IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge
Case No. 2010-CP-08-1771

Appellate Case No. 2014-000183

North Pleasant, LLC and Vanguard Development Group, LLC ..... Appellants,

v.

South Carolina Coastal Conservation League and Edward Dana Beach ..... Defendants,
of whom the South Carolina Coastal Conservation League is the.....Respondent.

RETURN TO PETITION FOR REHEARING BY RESPONDENT SOUTH CAROLINA COASTAL CONSERVATION LEAGUE

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Attorneys for Respondent

Respondent South Carolina Coastal Conservation League ("Respondent" or the "League") respectfully submits this Return to the Petition for Rehearing filed by Appellants North Pleasant, LLC and Vanguard Development Group, LLC ("Appellants"). For these reasons discussed herein, the Petition should be denied.

STANDARD OF REVIEW

In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument. Rule 221(a), SCACR; Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532-33, 564 S.E.2d 322, 322-23 (2001). "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Jean H. Toal, Shahin Vafai & Robert Muckenfriss, Appellate Practice in South Carolina 309 (1999) (citing Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234 (1933)).

THIS COURT'S OPINION

This Court decided this appeal by issuing a memorandum opinion pursuant to Rule 220(b), SCACR, and made three specific findings, citing extensive precedent for each finding:

- There was no evidence that the Respondent committed any "unfair or deceptive" acts or practices.
- The Respondent did not cause Pittenger Company to cancel the contract, and the League's employee was justified to make the statements to the Pittenger Company.
- South Carolina recognizes no claim for injurious falsehood.

ARGUMENT[1]

The Appellants have demonstrated no instance in which the Court has overlooked or misapprehended their argument. Instead, the Appellants disagree with the Court's ruling and rehash and reargue the same points they made at trial and on appeal before this Court. The Court should deny this petition for a rehearing.

1. **There was no evidence that the League committed any "unfair or deceptive" acts or practices.**

Appellants' Petition fails to show that this Court overlooked or misapprehended their argument that the evidence in the record showed the League committed an unfair or deceptive practice. Appellants made only two cites to the Record as evidence that the League engaged in unfair and deceptive acts. Neither cite supports their argument or supports their position in the Petition that the Court overlooked or misapprehended their argument.

One (R.p. 428-432) points to two letters from a program director at the League to the Mayor of the Town of Awendaw and to an official at SCDHEC/OCRM opposing a rezoning and a wetlands permit. These letters make many forceful arguments against regulatory decisions that would allow development in areas that the League contends are inappropriate for such disturbance and would significantly degrade water quality and other environmental conditions in those affected areas.

The only other record cite Appellants make in support of their argument, (R.p. 60-63, 434-486, 694-742), includes an affidavit and deposition transcript from a developer who the League opposed

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1 The League notes that the facts stated in the Summary of Proceedings and throughout are argumentative and in many cases without authority in the record below, but will not counter each fact stated in the petition as it is not necessary to address the petition based on the Court' standard of review here.

in a water quality permit challenge and a deposition excerpt from the developer of a project that the League opposed near the Angel Oak in Charleston County.

From the legal precedent cited on this point by this Court, it is evident that the Court agreed with the trial court that none of the facts represented by this and other testimony amounted to evidence of "unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20(a); Johnson v. Collins Entm't Co., 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002). Again, Appellants presented this evidence in the record to the trial court and to this Court, and this Court ruled it was not evidence that supported a cause of action for unfair or deceptive trade practices. This is simply a re-argument of this point, not an instance where this court overlooked or misapprehended the Appellant's argument.

This argument for rehearing should be denied.

2. Respondent did not cause Pittenger Company to cancel the contract and the League's employee was justified to make the statements to the Pittenger Company.

In arguing for a rehearing of this point, Appellants do not contend that the Court overlooked or misapprehended their argument: they simply disagree with the Court's decision: "... this court made the same mistake as the trial court." Pet.for Reh'g, p. 7, l. 2. This Court, in its memorandum opinion, affirmed the trial court's finding that the evidence cited by Appellant was susceptible of only one inference: that the meeting with the county supervisor was the "but for" cause for Pittenger's decision not to go forward with his contract. Further, the contact by the League's employee, if it was "interference," was justified and not wrongful.

Appellants attempt, again, in this Petition, to float the theory that Pittenger "effectively" terminated the contract on Sunday, May 20, after the call, when he requested additional due diligence time. Appellants argued this to the trial court and to this Court. Both, rightly, concluded

that the argument was not well founded because it ignored the sequence of events that put Pittenger's decision not to go forward with his contract immediately after his meeting with the country supervisor at which he learned he would not have access to the infrastructure or the density that he wanted. Josh Hulen's opinion and the statements by Mr. Pittenger that he was concerned about public opposition to development in the Francis Marion forest did not change the only evidence, from the email correspondence and Mr. Pittenger's testimony, and that of his employees, that he decided not to go forward based on what he learned on the Friday meeting with the county supervisor, which ended just minutes before he made the decision on the contract.

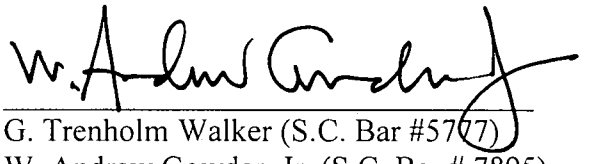
All of this evidence was before this Court in the Record and was presented to this Court in the briefs and arguments of counsel. This Court correctly affirmed the trial court's decision to direct a verdict on these causes of action for tortious interference with a contract and a prospective contract. There is nothing in Appellant's petition that this Court overlooked or misapprehended.

This argument for rehearing should be denied.

CONCLUSION

Therefore, for these reasons, this Court should deny the Appellants' Petition for Rehearing.

Respectfully Submitted,
PRATT-THOMAS WALKER, PA



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September 17, 2015
Charleston, South Carolina

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IN THE COURT OF APPEALS

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APPEAL FROM BERKELEY COUNTY
COURT OF COMMON PLEAS

Roger M. Young, Circuit Court Judge
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North Pleasant, LLC and Vanguard Development Group, LLC ..... Appellants,

v.

South Carolina Coastal Conservation League and Edward Dana Beach.....Defendants

Of whom the South Carolina Coastal Conservation League is the.....Respondent.

PROOF OF SERVICE

I certify that I served the Appellants North Pleasant, LLC and Vanguard Development Group, LLC with Respondent Costal Conservation League's Return to Petition for Rehearing; Postage prepaid, to the addresses below, on September 17, 2015.

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Smith, Bundy, Bybee & Barnett, PC
Post Office Box 1542
Mount Pleasant, SC 29465

Charles R. Reynolds, Esquire
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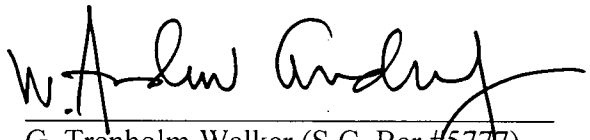
[Signature on following page]

Respectfully Submitted,
PRATT-THOMAS WALKER, PA



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September 17, 2015
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Via U.S. Mail
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: North Pleasant, LLC and Vanguard Development Group, LLC v. South Carolina Coastal Conservation League and Edward Dana Beach.
Appellate Case No.: 2014-000183
File No.:6803.004

Dear Ms. Kitchings,

Enclosed please find the Return to Petition for Rehearing by Respondent South Carolina Coastal Conservation League for filing in the above referenced matter.

Please let me know if you have any questions or concerns.

Sincerely,
PRATT-THOMAS WALKER

Amanda Smith
Paralegal

/abs
cc: Stanley E. Barnett, Esquire
Elllison D. Smith, Esquire
Charles E. Reynolds, Esquire