

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

G. Thomas Cooper, Circuit Court Judge

Court Of Appeals Case No.:2013-001869

RECEIVED

JUN 26 2015

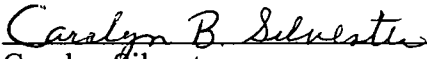
S.C. Supreme Court

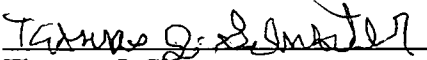
Thomas J. And Carolyn Silvester. Respondents

v.

Spring Valley Country Club. Petitioner

**RETURN TO PETITION FOR WRIT OF CERTIORARI
OF PETITIONER SPRING VALLEY COUNTRY CLUB**


Carolyn Silvester


Thomas J. Silvester
12 Glenlake Road
Columbia, SC 29223
803-736-0715
Pro Se Respondents

June 26, 2015

ARGUMENT

Pursuant to Rule 242, SCACR, Respondent respectfully moves that a Writ of Certiorari not be granted by The Supreme Court to review and reverse The Court of Appeals Opinion No. 2014-UP-072. The Court of Appeals was correct in reversing the Circuit Court's grant of Petitioner's Motion to dismiss because The Circuit Court never fulfilled their duty to schedule the case that been remanded back to them by the Court of Appeals. The Court of Appeals Opinion No. 205-UP-072 does not conflict with existing precedent and does not create novel issues for which no precedent exists. Existing precedent, as stated in the Court of Appeals Opinion that "The Clerk initially shall place all cases in which a jury has been requested on the General Docket. A case may not be called for trial until it has been transferred to the Jury Trial Roster. . . ."(Rule 40(b), SCRCP). This Rule was not followed by the Circuit Court. The Circuit Court misapplied Rule 41 (b) SCRCP and the cases cited are not applicable since the Circuit Court did not fulfill their responsibilities and dismissed a case remanded back from the Court of Appeals, but never scheduled by them for prosecution. It was the responsibility of The Circuit Court to place the case on the General Docket and not a blatant lack of prosecution by the Respondents. The Respondents completed the Appeal timely, responded to the request for Rehearing, and The Petition for Writ of Certiorari to get this case remanded back to the Circuit Court only to have it dismissed by the Circuit Court after they failed to set the case up for trial.

All of the Arguments (1, A, B) are null and void because The Trial Court did not adhere to Rule 40 (b) and 40 (f) SCRCP. The Respondents were never given a chance to prosecute their case even though they had spent countless, agonizing hours writing Appeals, Briefs, responding to Motions for Rehearings and Petitions for Certiorari. The

Court could not enforce Rule 41 if Rule 40 has not been enforced. For this reason, The Arguments of the Respondents are:

- I. **The Court of Appeals DID NOT Err in Reversing the Circuit Court's Order Dismissing Respondents' Case pursuant to Rule 41(b), SCRPC, for Failure to Prosecute in light of The Court's Failure to schedule the Case remanded back to The lower Court more than Twelve Years ago**

The Court of Appeals rightly adhered to and applied Rule 40 SCRPC in their Opinion

- A. **The Court of Appeals Opinion DOES NOT conflict with Binding Precedent Concerning Rule 41, SCRPC Dismissal for Lack of Prosecution and the Standard of Review Applicable Thereto.**


The Court cannot ignore Rule 40 SCRPC and has to adhere to it.

- B. **In light of the Circuit Court's Duty to schedule this case and their failure to do So for over Twelve Years, The Court of Appeals Did NOT Err and Was Correct in Reversing the Circuit Court's Order Dismissing Respondents' Case pursuant to Rule 41(b), SCRPC**

CONCLUSION

The findings and conclusions in the Court of Appeals unpublished opinion should NOT be reviewed by this Court. The Court of Appeals adhered to the binding precedent of Rule 40 SCRPC in reaching its Opinion. The Petitioner, NOT The Court of Appeals is trying to create novel issues of the law. The Respondents, therefore, respectfully request that this Honorable Court DOES NOT grant the relief sought by the Petitioners and deny the Petitioners Petition for Writ of Certiorari.

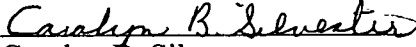
Respectfully submitted,


Carolyn B. Silvester
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I certify that on June 26, 2015, I served a true and correct copy of *Return to Petition for Writ of Certiorari of Petitioner, Spring Valley Country Club*, by United States Mail, postage prepaid to the following:

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211
Served Return to Petition, and Proof of Service

John E. Cuttino
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Served Return to Petition, and Proof of Service


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June 26, 2015
Columbia, SC