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S.C. Supreme Court

**THE STATE OF SOUTH CAROLINA**
In the Supreme Court

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APPEAL FROM GEORGETOWN COUNTY
Circuit Court

Benjamin H. Culbertson, Circuit Court Judge
Case No. 2008-CP-22-00834

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TRINITY INVESTMENTS, LLC,

Respondent,

v.

MARINA VENTURES, INC. and PIONEER PROPERTIES, INC.,

Petitioners

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# PETITION FOR WRIT OF *CERTIORARI*

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Kevin R. Eberle
414 King St.
Charleston, SC 29402
(843) 853-5355

Attorney for Petitioners

## CERTIFICATE

The undersigned certifies that a petition for rehearing was made and finally ruled upon by the South Carolina Court of Appeals on the matter raised by this petition.

## QUESTION PRESENTED FOR REVIEW

Did the trial court err in approving a receiver's gift of Petitioners' entire assets to the receiver's own company (the Respondent) even though Petitioners were never served with process; no default judgment was ever entered against Petitioners; Respondent never obtained any judgment establishing a debt owed by Petitioners despite two earlier lawsuits; and Respondent's lawyer never disclosed these facts to the trial judge when questioned during an *ex parte* hearing which resulted in the approval of the self-dealing?

## FACTS

Petitioners Marina Ventures, Inc. and Pioneer Properties, Inc. are South Carolina corporations. In 1998, the companies bought two gas stations in Georgetown County which, in January 2000, they used as collateral for loans by First Carolina Bank.

First Carolina filed the first of three suits to establish a default by Marina and Pioneer and foreclose on their real estate in February 2001. (App. at 49-60.) After more than a year, however, First Carolina abandoned its lawsuit, and a voluntary dismissal was filed on May 6, 2002. (App. at 15.) Thereafter, First Carolina continued to service the accounts until June 2003 when the bank assigned its interests to Respondent, Trinity Investments of Georgetown, LLC. (App. at 79.)

Trinity brought a second, identical lawsuit against Marina and Pioneer in September 2003 for the same relief as the first suit. (App. at 38-47.) Trinity claimed that

the companies were in default and prayed "[t]hat a receiver be appointed" and also, importantly, "[t]hat the amounts due upon said Notes and Mortgages held by [Trinity] be ascertained and determined under the direction of this Court." (App. at 46.) While the second lawsuit was pending, Walter Green died. Mr. Green had owned Marina and Pioneer and served as their registered agent. The probate of his estate began in 2004, but in June 2005, Trinity filed a 40(j), and the case was dismissed. (App. at 11.) No amounts due were ever "ascertained or damaged" as requested by Trinity for the second time.

More than three years later, on June 20, 2008, Trinity filed yet another lawsuit against Marina and Pioneer. (App. at 32-35.) The third lawsuit, unlike the previous two, did *not* allege that the companies owed Trinity any money or had defaulted on any obligations. Instead, the third lawsuit sought *only* the appointment of a receiver to care for two properties which were "deteriorating rapidly."

At the same time Kenneth Mitchum, the lawyer for Trinity, was filing the third lawsuit, this Court was reviewing an attorney grievance case against Mr. Mitchum and suspended him from practicing law ten days after he filed suit. (App. at 7.) Neither Mr. Mitchum nor anyone else ever made any effort to serve the summons and complaint on either Marina or Pioneer, and no attempt has ever been made to hold them in default.

In November 2008, Laura Moyer was substituted as counsel for Trinity, and the lawsuit continued. (App. at 10.) On November 18, 2008, Johnnie Young was appointed to serve as the receiver for the Marina and Pioneer (App. at 26) even though Mr. Young, as the owner of Trinity (App. at 81), had a clear, financial interest in the proceedings. Mr. Young's interest in the litigation was never disclosed to the court.

On March 24, 2009, Julie Green, Walter Green's personal representative and devisee, attempted to halt this action by filing a *pro se* motion to reconsider the appointment of the receiver. (App. at 20.) The very next day, after four months of inaction, the receiver quitclaimed both companies' gas stations to Trinity and quickly recorded the deeds in Georgetown County even though neither Marina nor Pioneer had ever been served in this case, no default had ever been sought, and there was no finding of any liability against either company in favor of Trinity. (App. at 69-78.) When Ms. Green's motion was raised in the trial court, it was denied because she is not a lawyer and could not represent Marina and Pioneer in court.

On May 22, 2009, Judge Culbertson held a very brief hearing at which Trinity appeared *ex parte*. The trial court made no findings of any liability at that hearing, but Trinity nevertheless asked to have the receiver's transfers of Marina and Pioneer's real estate to Trinity approved. When asked whether there were any objections to the transfers, Trinity's lawyer responded, "Not that I'm aware of," despite knowing that Ms. Green had objected and tried to file an answer with legal defenses. (App. at 28-30.) On June 5, 2009, the trial court discharged the receiver, and the case was closed. (App. at 3.)

On June 26, 2009, an appeal was filed by Marina and Pioneer, represented for the first time by counsel G. Turner Perrow. (App. at 14.) The Court of Appeals rejected the appeal, and on March 2, 2012, the Court of Appeals also denied the companies' petition for rehearing. (App. at 137-38, 153.)

## SUMMARY OF ARGUMENT

At a bare minimum, due process requires that a party be given notice of claims, a meaningful opportunity to present its response to a court, and the chance to seek judicial review. Petitioners Marina and Pioneer received none of those procedural protections before a self-dealing receiver liquidated the companies in satisfaction of non-existent debt.

Trinity was well-aware that the registered agent for Marina and Pioneer, Mr. Walter Green, had died during a second lawsuit which Trinity had filed attempting to foreclose on their real estate; Trinity noted his death in its Complaint in this case. The South Carolina Code provides unambiguous instructions on how to proceed with service against corporations in such a case. Trinity not only *did not* follow those instructions, Trinity never took *any action* to serve Marina and Pioneer with a summons. At no point were Marina and Pioneer ever brought into this case, and all proceedings involving Pioneer and Marina in this case are, therefore, void as a matter of law.

When Marina and Pioneer appealed, Trinity raised a novel argument which has never been recognized in this Court: Trinity claimed that the appearance in court by someone with a mere *ownership* interest in a corporation was a legal appearance on behalf of the corporation for purposes of waiving service of process. No court has ever adopted that rule, and not even the cases cited by Trinity stand for that notion. Such a rule is squarely in conflict with this Court's holding that a corporation can appear in court only by a lawyer. Indeed, Trinity simultaneously made precisely that argument when faced with defenses filed by Marina and Pioneer's new owner.

Regardless, the lower court erred when it approved a transfer of Marina and Pioneer's only assets by the receiver to the receiver's own company without any liability ever having been established against either Marina or Pioneer. Marina and Pioneer have twice before been sued over alleged breaches of their financing with Trinity and its predecessor-in-interest. In both suits, the alleged creditor recognized that neither Marina nor Pioneer admitted liability, and both suits included causes of action seeking to establish the existence of a debt. Those claims have been raised and dismissed twice already, and any third attempt to establish a debt is barred as a matter of law.

Perhaps recognizing that liability could not be established, Trinity removed that claim from this most recent lawsuit. Trinity's complaint contains no cause of action to establish a debt. Instead, the only relief sought concerned the appointment of a receiver to care for allegedly deteriorating property belonging to Pioneer and Marina and pledged as collateral for First Carolina's loans. Thus, there was no basis for appointing a receiver – certainly not one who would personally benefit from transferring the Pioneer and Marina's properties to Trinity.

At a hearing before Judge Culbertson, Trinity was the only party represented. Judge Culbertson went out of his way during the very brief hearing to note that Pioneer and Marina were *not* represented at the hearing. Despite unambiguous requirements that a lawyer in an *ex parte* setting must be candid – especially when the other parties are not in default and have never even been served – Trinity's lawyer failed to disclose the receiver's own financial interest in his transactions, failed to note the lack of any legal basis for the transactions, and failed to alert the court to Pioneer and Marina's objections

to the transactions *even after specifically being asked if there were any.*

On appeal, the Court of Appeals rejected most of Pioneer and Marina's claims on the discretionary rule that objections must be raised in the trial court to be preserved for review. Of course, since the most important point on appeal was that Pioneer and Marina had never even been made parties to the suit and made no appearances in court, such a ruling is absurd and deprived Pioneer and Marina of even post-judgment judicial review.

Failure to accept this case for review and correction will deny Pioneer and Marina any procedural due process to fix patent errors. Moreover, this case raises at least two novel issues which deserve this Court's attention. First, this Court should clarify its ruling that a corporation cannot *appear* in court by a layperson for purposes of waiving service of process any more than it can be *represented* by a non-lawyer. Second, the Court should determine that the two-dismissal rule does not start anew each time an underlying claim is assigned to a new party.

## LEGAL ANALYSIS

### I. The trial court's confirmation of a receiver's self-interested dealings not only constituted a reversible error, but the refusal to consider the merits of Petitioners' arguments denied Petitioners even minimal due process.

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. The right to due process takes two forms: substantive due process and procedural due process. Substantive due process examines whether there was a legitimate justification for a deprivation of a protected interest: "[A] party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." *Sloan v. S.C. Bd. of Physical Therapy*

*Examiners*, 370 S.C. 452, 483, 636 S.E.2d 598, 614 (2006). Procedural due process examines the fairness of the process followed to extinguish those rights. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). When the trial court approved the taking of all of Petitioners' property without even joining them in this case and without requiring a valid claim against their property, both forms of due process were violated.

### A. Procedural due process required that Petitioners at least be made parties to this case to have a chance to protect their interests in the trial court.

One does not become a defendant until he has been served with process. *See Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 474, 609 S.E.2d 286, 295 (2005) ("Proper service of process on a defendant . . . confers personal jurisdiction over the defendant."). It has been well-settled law for over a century that court orders against those who have never been served properly are void as violations of due process. *See Beaudrot v. Murphy*, 53 S.C. 118, ___, 30 S.E. 825, 826 (1898) ("A court without jurisdiction cannot render a valid judgment. Its judgment may be disregarded and objected to at any time."); *Pennoyer v. Neff*, 95 U.S. 714, 733 (1877).

The plaintiff has the burden to establish that the court has personal jurisdiction over the defendant. *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996). Moreover, the plaintiff must prove that it actually accomplished service, not just that it was approximated. *Jensen v. Doe*, 292 S.C. 592, 358 S.E.2d 148 (Ct. App. 1987) (Sanders, C.J.). Even in *Roche v. Young Bros., Inc. of Florence*, where this Court disclaimed an "exacting" compliance standard for service, the burden remained on the

plaintiff to first show *basic compliance* with service. 318 S.C. 207, 456 S.E.2d 897 (1995) ("The plaintiff need only show compliance with the rules."). In that case, a plaintiff mailed a summons and complaint to an officer of the defendant corporation, and the corporation responded that the recipient had not been authorized to accept service. On appeal, this Court did *not* excuse a failure to properly serve the corporation according to the law; rather, it merely shifted the burden to the defendant to *disprove* the agent's authority to accept service. *Id.* at 209-11, 456 S.E.2d at 899-900.

South Carolina's provisions for serving a corporation are unambiguous and easy. Pursuant to § 15-9-210(b) of the South Carolina Code, corporations "may be served . . . by registered or certified mail, return receipt requested, addressed to the office of the registered agent, or the office of the secretary of the corporation at its principal office." The Code contains an express term concerning the proper method of serving a corporation which does not have a registered agent:

> If the business . . . has no registered agent . . . and such appears by affidavit, the court . . . may grant an order that the corporation may be served by registered or certified mail, return receipt requested, addressed to the office of the secretary of the corporation at its principal office. The summons shall state the date it was mailed under this subsection, and the date service is effective. . . .

S.C. Code Ann. § 15-9-210(c) (2005).

Additionally, service of the summons and complaint may be made upon a corporation by "delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." S.C.R. Civ. P. 4(d)(3). However, "[e]vidence of an actual

appointment by the defendant for the specific purpose of receiving service is normally required . . . ." James F. Flanagan, South Carolina Civil Procedure 20 (2d ed.1996). "Actual appointment for the specific purpose of receiving process normally is expected and the mere fact a person may be considered to act as defendant's agent for *some purpose* does not necessarily mean that the person has authority *to receive process*." *Moore*, 322 S.C. at 523, 473 S.E.2d at 67 (emphasis added).

In this case, Trinity's complaint was filed on June 20, 2008, by Kenneth Mitchum. (App. at 32-35.) Ten days later, Mr. Mitchum was suspended from practicing law for nine months for, among other things, failing to effect service on behalf of a client. (App. at 7.) There were no more filings of any kind by Trinity for almost five months until a new lawyer was substituted. There is no receipt from a certified mailing, no affidavit of personal service, and no affidavit of any reasonable effort to locate the registered agent. In short, there is no evidence of any effort to serve the complaint by either Mr. Mitchum before his suspension or later by his replacement. This is not a case of mere faulty service; *it is a case of no service whatsoever*. Petitioners were never made parties to this case, and no subsequent order concerning them or their property is valid.

On appeal to the South Carolina Court of Appeals, Trinity did not even contest the fact that it had utterly failed to serve Petitioners. Instead, Trinity argued that it did not *need* to serve the corporations since the devisee of their deceased founder had appeared in court, thereby waiving service. (App. at 115.)

Trinity cited two cases from an annotation which it wrongly said support that view. Neither case stands for the notion that a corporation's shareholder can waive

service for the corporation. For example, in *Scandia Down Corp. v. Euroquilt, Inc.*, 772 F.2d 1423 (7th Cir. 1985), the corporation had appeared in the case through a lawyer all the way to trial. Just before trial, the corporation fired its lawyer and claimed that it had to be represented by a lawyer in court – an officer could not represent it at trial alone. On appeal, the court ruled only that a case against a corporation, once formally begun with the involvement of a lawyer, can continue even if an officer of the corporation appears without the benefit of counsel. Otherwise, Judge Easterbrook noted, a corporation would always be able to effectively grant itself a continuance by firing its lawyers. *Id.* at 1427.

Likewise, *United States v. Priority Products, Inc.*, a case decided by the Court of International Trade, did not involve the waiver of service at all. 615 F. Supp. 593 (Ct. Int'l Trade 1985). Rather, the issue was whether an owner's failure to ask for a jury trial could bind his company. First, the International Trade Court's decision was based, in part, on a exception to the general rule that *pro se* appearance on behalf of a company is *not effective*:

> [T]here is a narrow exception to the almost absolute rule requiring attorney representation of a corporation in litigation. Occasionally, the courts have held that a corporation may appear through an agent other than an attorney *where the agent is a party to the action along with the corporation*. This case falls within this narrow exception. This closely held corporation will be held to the pro se answer filed by its agents, who also were parties to the action.

*Id.* at 394-95. Second, the case was decided under the Rules of the Court of International Trade which, at the time, apparently permitted the court to give effect to the filings by the owners of the company. *Id.* at 594 n.1 (citing Rules of Court of International Trade 1 and 5(e)). Those rules have been amended more

than twenty times since the case was decided.

Neither of these cases remotely supports Trinity's argument. Petitioners were never represented by counsel before their property was given to Respondent's owner. No lawyer had ever appeared in court on their behalf to affect a waiver of service, and the docket of the Georgetown Clerk of Court still shows no appearance of counsel. Moreover, the corporations were the only parties to this suit, not their owner. Lastly, this case quite obviously was not controlled by the Rules of the Court of International Trade.

Far more relevant to this case is a decision by this Court which held that a corporation cannot appear in court other than through a lawyer. In *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 652, 515 S.E.2d 257, 258 (1999), this Court ruled that a corporation may not appear through an officer or director except in magistrate's court. Respondent was well-aware of that controlling case and even relied upon it in rebuffing a filing by the Petitioners' shareholder. This Court should certainly not tolerate a party's use of that authority as both sword and shield.

### B. The decision to confirm the liquidation of Petitioners was without any substantive basis and was infected with reversible, procedural errors.

When a court grants unjustified and unexpected relief, due process requires that the parties whose rights are at stake be given notice of the specific claims. The unusual issue raised in this case is, surprisingly, not unique in South Carolina. In *Koester v. Citizens' Publishing Co.*, 151 S.E.2d 452 (S.C. 1930), a receiver was appointed to

manage the affairs of an Upstate newspaper. The receiver sought permission from the court to borrow money to continue the business and, in a very unusual move, to give the bank's liens priority over existing liens.

When two of the earlier creditors learned of the matter, they objected because they had not been made parties. Notice of the receivership had been published, and the creditors had informally learned of the court's order. The agents of one of the creditors, a linotype company, even met with the receiver to discuss his appointment, but that too was inadequate to alert company of the possible loss of its rights and need to join the lawsuit.

On appeal, this Court agreed that the approval of the receiver's plan was void for lack of service on the earlier creditors. Even if they had known of the existence of the suit, nothing in the notice had alerted the creditors that their liens would be subordinated because the relief was so contrary to law. As this Court eloquently wrote,

> If a person's property rights can be confiscated, so to speak, by the unconstitutional act of a court without due process of law, and then, if a mere notice of such action and after the event is equivalent to due process under the Constitution, the constitutional guaranty would be a farce.

*Id.* at 457-58.

There are several extraordinary errors with the court's final order approving of the receiver's transactions that place it well outside the scope of foreseeable relief. Most importantly, the court approved a transfer of Petitioners' only property to Trinity even though there has been no finding of any liability. This is the third lawsuit filed arising out of the January 2000 loans. Unlike the first two, this action did not contain a cause of action to foreclose on any debts. When Mr. Mitchum filed this suit, his civil action cover

sheet *did not* include a check next to "Debt Collection"; it indicated that this was purely a suit for the appointment of a receiver. (App. at 35.)

Respondent itself was well-aware that the debts were contested. In its previous lawsuit, Respondent had included a claim for foreclosure of the mortgages. (App. at 39 ("This is an action to foreclose security interests on real property and personal property in Georgetown County.").) Among the relief which Trinity requested in its earlier suit was "[t]hat the amounts due upon said Notes and Mortgages held by the Plaintiff be ascertained and determined under the direction of this Court." (App. at 46.) Despite the fact that the earlier lawsuits had not resulted in any finding of liability, the current suit contains no such statements.

Indeed, the two former attempts to foreclose on Petitioners' real estate operate as a legal defense to any third such suit. A party may voluntarily dismiss a suit *once* as a matter of right, but subsequent dismissals are automatically with prejudice. *See* S.C.R. Civ. P. 40(j), 41(a)(1). Trinity has recognized that this was the third suit against Petitioners, but it has argued that it cannot be precluded for litigating yet again because it was not the same "party" to both of the earlier suits. Although the issue is apparently novel in South Carolina (and justifies resolution by this Court), in other jurisdictions with the same language, the preclusive effect also applies to those in privity with former litigants. *See, e.g.*, *Microvote Corp. v. Casey*, 57 F.3d 1070 (6th Cir. 1995) (unpublished); Moore's Federal Practice Civil § 131.40(1).

The term "party" refers to parties in interest, meaning those parties whose interests are so closely related that a judgment against one should preclude all. *Moore's*

*Federal Practice Civil* § 131.40(3)(a); *see Latham v. Wells Fargo Bank, N.A.*, 896 F.2d 979, 983 (5th Cir.1990). A nonparty is in privity in three situations: (1) a nonparty who has succeeded to a party's interest in property is bound by any prior judgments against that party, (2) a nonparty who controlled the original suit will be bound by the resulting judgment, and (3) federal courts will bind a nonparty whose interests were represented adequately by a party in the original suit. *Ford Gas Co. v. Wanda Petroleum Co.*, 833 F.2d 1172, 1174 (5th Cir.1987), *Freeman v. Lester Coggins Trucking, Inc.*, 771 F.2d 860,864 (5th Cir.1985) (citing *Sw. Airlines Co. v. Tex. Int'l Airlines*, 546 F.2d 84, 95 (5th Cir. 1977)).

Trinity undeniably has already sued Petitioners at least once before and dismissed the case. Earlier, however, its immediate predecessor-in-interest sought to foreclose the exact same mortgages for the same reasons. In June 2003, the original lender, First Carolina Bank, assigned its interests to Trinity. (App. at 79.) As the assignee of the exact same interest, Trinity is in privity with First Carolina Bank and can have First Carolina's dismissal counted against it. The two parties do not just have a *common* interest – they have the exact *same* undivided interest to the point that only one could possibly sue at a time.

Any other interpretation would render Rule 41 meaningless. If an assignee is not charged with the dismissals of the assignor, then no litigation will ever be barred by Rule 41(a). Instead, a litigant will always simply assign its rights to a third-party straw man just to reset the count and get two more tries. Indeed, according to Trinity's view, even if a party dismissed a case twice (and unquestionably triggered Rule 41(a)), the same action

could be assigned to a third-party, and the action would emerge from the grave with a clean history.

Regardless of the substantive errors in the relief granted by the trial court, the appointment of a receiver was also erroneous in form. A receiver must be an impartial agent of the court and should not be affiliated with any of the parties to the litigation. *Ex parte Citizens' Exchange Bank of Denmark*, 140 S.C. 471, 139 S.E.2d 135 (1927); *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177 (1909). In flat contrast to that rule, the receiver here has a direct financial stake in the transactions he made; he is the owner of Respondent.

The totally unjustified relief granted in this case was awarded because the trial court was not alerted to critical facts during the motion hearing. South Carolina Rule 3.3 requires that a lawyer be completely candid with a court, especially during *ex parte* hearings: "In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse." On May 22, 2009, Judge Culbertson heard Trinity's motion to discharge the receiver. (App. at 62.) The only party represented at the hearing by counsel was Trinity. (App. at 62.) Trinity's lawyer did not disclose that Trinity had never attempted to serve either Petitioner. She also failed to tell the judge that there was no underlying debt and that the receiver was an interested party to the transfers. Any one of those facts would have prevented the transfers from being approved, but no disclosure was made.

After marking the quitclaim deeds as exhibits, Judge Culbertson asked, "All right,

any opposition?" (App. at 66.) Despite knowing that defenses had been raised by Petitioners in two earlier lawsuits and despite the knowing that Petitioners' shareholder had attempted to register a defense in this suit, Trinity's lawyer responded, "Not that I'm aware of." (App. at 66.)

### C. The refusal to hear an appeal of this case on issue preservation grounds was absurd given the nature of Petitioners' claims of lack of service.

Petitioners made their first appearance in this case only after the trial court had appointed the receiver, confirmed his self-dealing, and concluded the case. As explained above, before that, Petitioners had never been served with process, had never been held in default, had never been served any litigation papers or motions, and had never made an appearance in court through their lawyer.

When this case was presented to the South Carolina Court of Appeals, the court affirmed. (App. at 90-91.) It addressed subject matter jurisdiction, but not the main error of this case: the lack of personal jurisdiction. Instead, the court simply noted that the errors had not been preserved. (App. at 91.)

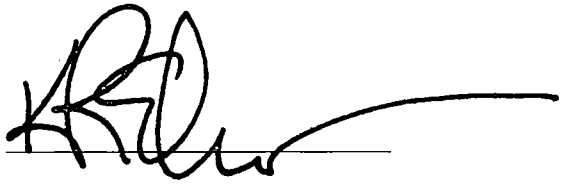
Preservation of error serves an important purpose: it prevents our appellate courts from becoming the first line of litigation. However, the doctrine is ultimately a discretionary and pragmatic one, not a jurisdictional bar to relief. As this Court has said, "We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner." *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011). The real policy behind the rule is to "prevent[] a party from keeping an ace card up his sleeve" in hope that he will find a more favorable audience on appeal.

*I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). Far from trying to keep a card up their sleeves, Petitioners were eager to show their hand but were never even made parties to this suit. Using error preservation to prevent review in a case where the error is the very thing which prevented the trial court from ruling is absurd, and this Court should intercede to give Petitioners their day in court.

## CONCLUSION

Because the Court of Appeals has refused to offer a meaningful review of unambiguous legal and procedural errors, the South Carolina Supreme Court should undertake a review of the case for correction.

For all these reasons, this Court should grant Petitioners-Appellants' Petition for a Writ of *Certiorari*.



Kevin R. Eberle
Attorney for Appellant
414 King St.
Charleston, SC 29403
KEberle@CharlestonLaw.edu
(843) 853-5355

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Petitioners-

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**CETIFICATE OF SERVICE**

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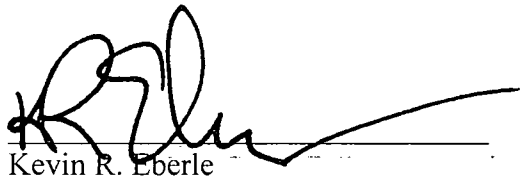
I certify that I have served all counsel in this action with a revised copy of (1) the Petition for Writ of Certiorari and (2) the revised Appendix by U.S. mail, sent on April 5, 2012, addressed to the following:

Robert W. Maring
1130 Highmarket Street
P.O. Box 478
Georgetown, SC 29442-0478



Kevin R. Eberle
414 King St.
Charleston, SC 29402
(843) 853-5355