

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No.: 2008-CP-26-6169

Joseph E. Mason, Jr.,Appellant

v.

Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard,
Mason Holding Company, Inc., and Irwin Levine,Respondents

**RETURN OF RESPONDENTS CATHERINE L. MASON, JOSEPH E. MASON,
SR., KATHY ST. BLANCHARD AND MASON HOLDING COMPANY, INC. TO
APPELLANT'S PETITION FOR REHEARING**

ARGUMENT

Appellant has petitioned for rehearing citing multiple instances in which he claims this Court has overlooked or misapprehended his arguments. These Respondents contend this Court has neither overlooked nor misconstrued any of Appellant's arguments, but has simply disagreed with Appellant as to what issues he has raised on appeal and has arrived at a different conclusion on the issues raised by Appellant based upon this Court's view of the law and the evidence.

Appellant first questions the Court's finding that the Appellant failed to address

the special referee's finding his suit should have been filed as a derivative action. Appellants Final Brief on appeal lists ten issues on appeal (the "Issues") for consideration by this Court. (Final Brief of Appellant, pp. iv and v). Not one of the Issues contains any reference to "shareholder derivative action" either directly or indirectly. Moreover, only Appellant's Issue numbered one (1) questions in any manner the special referee's determination that these Respondents should be required to purchase his shares. That Issue as stated, however, questions only whether the evidence established these Respondents should be required to purchase his shares, and fails to make any mention or inference of whether that claim should be pursued individually or derivatively. The statement of issues must be concise and direct. Broad general statements may be disregarded by the appellant court. Rule 208(b)(1)(B), SCACR; see *Windsor Prop. Inc. v. Dolphin Constr. Co.*, 331 S.C. 466, 498 S.C.2d 858 (1998); *Langehans v. Smith*, 347 S.C. 348, 554 S.E.2d 681 (Ct. App. 2001). Moreover, regardless of whether Appellant's suit or portions thereof could be maintained individually or derivatively, the Court of Appeals affirmed the special referee's factual finding that the Appellant was not an oppressed shareholder, thereby making the issue moot.

Appellant's reliance on the case *Hanekamp v. Atlas Techs, Inc.*, C.A. No. 2011-CP10-1243, Business Court Op. 2014-05-15-02 (Charleston County, May 15, 2014), (a copy attached to their petition) is misplaced. In *Hanekamp*, summary judgment was granted to the defendants on a counterclaim seeking a court ordered buy-out of the plaintiff's shares in the two corporate defendants because of the plaintiff's multiple violations of statutory and common law duties owing to the defendants. This is the reverse of the facts in the instant action before this Court. In *Hanekamp*, the plaintiff did

not even appear at the summary judgment hearing to oppose the defendants' requested relief, nor was he represented by counsel because his counsel had previously been relieved by court order. *Hanekamp* is neither controlling nor even persuasive authority for anything related to the instant action.

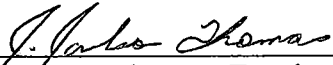
Appellant's assertion of error as to the Court's conclusion that Appellant is barred under the two-issue rule from pursuing his claim that he owns an additional twenty percent (20%) of the shares of the company is equally without merit. In the Special Referee's Conclusion of Law numbered 11, he clearly based his ruling that Appellant was not entitled to the additional twenty percent (20%) interest that he sought on multiple grounds: (1) the claim was completely absent from the Plaintiff's Amended Complaint; (2) the provisions of the documents which would have arguably triggered Appellant's entitlement to the additional twenty percent (20%) were not complied with; and (3) the agreements themselves were illegal on their face. Neither Appellant's argument for entitlement to the additional stock, contained on pages 35 through 38 of his Final Brief, nor any of the Issues Appellant posited on appeal, address the absence of such a claim from his Amended Complaint; similarly, neither the Appellant's Brief nor issues raised on appeal address the noncompliance with the Retirement Documents provisions, or why these documents found to be, clearly, on their face, illegal and unenforceable, should be the subject of a court's enforcement decree. His sole argument is that the result is "inequitable." Contrary to his assertion contained in his petition for rehearing, however, Appellant had every opportunity to amend his pleading to include such a claim at any time. He also had the opportunity to make this an issue in his appeal, but did not.

In summary, all issues raised and presented by Appellant were extensively briefed

by the parties and were correctly determined in the Court's extensive Order based on the extensive record exhibits and testimony

Based on the foregoing, and the arguments previously submitted in their Final Brief, these Respondents respectfully request the Court to deny Appellant's Petition for Rehearing.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENTS
CATHERINE L. MASON, JOSEPH E.
MASON, SR., KATHY ST. BLANCHARD
AND MASON HOLDING COMPANY,
INC.

March 27, 2015

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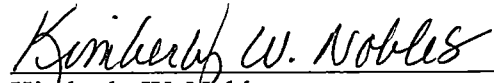
PROOF OF SERVICE

I certify that I have served the Return of Respondents Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, and Mason Holding Company, Inc. to Appellant's Petition for Rehearing, by depositing a copy of it in the United States Mail, postage prepaid, on March 27, 2015, addressed to its attorney of record, Robert Y. Knowlton, Esquire, as follows:

Robert Y. Knowlton, Esquire
Elizabeth H. Black, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, South Carolina 29211

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
Post Office Box 11629
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March 27, 2015

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J. JACKSON THOMAS
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March 27, 2015

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

Re: Joseph E. Mason, Jr. v. Catherine L. Mason, Joseph E. Mason, Sr.,
Kathy St. Blanchard, Mason Holding Company, Inc., and Irwin Levine
Appellate Case No.: 2012-212146

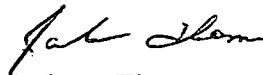
Dear Ms. Kitchings:

In connection with the above-referenced matter, enclosed please find the original and six (6) copies of the Return of Respondents Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard and Mason Holding Company, Inc. to Appellant's Petition for Rehearing and the Proof of Service. Please return a clocked copy of the Return us in the enclosed self-addressed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

THOMAS & BRITTAIN, P.A.



J. Jackson Thomas

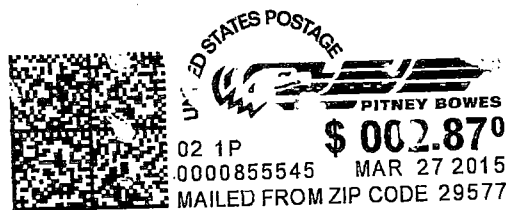
JJT/kwn

Enclosures

cc: Robert Y. Knowlton, Esquire
Elizabeth H. Black, Esquire
John M. Leiter, Esquire
Mr. and Mrs. Joseph E. Mason, Sr.
Ms. Kathy St. Blanchard



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SC Court of Appeals

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Clerk of Court, South Carolina Court of Appeals
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