

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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MAY 22 2015

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

S.C. Supreme Court

Marvin H. Dukes, III, Master in Equity and Circuit Court Judge

Court of Appeals Appellate Case No.: 2012-213579  
Unpublished Opinion No. 2014-UP-430 (S.C. Ct. App. filed Nov. 26, 2014)

Cashman Properties, LLC

Respondent,

vs.

WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o  
Louise Lightsey Baughman; the Trust under Will of E.  
Oswald Lightsey dated August 8, 1958, and Codicil  
dated March 23, 1976, for the Benefit of Lilian Lightsey  
Drawdy; and the Trust Under Will of E. Oswald Lightsey  
for the Benefit of Claudia Lightsey Ware

Petitioners.

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**Reply to Respondent's Return to Petition for Writ of Certiorari**

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Pursuant to Rule 245(g), SCACR, Petitioners ("the Lightseys") submit this Reply to Respondent's Return to Petition for Writ of Certiorari.

According to Respondents, adopting a rule requiring a party to establish a substantive basis for a declaration of rights as a prerequisite to a court issuing a declaratory judgment "would require that before a party obtain a declaration of rights, the party must plead and prove some right under some other substantive law . . . ." (Return 14, 21.) But this is exactly what the Declaratory Judgments Act requires and adherence to this

requirement does not “render[] the declaratory judgment process . . . a second (and seemingly unnecessary) vehicle for addressing that right.” (*Id.* at 21.)

“The purpose of a declaratory judgment action is to settle and afford relief from uncertainty and insecurity to a party with respect to that party’s rights, status, and other legal relations.” *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 453-54, 415 S.E.2d 801, 804 (1992) (citing S.C. Code Ann. § 15-53-130 (1976)). *See also* S.C. Code Ann. § 15-53-20 (2005) (stating that under the Declaratory Judgments Act, “[c]ourts of record . . . shall have the power to declare rights and other legal relations . . .”). “The statute is remedial.” *Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co., Inc.*, 249 S.C. 561, 567, 155 S.E.2d 618, 621 (1967). Thus, “[a]t the outset of any action for declaratory judgment it must be determined whether the pleadings state a cause of action.” *West v. West*, 263 S.C. 146, 148, 208 S.E.2d 530, 532 (1974); *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970) (“At the outset, we must determine whether the pleadings state a cause of action entitling the parties to a declaratory judgment.”); *Wilson v. Kelley*, 617 A.2d 433, 436 (Conn. 1992) (“Implicit in these principles is the notion that a declaratory judgment action must rest on some cause of action that would be cognizable in a non-declaratory suit.”). In other words, there must be a legal basis upon which a court issues a declaration of rights. No such basis exists in this case.

“Declaratory relief is a mere procedural device by which various types of substantive claims may be vindicated.” *Wilson*, 617 A.2d at 436 (quoting *Luckenbach Steamship Co. v. United States*, 312 F.2d 545, 548 (2d Cir. 1963)); *Harvey v. S.C. Dep’t of Corr.*, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 1999) (observing that the Act “authorizes an action to establish a party’s entitlement to a preexisting right”); *Ed*

*Construction, Inc. v. CNA Ins. Co.*, 24 A.3d 1, 6 (Conn. App. 2011) (same); *Days Inn Worldwide, Inc. v. Sai Baba, Inc.*, 300 F. Supp. 2d 583, 592-93 (N.D. Ohio 2004) (“A request for declaratory judgment must accompany the substantive claim for which declaratory judgment is sought.”). *See also Hodgdon v. Campbell*, 411 A.2d 667, 669 (Me. 1980) (noting that declaratory judgment statutes do “not create a new causes of action; [their] purpose is ‘to provide a more adequate and flexible remedy in cases where jurisdiction already exists’”). “To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy.” *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004).

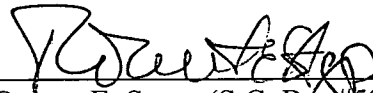
Thus, the Declaratory Judgments Act is merely a vehicle for the recognition of rights existing under other principles of law. A court’s authority to issue a declaratory judgment must fall within the parameters of an established legal theory. In the present case, a justiciable controversy existed, but the Respondents failed to establish any theory of co-ownership rights in Dock 3. As noted by Respondents, “[p]rior to the final order, the Cashmans withdrew their adverse possession claim and the Master denied the Cashmans’ claims for prescriptive easement and resulting trust.” (Return 7.) The trial court concluded that the Respondents had no substantive right to co-ownership, yet the court declared Respondents to be co-owners of the dock anyway. In so doing, the trial court converted the declaratory judgment from a procedural device into a source of substantive rights. Prescriptive easement, resulting trust, and adverse possession were the only substantive legal theories upon which Respondents claimed they had ownership rights as tenants in

common in Dock 3. No other theory of ownership was pled.<sup>1</sup> Once these legal theories were either withdrawn or denied by the trial court, no substantive basis existed entitling Respondents to a declaration that they were co-owners as tenants in common of Dock 3. *See Power*, 255 S.C. at 153, 177 S.E.2d at 552. Respondents did not prevail on any of the grounds forming the basis of a justiciable controversy and therefore the declaration of cotenancy was inappropriate. This Court should grant the Lightsey's petition and reverse the court of appeals.

### Conclusion

For the reasons set forth above and for the reasons set forth in the Lightsey's petition, the Lightseys respectfully request that this Court grant their Petition for Writ of Certiorari and reverse the decision of the court of appeals.

By:



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—and—

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<sup>1</sup> Under South Carolina law, “[a] tenancy in common may be created by conveyance, devise, intestate descent, adverse possession, and by mistake or operation of law where the parties intended to create another form of cotenancy.” 6 S.C. Jur. *Cotenancies* § 7 (footnotes omitted).

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May 22, 2015

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**Proof of Service**

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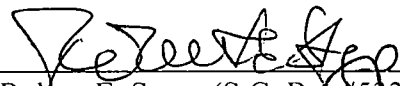
I certify that I have caused the Petitioners' Reply to Respondent's Return to Petition for Writ of Certiorari to be served on Respondents by U.S. Mail on May 22, 2015, addressed to their attorneys of record, and mailed to the following:

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