

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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App. Case No. 2012-212687  
Lower Case No. 2010-CP-40-3297

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**RECEIVED**

FEB 23 2015

**SC Court of Appeals**

YANCEY ENVIRONMENTAL SOLUTIONS, LLC .....Appellant,

vs.

RICHARDSON PLOWDEN & ROBINSON, P.A. and  
GEORGE HAROLD HANLIN, J.D. ....Respondents.

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**RESPONDENTS' RETURN TO PETITION FOR REHEARING**

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Respondents Richardson Plowden & Robinson, P.A. and George Harold Hanlin, Esquire (hereinafter "Respondents") oppose the Petition for Rehearing by Yancey Environmental Solutions, LLC (hereinafter "Appellant"). This Court has "overlooked or misapprehended," Rule 221(a), SCACR, nothing. Rather, it correctly identified a missing link in Appellant's theory of this case: there is no evidence in the record that Jim Justice, Jr. (hereinafter "Mr. Justice") required that the proposed conservation easement transaction be completed in 2007.

Appellant's petition for rehearing, therefore, seeks to manufacture the missing link via argument. Appellant's arguments are of no aid, however, because they do not identify for this Court any evidence that a 2007 completion was required. "In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with

the existence or non-existence of evidence.” *Sims v. Giles*, 343 S.C. 708, 714, 541 S.E.2d 857, 861 (Ct. App. 2001). Appellant failed to introduce any evidence that Mr. Justice required that the proposed conservation easement be completed and of record in 2007. Accordingly, this Court correctly decided this case and Appellant’s petition for rehearing should be denied.

Appellant rests its entire petition for rehearing upon the speculative premise that the conservation easement was “**required**” to be recorded in 2007. (Petition for Rehearing, p.2) (emphasis added). Appellant argues that “the conservation easement **was required** to be finalized by the end of 2007 to satisfy Mr. Justice and the Justice Companies’ intent and motivation to obtain tax advantages resulting from the easement being recorded in that year.” (Petition for Rehearing, p.2) (emphasis added). Appellant, however, cites **no evidence** from the record that Mr. Justice ever made this a requirement of the oral agreement. Instead, Appellant points to testimony from the Justice Family Farm’s Rule 30(b)(6) designee showing only that they were **planning** to record the conservation easement in 2007 and that they were **planning** to use those tax advantages in 2007. (Petition for Rehearing, p.3). Planning for the tax benefits of the proposed conservation easement in 2007 and **requiring** that the conservation easement be recorded in 2007, however, are not the same.

In its petition for rehearing, Appellant follows its citations of the Justice Family Farm planning testimony with a full paragraph of argument filled with Mr. Justice’s supposed need to close the conservation easement in 2007. In doing so, Appellant seeks to transform the planning language of Justice Family Farm’s testimony into “evidence” that Mr. Justice, the acknowledged decision-maker on the transaction, required a 2007

recording. A close examination of Appellant's attempted transformation, however, reveals a glaring omission: none of its arguments are supported by the record. Appellant makes the following bald statements:

- "Their particular fiscal situation for the year 2007 created the need for tax deductions flowing from this conservation easement." *No record cite.*
- "When the transaction could not close before the end of 2007 . . . , then the deal did not have the same value and the conservation easement did not close." *No record cite.*
- "While it might have been technically possible to complete the transaction in 2008, those particular tax incentives were lost and the motivation for the easement had disappeared." *No record cite.*
- "In fact, seven years later, the conservation easement has still not happened. This is due to the fact that the tax incentives were unique and particular to the 2007 fiscal year." *No record cite.*
- "Thus, while the mechanics of creating a conservation easement could technically take place at any time, the motivation for the conservation easement was lost after the end of 2007 . . . ." *No record cite.*

There is no evidence in this record that Mr. Justice required the conservation easement to be recorded in 2007 for a particular taxable income offset purpose.<sup>1</sup> The above quoted sentences found in Appellant's petition for rehearing are nothing more than "speculative, theoretical and hypothetical" arguments that do not overcome the Rule 50

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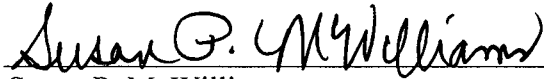
<sup>1</sup> Indeed, the evidence presented at trial showed, without challenge, that Mr. Justice earned significantly more income in 2008 than he did in 2007. (R. p. 619, line. 8- p. 622, line 17).

theoretical and hypothetical” arguments that do not overcome the Rule 50 standard for a directed verdict. *Hanahan v. Simpson*, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997).

Appellant also cites to the “expert” testimony of Gregory B. Adams in an effort to manufacture the missing link. Mr. Adams, obviously, was not a party to the oral agreement and, therefore, had no personal knowledge to provide on this issue. Consequently, Mr. Adams’ testimony cannot provide the necessary *factual* evidence Appellant needed to overcome a directed verdict. *See Jones v. Doe*, 372 S.C. 53, 62-63, 640 S.E.2d 514, 519 (Ct. App. 2006) (affirming summary judgment and holding that expert witness’s opinions cannot substitute for required factual evidence). Consequently, Mr. Adams’ bald and speculative statements that “this had to be done by December 31st,” (R. p. 68, line 11-12), or that Mr. Justice had a “critical need for [the conservation easement] in 2007,” (R. p. 283, line 20), do not aid Appellant.

Again, “[i]n deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or non-existence of evidence.” *Sims*, 343 S.C. at 714, 541 S.E.2d at 861. At the trial court, and before this Court, Appellant failed to present any evidence that Mr. Justice required the conservation easement to be recorded in 2007. This Court correctly identified this missing link and correctly affirmed the directed verdict. Appellant’s petition for rehearing should be denied.

Respectfully submitted,



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February 23, 2015

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge  
DeAndrea G. Benjamin, Circuit Court Judge

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**PROOF OF SERVICE**

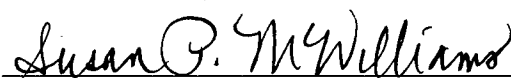
I certify that this 23<sup>rd</sup> day of February, 2015, I have served the foregoing Return to Petition for Rehearing via U.S. Mail, first class postage prepaid, on the following counsel:

Thomas A. Pendarvis, Esquire  
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Catherine Brown Kerney, Esquire  
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*(Signature on following page)*

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February 23, 2015

Columbia, South Carolina

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*George Harold Hanlin, J.D.*

Susan P. McWilliams  
Member  
Admitted in SC, GA

February 23, 2015

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**SC Court of Appeals**

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Deputy Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: *Yancey Environmental Solutions, LLC, Appellant v. Richardson Plowden & Robinson, P.A. and George Harold Hanlin, J.D., Respondents*  
Appellate Case No. 2012-212687

Dear Ms. Allen:

Enclosed herewith for filing are the original and nine copies of Respondents' Return to Petition for Rehearing in the above-referenced matter. Please return the extra three received-stamped copies to me via our courier.

By copy of this letter, I am serving Appellant's counsel with a copy of the same.

Very truly yours,



Susan P. McWilliams

SPM/fch  
Enclosures

cc (w/encl – via US Mail): Thomas A. Pendarvis, Esquire  
Catherine Brown Kerney, Esquire

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

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Columbia SC 29202

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**SC Court of Appeals**

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