THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Opinion No. 5270 (S.C.Ct.App. Filed September 10, 2014)

Appellate Case No. 2015-000782

---

56 Leinbach Investors, LLC.....Respondent

v.

Magnolia Paradigm, Inc.....Petitioner

RETURN TO PETITION FOR A WRIT OF CERTIORARI

Donald H. Howe
Law Offices of Donald H. Howe, LLC
818 Wappoo Road (29407)
P.O. Box 31324
Charleston, SC 29417
SC Bar#002690
Telephone: 843-225-2523
Facsimile: 843-225-2698
Attorney for Respondent
56 Leinbach Investors, LLC

Other Counsel of Record:

William S. Barr
Barr, Unger and McIntosh
11 Broad Street (29401)
P.O. Box 1037
Charleston, SC 29402
Telephone: 843-577-5083
Facsimile: 843-723-9039
Attorney for Petitioner
Magnolia Paradigm, Inc.

Stephen A. Spitz
Stevens & Lee
151 Meeting Street, Suite 350
Charleston, SC 29401
Telephone: 843-414-5080
Facsimile: 843-414-5081
Attorney for Petitioner
Magnolia Paradigm, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: PAGE

OTHER AUTHORITIES:

INTRODUCTION

Respondent requests that Petitioner's plea for certiorari pursuant to Rule 242, SCACR be denied. As to Petitioner's arguments concerning the novel question of equitable abatement of rent, Respondent asserts that Petitioner's request be denied for two reasons:

1) The legal theory of equitable abatement constituting the "novel question" was never raised at trial or on appeal to the Court of Appeals.

2) The theory of equitable abatement is not supported by the controlling facts of the case.

As to the other grounds set out in the Petition for Writ of Certiorari, Respondent will respond in seriatim.

COUNTERSTATEMENT OF THE CASE

Respondent Leinbach owned two adjacent pieces of property at the end of a cul-de-sac. The properties abut at the end of the cul-de-sac such that they are contiguous only for a short distance. On one piece of property is the Charles Towne Montessori School. The other piece of property is the parcel in dispute. (R. p. 223).

Mr. Tommy Baker is a businessman in Charleston. Mr. Baker is the sole member of the Petitioner, Magnolia Paradigm. He owns a series of car dealerships along Highway 17 (Mercedes, Cadillac, Land Rover, Maserati, etc.). Due to the success of his dealerships, he was running out of room for employee parking. (R. p. 179, lines 10-17).

Baker (Magnolia/Petitioner) approached Hiers (Leinbach/Respondent) about leasing the lot contiguous to the Charles Towne Montessori School. At the time, it was an empty, unimproved lot used for soccer/playground by the school. (R. p. 75, lines 11-12). Baker agreed

he would undertake all improvements to construct a parking lot. Plans were drawn up by Baker-employed engineers and submitted to Hiers. Once Hiers approved the plans, the plans had to be submitted and approved by the City of Charleston. The plans were drawn to maximize the number of parking spaces that could be placed on the property. (R. p. 166, lines 11-22). It was not until the plans drawn by Baker's agent had been submitted and approved by the City of Charleston that Baker (as Magnolia) and Hiers (as Leinbach) entered into a written agreement. Had the city not approved the plans, there would have been no contract. (R. p. 171, lines 20-24).

The essential purpose of the lease was parking for Baker's employees (R. p. 167, lines 5-6) and the lease specifically provided "The demised premises shall be used by the Tenant as parking for Tenant or Baker Motor Company and for no other purposes without the prior written consent of Landlord." (R. p. 189, Section 1.02 Use of Space).

Between the area where the parking lot ended and the parcel on which the Charles Towne Montessori School sat was a small "wooded area" containing a few trees, a cargo container and two metal sheds used by the school for storage. This area was technically on the 1.21 acres of the demised premises under the lease with Baker but not part of the parking lot.

Approximately two years after Baker and Hiers signed the lease, Hiers was approached about building a communications tower on his property. (R. p. 63, lines 3-6). Optima had searched the property records in Charleston County and determined Hiers to be the property owner. (R. p. 64, lines 3-5). Baker had not filed a Memorandum of Lease at the Charleston County RMC office to put anyone on notice of his interest in the property. (R. p. 66, lines 5-22).

Optima obtained approval from the City of Charleston to erect the communications tower – a 150+foot structure. Optima built the tower and it stood immediately adjacent to the parking area used by Baker. Optima had to coordinate with Baker during the construction phase of the

tower (approximately 45-60 days) because the crane used to build the tower was placed in such a way as to require part of the parking lot to be "flagged off" (R. p. 67, line 1-p. 73, line 14) to accommodate the crane. The existence of the tower was a non-issue until Baker later sought to buy the property he had been renting from Hiers. At that time, he "discovered" the tower was on part of the 1.21 acres he had been leasing from Hiers. (R. p. 181, line 25-p. 182, line 9).

Baker's attorney wrote a letter demanding the tower be removed, citing Section 6.01 of the lease and claiming that the tower "substantially interfered" with Baker's ability to park cars in the parking area and stating that Baker would begin to abate his rent pursuant to Section 6.03 of the lease in the amount of the cell tower rent ($800.00 per month at that time). (R. p. 254).

Both sides sued claiming breach of contract and unjust enrichment before the Master in Equity for Charleston County. The Master found that Hiers (Leinbach) breached the contract but that Baker (Magnolia) had not proven any damages. He then ruled that Baker had been unjustly enriched by keeping the rent and on the basis of "mutual mistake" apportioned the rent 70% to Hiers and 30% to Baker.

Both sides appealed. The Court of Appeals held the theory of mutual mistake to be in error because the mistake was not at the time the contract was entered into. The Court of Appeals then agreed with the Master that Leinbach had breached the contract but that no damages were proven. It therefore awarded nominal damages only.

ARGUMENTS

I. THE LEGAL THEORY OF EQUITABLE ABATEMENT WAS NOT RAISED IN THE LOWER COURTS.

The legal theory that underlies Petitioner's purported "novel question" is the equitable theory of abatement as set out on page 2 of its Petition for Writ of Certiorari:

> "...the question before the court was not one of damages. Rather, the question is one of remedies. Petitioner seeks the equitable remedy of rent abatement because of Respondent landlord's actual ejectment of Petitioner from a portion of the leased property."

The "equitable" theory of "abatement" was never raised and argued at trial. Neither was it ruled on by the lower courts. To the extent the theory of abatement was raised, it was only in the context of the contract, specifically Section 6.03 Landlord Interference.

> If Landlord creates a condition that substantially interferes with the normal use of the Demised Premises or appurtenant parking or service areas as allowed herein, the rent and other charges due hereunder shall be abated during the time such interference persists... (R. p. 194).

The Master in Equity held that Section 6.03 of the lease provided Defendant's remedy for Plaintiff's interference (R. p. 10, paragraph 24) but found there was no proof of substantial interference. (R. p. 8, paragraph 19).

The Master then ruled under the theory of unjust enrichment for Leinbach (i.e. against Petitioner Magnolia) and granted an equitable split of the proceeds. His final Order is quite detailed in addressing all aspects of the case as argued by the parties. The Order is nearly 13 pages long. The Master never addressed the theory of equitable abatement because it was not raised. Indeed, the Master resorted to a rather contorted theory of "mutual mistake" which the Court of Appeals rejected. Had equitable abatement been raised, there would have been no

reason for the Master to adopt the mutual mistake theory (raised by neither party) to accomplish the 70/30% split he imposed.

In its brief and at argument before the Court of Appeals, the only theory of abatement presented by Petitioner was the contractual theory of abatement pursuant to Section 6.03 of the Lease. On page 31 of Appellant's Brief of Respondent/Appellant, Petitioner Magnolia sums up its position in the section entitled "Conclusion":

> This was an action at law. The court's role was to interpret the contract...the lease was not ambiguous and the court should not have considered matters outside the four corners of the lease.
>
> * * * * * * * * *
>
> The remedy is (sic) provided for in the lease that (sic) is abatement. (emphasis added)

Accordingly, the Court of Appeals states in its decision "In the instant case, an express contract exists covering the issue of abatement of rent – the relief sought by Magnolia." (411 S.C. at 479, 769 S.E.2d at 249).

Having put all of its eggs in the "contract at law" basket and lost, Petitioner now wants to switch to an equitable theory that is entirely new and inconsistent with its earlier position. Such a new theory/argument cannot be raised at this late date of the proceedings. Allendale County Bank v. Cadle, 348 S.C. 367, 559 S.E.2d 342 (S.C. Ct. App. 2001). See also, Toal, et al., Appellate Practice in South Carolina, 2nd Ed. 2002, pages 55-60.

The Allendale case involves a party's attempt to raise the equitable principle of "unclean hands" on appeal. The Court of Appeals would not entertain the argument because 1) the theory was not in the pleadings (As in this case: R. pp. 39-43), 2) the detailed order of the referee did not address it (As in this case: R. pp. 3-15), and 3) it was not raised specifically in the motion to alter or amend (As in this case: R. pp. 45-56). Allendale, 348 S.C. at 377-378, 559 S.E.2d at

347-348. All of these factors are true in this case, as well. In addition, as noted above, the equitable theory of abatement is entirely absent in Petitioner's brief to the Court of Appeals and in the decision of the Court of Appeals. As a result, Respondent believes it would not be properly before the Supreme Court.

II. THE THEORY OF EQUITABLE ABATEMENT IS NOT SUPPORTED BY THE CONTROLLING FACTS OF THE CASE.

Respondent would draw the Court's attention again to the essence of Petitioner's argument as set out on page two of its Petition for Certiorari.

> Petitioner seeks the equitable remedy of rent abatement because of Respondent Landlord's actual ejectment of Petitioner from a portion of the leased property. (emphasis added)

Both the Master in Equity and the Court of Appeals found that the Petitioner had no right to use the disputed area except as to its right of quiet and peaceful possession (because Magnolia signed away its right to use the property except for parking in the contract). To the extent that the tower was placed on the wooded area, the quiet and peaceful possession right of Magnolia was breached. This was the entire scope of the breach, however, because Magnolia had no right to "use" the property in any other way without prior written consent of Hiers (Leinbach). Because no evidence was offered to describe how the breach of the quiet possession of the small wooded area damaged Magnolia, nominal damages were awarded.

Although the Petitioner expansively asserts that Magnolia's rights under the contract included "...all rights and opportunities for future use" (Petition for Writ of Certiorari, page 8) both the Master and the Court of Appeals concluded otherwise. "First of all, Tommy Baker described the only damage Magnolia sustained as the deprivation of the "opportunity" to expand

the existing lot into the "wooded area." Such expansion, however, is entirely speculative." (R. p. 8, paragraph 19). The Court of Appeals found the same "...any sublease was subject to Leinbach's approval and did not exist as a matter of right." 411 S.C. at 479, 769 S.E.2d at 250.

The lease contract concerning the property in this case is very specific. (R. pp. 189-213). It limits the use of the property by Magnolia to parking. That parking can only be in the "parking area." Only employees of Baker can park there (no new cars can be stored there). (R. p. 189, Section 1.02 Use of Space). The extent of the parking area is limited by the plans drawn by Magnolia and approved by the City of Charleston, the drawing and approval having been accomplished prior to the signing of the lease. Before the lease was signed and up until the tower construction began, a large truck size container occupied the area in dispute and two metal storage sheds that were used by the school next door for storage. (R. p. 93, line 20-p. 94, line 3).

The fact is that Magnolia had no right to use the area where the tower was constructed under the terms of the lease except to the extent of "quiet possession." Despite the fact that Baker is a very sophisticated businessman, he could articulate no damages recognized by law. He provided only gross speculation at best. Accordingly, the Court of Appeals applied the longstanding and well recognized remedy of nominal damages, a remedy recognized for centuries throughout the United States and since 1903 in South Carolina. Young v. Western Union Tel. Co., 65 S.C. 93, 43 S.E. 448 (1903). See also Stevens v. Allen, 342 S.C.47, 536 S.E. 2d 663 (S.C. 2000).

Another error in Petitioner's argument is this. Magnolia concedes that the theory of abatement (both legal and equitable) is based on "a failure of consideration." Yet the overwhelming evidence demonstrates there has been and will be no failure of the essential

consideration – the right to park in the parking area. The testimony of Tommy Baker himself confirms this.

> Q. As I understand it, what happened was, as Baker Motors was growing, your need for parking grew; correct?
>
> A. Yes.
>
> Q. And the way that you needed to accommodate that parking for Baker Motors was through the parking lot at this site; is that correct?
>
> A. Yes.
>
> Q. And that is, in fact, what you've done?
>
> A. Yes.
>
> Q. And the tower that's there has not interfered at all with any of the parking on any of the sites?
>
> A. For the time being, yes.
>
> Q. Your testimony is, basically, you just really don't know what the future brings?
>
> A. I don't think anybody does.
>
> Q. That's right. Neither do you today, do you?
>
> A. No, sir.
>
> Q. It would be speculation to try to say what it is?
>
> A. Right. (R. p. 179, line 10-p. 180, line 7).

and

> Q. The only damage that you contend, at some point in the future, you might be able to expand into that other little piece; is that correct?
>
> A. I don't know that it's the only. For the moment, I think this is, yes.

Q. To do that, you would need Mr. Hiers' approval, wouldn't you?

A. Yes.

Q. You don't know if you can get that or not, do you?

A. I think it's part of the process, thank you.

Q. You don't know that you can get that, do you?

A. I don't know that it's not going to rain today either.

Q. You don't know that the city would approve it either, do you?

A. Don't know that.

Q. You don't know that it would make any economic sense?

A. That would be for a future determination.

Q. You haven't run any numbers to see if it would make any economic sense?

A. There's no need for the moment. (R. p. 180, line 20-p. 181, line 19).

Next, because it concedes that it cannot prove damages ("the issue here is not one of damages", Petition Page 10), Petitioner urges the court to find "substantial interference as a matter of law" (Petition Page 10). In other words, this court should ignore the facts and create a legal fiction. Having created a legal fiction, the court should then, as a matter of equity, use that fiction to abate all the rent in favor of Magnolia. It is a strange sense of equity (i.e. "fairness") that urges a court to rule as true what has been proven as false and then "reimburse" Magnolia for losses it never suffered.

Next, according to Petitioner, abatement "...is readily calculable in a case for partial ejectment by comparing what was taken with what was bargained for." Respondent submits that "what was bargained for" is reflected in the lease. (As argued below, Petitioner wants the Court to ignore the lease and rely solely on general principles of landlord tenant law). The Master and the Court of Appeals agreed and held that the essence of the bargain was parking. In addition, however, and over Respondent's objection, they found a right of quiet possession in the wooded area that was breached by the building of the tower. For this breach of quiet possession, they awarded nominal damages. Assuming arguendo that nominal damages are inadequate and that equity should apply, what are the equities?

Respondent would submit the following should be considered:

1) Baker approached Hiers about using the property.

2) The only stated purpose for using the property was parking for employees.

3) Baker's agent drew the plans for the parking lot.

4) The plans were drawn to maximize the possible number of parking spaces on the property.

5) Baker's agents obtained approval for the plans from the City of Charleston.

6) Baker's lawyer had the proposed lease agreement 6 months prior to consummation.

7) The lease was not signed until after the City approved the parking (because parking was the essential consideration).

8) The lease itself expressly limits Baker's use of the property to parking in the parking area.

9) There were 2 aluminum storage sheds and a large cargo container on the "wooded area" before, during and after the construction of the parking lot that were used for storage by the

Charles Towne Montessori School next door. These storage facilities were not disturbed until the tower was erected. Baker never objected to the storage facilities.

10) Baker did not file a memorandum of lease with the RMC that would have put Optima on notice of his alleged rights.

11) Baker did nothing to secure, negotiate, analyze or participate in the consummation of the contract with Optima.

12) Optima had to obtain permission from the City of Charleston to build the tower – Baker never objected.

13) Optima coordinated with Baker when the tower was being built. The construction period was 45-60 days and Baker's employees actually flagged off certain areas of the parking area to allow the construction. (R. p. 67, lines 1-20 and R. p. 71, line 1-p. 73, line 14).

14) The tower is 150+feet tall and it is impossible not to see it.

15) The tower sat unnoticed by Baker because it had no impact on his use of the property.

16) The large concrete pad on which the tower is anchored is a huge and substantial mar to Leinbach's property which will represent a major detriment and expense to remove if the tower contract ends.

The last item was not really argued below but only because the equitable theory of abatement was never raised. Suffice it to say, that under Magnolia's theory, Leinbach should bear all the future expenses while Magnolia keeps all the profits, which can hardly be considered to be equitable.

III. THE COURT OF APPEALS WAS CORRECT IN FINDING MAGNOLIA SUFFERED NO ACTUAL DAMAGES. (Petitioner's Grounds for Petition I and II)

As noted above, Mr. Baker testified that there had been no effect on the parking of vehicles and future damages were only speculative.

Petitioner quotes some general law from Corpus Juris Secundum and American Jurisprudence including the following "In the absence of an express or necessarily implied covenant to the contrary, a tenant may put the leased property to whatever lawful purpose it desires...that is not injurious to the reversion." (Petition p. 12 quoting 49 Am.Jur.2d Landlord Tenant §484).

First of all, the lease itself specifically restricts the use to which Magnolia could put the property ("...shall be used by Tenant as parking for employees to Tenant or Baker Motor Company and for no other purpose...") (R. p. 189, Section 1.02 Use of Space), so the general proposition quoted, while interesting, simply has no correlation with the facts of the case.

Next, Magnolia could never have leased the area for a tower because the construction, particularly the concrete pad, is injurious to the reversion.

In its Petition, Magnolia asks: "How could this not be a substantial and material breach, measured by the additional compensation received by the Landlord from "parking" the cell tower?" The answer is easy. Respondent relies on the sworn testimony of Mr. Baker who verified there was no interference with his use of the property and could articulate no future damages. Here again, the Petitioner asks the Court to assume as true and proven facts (damages) it concedes are unproven and, indeed, false.

IV. THE LOWER COURTS DID NOT ERR IN FINDING THAT LANDLORD WAS NOT UNJUSTLY ENRICHED. (Petitioner's Grounds for Petition III)

The elements of unjust enrichment require that the enrichment be at the expense of the other party. As shown above, there was no expense to Magnolia proven other than the de minimis interference with its quiet possession of the wooded area with the cargo container on it. Conversely, Leinbach, as owner, has suffered the alteration of its property by the placement of a huge concrete base and extremely tall tower. This fact also totally contradicts the assertion that Leinbach would have given Magnolia permission to lease to Optima. Why would a landlord allow substantial alteration to his property to make money for a tenant?

Lastly, this equitable theory is moot in light of the award of nominal contractual damages.

Petitioner also suggests that Leinbach was guilty of some type of fraud in allowing the tower to go up on the wooded area. This was not argued below and cannot be raised now. Also, the facts are to the contrary. Leinbach directed Optima to coordinate the construction of the tower with Magnolia and the Optima tower representative testified he did coordinate with Magnolia prior to the erection of the tower. Mr. Steven Keith Powell, the Optima representative, testified as follows:

> Q. Did anyone from Mr. Baker's, Mr. Baker or anyone on his behalf, ever approach you during the construction phase and object or say anything to you about it?
>
> A. I don't recall them approaching us. I do know we had contacted them because we had to flag off part of their lot where he parked their cars there to set a crane up and, obviously, to take care of the area, make sure no damage would happen to the area.
>
> Q. And so, I guess – I'm trying to visualize. The crane was actually in the lot a little bit?

> A. The specifics, that's five years ago. I can't recall. I do know we had contacted him. Mr. Hiers had asked us to contact Mr. Baker's group up there, and we did. (R. p. 67, lines 5-20).

Powell's testimony was never denied by Magnolia. Indeed, as reflected in the excerpt, the Optima crane was actually placed in Magnolia's parking lot and took up space used for parking. This construction (which lasted 45-60 days) was coordinated with Magnolia and Magnolia consented. To try to characterize this as "fraud" is disingenuous.

V. THE COURT OF APPEALS DID NOT ERR IN FINDING THAT MAGNOLIA BREACHED THE LEASE BY FAILING TO PAY RENT. (Petitioner's Grounds for Petition IV)

The only reason Magnolia was entitled to use the property was payment of its rent. Magnolia's arguments as to why it failed to pay rent were rejected for the reasons outlined above. As a result, Magnolia was in breach of the contract.

VI. THE COURT OF APPEALS DID NOT ERR IN AWARDING THE RENT FROM THE TOWER TO THE LANDLORD. (Petitioner's Grounds for Petition V)

Magnolia's argument in this section is indicative of its flawed logic in this case. Magnolia wants the courts to analyze this case solely in terms of general principles of landlord tenant law. To do this, Magnolia asks the court to entirely ignore the specific provisions of the controlling contract, specifically Section 1.02 Use of Space (R. p. 189).

How could this possibly be appropriate? This case involves two sophisticated businessmen, both represented by lawyers. They devise a contract which is legal in every respect (there has been no evidence to the contrary). The contract limits the rights of use of

Magnolia. Magnolia readily agrees to those limitations. Now Magnolia wants some general principles of landlord tenant law to alter the specific provisions of the contract to which it agreed. Respondent submits that it is not the Court's job to rewrite contracts. See McPherson v. J.E. Sirrine & Co., 206 S.C. 183, 33 S.E.2d 501 (1945): "It is not the province of the Court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves..." Id. At 510 and Jordan v. Security Group, 311 S.C. 227, 428 S.E.2d 705 (S.Ct. 1993): "The Court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." Id at 707.

Under the plain language of the contract, Magnolia had no right, other than quiet possession, to do anything with regard to the wooded area. Magnolia negotiated the generic rights of a tenant away and paid an appropriate rent for what it bargained for. This contract does not give Magnolia all rights of the average tenant and it is very specific in not doing so. Indeed, the first words in the lease are "Subject to...the conditions...of the Lease". Magnolia made its bargain. It should be required to stick to that bargain.

VII. THIS COURT SHOULD NOT GRANT MAGNOLIA'S REQUEST FOR ATTORNEY'S FEES BECAUSE IT WAS NOT THE SUCCESSFUL PARTY.

(Petitioner's Grounds for Petition VI)

As quoted by Petitioner in its brief, to be considered to be the "prevailing party", a party must prevail in a way the "materially altered the legal relationship of the parties resulting in a direct benefit to the party claiming prevailing party status." (Petition p. 19 citing Pure Fishing,

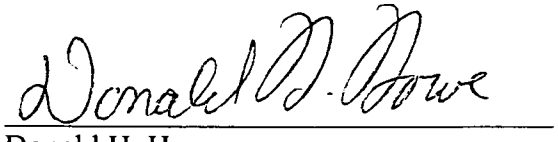
Inc. v. Normark Corp., C.A. No. 10-cv-2140-CMC (D.S.C., Columbia Division) Filed January 21, 2014).

At the time of trial in October of 2011, Magnolia owed Leinbach approximately $40,000.00 in "abated" rent. Assuming the nominal damage theory remains the holding in the case, this figure will have increased by tens of thousands of dollars to date. If the final result is that Magnolia will have to pay Leinbach approximately $70,000.00, Magnolia cannot be said to be the prevailing party and should not be entitled to attorney's fees.

CONCLUSION

For the reasons outlined above, Respondent asks that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



Donald H. Howe
Law Offices of Donald H. Howe, LLC
818 Wappoo Road (29407)
P.O. Box 31324
Charleston, SC 29417
SC Bar#002690
Telephone: 843-225-2523
Facsimile: 843-225-2698
Attorney for Respondent
56 Leinbach Investors, LLC

Other Counsel of Record:

William S. Barr
Barr, Unger and McIntosh
11 Broad Street (29401)
P.O. Box 1037
Charleston, SC 29402
Telephone: 843-577-5083
Facsimile: 843-723-9039
Attorney for Petitioner
Magnolia Paradigm, Inc.

Stephen A. Spitz
Stevens & Lee
151 Meeting Street, Suite 350
Charleston, SC 29401
Telephone: 843-414-5080
Facsimile: 843-414-5081
Attorney for Petitioner
Magnolia Paradigm, Inc.

Certificate of Counsel

The undersigned certifies that this Return To Petition For a Writ of Certiorari complies with Rule 242, SCACR.

Donald H. Howe

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Opinion No. 5270 (S.C.Ct.App. Filed September 10, 2014)

Appellate Case No. 2015-000782

---

56 Leinbach Investors, LLC.....Respondent

v.

Magnolia Paradigm, Inc.....Petitioner

CERTIFICATE OF SERVICE

I certify that I have served the Petitioner with the Return to Petition for a Writ of Certiorari by U.S. Mail addressed to the attorneys of record, William S. Barr, Esquire, 11 Broad Street, Post Office Box 1037, Charleston, SC 29402 and Stephen A. Spitz, Esquire, 151 Meeting Street, Suite 350 Charleston, SC 29401 on May 11, 2015.

Donald H. Howe
Law Offices of Donald H. Howe, LLC
818 Wappoo Road (29407)
P.O. Box 31324
Charleston, SC 29417
SC Bar#002690
Telephone: 843-225-2523
Facsimile: 843-225-2698
Attorney for Respondent
56 Leinbach Investors, LLC

LAW OFFICES OF DONALD H. HOWE, LLC
Attorneys at Law

May 11, 2015

Honorable Daniel E. Shearouse
Supreme Court of South Carolina
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

RE: 56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc.
Appellate Case No.: 2015-000782

Dear Mr. Shearouse:

Please find enclosed an original and six copies of my Return to Petition for Writ of Certiorari and proof of service in the above captioned case. Thank you for your assistance.

With kindest regards, I am

Sincerely,

Donald H. Howe

DHH/gbh
Enclosure
cc: William S. Barr, Esquire
Stephen A. Spitz, Esquire

818 WAPPOO ROAD, CHARLESTON , S.C. 29407 P.O. BOX 31324, CHARLESTON, S.C. 29417
(843) 225-2523 FAX (843) 225-2698 DONALDHOWELAW@GMAIL.COM