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May 3, 2012

VIA FACSIMILE #803-734-1839
AND REGULAR MAIL

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

RECEIVED

MAY 3 2012

SC Court of Appeals

Re: *Ex Parte: Ralph DeMarco*

Dear Ms. Kitchings:

Enclosed please find the Petition for ReHearing regarding the above-referenced matter. I am also including my check made payable to the S.C. Court of Appeals in the amount of \$25.00 as well as a Certificate of Service By Mail and hand delivery to the other counsel of record.

Sincerely yours,



Patrick D. Partin, Esquire

/ar

- Enclosures: (1) Original Petition for ReHearing w/ 6 copies;
- (2) Check for \$25.00;

cc: Vincent A. Sheheen
William B. Cox, Jr.
P.O. Drawer 10
Camden, SC 29020

Jonathan M. Robinson
J. Kennedy Dubose, Jr.
PO Drawer 39
Camden, SC 29020

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
Case No.: 2007-CP-28-2099**

Allison Renee Lee, Circuit Court Judge

EX PARTE: Ralph DeMarco,.....Appellant,

v.

**Audrey S. Dixon, William H. Stokes, III
and Starling Odell Stokes, Sr.....Respondents.**

v.

Kershaw County.....Respondents.

CERTIFICATE OF SERVICE

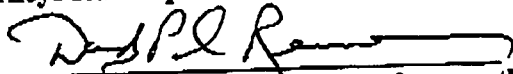
I, David Paul Reuwer, certify that I have served the Petition for Rehearing on counsel for the Respondents by serving a copy of the same via U.S. Mail, postage prepaid, and hand delivery, on 3 May 2012, to the following:

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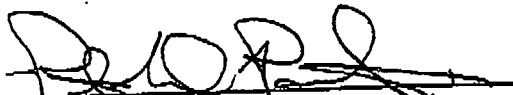
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Attorneys for Respondent

Attorneys for Respondent



Subscribed to and sworn before me this 3 day of May, 2012



Notary Public for South Carolina

My commission expires 2/15/12

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PETITION FOR REHEARING

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Attorney for Appellant**

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellant hereby petitions this Court to vacate Opinion No. 2012-UP-231 (the "Opinion"), filed on April 18, 2012 and to grant a rehearing. The Appellant received notice of the filing of the Opinion on April 19, 2012. The Appellant respectfully requests a rehearing *en banc* by the full panel.

GROUNDS FOR REHEARING

Appellant would respectfully show unto this Court that the Opinion overlooks certain written arguments made Appellant in its briefs, has overlooked the actual ruling made by the tribunal below, and has misapprehended the law in certain instances. Thus, the Appellant believes that this Court should grant a rehearing and overrule the decision of the tribunal below (the Kershaw County Circuit Court).

I. Rehearing Should be Granted Because the Opinion Overlooks or Misreads the Trial Court's Ruling upon Appellant's Intervention Motion

The Opinion asserts that Appellant's intervention is "unpreserved for appellate review" because "abutting landowner was not the sole dispositive question in determining whether to grant DeMarco's motion to intervene; rather, the Court also should have considered whether DeMarco was an interested party to the action." Appellant specifically argues that Trial Court did not provide DeMarco opportunity to make his case, much less with timely notice, sufficiently and adequately in presentation before Trial Court.

Rule 24, SCRCF, clearly states that DeMarco must only "claim an interest relating to property" and that he is "so situated that the disposition may as a practical matter impair or impede his ability to protect the interest." DeMarco stated that he used the road (claiming an interest as public member) to get to his own land (so situated as to impair or impede his interest). Intervention was appropriate, but denied.

Because the Trial Court ignored Appellant's right to intervene as a matter of right when Appellant claimed an interest and was so situated as to be impaired or impeded by the Trial Courts decision, the Trial Court and the Appellant Court should not have reached the other issues. The Appellant should be given his right under Rule 24 to participate in and to fully litigate these other issues at the Trial Court level.

This Court must grant Appellant a new hearing out of a sense of justice, equity, and fairness, if not for any other reason so stated.

II. Rehearing Should be Granted Because The Opinion Overlooks the Trial Court's Implicit Ruling on, and thus Preservation of, the Appellant's Practical Interested Party Argument

The Opinion holds that the order of the Trial Court did not rule on whether DeMarco was an interested party to the action. The issue of intervention has been implicitly ruled upon by the Trial Court in its July 7, 2009 order in the following paragraph from the findings of fact: "Therefore, I deny Mr. Demarco's motion to intervene as an abutting landowner. However, Mr. DeMarco's testimony was considered as evidence from a member of the public who has used the road in the past."

It is crystal clear that the issue of DeMarco's intervention has been ruled upon; a fair reading of the language shows that the DeMarco's practical interest as "a member of the public who used the road in the past" was considered and decided against DeMarco's intervention. Because the issue was preserved, this Court must grant a rehearing so that the issue may be considered.

III. Rehearing Should be Granted Because the Opinion Misapprehends the Standard for an Abutment Showing and Misapprehends the Legal Significance of the Easements as shown on Recorded Plats.

The official historic record indicates two pre-litigation-dated plats. The Opinion states "The recorded plats of the property produced by both Mr. DeMarco and the Plaintiffs show the locations of iron pins that mark the boundary lines. It is the location of the iron pins that determine the proper location of the boundaries and reference is made to the recorded plats. Whether the plats show the land belonging to DeMarco or to Stokes, it is clear that the boundary line between the properties is marked by old iron pins." A plat prepared for litigation, demonstratively using old and new pins, is all that Respondent's assert, together with hearsay from the grandfather. This holding is internally inconsistent. The record at Trial Court does not reasonably support the Trial Court's denial of abutment, when the Appellant's position was absolutely supported by the detailed, earlier recorded plats.

It was Respondent's burden to make a reasonable showing of actual pins, old and new, for the purposes of his denying DeMarco's abutment, as proven by the recorded plats introduced by DeMarco. DeMarco never was given the opportunity nor allowed testimony by the Trial Court to argue easement appurtenant, an easement by prescription, or recorded easements – all because he was not allowed to intervene (laying out the types of easements). Reason is defined by Webster's Dictionary as "an underlying fact or motive that provides logical sense for a premise or occurrence." The Trial Court totally ignored the underlying facts logical for the determinative decision on the recorded plats.

The Opinion is circular in its reasoning, requiring the Applicant to preserve issues for which Appellant was not allowed to argue over or submit evidence bearing on the type of

easement necessary to use. Furthermore, Trial Court reckoned its decision on the later in time plat, prepared after the start of original litigation.

Because the Opinion appears internally inconsistent, and because the Trial Court support for its abutment findings is not reasonable, the Opinion misapprehends the law and a rehearing should be granted.

IV. Rehearing Should be Granted Because the Opinion Misapprehends Rule 208 and the Public Safety Evidence

The Opinion misapprehends Rule 208 (b)(1)(D), SCACR in requiring a case citation of authority when the Appellant's argument is not about legal authority but, rather, that the record is devoid of any factual basis for Respondent's safety concerns on the relevant portion of the Bill Stokes Road. The rule does not state that discussion cannot be had without citing cases. The cigarette butts and beer cans (trash), even if such minute trash was determined to be a safety hazard, are not located near nor on the actual portion of the long road affecting DeMarco. That is, "beginning at McGoughan Mill Pond Road down to the dam. "This portion does not appear to be in useable condition," said the Court after stating this portion was maintained by the county (R.p.7, 2009 Order, p. 4, paragraph 2). This road extends from McGoughan Mill Pond Road easterly to first touch, the run along, the DeMarco property most of its 2,023 feet before making any twists and turns (R.p.212). To access his own property, DeMarco only needs to come up to along his property a short way and not the full length of this roadbed between he and Stokes. It is against public policy to land lock property without good cause."

Because the safety hazard is without evidence in the part of the road closed which affects Appellant, a rehearing should be granted.