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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

JUL 29 2015

SC Court of Appeals

Case No. 2015-000641

Tammy Vance and David Montorio, on behalf of themselves
and all other similarly situated Respondents

vs.

Horry Electric Cooperative Appellant

**APPELLANT'S NOTICE OF MOTION AND MOTION
TO FILE AND SERVE A REPLY BRIEF 2 DAYS OUT OF TIME**

The Appellant moves the Court for an Order allowing it to file and serve the attached Reply Brief. The motion is made upon the following grounds:

1. Respondents' Brief was served by mail on July 17, 2015.
2. The Brief was not received until July 21, 2015.
3. The date by which the Reply Brief was due to be filed and served was July 27, 2015. This gave the Appellant 4 business days within which to prepare and serve a Reply Brief.
4. The undersigned attorney for the Appellant mistakenly counted the 10 days from July 21, 2015, the date it was received, not 10 days from the date it was

mailed.

5. As soon as the undersigned learned of his mistake, he finalized the Reply Brief and filed and served this motion.
6. Appellant asks that all deadlines be suspended pending the disposition of this motion.
7. The attached Affidavit of Pope D. Johnson, III is submitted in support of this motion.



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Attorney for the Appellant

Columbia, South Carolina
July 29, 2015

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AFFIDAVIT OF POPE D. JOHNSON, III

PERSONALLY APPEARED BEFORE ME, Pope D. Johnson, III, who being duly sworn, deposes and says:

1. I am Pope D. Johnson, III. I represent the Appellant in the above-referenced appeal. I file this Affidavit in support of the Appellant's Motion to be permitted to file and serve a Reply Brief.
2. The Respondents' served their Brief by mail on July 17, 2015 which meant that the Reply Brief was due July 27, 2015. However, the Respondents' Brief was not received until July 21, 2015. I mistakenly counted the 10 days for filing a Reply Brief from July 21, 2015, the date of the receipt of Respondents' Initial Brief.

3. My normal practice is to pull the South Carolina Rules of Appellate Procedure to verify and to diary deadlines. I failed to do that in this case. The failure to meet the deadline for filing was my fault. I have no excuse for failing to meet the deadline other than I was just back in my office after a family vacation from July 1-19, 2015 and I was under significant pressure from other matters.
4. I request that the Court give favorable consideration to this request and grant the motion. The matters argued in the Reply Brief can be argued at oral argument but having them set forth in writing may be helpful to the Court in deciding this case.

SWORN TO AND SUBSCRIBED BEFORE ME

this 29th day of July, 2015

Henry W. Wise
Notary Public for South Carolina

My Commission Expires: 8/1/2016

Pope D. Johnson
Pope D. Johnson, III

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APPELLANT'S INITIAL REPLY BRIEF

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TABLE OF CONTENTS

	<u>Page(s)</u>
INTRODUCTION	1
ARGUMENT	1
CONCLUSION	2

INTRODUCTION

Having read Respondents' Initial Brief, a short reply is necessary to correct and/or clarify matters in Respondents' Initial Brief.

ARGUMENT

1. On page 2 of the Respondents' Initial Brief, Respondents make the following statement:

"On August 28, 2012, the Lower Court granted Plaintiffs' Motion for Class Certification, certifying a class of persons who currently own homes that were enrolled in Horry's Good Cents Program from 1988-2003. Order Granting Class Cert., pp.8-9."

This is incorrect. The Order Granting Certification defines the class as follows:

"The class is defined as each and every Horry County homeowner of a new Good Cents Program Home that has a vapor barrier, on the inside of its exterior walls and was included by the Defendant in the new Good Cents Program Home upon its construction during years 1988 through 2003. All persons within the Class who do not elect to exclude themselves from ('opt out of') the Class are referred to as class members."

Persons with manufactured homes were never within the definition for class membership. The action in no way involved persons with manufactured homes.

2. On page 4 of Respondents' Initial Brief, Respondents make the following statement:

"Pursuant to the Final Approval Order, the underlying action was dismissed with prejudice. Final Approval Order ¶15."

This is incomplete and somewhat misleading. While the order dismissed the action with prejudice, the Final Approval Order provided that Judge Culbertson retained jurisdiction to oversee the administration and consummation of the settlement. The

Final Approval Order states:

- “15. The Action is hereby dismissed with prejudice as to the Defendant and against Plaintiffs and all other members of the Class on the merits and, except as provided in the Agreement, without costs.
16. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Agreement.”

The dispute here is the very kind of dispute for which jurisdiction was retained.

3. On page 8 of Respondents’ Initial Brief, Respondents make the following statement:

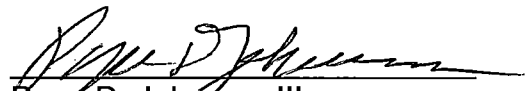
“The Class Members, which received direct mail Notice of the Class Action in 2013 and the Settlement Agreement in 2014, relied on the notices for opt-out purposes, relied on their inclusion in the Class for the resolution of any claims against Horry, and relied upon the parties’ representation that they were entitled to participate in the settlement upon receipt of the notice.”

There is no evidence to support these statements because there was no evidentiary hearing.

4. When the Court reserves jurisdiction over all matters relating to the administration and consummation of the settlement, his order is not final and the law of the case doctrine does not apply.

CONCLUSION

This case, from the beginning, has been about homes in the new Good Cents Home Program, not manufactured homes. Those with manufactured homes should not be granted a windfall. Judge Culbertson’s Order should be reversed and the action should be remanded for an evidentiary hearing.



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Columbia, South Carolina
July 29, 2015

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PROOF OF SERVICE

I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Nate Fata, T. Christopher Tuck, and James L. Ward, attorneys for the Respondents, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 29th day of July, 2015.

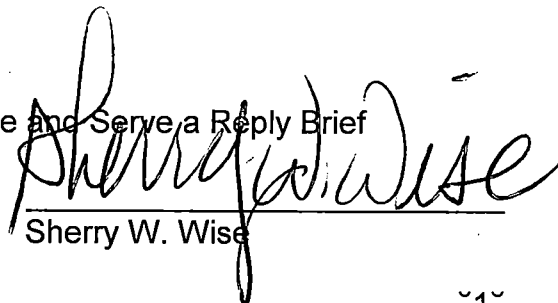
COUNSEL SERVED:

Nate Fata, Esquire
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T. Christopher Tuck, Esquire
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PLEADINGS:

Appellant's Notice of Motion and Motion to File and Serve a Reply Brief


Sherry W. Wise

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June 18, 2015

RECEIVED

JUL 29 2015

SC Court of Appeals

(Via Hand Delivery)

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Tammy Vance and David Montorio, on behalf of themselves and all others
similarly situated v. Horry Electric Cooperative
Case No. 2015-000641

Dear Ms. Kitchings:

Enclosed herewith are the original and (7) copies of **Appellant's Notice of Motion and Motion to File and Serve a Reply Brief** regarding the above-referenced action. Also enclosed is a check in the amount of \$25.00 for the filing fee. Please file the original and (6) copies and clock and return the additional copy to me.

With a copy of this letter to Nate Fata, T. Christopher Tuck, and James L. Ward, attorneys for the Respondents, I am serving a copy of the Motion upon them.

Sincerely,


Pope D. Johnson, III

PDJIII/sww
Enclosures

cc: Nate Fata, Esquire
T. Christopher Tuck, Esquire
James L. Ward, Esquire