

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM LEXINGTON COUNTY APR 28 2016
In the Court of Common Pleas

SC Court of Appeals

William P. Keesley, Presiding Judge

Appellate Case No. 2014-001519

McGuinn Construction Management, Inc.,.....Appellant,

v.

Saul Espino and Mara Espino,.....Respondents,

and

Saul Espino and Mara Espino,.....Respondents,

v.

Gates Commons, LLC, S. Wade McGuinn, Individually,
and Town of Lexington,Defendants,

Of whom Town of Lexington is.....Appellant.

**RETURN IN OPPOSITION TO RESPONDENTS'
PETITION FOR REHEARING**

S. Jahue Moore
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I. INTRODUCTION

This Court reversed the Order of the Lower Court granting Summary Judgment as to the Respondents in its decision dated March 23, 2016. Respondents filed a Motion for Rehearing on or about April 7, 2016. For the reasons stated herein, as well as the arguments set forth by Appellant in its Brief and before this Court, Appellant McGuinn Construction Management, Inc. submits the Court's well-reasoned Opinion reached the correct result and that Respondents' Petition for Rehearing should be denied.

II. ARGUMENT

Respondents raise two primary arguments in support of their Petition for Rehearing. They argue that the Court overlooked and misapprehended numerous points, "in concluding that further inquiry into the facts surrounding the grant of the easement was necessary to determine the grantor's intent. Respondents also once again assert that Appellant "abandoned" numerous arguments in its Brief. Neither of these arguments entitle Respondents to a Rehearing. The Court's Opinion in this case correctly decides the issues before it and the Respondents' Petition for Rehearing should be denied.

The Court's argument recognized that there were multiple contested issues of fact with respect to the scope of the easement that precluded the Lower Court's granting of Summary Judgment in this case. (Op. No. 2016-UP-138, filed March 23, 2016). The Court correctly found (as argued by both Appellants) that further inquiry into the facts surrounding the grant of the easement was necessary to determine the grantor's intent. (Op. No. 2016-UP-138, filed March 23, 2016). The Court correctly determined (as Appellants argued) that this was not a case in which summary judgment was appropriate. The Court correctly concluded (as argued by Appellants) that further inquiry into the facts

surrounding the grant of the easement was necessary in this case. This Court's decision is appropriate and the Respondents' Petition for Rehearing should be denied.

The Respondents once again argue that Appellant abandoned its argument regarding the Trial Court's error in granting summary judgment as to the slander of title and tortious interference with contract. This argument is identical to their arguments previously raised with this Court and is based on an incorrect reading of the language contained in Appellant's brief and lacks merit.

As argued by the Appellant in his brief, Judge Johnson based his decision to grant summary judgment as to the claims *solely* on the grounds that, "...the Court has determined that the Plaintiff [Appellant] did not have the authority to occupy the Espinos' [Respondents'] property or to connect to either the sewer or drainage lines in the Coventry Lakes subdivision." (R. p. 15). As argued by the Appellant throughout its brief, this finding is clearly erroneous and should not and cannot be used as the sole basis to grant summary judgment as to the Appellant's slander of title and tortious interference with contract causes of action. There was no need for the Appellant to reassert each and every argument presented earlier in its brief that the sole grounds the trial court relied on in granting summary judgment as to these causes of action was fatally flawed. Therefore, the Appellant did not abandon these arguments in its brief.

Once this Court reversed Judge Johnson's determination that Appellant did not have the authority to occupy the Espinos' (Respondents') property or to connect to either the sewer or drainage lines in the Coventry Lakes subdivision, there was nothing to support the grounds for summary judgment as to these causes of action and they should be remanded for further development and consideration by the lower court.

III. CONCLUSION

The Court's Opinion fully addresses all of the issues on appeal and it correctly decided those issues. Respondents' Petition for Rehearing does not demonstrate otherwise, and there is no reason for the Court to revisit its decision. For these reasons, Respondents' Petition for Rehearing should be denied in its entirety.

Respectfully submitted,

By: 

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West Columbia, SC
April 27, 2016

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PROOF OF SERVICE

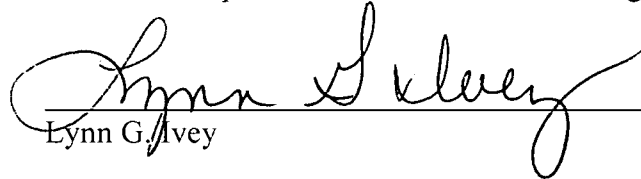
I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, P.A., certify that I have on this day effected service of the Return in Opposition to Respondent's Petition for Rehearing upon counsel of record, by placing a copy of same in the United States mail in an envelope with sufficient postage affixed thereto, addressed as listed below:

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DOCUMENT(S): 1. Return to Respondents' Petition for Rehearing


Lynn G. Ivey

West Columbia, South Carolina
April 27, 2016



April 27, 2016

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 29211

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RE: McGuinn Construction Management, Inc. v. Saul Espino and Mara Espino and
Saul Espino and Mara Espino v. Gates Commons, LLC, S. Wade McGuinn, Individually, and Town of Lexington

Appellate Case No. 2014-001519

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of Appellant McGuinn Construction Management, Inc.'s Return in Opposition to Respondent's Petition for Rehearing in regards to this case. I have also enclosed a proof of service of this document on counsel for respondent and Co-Appellant. Please return the additional filed copies to me via the enclosed envelope.

Thank you in advance for your assistance in this matter.

With kindest regards I am,

Yours very truly,

Lynn G. Ivey
Assistant to John C. Bradley, Jr.

Enclosures

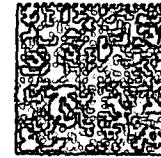
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