

77650

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

OCT 23 2015

SC Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Kathy Ouzts Rushton, Special Referee

Appellate Case No. 2014-001742

Bernard Loyer, Jr. and Sherry Loyer, Respondents.

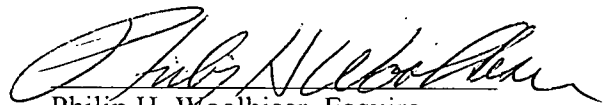
v.

S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Robert J. Berning; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Charles Wilmont Miller; Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan, Defendants,

OF WHOM S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Greg Connell; Jonathan D. Dunn; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Michael O'Brien; Carolyn M. Rischbieter; and Belinda Smith-Sullivan, are Appellants.

And Charles Wilmont Miller is a Respondent.

PETITION FOR REHEARING



Philip H. Woolhiser, Esquire
112 Trafalgar Street SW
Aiken, South Carolina 29801
(803) 648-9994
Attorney for Appellants

Rule 221(b)
Points Overlooked By The Court

1. The Lower Court did not have personal jurisdiction. Pages 5-7 of the “Final Brief of Appellants” describes the lack of actual service upon many Defendants as follows:
 - a) Counsel for the Respondents presented no evidence of essential service; instead, it was assumed that Attorney Marsha Banks represented all Defendants.
 - b) Attorney Marsha Banks specifically stated she only represented “some Defendants”.
 - c) During the Lower Court Hearing, the Special Referee asked the court room audience, in general, if anyone was not represented by Attorney Banks.
 - d) There was no response and the hearing proceeded.
 - e) There is no way to determine if all or any Defendants were present at the Foreclosure Hearing.
2. The Court of Appeals affirmed the Special Referee’s Order and Judgment based upon the well-settled principal that “an issue cannot be raised for the first time on appeal”.
3. However, Defendants who were not served, and who were not represented by counsel, and who did not receive notice of the Foreclosure Hearing, had no obligation to appear at the Foreclosure Hearing. These unrepresented and unserved Defendants could not raise an objection at the Foreclosure Hearing – they were officially not there. The Court did not have jurisdiction over a group of the Defendants. There is no evidence in the Case Record that can be used to estimate the number and identity of the individual Defendants that are in the group that is outside the Court’s jurisdiction.

Petition For Rehearing

Because of the Lower Court's lack of jurisdiction over the Defendants, the Appellants hereby petition the Court of Appeals to remand this Case to the Lower Court to determine if the Lower Court lacked jurisdiction over one or more Defendants. If complete jurisdiction cannot be proven, the mortgages held by the Defendants should be reinstated and such other relief should be granted to the Defendants as determined by the Court of Appeals.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Kathy Ouzts Rushton, Special Referee

Case No. 2014-001742

RECEIVED

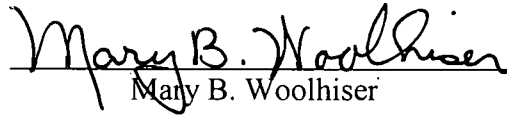
OCT 23 2015

SC Court of Appeals

CERTIFICATE OF SERVICE

I, Mary B. Woolhiser, Secretary for Attorney Philip H. Woolhiser, certify that I have caused Appellants' Petition for Rehearing and this Certificate of Service, in the above-referenced matter to be served, via either hand delivery or U.S. Mail, on October 21, 2015, to applicable parties as addressed below:

Aiken, South Carolina
October 21, 2015


Mary B. Woolhiser

Original and 6 copies to:

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Copies to: Bernard Loyer, Jr., *pro se*
Sherry Loyer, *pro se*
61 Rachel Avenue
Trenton, SC 29847

S-17 Owners Association, Inc.
81 Rachel Ave
Trenton, SC 29847

Paul Knapp Simons, Esquire (Hand Delivered)
111 Park Ave SW
Aiken, SC 29801
Attorney for Respondent, C.W. Miller

Marsha M. Banks, Esquire (Hand Delivered)
319 Park Ave SE
Aiken, SC 29801
Attorney for certain Defendants

Philip H. Woolhiser, Attorney at Law

112 Trafalgar St. SW
Aiken, SC 29801-3744

Phone: (803) 648-9994
FAX: (803) 753-9018

Email: woolhiser@bellsouth.net

October 21, 2014
Delivery by USPS Priority Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

OCT 23 2015

SC Court of Appeals

Subject: • Bernard Loyer, Jr. v. S17 Owners
• Appellate Case No. 2014-001742
• Petition for Rehearing by Appellants

Dear Ms. Kitchings,

In accordance with SCACR Rule 221, please find enclosed the original and 6 copies of the Appellants' Petition for Rehearing, for your file action. Also, enclosed, please find the applicable Certificate of Service and a check in the amount of \$25.00, for the required Filing Fee.

An extra copy of this cover letter is enclosed. Please stamp the extra copy "received" and return the stamped copy in the SASE. Please contact me should you need any further information.

Sincerely yours,



Philip H. Woolhiser
Attorney for Appellants

PW/mw
Enclosures

cc: Bernard Loyer, Jr. and Sherry Loyer, Paul Knapp Simons, Esquire, Marsha M. Banks, Esquire and S-17 Owners Association, Inc.

PRESS FIRMLY TO SEAL

PRESS FIRMLY TO SEAL

PRIORITY MAIL

DATE OF DELIVERY SPECIFIED *

USPS TRACKING™ INCLUDED *

INSURANCE INCLUDED *

PICKUP AVAILABLE

* Domestic only

FOR INTERNATIONAL, CUSTOMS DECLARATION LABEL MAY BE REQUIRED.



S00001000014

EP14F: JULY 2013
OD: 12.5 X 9.5



UNITED STATES POSTAL SERVICE®

Click-N-Ship®

P

usps.com 9405 8036 9930 0095 2862 42 0050 5000 0012 9211
US POSTAGE Flat Rate Env
Commercial Base Pricing
Mailed from 29801 062S0000001301
10/21/15

PRIORITY MAIL 2-DAY™

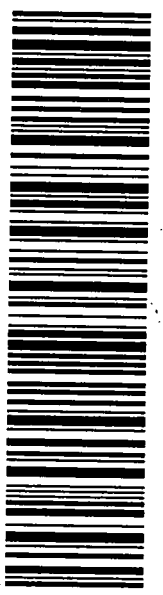
PHIL H WOOLHISER
WOOLHISER & ASSOCIATES
112 TRAFALGAR ST SW
AIKEN SC 29801-3744
RECEIVED
Expected Delivery Date: 10/24/15
0006

OCT 23 2015

B012

SHIP TO: HONORABLE JENNY A KITCHINGS
CLERK OF THE SOUTH CAROLINA COURT OF
PO BOX 11629
COLUMBIA SC 29211-1629

USPS TRACKING #



9405 8036 9930 0095 2862 42

Electronic Rate Approved #038555749

ED STATES
AL SERVICE®