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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia Verdin, Circuit Court Judge

Case No. 2013-CP-23-5575

HHH Ltd. of Greenville, by
and through its Receiver,
Randy A. Skinner Respondent,

v.

Randall S. Hiller, Robert E. Appellant.
Hiller and Randall S. Hiller,
P.A.,

PETITION FOR REHEARING

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Attorney for Appellants

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John T. Crawford
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PETITION FOR REHEARING

Under Rule 221(a) of the South Carolina Appellate Court Rules, Appellants Petition for Rehearing of the Court's opinion in *HHH Limited of Greenville v. Randall S. Hiller, et al* , opinion number 2016-UP-338 (SC Court of Appeals filed June 29, 2016).

Rehearing is proper for several reasons:

1. The Court misapprehended the actual parties in interest in the subject action;
2. The Court failed to follow Supreme Court precedent in Creed v. C.W. Stokes, 285 S.C. 542, 331 S.C. 2nd 351 (1985) declaring that a reference of a jury issue must be appealed immediately because it effected the mode of trial, a substantial right;
3. The Court did not consider that a "substantial right" is a right to a mode of trial guaranteed by the South Carolina Constitution and that such a right extends to a trial before a duly elected Circuit Court Judge.

Rehearing and issuance of a new opinion is appropriate as a result.

Number I. The Court misapprehended the actual parties in interest in the subject action. The Court has applied the law of compulsory counterclaims to the within action as if the judgment creditor were the Plaintiff. That was how it should have been. As Appellants argued at their initial Rule 12(b)(6), S.C.R.C.P., motion to dismiss, it was improper to bring the action in the name of the transferor of the property under a Section 27-23-10, *South Carolina Code of Laws*, cause of action (R. Pg. 112). Appellants argued, unsuccessfully, that the judgment creditor was required to bring the action under the aforesaid section and the Plaintiff of the within action was required to be a co-defendant (R. Pg. 115-117). Had the trial court ruled in Appellants' favor then there could not have possibly existed a compulsory counterclaim as the judgment creditor would be the

Plaintiff and the current Plaintiff would be a cross-defendant thereby eliminating any claim as compulsory.

In this case however the Plaintiff/Respondent is the grantor of the deeds which it, now, seeks to set aside as fraudulent transactions although it directly participated in the transaction. No matter the theory under which the Plaintiff/Respondent seeks to void the transactions with the Appellants, whether it be rescission, fraud or the chosen method in this action, the result is that the underlying transaction is the transaction at issue.

As the Court correctly pointed out “a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing parties claim” First Citizens Bank & Trust Co. of SCV Hucks, 305 S.C. 296, 298, 408 S.C. 2nd 222, 223 (1991). In this case the opposing party IS the PARTY that the Appellants transacted business with and thus all of the facts of the counterclaim are identical and logically related to the facts of Plaintiff’s claim.

The complaint states two claims against two separate Appellants seeking to set aside the conveyance of two separate parcels of real estate.

In the first instance, the PLAINTIFF executed a purchase money note and mortgage to a third party secured by real estate in Greenville County. The Appellant, Randall S. Hiller, subsequently purchased the note and mortgage and an assignment was duly recorded at least 8 years prior to the entry of a judgment against the Plaintiff. The Plaintiff/Respondent was in default and issued a deed in lieu of foreclosure to satisfy the debt. The PLAINTIFF now seeks to set aside that deed as fraudulent. The judgment creditor is not a party and has not sought to set aside that deed. This counterclaim by the Appellant unquestionably arises out of the same transaction or occurrence that is the subject of the action and is thus compulsory under case law and Rule 13, S.C.R.C.P. Clearly there is a logical relationship between the enforceability of the purchased note

and mortgage, the deed given in lieu of foreclosure and the Plaintiff's now claim that it fraudulently conveyed the property to the Appellant.

The second piece of property, also conveyed by the Plaintiff/Respondent as Grantor, was conveyed pursuant to a written contingent contract between PLAINTIFF and the Appellant, Randall S. Hiller, P.A. to file an action to set aside a tax sale under which the property had already been deeded to the successful purchasers at the tax sale. The Appellant did in fact file an action and after a non-jury trial obtained a successful result wherein the tax sale deeds were voided and title to the property reverted to the Plaintiff. In accordance with the written fee contract, the Plaintiff then executed a deed to a one-half interest in the property to the Appellant which the Plaintiff now seeks to set aside as having fraudulently executed. The contract was performed by Plaintiff and Defendant in accordance with its terms but the PLAINTIFF now seeks to set the entire agreement aside as a fraudulent conveyance. If it indeed did fraudulently execute the deed then Appellant would have no remedy as its counterclaims against the Plaintiff obviously and completely arose out of the same transaction or occurrence that is the subject of the action.

Because the Plaintiff/Respondent is a direct participant in each transaction which is the subject of this litigation and the Appellant's counterclaims are based on the exact same transactions they are both compulsory and rationally related and the Court should reconsider its opinion to dismiss the appeal. North Carolina Federal Savings and Loan Association v. DAV Corp., 298, S.C. 514, 381 S.E. 2nd 903 (1989)

Number II. The Court failed to follow Supreme Court precedent in Creed v. C.W. Stokes, 285 S.C. 542, 331 S.C. 2nd 351 (1985) declaring that a reference of a jury issue must be appealed immediately because it effected the mode of trial, a substantial right.

Creed v. C.W. Stokes, 285 S.C. 542, 331 S.C. 2nd 351 (1985) mandates that a constitutionally protected right effects the mode of trial and is a substantial right which may be appealed immediately.

Number III. The Court did not consider that a “substantial right” is a right to a mode of trial guaranteed by the South Carolina Constitution and that such a right extends to a trial before a duly elected Circuit Court Judge. Appellants are entitled pursuant to the South Carolina Constitution Article I, Sections 3 and 14; Article V, Sections 14 and 15 and Rule 53(b), S.C.R.C.P, to a trial before a circuit judge.

The Circuit Court is a general trial court with original jurisdiction in civil and criminal cases. Article V, Section 11, South Carolina Constitution. Circuit Court judges are qualified and elected pursuant to the Constitution of the State of South Carolina and Masters in Equity are creations of statute appointed by the Governor. Circuit Court judges are constitutionally required to rotate among the circuits established throughout the state. Article V, Section 14 South Carolina Constitution.

Rule 53(b), S.C.R.C.P., provides three instances where a reference is mandated, consent, default, or an action for foreclosure. In all other cases a circuit court may direct a reference of some or all of the causes of action in a case unless a party demands a jury trial.

Appellants did not consent to the reference. Appellants are not in default nor is this a foreclosure action. The circuit court made no distinction between the causes of action referred to the Master but a jury demand was already made and therefore pursuant to Rule 35, S.C.R.C.P., the action should have been returned to the circuit court automatically.

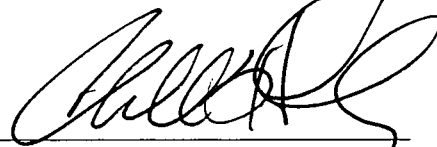
Additionally, the Constitution of the State of South Carolina guarantees to its citizens the right to have its case heard by a circuit court judge absent consent to be heard by a Master in

Equity. Masters in Equity were created to preside over foreclosures and are not subject to the same qualifications or process of election nor are they required to rotate. The legislature establishes terms of court for each circuit and the circuit judges rotate as required by the Constitution and as directed by the chief justice of the Supreme Court. Presumably there is a benefit to the citizens of this state of these constitutional and statutory requirements. Because they are derived from the constitution these benefits must be a substantial right. Creed v. C.W. Stokes, 285 S.C. 542, 331 S.C. 2nd 351 (1985).

Appellants, as are all litigants, absent their consent, their default or in an action for foreclosure, are entitled to a trial, non-jury, jury, equitable or legal in the court of common pleas before a duly elected circuit court judge.

Respectfully Submitted,

RANDALL S. HILLER, P.A.



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July 11, 2016
Greenville, SC

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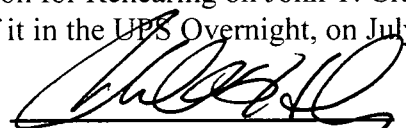
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Hiller and Randall S. Hiller
P.A.,

Appellant.

PROOF OF SERVICE

I certify that I have served Appellant's Petition for Rehearing on John T. Crawford, Esq. and Randy A. Skinner, Esq. by depositing a copy of it in the UPS Overnight, on July 11, 2016.

July 11, 2016



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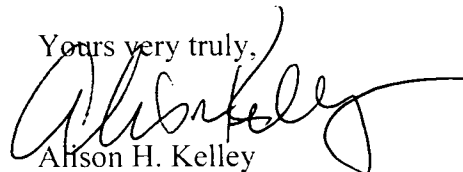
Re: HHH Ltd. of Greenville v. Randall S. Hiller, et al
C.A. No.: 2013-CP-23-5575

Dear Madam Clerk:

Please find enclosed one original and seven copies of our Petition for Rehearing and Proof of Service regarding the above. Please file the original and six copies and return a stamped copy to me in the envelope provided.

By copy of this letter I am providing opposing counsels with same.

Yours very truly,



Alison H. Kelley
Paralegal to Randall S. Hiller

/ak

Enclosures.

Cc: Randy A. Skinner, Esq.
John T. Crawford, Esq.