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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No.: 2011-CP-18-1684

WALTERS CONSTRUCTION, INC., ..... Respondent,

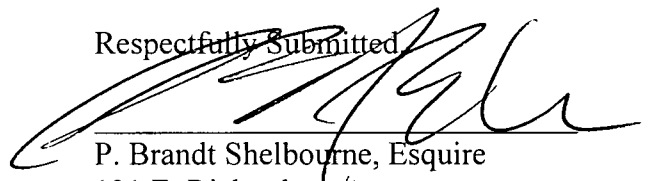
vs.

STANLEY J. SLEDZIONA and SHARON SLEDZIONA, ..... Appellants,

APPELLANTS' PETITION FOR REHEARING

Appellants STANLEY J. SLEDZIONA and SHARON SLEDZIONA hereby petition the Court for a rehearing on the Court's Opinion No. 2015-UP-233 submitted February 1, 2015 and filed May 6, 2015. In support of Appellants' Petition for Rehearing please see the attached Memorandum.

Respectfully Submitted



P. Brandt Shelbourne, Esquire  
131 E. Richardson Ave.  
Summerville, SC 29483  
(843) 871-2210  
SC Bar # 15143  
ATTORNEY FOR THE  
APPELLANTS

May 20, 2015

Other Counsel of Record:  
Frank M. Cisa, Esquire  
858 Lowcountry Blvd., Suite 101  
Mt. Pleasant, SC 29464  
(843) 881-6530

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WALTERS CONSTRUCTION, INC., ..... Respondent,

vs.

STANLEY J. SLEDZIONA and SHARON SLEDZIONA, ..... Appellants,

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**MEMORANDUM IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING**

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P. Brandt Shelbourne, Esquire  
131 E. Richardson Ave.  
Summerville, SC 29483  
(843) 871-2210  
SC Bar # 15143  
ATTORNEY FOR THE APPELLANTS

Appellants STANLEY J. SLEDZIONA and SHARON SLEDZIONA have petitioned the Court for a rehearing on the Court's Opinion No. 2015-UP-233 submitted February 1, 2015 and filed May 6, 2015. In support of Appellants' Petition for Rehearing, Appellants hereby state as follows:

### **BACKGROUND**

The underlying suit involved construction of a house and the alleged damages incurred by the Respondent Builder when the Appellants who were to purchase the house allegedly failed to purchase the house.

### **ARGUMENT**

Appellants respectfully contend that the Appellate Court overlooked the admitted fact that Appellants' duty to perform under the contract was contingent solely on Respondent completing the house and being able to provide Appellants with a Certificate of Occupancy, which Respondent admittedly did not do. Without the Certificate of Occupancy, Appellants had no duty to close on the property and no duty or obligation to pay Respondent.

Only under a theory of anticipatory breach could Respondent fail to complete construction of the house and claim that Appellants still owed him for the costs incurred in building the house. The Trial Court should have required Respondent to show that the alleged notice of the anticipatory breach was clear and unambiguous. In this case, there is no evidence whatsoever to support an allegation that Appellants clearly and unambiguously declared their intent not to go forward with the purchase of the house. Thus the Trial Court erred as a matter of law by finding that there was an anticipatory breach.

Appellants' Contract with Respondent required Appellants to pay for the house. (R. pp. 115-126.) Construction was to be complete and the parties were to close on the house by

December 23, 2008. Respondent had the right to extend the closing by up to Thirty (30) days. (R. pp. 127-184, p. 36.) It is uncontroverted that Respondent failed to complete the house by December 23, 2008 or by January 23, 2009. (R. p. 76.) Respondent never finished the house, never had or demanded a Final Settlement, nor obtained a Certificate of Occupancy, all of which were required before Appellants were obligated to close. (R. pp. 67-68, pp. 115-126.)

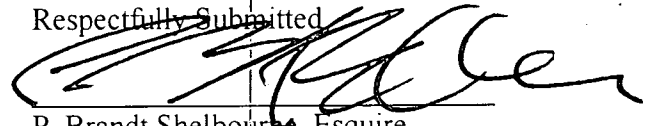
Further, Respondent's right to damages was allowed only if "[i]f BUILDER fully performs all of BUILDER'S covenants and agreements contained herein and BUYER fails to perform their obligation hereunder, then BUILDER shall retain the Earnest Money Deposit described above...." (R. p. 117.) Since Respondent failed to perform, by its own contract terms, it could not seek damages. The Trial Court erred as a matter of law in failing to interpret the contract terms to require Respondent to fully perform its obligations before having the right to bring suit.

At trial, Respondent contended that the Appellants refused to close on the house, but admitted that the Appellants continued to try to purchase the house even after Respondent stopped working on the house. (R. p. 50, p. 75, p. 77.) Respondent admitted that it never demanded that the Appellants close. (R. p. 75.) There was no evidence that Appellants clearly and unambiguously declared their intention not to close.

### CONCLUSION

Appellants respectfully contend that the Appellate Court overlooked the terms of the Contract that required Respondent to fully perform before Respondent could seek damages, and that as Respondent failed to fully perform its contractual obligations, and as there was no clear and unambiguous manifestation by Appellants to not purchase the house, the Trial Court erred as a matter of law in awarding damages to the Respondent under the Contract.

Respectfully Submitted



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ATTORNEY FOR THE

APPELLANTS

May 20, 2015

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Case No.: 2011-CP-18-1684

WALTERS CONSTRUCTION, INC., ..... Respondent,

vs.

STANLEY J. SLEDZIONA and SHARON SLEDZIONA, ..... Appellants,

PROOF OF DELIVERY

I certify that I have served a copy of the Appellant's Petition for Rehearing on Walters Construction, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on May 20, 2015 addressed to their attorney of record, Frank M. Cisa, 858 Lowcountry Blvd., Suite 101, Mt. Pleasant, SC 29464.



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SHELBOURNE LAW FIRM  
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May 20, 2015  
Summerville, South Carolina

ATTORNEY FOR APPELLANTS

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SC Court of Appeals

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May 20, 2015

**VIA FEDERAL EXPRESS**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**Re: Walters Construction, Inc. v. Stanley J. Sledziona and Sharon Sledziona**  
**Case No.: 2011-CP-18-1684**  
**Appellate Case No.: 2013-001357**  
**Our File No.: 04407**

Dear Madam Clerk:

Enclosed please find the original and six (6) copies of the Appellants' Petition for Rehearing on Opinion No. 2015-UP-233 filed May 6, 2015, Memorandum in Support of Appellants' Petition for Rehearing and Opinion No. 2015-UP-233. I have enclosed an additional copy and a return envelope for filed copies of same. By copy of this letter to opposing counsel I am hereby serving him with same. Thank you for your assistance in this matter.

With best regards, I am

Sincerely yours

  
P. Brandt Shelbourne

PBS/jeb

Enclosures

cc: Client via email  
Frank Cisa, Esquire via regular mail and email

From: (843) 871-2210  
P. Brandt Shelbourne  
Shelbourne Law Firm  
Attorney at Law  
131 East Richardson Avenue  
Summerville, SC 29483

Origin ID: CHSA

FedEx  
Express



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SHIP TO: (803) 734-1890

BILL SENDER

Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street

COLUMBIA, SC 29201

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