

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

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Case No: 2011-CP-07-5059  
Court Of Appeals Number: 2012-213154

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**RECEIVED**  
MAR 23 2015  
**SC Court of Appeals**

CoastalStates Bank, Respondent,

v.

Hanover Homes of South Carolina, LLC; Hanover Homes, Inc.; George Cosman,  
Defendant,

Of Whom George Cosman is the Appellant.

George Cosman, Third-Party Plaintiff,

v.

Phillip Petruzzelli, Third-Party Defendant

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**APPELLANT'S RETURN TO  
RESPONDENT'S PETITION TO RECALL THE REMITTITUR**

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Attorneys for Appellants

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Attorneys for Respondents

Pursuant to Rule 240(e) SCACR, the Appellant, George Cosman (“Cosman”), respectfully submits his Return to Respondent’s Motion to Recall the Remittitur (the “Motion”) served on Appellant on March 18, 2015. The Opinion of this Court was filed on June 11, 2014. The Remittitur was then issued on July 18, 2014. The Respondent now seeks to move for a recall of the Remittitur more than 243 days after the Remittitur was issued.

Pursuant to the Motion, the grounds for the Motion is the Respondent’s request for clarification of the Court of Appeals Order. Under South Carolina Law, in order to justify the Court of Appeals exercising the “unusual power of recalling the remittitur after it has been sent down,” the movant is required to provide a “very strong showing” that the remittitur was sent down “through some mistake or inadvertence on the part of this court or its officer.” *State v. Keels*, 39 S.C. 553, 17 S.E. 802, 802-03 (1893). There is no pretense of any such showing in this case. Simply, it is not enough to show that the Respondent is confused or disagrees with Appellant as to how to proceed at the trial level. The proper time and place to make such a showing would be at a hearing before the Trial Court. The Respondent is, in fact, making the same argument as it previously made in its petition for rehearing. The Supreme Court’s decision in *Millhouse v. Sally*, makes clear, where there is no issue of timing regarding when the remittitur is sent down, “there is no ground [...] for granting [a] motion to recall the remittitur.” 43 S.C. 318, 21 S.E. 885, 886 (1895). In *Sally*, the petitioner, similar to the Respondent in this instance, was merely seeking a method of petitioning for rehearing. *Id.* The Supreme Court soundly rejected such an argument for grounds to recall a remittitur. *Id.*

Rule 221 of the South Carolina Rules of Appellate Practice provide as follows:

“(a) Rehearing. Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court. A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. [...]

(b) Remittitur. The remittitur shall contain a copy of the judgment of the appellate court, shall be sealed with the seal and signed by the clerk of the court, and unless otherwise ordered by the court shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment, or decree of the court finally disposing of the appeal. If a petition for rehearing is received before the remittitur is sent, the remittitur shall not be sent pending disposition of the petition by the court. Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired...”

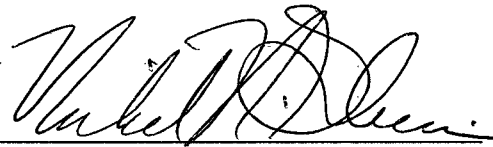
Rule 221 SCACR. The manifest purpose of these provisions is to give parties and their attorneys ample time and opportunity to examine (a) the orders and opinions of the court, (b) the grounds upon which they are based, and (c) bring to the attention of the court any errors or omissions therein, before the court has lost jurisdiction of the cause by sending the remittitur to the court below. Respondent has had the opportunity to argue the very argument it now presents in its petition for rehearing. Our Supreme Court has long held that a party to an action has the “right to the orderly disposition thereof, and that his rights must be respected, and that it is essential to the due and orderly administration of the law that the methods of procedure prescribed by the statutes and rules of court be complied with.” *Thomas v. Lynch*, 87 S.C. 44, 68 S.E. 817, 817 (1910)(holding that, otherwise, there would be no end to litigation); See also *Ex parte Dunovant*, 16 S.C. 299, 301 (1881)(“Every party to a cause is entitled to his right of appeal from a judgment which he may think erroneous, but unless he takes his appeal within the time and in the manner

prescribed by law, he loses this right, even though the judgment against him may be manifestly erroneous”).

The Respondent’s motion is untimely, inappropriate, and not supported by South Carolina law. Simply, the Respondent’s second attempt at having the Court of Appeals reconsider its Order is without merit and, therefore, should be denied. The Appellant respectfully requests the Court deny Respondent’s motion to recall the remittitur and award the costs associated with Respondent’s post remittitur motions in accordance with Rule 222 of the South Carolina Rules of Appellate Practice.

**Respectfully submitted,**

By:



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March 23, 2015

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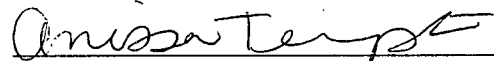
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**PROOF OF SERVICE**

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I certify that I have served a copy of the Appellant's Return to Respondent's Petition to Recall the Remittitur by depositing a copy of it in the United States Mail, postage prepaid, on March 23, 2015, addressed to its attorney of record as follows:

Russell P. Patterson, Esquire  
Post Office Drawer 8047  
Hilton Head Island, South Carolina 29938



Anissa Terpstra, Paralegal to  
Richard R. Gleissner  
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(803) 787-0505

Dated: March 23, 2015

Attorneys for the Appellants