

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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AUG 31 2015
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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 FINAL REPLY BRIEF

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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. (R. 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. (R. p. 28)."

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.”

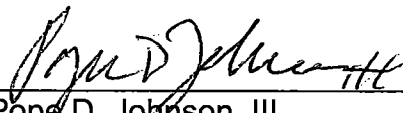
There is no evidence to support these statements because there was no evidentiary hearing.

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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CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Final Reply Brief of
Appellant, Horry Electric Cooperative, complies with Rule 211(b), SCACR.



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PROOF OF SERVICE

I, Susan J. Mondello, 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 31st day of August, 2015.

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PLEADINGS:

Final Reply Brief


Susan J. Mondello