

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity and Circuit Court Judge

Appellate Case No.: 2012-213579
Unpublished Opinion No. 2014-UP-430
Heard October 8, 2014—Filed November 26, 2014

Cashman Properties, LLC

Respondent,

vs.

WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o
Louise Lightsey Baughman; the Trust under Will of E.
Oswald Lightsey dated August 8, 1958, and Codicil
dated March 23, 1976, for the Benefit of Lilian Lightsey
Drawdy; and the Trust Under Will of E. Oswald Lightsey
for the Benefit of Claudia Lightsey Ware

Appellants.

Appellants' Petition for Rehearing

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SC Court of Appeals

Pursuant to Rule 221(a), SCACR, the Lightseys¹ petition this Court for a rehearing, respectfully submitting that the Court has misapprehended the law and overlooked important evidence related to ownership in reaching its decision in this case.

The Amended Complaint sets forth three substantive legal theories upon which Plaintiff based its claim for a declaratory judgment that it was a co-owner of the Dock 3. Each of these theories was either decided in favor of the Lightseys or withdrawn by Plaintiff. That should have ended the case, and the trial court erred in failing to dismiss the case with prejudice upon the failure of Plaintiff to prevail on at least one of these theories. This must be the case because the Uniform Declaratory Judgments Act is not the source of any substantive ownership rights. Ownership rights must come from some other place in the law—e.g., adverse possession, resulting trust, constructive trust, gift, bequest. In the absence of a finding in favor of Plaintiff on at least one of these theories, a declaratory judgment was inappropriate, and a reversal of the lower court was required. Finally, the record does not contain any evidence that establishes co-ownership of the dock.

I. The Denial of Plaintiff's Substantive Legal Theories Required Judgment in Favor of the Lightseys.

The Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* (2005), “is remedial and procedural in nature and does not create substantive rights and duties.” *Felts v. Richland Cnty.*, 299 S.C. 214, 216, 383 S.E.2d 261, 262-63 (Ct. App. 1989), *aff'd* 303 S.C. 354, 400 S.E.2d 781 (1991). *See also State ex rel. Edmisten v. Tucker*, 323 S.E.2d 294, 308 (1984) (“[T]he Act creates a new remedy, not a new source of legal rights and obligations.”). Rather,

¹ WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o Louise Lightsey Baughman; the Trust under Will of E. Oswald Lightsey dated August 8, 1958, and Codicil dated March 23, 1976, for the Benefit of Lilian Lightsey Drawdy; and the Trust Under Will of E. Oswald Lightsey for the Benefit of Claudia Lightsey Ware.

the Act “authorizes an action to establish a party’s entitlement to a preexisting right.” *Harvey v. S.C. Dep’t of Corr.*, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 1999) (citing *Noisette v. Ismail*, 299 S.C. 243, 247 n.1, 384 S.E.2d 310, 312, n.1 (Ct. App. 1989), *rev’d in part* by 304 S.C. 56, 403 S.E.2d 122 (1991)). Thus, a court’s authority to issue a declaratory judgment must fall within the parameters of an established legal theory,² and the rights a court can declare in a declaratory judgment action must be found in some other place in the law.

In the present case, the only basis that could support a declaration that the Cashmans had ownership rights in Dock 3 were the three legal theories pled and argued by the Cashmans. The first is prescriptive easement, (*see* R. pp. 26-27), which was denied by the trial court. (R. p. 21 (“To the extent not stated, the Court denies Plaintiff’s claim for prescriptive easement.”)). The second is resulting trust (*see* R. pp. 27-28), which was also denied by the trial court. (R. pp. 316-17). The third is adverse possession (*see* R. pp. 29-30), which was withdrawn by Plaintiff and as to which the trial court concluded, “this is not an adverse possession case.” (R. pp. 215-218.)

² Success on a declaratory judgment action is necessarily dependent on success of an underlying claim. *See Becker v. Kroll*, 340 F. Supp. 2d 1230 (D. Utah 2004), *aff’d in part, rev’d in part* by 494 F.3d 904 (10th Cir. 2007) (observing that “Plaintiff’s causes of action for declaratory judgment and injunction are, of course, dependent on the success of the underlying claims”); *Days Inn Worldwide, Inc. v. Sai Baba*, 300 F. Supp. 2d 583 (N.D. Ohio 2004) (holding that a “request for declaratory judgment must accompany the substantive claim for which declaratory judgment is sought” and defendants “failed to state a claim on which relief can be granted by failing to link their request for declaratory judgment to an underlying substantive claim for relief”); *Econ. Opportunity Comm’n of Nassau Cnty., Inc. v. Cnty. of Nassau*, 106 F. Supp. 2d 433 (E.D.N.Y. 2000) (stating that “a court may only enter a declaratory judgment on favor of a party who has a substantive claim of right to such relief”); *Matos v. First Nat’l Bank*, No. 092681B, 2010 WL 3327725, at *4 (Mass. Super. June 16, 2010) (finding that because plaintiff’s declaratory judgment claim is “dependent on the success” of plaintiff’s underlying claims, the “failure of the Plaintiff’s previous claims” means that the declaratory judgment claim “must also fail”); *Repwest Ins. Co. v. Praetorian Ins. Co.*, 890 F. Supp. 2d 1168, 1183-84 (D. Ariz. 2012) (finding that “[d]eclaratory judgment is a remedy that is dependent on Plaintiff’s success on an underlying cause of action. Because the Court has dismissed Plaintiff’s only cause of action against Defendant Aon, its claim for declaratory relief must also be dismissed”).

Prescriptive easement, resulting trust, and adverse possession are the only substantive theories upon which the Cashmans contended they had ownership rights in, or gave them the right to use, Dock 3. In fact, during the Cashman's opening statement, counsel stated, "we filed a Complaint asking for a declaratory judgment as to who has rights to this dock and the floating dock. The legal theories that we have filed are prescriptive easements, resulting trust and adverse possession." (R. p. 80.) These were the theories the Cashmans argued, the Lightseys defended, and the trial court resolved in favor of the Lightseys. The Cashmans did not plead or argue any other method that could possibly result in co-ownership of a dock under South Carolina law. It was therefore error for the trial court to declare that the Cashmans had ownership rights in Dock 3 when the only theories that could result in ownership were either withdrawn or denied by the trial court. Because no ownership rights in Dock 3 were obtained by the Cashmans through prescriptive easement, resulting trust, or adverse possession, and further because the Cashmans did not plead or argue that they obtained an ownership interest in any other legally recognized way, it was error for this Court to affirm the decision of the trial court. This Court should grant the Petition for Rehearing and reverse the decision of the trial court.

II. An Appurtenant Structure to Commonly Owned Property is not Common Property Under South Carolina Law.

This Court's opinion affirming the trial court states that the Lightseys were not put on notice that the Cashmans "were claiming ownership of the pier as an appurtenant structure to commonly-owned property." *Cashman Props., LLC v. WNL Props., LLC*, No. 2014-UP-430, 2014 WL 6682469, at *3. This may or may not be correct. However, whether or not a pier is an appurtenant structure to commonly-owned property is irrelevant to determining ownership of the pier. If authority exists that allows a litigant to establish ownership of a pier by establishing

ownership of the land it emanates from, it was never advanced or argued by the Cashmans, and never relied upon by the trial court.

Significantly, even if South Carolina law did provide that an owner of real property also owns any appurtenant piers, the real property at issue here is not “co-owned by the Cashmans and Lightseys” as this Court incorrectly concluded. The property at issue is common property held in trust for the benefit of all Brighton Beach property owners. (R. pp. 46—55.) Several privately owned docks emanate from this property. (See R. pp. 127—129.) As the Cashmans’ counsel stated during opening statements, “[W]e do not contend that we own that property.” (R. p. 87.)

Because South Carolina law does not recognize that ownership of a pier can be established by showing ownership of the property it emanates from, and further because the property here is not co-owned by the Cashmans and the Lightseys, the Court should grant the Petition for Rehearing and reverse the decision of the trial court.

The Court should end its analysis here, grant the Petition for Rehearing, and reverse the decision of the trial court. An evaluation of the evidence as it may relate to the ownership of Dock 3 is not necessary. Nevertheless, the Lightseys can show that the evidence presented at trial does not support co-ownership of the pier.

III. This Court Erred in Finding that Plaintiff is a Tenant in Common with Respect to the Dock.

“At the outset of any action for a declaratory judgment it must be determined whether the pleadings state a cause of action.” *West v. West*, 263 S.C. 146, 148, 208 S.E.2d 530, 532 (1974); *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970) (same). This Court correctly observed that “[t]o state a cause of action under the [Act], a party must demonstrate a justiciable controversy.” *Cashman Props.*, 2014 WL at *2 (quoting *Sunset Cay, LLC v. City of Folly*

Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004)). While it is true that “the parties were in an ‘actual controversy’ over their respective rights to Pier 3[,]” *id.* at *3, the record is devoid of evidence establishing a legitimate claim to ownership by Plaintiff. Therefore, even if the declaratory judgment act was properly applied to this case, Plaintiff was not entitled to a declaration that it is a tenant in common because there is no evidence that establishes ownership in Plaintiff.

Despite the resolution of each of the substantive theories in favor of the Lightseys, this Court found that “the declaratory judgment issued [by the trial court] is in full conformity with the true intent and meaning of the Act[.]” because “the presence of an actual controversy is sufficiently demonstrated by the pleadings.” *Id.* Specifically, this Court found that “[i]n their amended complaint, the Cashmans sought a declaratory judgment declaring that the parties are ‘by virtue of the facts set forth in the preceding paragraphs, the joint owners, as tenants on common, of [Pier 3] located on and emanating from the [c]ommon [p]roperty.’” *Id.* According to the Court, “there is substantial evidence in the record to support the trial court’s decision that the Lightseys and the Cashmans are tenants in common with respect to Pier 3.” *Id.* at *3. Most significantly, neither the trial court nor this Court identified (a) what “substantial evidence” it was relying on, or (b) how the evidence supported a declaration that the Cashmans were “tenants in common with respect to Dock 3.” No amount of evidence can support a legal theory that is not recognized under South Carolina law. Nevertheless, the record overwhelmingly shows that no such evidence exists.

The facts set out in the Amended Complaint do not establish that the parties are joint owners, as tenants in common or otherwise, of Pier 3. Indeed, the only undisputed fact in the

Amended Complaint is that the Lightsey family constructed Dock 3. (R. p. 24 ¶ 19.) There are no facts that support Plaintiff's claim to be a tenant in common with respect to the dock

A. Permissive use of the dock by the Cashmans cannot establish ownership.

The evidence in this case overwhelmingly establishes that the Cashmans' use of Dock 3 was by permission of the Lightseys. Permissive use, even when of long duration, is by its very nature inconsistent with ownership and does not create ownership rights. "[U]se by express or implied permission or license, no matter how long continued, cannot ripen into" a prescriptive right "until there is a distinct and positive assertion of a right hostile to the owner, and brought home to him." *Williamson v. Abbott*, 107 S.C. 397, 400-01, 93 S.E. 15, 16 (1917); *Young v. Nix*, 286 S.C. 134, 135, 332 S.E.2d 773, 774 (Ct. App. 1985) ("Where one enters land under permission from the title holder, the possession can never ripen into an adverse title unless a clear and positive disclaimer of the title under which entry was made is brought home to the other party.") Indeed, as this Court recently observed, the asking and obtaining of permission "stamps the character of the use as not having been adverse, or under claim of right, and therefore as lacking that essential element which was necessary for it to ripen into a right by prescription." *Paine Gayle Props. LLC v. CSX Transp. Inc.*, 400 S.C. 568, 584, 735 S.E.2d 528, 537 (Ct. App. 2012) (quoting *Williamson*, 107 S.C. at 400-01, 93 S.E. at 16).

In the present case, the evidence establishes that the Lightseys, as owners, gave the Cashmans express written permission to use Dock 3. This was confirmed when in 1977, Eugene K. Cashman, Sr. ("Cashman Sr.") wrote a letter to the dock permitting authority stating that Dock 3 was "owned by Lightsey Brothers" and that he had "*permission to construct*" a floating dock on the side of Dock 3. (R. p. 385 (emphasis added).) When asked about this letter at trial, Cashman Sr.'s son, Eugene K. Cashman, Jr. ("Cashman Jr."), testified that it was a letter drafted

by his father, that the handwriting on the letter was that of his father, and that the letter was signed by his father. (R. p. 116; R. p. 542; Dep. p. 41, line 14-Dep. p.42, line 23.) The testimony further establishes that a member of the Lightsey family signed the following section of the document: "I, Oswald Lightsey, do hereby give *permission* to Eugene K. Cashman to attach a floating dock and ramp to dock as mentioned in above application for permit." (R. pp. 385-386 (emphasis added).) Cashman Jr. acknowledged that this document, drafted by his father and signed by a member of the Lightsey family, constituted his father requesting, and Oswald Lightsey granting, permission for Eugene Cashman Sr. to use Dock 3:

Q: And so in 1977 your father used the words that he had the permission of the Lightseys, right?

A: Yes, it was permission from the Lightseys to replace the floating dock that I previously testified to as-

Q: And Mr. Lightsey also used the word that he was giving permission to your father, Eugene K. Cashman, correct?

A: Yes, to the district engineer.

Q: Well Mr. Lightsey actually says he gives permission to Eugene K. Cashman. He is giving your father permission, right?

A: That's correct.

(R. p. 118.)

Further, Cashman Jr. testified that his family sought approval from the Lightsey family before adding a water line and an electrical line to the pier. (R. pp. 147-148; R. p. 538; Dep. p. 28, lines 2-11.) As Cashman Jr. stated in his deposition, his father "wouldn't have gone and just one day have [the Lightsey Family] come back and arrive and see lights on the dock." (R. p.

538, Dep. p. 28, lines 9-11.) Thus, the Lightseys gave express permission to the Cashmans to add and use a floating dock that was attached to Dock 3.³

In addition, the conduct of the parties over a long period of time is inconsistent with any purported ownership in the Cashmans. First, as noted above, before making any improvements or modifications to Dock 3, Cashman Sr. contacted the Lightsey family and made certain that he had the Lightsey family's approval. Cashman Jr. testified that Cashman Sr. sought the approval of the Lightsey family before adding a water line and an electrical line to Dock 3. (R. pp. 147-148; R. p. 538; Dep. p. 28, lines 2-11; R. p. 538, Dep. p. 28, lines 9-11.)

Second, Cashman Jr. testified that he allowed others to use Dock 3 only if there was no objection by the Lightseys, an action that is irreconcilable with ownership, yet consistent with permissive use. Specifically, Cashman Jr. testified that a neighbor, Diane Reynolds, asked him if she could use the Dock 3. Cashman, Jr. responded that she could use Dock 3 only "if there were no objections by the Lightseys." (R. p. 539, Dep. p.32, lines 15-18.)

Third, Cashman Jr. testified that no one from the Lightsey family ever asked his permission prior to modifying or repairing Dock 3. (R. pp. 140-141.) Significantly, modifications and repairs made by the Lightsey family included replacing twenty of the main pilings on Dock 3, and installing a new roof over the gazebo. (R. pp. 139-140.) Cashman Jr. also testified that no one from the Lightsey family asked the Cashman family for permission to add a sink to the pier. (R. p. 538, Dep. p. 27, lines 11-13.) On the other hand, Norris Laffitte, a member of the Lightsey family, ejected non-permissive users from Dock 3 without asking the

³ There was testimony relating to whether the U.S. Army Corps of Engineers had issued a permit to allow a floating dock to be attached to Dock 3. Cashman Jr. testified that the first floating dock did not have a permit from the U.S. Army Corps of Engineers. (R. p. 92, p. 168.) While this testimony established that the first floating dock on Dock 3 was built without a permit from the Army Corps of Engineers, neither it nor other evidence addresses whether the first floating dock was built with the permission of the Lightsey family.

Cashmans. Laffitte testified that he told a woman who claimed to have permission to be on Dock 3 to leave. (R. p. 472, Dep. p.38, line 18-Dep. p. 39, line 2.) Laffitte also testified that he installed and subsequently replaced the “No Trespassing” signs on Dock 3 without consulting the Cashmans. (R. p. 472, Dep. p.40, line 23-R. p. 473, Dep. p. 41, line 4.) Cashman Jr. also testified that no one from the Lightsey family asked his permission before placing a lock on the gate to Dock 3. (R. p. 140.)

Fourth, the conduct of the parties relating to the costs of repairing Dock 3 also supports the conclusion that the Lightseys were the sole owners. At trial, the Lightseys offered documentary evidence to support \$89,550.66 of expenses used to maintain and pay taxes associated with Dock 3. (R. pp. 599—624.) Laffitte testified that the Lightsey family took care of the pier, pierhead, gazebo, west side ramp, and west side floating dock, and that he had no knowledge of the Cashman family performing any repairs on the pier, pierhead, gazebo, west side ramp, or west side floating dock. (R. p. 474, Dep. p. 46, lines 3-9.) Further, Cashman Jr. testified that no one from the Lightsey family asked him to contribute to repairs such as piling replacements and a new roof on the gazebo for Dock 3. (R. p. 140.)

Despite maintaining a file specifically dedicated to Dock 3, and despite the fact that the file included receipts from 1974—1995, the Cashman family could not identify a *single receipt* relating to expenses incurred on the pier, pier head and gazebo. (R. pp. 580-597.) Specifically, Cashman Jr. testified regarding the following receipts as follows:

- the August 21, 1974 estimate and the April 11, 1977 estimate related solely to the floating dock. (R. p. 132; R. pp. 580-597);
- the May 25, 1977, document was for the floating dock only and did not involve any work on the pier. (R. p. 133; R. pp. 580-597);

- the June 18, 1980 receipt for \$12.22 was for unknown items. (R. pp. 133-134; R. pp. 580-597);
- receipts dated June 25, 1980, June 25, 1980, July 23, 1984, and July 26, 1984 for 2x8's and 2x4's for lumber of the size used on the floating dock and duct tape. (R. pp. 134-136; R. pp. 580-597);
- the July 29, 1980 receipt was for cleats, bolts and nuts for the floating dock. (R. p. 134; R. pp. 580-597);
- the receipts from June 27, 1980, July 24, 1984, July 25, 1984, July 31, 1984, July 7, 1984 and July 7, 1987 were exclusively for the floating dock. (R. pp. 134-137);
- the February 22, 1986 document, two of the three services listed were solely for the floating dock and no one knew if the other listed service was for the floating dock or the pier. (R. pp. 136-137; R. pp. 580-597);
- the June 9, 1995, receipt contained (1) charges unrelated to the dock such as putting new lights at the BBQ pit; (2) charges related exclusively to the floating dock such as installing a dock ladder and putting new rope on the floating dock; and (3) charges related to services to the floating dock. (R. pp. 137-138; R. pp. 580-597);

Cashman Jr. stated that these documents constituted all of the evidence of expenses incurred by the Cashman family related to the pier.

Q: Now you don't have any other documentary evidence, checks, receipts, invoices, work orders, anything of that nature to show that the Cashman family ever incurred any expenses associated with the pier, right?

A: Not in my possession, no.

Q: Well do you know if there's any that exist anywhere in anybody's possession?

A: Presently, no.

(R. p. 138.) It is telling that Cashman Jr. could not testify that any expenditures were for the pier, pierhead, or gazebo of Dock 3. Instead, all of the expenses incurred by the Cashman family were related to their small floating dock, which they were responsible for the maintaining until it washed away in 2004, almost 5 years before suit was filed in 2009. (R. p. 474, Dep. p. 46, lines 10-14.)

Cashman Jr. and Betty Cashman Davis testified that they and their children occasionally would nail down protruding nails, replace boards, and temporarily run water to Dock 3. However, these actions do not alter the fact that their use was permissive. (R. pp. 112, 162, 183.) Indeed, such actions by permissive users recognize the neighborly accommodation of the Lightsey family in allowing the Cashman family to use Dock 3 free of charge for more than fifty years.

Fifth, the evidence establishes that the Cashman family never paid any taxes associated with Dock 3. (R. pp. 123, 126-127; R. pp. 575-578.) Cashman Jr. testified that neither he nor his father nor his sister nor anyone associated with the Cashman family has ever paid any taxes associated with the pier, gazebo, and dock. (R. pp. 123, 126-127.) Instead, the Lightseys have paid all of the taxes associated with Dock 3 since 1986, the year that Beaufort County began taxing docks. (R. pp. 413, 415, 417-418; p. 424; pp. 451-452; pp. 456-457; pp. 575-578; pp. 657-659; pp. 661-662.)

Sixth, Cashman Jr.'s letter to Laffitte, dated March 28, 2005, also evidences that the Cashman family only had permissive use of the Lightsey family dock. Cashman Jr. voluntarily returned the key to Dock 3 without objection. Moreover, Cashman Jr. stated that if he needed to

make the Cashman families' use of Dock 3 a "business relationship" he was willing to do so. (R. pp. 448-449.) Cashman Jr. ended the letter by asking the Lightsey family to reconsider its decision regarding exclusive ownership of the pier. *Id.* The language used by Cashman Jr. in this letter is inconsistent with any ownership interest in the Cashmans, and is further evidence that their use of the pier was with the permission of the Lightseys.

Seventh, the Lightsey family acknowledged in writing that express permission had been given to the Cashman family to use Dock 3. The minutes of the Lightsey Trusts Jointly Owned Property Meeting of September 2004 (which were taken down before any dispute arose over Dock 3 and five years before this lawsuit was filed) state that "the Lightsey family has *allowed* the Cashman family" to use Dock 3. (R. p. 426 (emphasis added).)

Finally, on two separate occasions, Cashman Sr. verbally acknowledged that he was a permissive user of the Lightsey dock in two separate conversations with Will McMaster. McMaster is married to a Lightsey granddaughter, and has visited the Bluffton property as a guest. (R. pp. 235-238.) McMaster testified that Cashman Sr. told him that "the Lightseys had given the Cashmans permission to use that pier and that [Cashman Sr.] would like to get a document stating that they had permission in the past and would like to have permission in the future." When asked if Cashman Sr. "actually use[d] the word permission," McMaster responded, "Yes." (R. p. 236.) Regarding the second conversation, Mr. McMaster testified as follows:

The second conversation was very similar to the first conversation in that he was seeking a document that would establish that he had had permission, the Cashman family had permission to use the dock in the past and they wanted permission to use the dock in the future and during this conversation he said that I realize that we don't own the dock because it was built with Lightsey labor and material.

(R. p. 238.) This testimony is consistent with the Cashmans' own testimony and the other documentary evidence.

Under South Carolina law, a party's permissive use can never ripen into a prescriptive right unless there is a "distinct and positive assertion of a right hostile to the owner, and brought home to him." *Williamson*, 107 S.C. at 400-401, 93 S.E. at 16. In the present case, there is simply no evidence that the Cashmans engaged in conduct that would amount to a distinct and positive assertion of a right hostile to the Lightseys. Moreover, the Cashmans never pled or argued that the assertion of such a right took place, and even if they had, the trial court specifically found no prescriptive easement, and the Cashmans did not appeal that ruling. Indeed, Cashman Jr. testified that between 1994 and 2005, he never told anyone in the Lightsey family that he believed he had an ownership interest in Dock 3. (R. p. 151.)

The evidence overwhelmingly establishes that the Lightseys are the sole owners of Dock 3. The Cashmans failed to establish that their use of Dock 3 was anything other than with the express or implied permission of the Lightseys. Because permissive use can never ripen into an ownership interest, the Cashmans are not tenants in common of Dock 3, and there is no evidence in the record to suggest otherwise. In light of the overwhelming evidence overlooked by this Court supporting sole ownership by the Lightseys, this Court should reverse the trial court and remand the case for entry of judgment in favor of the Lightseys.

B. No other facts support a finding of joint ownership.

There are several legally recognized pathways in which an ownership interest in (or right to use) Dock 3 could have been acquired by the Cashmans from the Lightseys. The Cashmans chose to advance adverse possession, prescriptive easement, and resulting trust. These failed. There is no evidence to support other methods by which a transfer of an interest from the

Lightseys to the Cashmans. There is no evidence in the record that the Lightseys sold an ownership interest in Dock 3 to the Cashmans and the Cashmans did not allege that they purchased an ownership interest in Dock 3. (*See* R. pp. 23-30.) There is no evidence in the record that the Lightseys gave an ownership interest in Dock 3 to the Cashmans and the Cashmans did not allege that the Lightsey's gave them an ownership interest in Dock 3. (*See* R. pp. 1—21; 23—30.) There is no evidence in the record that the Cashmans inherited an ownership interest in Dock 3 from the Lightseys and the Cashmans did not allege that they inherited an ownership interest in Dock 3. *See id.* Finally, there is no evidence in the record that the Cashmans acquired an ownership interest in Dock 3 as a result of a constructive trust, and the Cashmans did not allege a constructive trust cause of action in their Amended Complaint. *Id.*

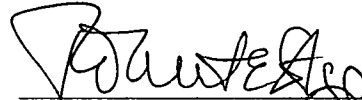
Neither the Amended Complaint nor the record intimates any of these theories as a basis for declaratory relief. In order to declare under the Declaratory Judgment Act that the Lightseys and the Cashmans jointly own Dock 3, there must exist a substantive legal basis to support that declaration. The record establishes that no such basis exists under a joint ownership theory or any of the above theories.

Conclusion

For the reasons set forth above, Appellants respectfully request this Court grant a rehearing in this matter or reconsider this matter and reverse the decision of the trial court.

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Appellants.

Proof of Service

I certify that I have caused the Appellants' Petition for Rehearing to be served on Respondents by U.S. Mail on February 9, 2015, addressed to their attorneys of record, and mailed to the following:

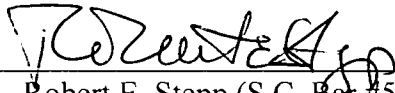
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SC Court of Appeals

BY HAND-DELIVERY

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Columbia, South Carolina 29201

Re: Cashman Properties v. WNL Properties, LLC; E. Oswald Lightsey Trust, et al.
Appellate Case No. 2012-213579
SGS&L File No.: 6732/1500

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellants' Petition for Rehearing along with Proof of Service. Also enclosed is a check in the amount of \$25.00 in payment of the filing fee

I would appreciate your filing as appropriate and returning a clocked-in copy of each via our courier.

By copy of this letter, and as evidenced by the Proof of Service, I am serving same upon counsel for the Respondent.

Very truly yours,


Robert E. Stepp

cc: J. Ashley Twombly, Esquire
Roberts Vaux, Esquire
James P. Scheider, Jr., Esquire
Mark S. Berglind, Esquire
John S. Nichols, Esquire
Norris L. Laffitte