

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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OCT 28 2016

APPEAL FROM DILLON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

J. Michael Baxley, Circuit Court Judge

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Opinion No. 2016-UP-331 (S.C. Ct. App. Filed June 29, 2016)

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Claude W. Graham and Vickie B. Graham, ..... Petitioners,

v.

Town of Latta, South Carolina, ..... Respondent.

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**PETITIONERS' REPLY**

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**I. “According to law” cannot be an adverb modifying the word “draw” in S.C. Code Ann. 34-31-20(B).**

Respondent continues to argue that the Legislature explicitly incorporated Latta’s interpretation of “must” as something less than mandatory when it used the phrase “according to law,” now not only urging this Court to ignore the doctrine of the last antecedent but also to find that the Legislature either displayed its ignorance or engaged in nonsense. Respondent argues that “... the phrase ‘according to law’ is actually an adverbial phrase which modifies the verb ‘draw.’” (Return, p. 10).

“-ing” is a suffix used to form the present participle of verbs or one used to form an adjective resembling the present participles but not derived from verbs; it is a noun or gerund suffix. *The American Heritage Dictionary of the English Language* 4<sup>th</sup> Ed. © 2000 Houghton Mifflin Co. (p. 900). In the English language, a gerund is “a verbal noun” or “adjective.” *op. cit.* 738.

If “according to law” is a participial phrase, it functioned as an adjective. Participial phrases “... are commonly used in English to modify nouns or pronouns, but care must be taken in incorporating such phrases into sentences. Readers will ordinarily associate a participle with the noun, noun phrase, or pronoun adjacent to it, and misplacement may produce comic effects.” *op. cit.* 1281. A gerund on the other hand, functions as a noun. Andrea DeCapua, Ed.D. describes an easy way to differentiate between the two structures:

Try substituting “it.” If the gerund or gerund phrase is functioning as a noun the substitution of “it” leaves the sentence grammatical but if it is functioning as an adjective, substituting “it” will give you a nonsense sentence.

*Grammar For Teacher: A Guide To American English for Native and Non-Native Speakers.* Springer, 2008. See also, [www.grammar.about.com/od/pq/g/partphraseterm.htm](http://www.grammar.about.com/od/pq/g/partphraseterm.htm).

Since a sentence reading “a judgment must draw interest according to it” would be nonsense then the Legislature must have been using “according to law” as a participial phrase modifying its nearest antecedent “interest”.

**II. Petitioners have argued in the Court of Appeals, including their Petition for Rehearing, that there has never been a ruling by this Court to the effect that Rule 67 can alter the legal duties of the parties.**

At IIIB, Respondent’s Footnote 3 asserts that because *Renaissance Enterprises* and *Bakala* are not cited in the Petition for Rehearing, then Petitioners’ first question and first argument have not been preserved. The Petition for Rehearing to the Court of Appeals invited that Court to address arguments that were “distinctly stated by the Appellants and argued by the Respondent in the record of the Court.” One specific argument repeatedly made is that Rule 67 does not, because it cannot, vary, alter, or amend a statutory mandate that a judgment must draw interest, incorporating in the Petition their arguments made in their Brief on page 8. (App. pp. 12-13). It is on that page 8 that the Petitioners support their conclusion that there has never been a case from this Court applying the rule to the current statute:

The holding of the *Bakala v. Bakala*, 352 S.C. 612, 632, 576 S.E.2d 156, 167 (2003) is that Rule 67 may not be used as a means of altering the legal duties of the parties. The holding of *Renaissance Enterprises, Inc. v. Ocean Resorts, Inc.*, 334 S.C. 324, 513 S.E.2d 617 (1999) is that since “there is nothing in Rule 67 indicating a deposit into court will affect the

parties' contract regarding interest... a deposit into court pursuant to Rule 67 does not stop the accrual of interest provided by contract."

Furthermore, all of the Petitioners' Argument I in the Petition for Rehearing relates to the issue of precedent; it is not possible to read the Petitioners' arguments below as having abandoned the issue of whether this Court has interpreted the current statute against their position.

### CONCLUSION

For the reasons stated in the Petitioners' Petition for Writ of Certiorari and the above discussion, the Petitioners ask the Court to grant their Petition.

Respectfully submitted,

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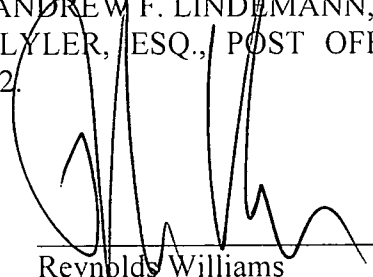
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**PROOF OF SERVICE**

I certify that I have served the *Petitioners' Reply* on Counsel for the Respondent by depositing a copy of the same in the United States Mail, sufficient postage prepaid, on October 26, 2016, addressed as follows: ANDREW F. LINDEMANN, ESQ., MICHAEL B. WREN, ESQ., and DANIEL C. PLYLER, ESQ., POST OFFICE BOX 8568, COLUMBIA, SOUTH CAROLINA 29202.



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