

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. Supreme Court

J. Mark Hayes, II, Circuit Court Judge

Op. No. 2015-MO-057 (S.C. Sup. Ct. filed Sept. 30, 2015)

Quentin S. Broom, Jr., Petitioner,

v.

Ten State Street, LLP, Timothy D. Scranton,
Mark Broadwater, and H. Hugh Andrews, Defendants,

Of whom

H. Hugh Andrews, Individually
and on behalf of Tri-Star
Communications, Inc. is the, Respondent,

v.

Quentin S. Broom, Jr., Third-party Defendant.

PETITION FOR REHEARING

This petition is filed pursuant to Rule 221, SCACR.

This Court held Respondent's motion to amend his pleadings was not preserved for appellate review. This will send the case back to the Court of Appeals because the Court of Appeals explained in footnote 1 that it did not consider all the case's issues. (App.p.3).

One of those issues is whether the Court of Appeals should modify the circuit court's order under *Spence v. Spence*. (App.p.342). *Spence* provides that a pleading's dismissal

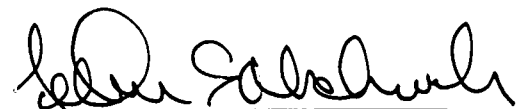
under Rule 12(b)(6), SCRCPP, should ordinarily be without prejudice and that even when the appellate court *affirms* a lower court's finding that the pleading is defective, the appellate court has its own discretion to modify the dismissal so the losing party has a chance to save his or her case. 368 S.C. 106, 129-30, 628 .E.2d at 881-82 (2006).

The Respondent maintains his argument that his pleading was never defective to begin with. However, even if Respondent *loses* this argument, it seems as though the end result can only be a finding that dismissal with prejudice was error under *Spence*. Further proceedings will only result in more expense of everyone's time and resources. This case is already over ten years old. See (R.p.19) (Petitioner's original complaint).

Respondent accepts that the Court of Appeals erred by ordering a "remand" for a ruling. He did not ask the Court of Appeals for this relief, although (as his return to the certiorari petition described), this does seem to have been functionally equivalent to a dismissal without prejudice under *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341 (1986). Nevertheless, the economical disposition is to end this appeal and hold that even if the circuit court was correct to dismiss, the dismissal is without prejudice under *Spence* and Respondent must be granted an opportunity to amend his counterclaims.

October 1, 2015

Respectfully submitted,



Blake A. Hewitt, #73674

John S. Nichols, #4210

BLUESTEIN NICHOLS

THOMPSON & DELGADO

Attorneys for Respondent

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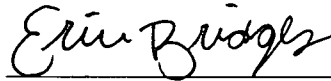
The undersigned hereby certifies that on the date indicated below she served counsel for the Petitioner with a copy of the *Petition for Rehearing* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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October 1, 2015



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