

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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

Case No. 2010-CP-40-3297
Appellate Case No. 2012-212687

YANCEY ENVIRONMENTAL SOLUTIONS, LLC. Appellant,

vs.

RICHARDSON PLOWDEN & ROBINSON, P.A. and
George Harold Hanlin, J.D. Respondents.

**APPELLANT'S REPLY
TO RESPONDENTS' RETURN
TO PETITION FOR REHEARING**

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ARGUMENT FOR REHEARING

Respectfully, Appellant, YANCEY ENVIRONMENTAL SOLUTIONS, LLC (“Yancey”), believes the Opinion overlooked or misapprehended specific evidence in the voluminous Record on Appeal showing that the Respondents’ withdrawal – abandoning their representation literally days before Justice Family Farms intended to record a \$45M conservation easement that, for their tax plans for 2007, was required to be recorded by December 31, 2007 – proximately caused harm to Yancey. Review of the testimony by Mr. Terry Miller, the designee for Justice Family Farms selected by Mr. James C. Justice, II, reveals the flaws in the basis for the Court’s holdings because there was testimony that having the easement recorded in 2007 was, in fact, a condition of the agreement. (ROA 893-95, 900-01, 905, 907-11, 954). It is telling that Respondents’ chose not to respond in any fashion to the actual quotes and citations to this testimony by Justice Family Farms as set out over four pages in Yancey’s Petition for Rehearing.

I. **Evidence Was in the Record Showing That the Easement Had to Be Recorded by the End of 2007 as a Condition for Payment of a Fee.**

A. **Evidence in the Record.**

The Opinion overlooked or misapprehended Justice Family Farms’ testimony of their “**intention to pay [Yancey’s] fee had the easement moved forward and been recorded in time.**” Justice Family Farms 30(b)(6) testimony; (ROA 908-909) (emphasis added). The jury heard testimony that Mr. Justice and the Justice companies were in “agreement with the process moving forward towards establishing a conservation easement, **so that we could have the tax advantages in the year 2007, by 12-31 of that year.**” Justice Family Farms 30(b)(6) testimony; (ROA 893-894) (emphasis added). In response to a question asking about the date they desired to have the easement recorded, Justice Family

Farms' testified that "[i]t would have had to been in place by December 31st [2007] for us to take tax advantages of the easement being recorded and in place" and "everything was in place and we were using that easement as part of our tax calculations for 2007 as to our tax liability and it was our understanding that everything was on track." Justice Family Farms 30(b)(6) testimony; (ROA 895) (emphasis added). Notwithstanding findings in the Opinion to the contrary, based on this testimony there was a "reasonable inference from the evidence that the oral agreement between Appellant and Jim Justice Jr. conditioned the payment of Appellant's consulting fee on the completion of the transaction by the end of 2007." (Quoting from the Opinion at p. 2).

Because Yancey was retained to assist Justice Family Farms in accomplishing its objective to record the easement "so [they] could have the tax advantages in the year 2007," it is reasonable to infer that recording the easement in 2008 or later years would not have provided any tax advantages "in the year 2007." Justice Family Farms 30(b)(6) testimony; (ROA 908-909) (emphasis added). "For these reasons, there was ~~no~~ evidence that Respondents' withdrawal from representation of [Yancey] prevented Justice Family Farms from recording the conservation easement, and then paying [Yancey's] fee, after 2007." (Quoting from the Opinion at p. 2 with strike-through on the word "no" for context). At a minimum, there were multiple inferences from this testimony creating disputed questions of fact on whether Respondents' conduct proximately caused injuries to Yancey. See *5 Star, Inc. v. Ford Motor Co.*, 408 S.C. 362, 366, 759 S.E.2d 139, 141 (2014) ("When reviewing a ruling on a motion for a directed verdict, we must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party." quoting *Hurd v. Williamsburg Cnty.*, 363 S.C. 421, 426, 611 S.E.2d 488, 491 (2005)). In other words,

a jury could reasonably infer that Justice Family Farms intended to record the easement and pay Yancey a fee if, and only if, the easement was recorded "***so that [they] could have the tax advantages in the year 2007, by 12-31 of that year.***" Justice Family Farms 30(b)(6) testimony; (ROA 893-894) (emphasis added). See also *RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 331–32, 732 S.E.2d 166, 171 (2012) ("The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt.").

Further evidence of the parties' intent was provided to the jury in testimony from Yancey's representative:

673:5 Q. Mr. McLeod, you have testified some earlier
673:6 today about -- I want to show you a few more of
673:7 your correspondence with Mr. Harrah and Mr. Justice
673:8 about your fees but you have testified earlier
673:9 today there wasn't any deadline for the project
673:10 set, to closing date?
673:11 A. December 31st.
673:12 Q. All right. Oh, the closing date was December
673:13 31st?
673:14 A. Everything was to be done by December 31st in
673:15 order for Mr. Justice to have the charitable gift
673:16 in the calendar year 2007.

Yancey A. McLeod, Jr., Trial Testimony; (ROA 569).

679:6 Q. Okay. Well, certainly with respect to the
679:7 Justice closing, you just said it was December
679:8 31st, that is just a tax deadline, right, that is
679:9 certainly not a -- you had no scheduled closing?
679:10 A. Yes, everybody had to get, we got to get
679:11 everything done and be able to record the easement
679:12 by December 31st.

Yancey A. McLeod, Jr., Trial Testimony; (ROA 679).

A review of the evidence and testimony shown here and in the Petition should prompt the Court to grant the Petition for Rehearing, and either schedule another oral

argument or issue a substitute Opinion reversing the trial court and remitting this case for a new trial.

B. Respondents' Return ignores the references to the evidence in the Record and cited in Yancey's Petition for Rehearing.

Respondents' Return to Petition for Rehearing does not refute Appellant's argument that the testimony and evidence cited in the Petition erodes and contradicts the Opinion's findings. Respondents' Return argues only one point: that Yancey cites no evidence from the record that the oral agreement was conditioned on the easement transaction closing in 2007. That is simply not true.

In its Petition, Yancey cited numerous examples of testimony and exhibits presented to the jury that provided, at the very least, some evidence that the conservation easement was required to be recorded by December 31, 2007. See Petition at pp. 4 - 12. "In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence." *Manios v. Nelson, Mullins, Riley & Scarborough, LLP*, 389 S.C. 126, 146, 697 S.E.2d 644, 654 (2010). Respondents are ignoring the evidence or, at best, effectively asking this Court to weigh the evidence instead of using the actual standard of whether any evidence exists. If the proper standard is applied, it is clear that evidence was presented to the jury to show that the oral agreement "conditioned the payment of Appellant's consulting fee on the completion of the transaction by the end of 2007."

Respondents divide Yancey's introductory paragraph into separate bullet-point quotes and argue that no cite to the record exists. This paragraph, however, was simply an introduction to the issues and evidence that was overlooked or misapprehended in the Opinion. In fact, the remainder of Yancey's Petition specifically cites the evidence

presented to the jury. In the interest of brevity, this Reply simply cites the evidence in the record supporting the statements criticized in Respondents' Return claiming Yancey failed to cite "any evidence."

- "Their particular fiscal situation for the year 2007 created the need for this conservation easement." See Testimony of Justice Family Farms 30(b)(6) Designee at 18:23-19:12, (ROA 893-894); 20:1-20:18 (ROA 895); 25:13-26:12 (ROA 900-901); 32:19-33:5 (ROA 907-908); 35:22-36:23 (ROA 910-9/11); 79:4 - 79:13 (ROA 954); Gregory B. Adams, Trial Testimony at 143:17- 145:12 (ROA 66-68); 150:7- 151:15 (ROA 73-74); 360:2-360:21 (ROA 283).¹
- "When the transaction could not close before the end of 2007, due to the last minute withdrawal by the lawyers, then the deal did not have the same value and the conservation easement did close." See Testimony of Justice Family Farms 30(b)(6) Designee at 18:23-19:12, (ROA 893-894); 20:1-20:18 (ROA 895); 25:13-26:12 (ROA 900-901); 32:19-33:5 (ROA 907-908); 35:22-36:23 (ROA 910-9/11); 79:4 -79:13 (ROA 954); Gregory B. Adams, Trial Testimony at 143:17- 145:12 (ROA 66-68); 150:7- 151:15 (ROA 73-74); 360:2-360:21 (ROA 283).
- 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

¹ Based on the documents and testimony in this matter that Prof. Adams reviewed, including the Justice Family Farms testimony presented at trial (and that were cited in the Petition for Rehearing and this Reply), Prof. Adams provided expert testimony on the proximate cause of Yancey's damages resulting from Respondents' breach of their professional duties as required in a legal malpractice case. See *Holmes v. Haynesworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 636, 760 S.E.2d 399, 407 (2014) (citing *Hall v. Fedor*, 349 S.C. 169, 174, 561 S.E.2d 654, 656 (Ct. App. 2002)). Respondents' citation to *Jones v. Doe*, 372 S.C. 53, 640 S.E.2d 514 (Ct. App. 2006) is misplaced.

disappeared. See Testimony of Justice Family Farms 30(b)(6) Designee at 18:23-19:12, (ROA 893-894); 20:1-20:18 (ROA 895); 32:19-33:5 (ROA 907-908); 79:4 -79:13 (ROA 954); Gregory B. Adams, Trial Testimony at 143:17- 145:12 (ROA 66-68); 150:7- 151:15 (ROA 73-74); 360:2-360:21 (ROA 283).

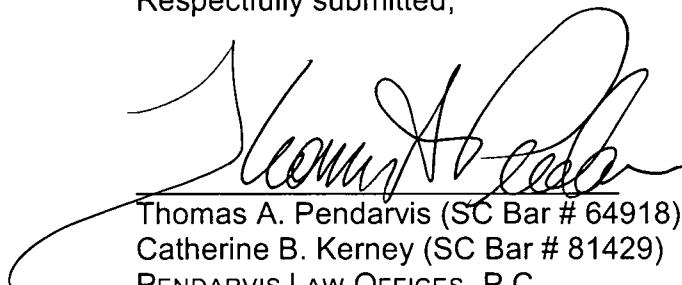
- In fact, seven years later, the conservation easement has still not happened. This is due to the fact that the tax incentives were unique and particular to the 2007 fiscal year. See Testimony of Justice Family Farms 30(b)(6) Designee at 18:23-19:12, (ROA 893-894); 20:1-20:18 (ROA 895); 32:19-33:5 (ROA 907-908); 79:4 -79:13 (ROA 954); Gregory B. Adams, Trial Testimony at 143:17- 145:12 (ROA 66-68); 150:7- 151:15 (ROA 73-74); 360:2-360:21 (ROA 283).
- 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 and the mutual intent of the parties was defeated once the lawyers withdrew and the transaction could not close before the end of 2007. See Testimony of Justice Family Farms 30(b)(6) Designee at 18:23-19:12, (ROA 893-894); 20:1-20:18 (ROA 895); 32:19-33:5 (ROA 907-908); 79:4 -79:13 (ROA 954); Gregory B. Adams, Trial Testimony at 143:17- 145:12 (ROA 66-68); 150:7- 151:15 (ROA 73-74); 360:2-360:21 (ROA 283).

In fact, Yancey presented numerous cites to the record and examples of evidence heard by the jury at trial from which the jury could have found that the agreement required the completion of the easement transaction by the end of 2007. Yancey respectfully submits that the Court of Appeals overlooked this evidence in its review of the voluminous Record on Appeal.

CONCLUSION

Based upon the foregoing, YANCEY ENVIRONMENTAL SOLUTIONS, LLC, respectfully requests this Court grant its Petition for Rehearing.

Respectfully submitted,



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February 27, 2015

Beaufort, South Carolina

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PROOF OF SERVICE

I, Thomas A. Pendarvis, a lawyer with PENDARVIS LAW OFFICES, P.C., certify that I have served one (1) copy of APPELLANT'S REPLY TO RESPONDENTS' RETURN TO PETITION FOR REHEARING on counsel for Respondents, Susan P. McWilliams, J.D., Daniel C. Leonardi, J.D., Tanya A. Gee, J.D. and Burl F. Williams, J.D., by depositing a copy of the same in the United States Mail, postage prepaid, on the 27th day of February, 2015 addressed as follows:

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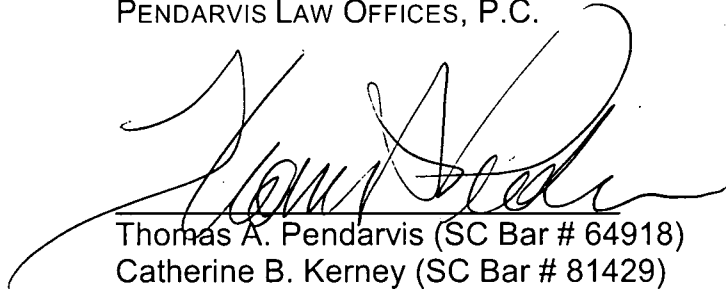
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