



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 25, 2016

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The Callawassie Island v. Arthur Applegate
Lower Court Case No. 2009CP0705410
Appellate Case No. 2013-001812

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Brian D. McDaniel, Esquire
Ehrick K. Haight, Jr., Esquire
Stephen P. Hughes, Esquire

The Supreme Court of South Carolina

The Callawassie Island Members Club, Inc., Respondent

RECEIVED

v.

FEB 16 2016

Arthur H. Applegate, Petitioner.

SC Court of Appeals

Appellate Case No. 2015-001302

Lower Court Case No. 2009-CP-07-05410

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

February 12, 2016

cc:

Brian D. McDaniel, Esquire

Stephen P. Hughes, Esquire

James Andrew Yoho, Esquire

M. Dawes Cooke, Jr., Esquire

John William Fletcher, Esquire

Bradley B. Baniyas, Esquire

The Honorable Jenny Abbott Kitchings

The Honorable Jerri Ann Roseneau

The South Carolina Court of Appeals

The Callawassie Island Members Club, Inc., Respondent,

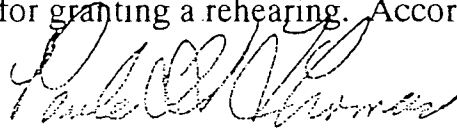
v.

Arthur H. Applegate, Appellant.

Appellate Case No. 2013-001812

ORDER

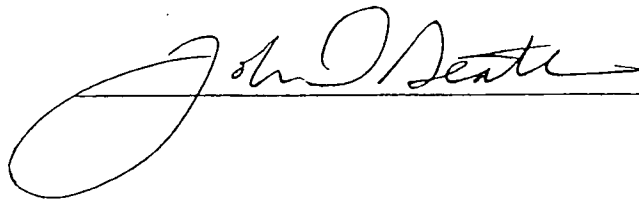
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Brian D. McDaniel, Esquire
Ehrick K. Haight, Jr., Esquire
Stephen P. Hughes, Esquire
The Honorable Edward W. Miller

FILED
5/15

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The Callawassie Island Members Club, Inc., Respondent,

v.

Arthur H. Applegate, Appellant.

Appellate Case No. 2013-001812

Appeal From Beaufort County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2015-UP-203
Heard March 4, 2015 – Filed April 15, 2015

AFFIRMED

Brian D. McDaniel, of Law Office of Brian McDaniel,
LLC, of Beaufort, for Appellant.

Ehrick K. Haight, Jr., of Minor Haight & Arundell, PC,
of Hilton Head Island; and Stephen P. Hughes, of Howell
Gibson & Hughes, PA, of Beaufort, for Respondent.

PER CURIAM: In this breach of contract action brought by The Callawassie Island Members Club, Inc. (CIMC) against Arthur Applegate, Applegate appeals a circuit court order referring the matter to the Master-in-Equity, arguing (1) the

order of reference improperly denied him a jury trial on an action at law and (2) the order denying his motion to alter or amend the order of reference improperly contradicted two prior orders denying summary judgment to CIMC, went beyond the scope of CIMC's motion to have the matter heard without a jury, and made new findings of fact and conclusions of law. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Applegate's right to a jury trial: Rule 210(h), SCACR (stating that subject to exceptions that are not applicable to this case, "the appellate court will not consider any fact which does not appear in the Record on Appeal"); Rule 39(a)(2), SCRCRCP (stating that even though a party has demanded a jury trial, the court may find the right to a jury trial on some or all of the issues in the case does not exist); *Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 306, 529 S.E.2d 45, 57 (Ct. App. 2000) (stating "motions must be made on the record to be preserved," but also allowing "an oral motion that is later reduced to writing [to] preserve an issue for appeal"); *id.* at 57, 529 S.E.2d at 306-07 (stating appellants "bear the burden of providing the court with a record sufficient to allow appellate review").

2. As to whether the order denying Applegate's motion to alter or amend exceeded the scope of the motion: *Johnson v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 372 S.C. 279, 283, 641 S.E.2d 895, 897 (2007) ("South Carolina courts have traditionally held the appealing party accountable for failing to present the court with an adequate record on appeal for review."); *Ballenger v. Bowman*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) ("The denial of summary judgment does not establish the law of the case . . ."); *Mains v. K Mart Corp.*, 297 S.C. 142, 145, 375 S.E.2d 311, 313 (Ct. App. 1988) ("A trial lawyer must, with all deference to the court, preserve his client's position in order to lay a foundation for appeal.").

AFFIRMED.

THOMAS, KONDUROS, and GEATHERS, JJ., concur.