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MAY 15 2012

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM GEORGETOWN COUNTY  
Circuit Court

Benjamin H. Culbertson, Circuit Court Judge  
Case No. 2008-CP-22-00834

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TRINITY INVESTMENTS, LLC,

Respondent,

v.

MARINA VENTURES, INC. and PIONEER PROPERTIES, INC.,

Petitioners-Appellants.

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**REPLY PETITION  
FOR WRIT OF *CERTIORARI***

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Kevin R. Eberle  
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Charleston, SC 29402  
(843) 853-5355

Attorney for Petitioners-Appellants

## LEGAL ANALYSIS

### **I. Because Respondent has not responded to the arguments in the Petition for Certiorari, the Court should accept this case for review.**

On May 29, 2009, the trial court discharged a receiver who had been appointed to manage the affairs of two corporations but ended up liquidating them. The court was never told that the receiver was also the self-interested owner of the alleged creditor; that the corporations had never been served; that no default judgment had established any liability of the corporations; that the alleged debts were invalid by operation of the two-dismissal rule; or that the corporations had, in earlier cases, challenged the existence of any debts. Instead, when asked during an *ex parte* hearing if there were any objections to the receiver's discharge, Respondent's counsel said, "None that I'm aware of."

The corporations retained a lawyer and appealed. The Court of Appeals, though, ruled that the corporations had lost their chance to argue that they had never been made parties in the trial court *because they had not raised the matter in the trial court*. That outcome is a perverse application of error preservation rules. The corporations petitioned for certiorari on April 5, 2012, and on May 4, 2012, Respondent filed a Return.

Service of process is a critical step in litigation; it brings a party within the jurisdiction of the court. *See Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 474, 609 S.E.2d 286, 295 (2005). South Carolina's statutes for serving corporations are simple, but Respondent never even tried to serve Petitioners. Instead, in hindsight, Respondent claims that no service was needed as long as any shareholder – including a non-lawyer – even tried to file a pleading. Respondent's position makes no sense. If the corporation *did not*

*appear*, the plaintiff would win the lawsuit by default. If the corporation *did appear* (even by a non-lawyer), its mere appearance would waive the requirement of service. In either case, no plaintiff would ever need to serve a corporation again.

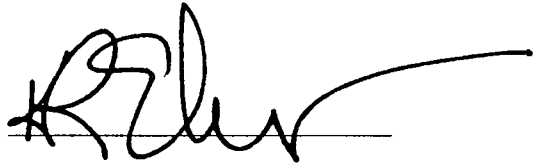
Respondent, as support, has copied a paragraph from its Court of Appeals brief that misstates the rules collected in a secondary source about *pro se* corporate appearances. (Respondent's Return at 6.) Indeed, one of Respondent's two cases actually states that a corporation in a case like the present one *cannot* be bound by an owner's appearance. *See United States v. Priority Prods., Inc.*, 615 F. Supp. 593, 594-95 (Ct. Int'l Trade 1985). In their Petition for Certiorari, the corporations had already pointed out Respondent's mistake in citing those cases and cited instead to this Court's own ruling that a corporation cannot appear through a non-lawyer owner in *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 652, 515 S.E.2d 257, 258 (1999), but Respondent has not tried to bolster its original position with its Return.

Respondent's argument hangs on its faulty premise about waiver of service. According to Respondent, if a corporation waives service through a shareholder's appearance, then the corporations were parties to this action in the trial court and lost their right to appeal by failing to object earlier. Otherwise, not even Respondent defends the Court of Appeals' decision to turn away the appeal on issue preservation grounds.

Moreover, Respondent does not respond to the corporations' challenge to the merits of the trial court's order. Respondent does not dispute that appointing a receiver whose own company is the litigating party is improper. Respondent has also not denied that this lawsuit was barred by the two-dismissal rule under Rule 41.

## CONCLUSION

For these reasons, this Court should grant Petitioners-Appellants' Petition for a Writ of *Certiorari*.

A handwritten signature in black ink, appearing to read 'KEberle', written over a horizontal line.

Kevin R. Eberle  
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**CERTIFICATE OF SERVICE**

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I certify that I have served all counsel in this action with a copy of the Reply Petition for  
Certiorari U.S. mail, sent on May 11, 2012, addressed to the following:

Robert W. Maring  
1130 Highmarket Street  
P.O. Box 478  
Georgetown, SC 29442-0478



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**S.G. SUPREME COURT**  
pm 5-11-12

**Kevin R. Eberle**  
414 King St.  
Charleston, SC 29403

May 11, 2012

Supreme Court of South Carolina  
Clerk of Court  
P.O. Box 11330  
Columbia, SC 29211

Re: Trinity Investments, LLC v. Marina Ventures, Inc.

Dear Ms. Shealy:

Enclosed is the original Petitioners' Reply Petition for Certiorari in the above-referenced case and six copies.

Sincerely,



Kevin R. Eberle

cc: Robert Maring