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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM CHARLESTON COUNTY JUL 25 2016  
COURT OF COMMON PLEAS

SC Court of Appeals

MIKELL R. SCARBOROUGH, CHARLESTON COUNTY MASTER-IN-EQUITY

Case No. 2011-CP-10-9513  
Appellate Case No. 2014-002742

AMH-Ashley Marina, LLC, and AMH Management, LLC ..... Appellants,

v.

The Harborage at Ashley Marina Horizontal  
Property Regimes, The Harborage at Ashley  
Marina Condominium Association, Eddie  
McCoy, Stuart Reeves, Brian Swan, Rich  
Cone, and Ed Miskotten, individually, ..... Respondents.

APPELLANTS' PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellants, AMH-Ashley Marina, LLC and AMH Management, LLC, hereby submit this petition for rehearing of the Court's unpublished opinion, No. 2016-UP-357, filed July 6, 2016.

As a preliminary matter, Appellants note that the Court's rationale for affirming the lower court's ruling is based on a dearth of information set forth in its opinion. The opinion consists of one paragraph of conflicting authorities, and no facts whatsoever.

Specifically, the Court overlooked or misapprehended the fact that Appellants' right to manage The Harborage at Ashley Marina, set forth in Paragraph 2.3(a) of Respondents The Harborage at Ashley Marina Horizontal Property Regimes and The

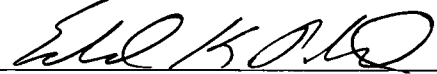
Harborage at Ashley Marina Condominium Association's Master Deed, is a property right not a contractual right. Though the Court seems to initially recognize that the right to manage is a property right, as indicated by its citation of authority discussing restrictive covenants and deeds. That said, the Court failed to properly analyze whether the provision was an enforceable property right. In fact, the Court's opinion cites two very different legal premises as its basis for affirming the lower court's decision. On the one hand, the Court relied on *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 363 S.E.2d 891 (1987) for the position that restrictive covenants will be enforced unless they are indefinite or contravene public policy. On the other hand, the Court cited *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 769 S.E. 2d 237 (2015) for the position that agreements to agree in the future have no legal effect and are void for indefiniteness, which is an analysis applicable to determining the existence of a contract, rather than the interpretation the extent of a property right. The Court clearly confused an interest in property with that of an interest in contract by incorrectly applying an analysis to determine whether the elements of a contract are present.

Even assuming the Court correctly analyzed this matter as to whether the restrictive covenant was enforceable under property law as set forth in *Sea Pines Plantation Co. v. Wells*, *supra*, the Court overlooked or misapprehended the fact that evidence and arguments set forth by Appellants overwhelmingly show that the right to manage included in the Master Deed is neither indefinite nor does it contravene public policy. Based on the undisputed facts and well-established South Carolina law regarding the enforcement of restrictive covenants, the only decision the Court could have reached was a reversal of the lower court's decision and a *remittur* for further proceedings.

Accordingly, for the reasons set forth above, Appellants respectfully petition this Honorable Court for a rehearing on the unpublished opinion rendered in this matter and for a decision in favor of the Appellants.

Respectfully submitted,

**PRITCHARD LAW GROUP, LLC**



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ATTORNEYS FOR APPELLANTS

July 21, 2016  
Charleston, South Carolina

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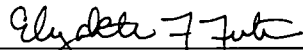
v.

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Marina Condominium Association, Eddie  
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PROOF OF SERVICE

I certify that I have served *Appellants' Petition for Rehearing* on Respondents, The Harborage at Ashley Marina Horizontal Property Regime, The Harborage at Ashley Marina Condominium Association, Eddie McCoy, Stuart Reeves, Brian Swan, Rich Cone and Ed Miskotten, individually, by depositing a copy of it in the United States Mail, postage prepaid on July 20, 2016, to their attorney of record, Michael A. Timbes, Esquire, at his office at 15 Middle Atlantic Wharf, Suite 101, Charleston, South Carolina 29401, on July 21, 2016

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July 21, 2016

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JUL 25 2016

SC Court of Appeals

**VIA U.S. Mail**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

**RE: AMH-Ashley Marina, LLC, et. al. v. The Harborage at Ashley Marina, et. al.**

In the Court of Common Pleas, Charleston County, South Carolina

Civil Action No.: 2011-CP-10-9513

Appellate Case No.: 2014-002742

Dear Ms. Kitchings:

Enclosed, please find an original and seven (7) copies of *Appellants' Petition for Rehearing*, in addition to a check in the amount of \$25.00 in connection with the above-referenced case. Please return one (1) clocked copy in the enclosed self-addressed, postage prepaid envelope.

By copy of this correspondence, I am providing counsel for Respondents, with a copy of the same. Should you have any questions or require anything further, please do not hesitate to contact me.

With warmest personal regards, I am

Yours very truly,



Elizabeth F. Fulton

Enclosures

cc: Michael A. Timbes, Esq. (w/ enc.)