

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2013-CP-40-2655
Appellate Case No. 2014-000963

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JUL 11 2016

SC Court of Appeals

Allen Patterson, Steve Tilton, Richard Sendler, Lincoln Privette, Marc Ellis, Joey Carter, Barry Davis, Michael Nieri, Allen Patterson Residential LLC, Tilton Group, Sendler Construction Co., Inc., Privette Enterprises, Ellis Construction Co., Inc., The Barry Davis Company, Inc., Great Southern Homes, and J. Carter, LLC, on behalf of themselves and others similarly situated
..... Appellants,

v.

Herb Witter, Colin Campbell, Eddie Weaver, Tom Markovich, Keith Smith, Jim Gregorie, individually and as Trustees of the South Carolina Home Builders Self Insurers Fund, and the South Carolina Home Builders Self Insurers Fund..... Respondents.

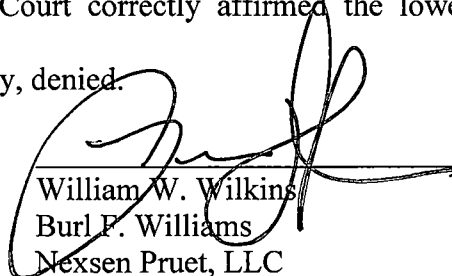
RETURN TO PETITION FOR REHEARING AND REHEARING *EN BANC*

Respondents submit this Return in Opposition to Appellants' Petition for Rehearing and Rehearing *En Banc* ("Petition"). "A petition for rehearing must show points supposedly overlooked or misapprehended by the court." *Checker Yellow Cab Co., Inc. v. Checker Cab and Parcel Service, Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986); Rule 221(a), SCACR. Its purpose is not to provide an opportunity for the lawyers of losing parties to assert arguments they overlooked previously or "to have the case tried in the Court of Appeals a second time." *Id.* (citing *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933)). This Petition, however, does precisely what this Court has admonished against. Accordingly, the Petition should be denied.

In an effort to meet the required standard for seeking a rehearing, Appellants repeatedly state that the "Panel misapprehended the facts" or that the "Panel misapprehended the law." (E.g., Petition, pp. 2, 5, 6, 9, 10, 18-19). Appellants never identify to this Court, however, which specific facts or legal authorities it purportedly misapprehended. Instead, the Petition is nothing more than a re-argument of the same points from Appellants' original briefing.

Further, the Petition demonstrates that it is the Appellants, and not this Court, that continue to misapprehend the facts and law. A review of the points raised in the Petition in comparison to this Court's Opinion demonstrates that the Court did consider and address each and every one of Appellants' contentions and arguments in its Opinion. Appellants do not identify any record cite that was ignored, and while Appellants now seek to argue additional case law not previously cited by them to the Court, none of that case law is new or different. Appellants' Petition merely seeks to improperly reargue the case. *Checker Yellow Cab*, 287 S.C. at 612, 340 S.E.2d at 552.

The Opinion does not contain any misapprehension of fact or law. For the sake of brevity, Respondents incorporate the arguments set forth in their prior brief submitted to the Court. The entire Petition is a re-argument of the same points from the original briefs, and the Court has not been presented with any grounds that would justify a reconsideration of its Opinion. Respondents submit that this Court correctly affirmed the lower court's decision. Appellants' Petition should be, respectfully, denied.

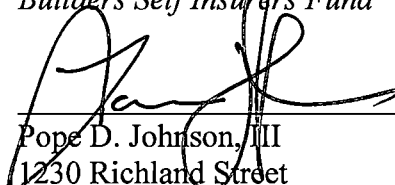


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Trustees of the South Carolina Home Builders Self
Insurers Fund*

July 11, 2016

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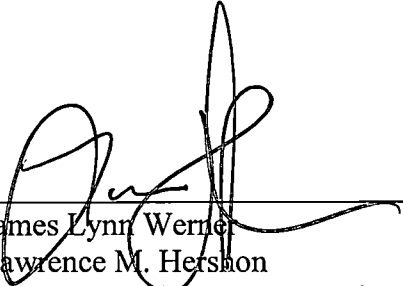
v.

Herb Witter, Colin Campbell, Eddie Weaver, Tom Markovich, Keith Smith, Jim Gregorie, individually and as Trustees of the South Carolina Home Builders Self Insurers Fund, and the South Carolina Home Builders Self Insurers Fund..... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on July 11, 2016, he served the foregoing **RETURN TO PETITION FOR REHEARING AND REHEARING *EN BANC*** on all counsel of record by placing a copy in the United States Mail, first class postage prepaid, addressed as follows:

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July 11, 2016

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk, Court of Appeals
1015 Sumter Street
Columbia, SC 29211

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SC Court of Appeals

Re: ***Allen Patterson et al. vs. Herb Witter et al.***
Appellate Case No. 2014-000963

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Respondents' Return to Petition for Rehearing and Rehearing *En Banc* in the above-referenced case. Please return a file-stamped copy of the Return to my courier.

By copy of this letter, I am today serving the Return on counsel for Appellants.

Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to be 'L. Hershon', written over the typed name.

Lawrence M. Hershon

LMH:rmb
Enclosure

cc: James E. Bradley, Esq. and S. Jahue Moore, Esq.

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