ruling prior to Appellant filing a Notice of Appeal. In his Reply Brief, Appellant states:

[Respondent] is right about the court's order. It never mentions the motion to amend. See (R. p. 17). But the obvious import of the order is to deny the motion. [Respondent] had argued that the court could grant the amendment only if the court changed the order dismissing the case. The only rational view of the court's decision is that it agreed. In deciding not to alter the order that dismissed [Appellant's] claims, the circuit court necessarily rejected [Appellant's] request that he be allowed to amend his claims. Nothing else is possible.

There is no cogent justification for denying the motion to amend.

Appellant's Reply Brief p. 8.

## **II. Preservation**

By remanding this case to the trial court, the Court is ignoring the general rules of issue preservation. Appellant took the position throughout his brief and oral argument that the issue of amending his pleadings was impliedly preserved. When the Court determined that the issue was never ruled upon, the general rules of issue preservation should have controlled. Thereby, allowing this Court to (1) rule on the remaining issues and (2) to find the issue of amending the pleadings could not be reached based on the grounds of preservation.

"It is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court." *Chastain v. Hiltabidle*, 381 S.C. 508, 514-15, 673 S.E.2d 826, 829 (Ct. App. 2009) (citing *Lucas v. Rawl Family Ltd. P'ship*, 359 S.C. 505, 510-511, 598 S.E.2d 712, 715 (2004)). This case does not qualify for any of the exceptions to issue preservation recognized by South Carolina appellate

courts: (1) subject matter jurisdiction, (2) rights of minors, (3) additional sustaining grounds, (4) judicial economy, nor (5) waiver of counsel. See *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *Ex parte Morris*, 367 S.C. 56, 624 S.E.2d 649 (2006); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000); *Jeter v. S.C. Dept. of Transp.*, 369 S.C. 433, 633 S.E.2d 143 (2006); *State v. Rocheville*, 310 S.C. 20, 25, 425 S.E.2d 32, 35 (1993). As such, this issue could only have been preserved if Appellant had raised this unanswered issue in a separate 59(e) motion specific to the Rule 15 motion. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting that proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court); *Walsh v. Woods*, 371 S.C. 319, 325, 638 S.E.2d 85, 88 (Ct. App. 2006) (finding issue on appeal was not preserved because the trial court did not rule on the issue and it was not raised in a Rule 59(e) motion). Appellant's failure to obtain a ruling should control. *Power v. Allstate Ins. Co.*, 312 S.C. 381, 383, 440 S.E.2d 406, 407 (Ct. App. 1994) (holding an issue was not preserved because the trial court did not address it in its order and the party did not request the trial court to rule upon it in any motion).

Appellant's reliance on an implied preservation was misplaced. The motion required a ruling. No futility existed in seeking a ruling of the Rule 15 motion. A plain reading of the order demonstrates that the judge never attempted to encompass a decision of the Rule 15 motion in that order. Appellant could have made a 59(e) motion to obtain a ruling, but did not. Remanding this case for a ruling was in error when Appellant could have sought a ruling.

### **CONCLUSION**

For the foregoing reasons, Respondent requests this Court to grant this Petition for Rehearing.

January 26, 2015

Respectfully submitted,



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**PROOF OF SERVICE**

The undersigned hereby certifies that on the date indicated below she served counsel for Appellant with a copy of *Respondent's Petition for Rehearing* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

John Nichols  
Blake Hewitt  
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January 26, 2015

Respectfully submitted,

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January 26, 2015

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Re: *Quentin S. Broom, Jr. v. Ten State Street, LLP*,  
Case No.: 2013-000514

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**SC Court of Appeals**

Dear Ms. Kitchings,

Enclosed please find Respondent's Petition for Rehearing in the above referenced matter along with a proof of service. Please let me know if you have any questions or concerns. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink that reads "Whitney B. Harrison". The signature is fluid and cursive, with a prominent initial 'W' and a long, sweeping tail.

Whitney B. Harrison

Enclosure

Cc: John Nichols  
Blake Hewitt  
Susie Campbell (email only)  
Jim Gilreath (email only)  
Patrick E. Knie (email only)