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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

Stephen Spitz, Special Referee

RECEIVED
OCT 27 2016
SC Court of Appeals

Appellate Case No. 2016-001878

Julia Tompkins Ewing Respondent,

v.

Keith A. Guest, Stephanie C. Guest, and
Pleasant Point Property Owners Association, Defendants,

of whom

Keith A. Guest and Stephanie C. Guest are the Appellants.

MOTION FOR LEAVE
TO APPLY FOR RELIEF
IN CIRCUIT COURT

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES
OF THE SOUTH CAROLINA COURT OF APPEALS:

Respondent moves for leave to apply to the court below for relief necessary to enforce the injunction contained in one of the Orders under appeal. As grounds for the motion, respondent would respectfully show as follows:

1. Two Orders are under appeal. The first is a final Order granting judgment in favor of the respondent, and the second is an Order entered upon motions of both the respondent and the appellants to alter or amend.¹ In these Orders the circuit court

¹ This Order, dated August 8, 2016, was styled by the special referee as "Special Referee's Supplemental Second Final Order Aug. 8, 2016".

recognized respondent's right to use the land area in controversy for access to her home by automobile. The circuit court based its judgment upon two grounds. First, the largest portion of the area in controversy appears as part of a street shown on the plat of subdivision streets and lots of Pleasant Point Subdivision, in reliance upon which the respondent's predecessor purchased the lots upon which respondent's home was built. Second, respondent's use of the area platted as a street, and a further smaller area, for more than twenty years gave rise to a prescriptive easement appurtenant.

2. In the Order of August 8, 2016, the circuit court ordered in part:

(4) That the Defendants are permanently enjo[ined] from obstructing or interfering with the normal driveway use of the 40-foot area or the dirt driveway and extension area

(5) Notwithstanding all of the above, any part of this Second Final Order that requires affirmative action by the Defendants to physical[ly] change the existing situation, such as restoring a driveway, is stayed and the parties are instructed to carry on with current status quo as to that matter, until and unless either:

(A) This Order becomes truly final because there is no appeal by any and all parties or

(B) This Order is appealed and the Appellate Court(s) of this State have ruled upon the validity of the First Final Order of March, 2016 and this Second Final Order of August, 2016³ and then, of course, the parties should proceed as the Appellate Court(s) so instructs.

³ It certainly seems (at least to me) it would be the wise and prudent not to order the return of a driveway to its original condition, until that Order was reviewed, if appropriate, by the proper authorities on appeal.

3. The appellants have employed a contractor to destroy trees in the area which is the subject of this litigation. On October 21, 2016, when informed of the injunction and the "status quo" portion of the circuit court's Order, the contractor agreed not to proceed with the work. However, there is no guarantee that the contractor will keep its agreement, or that the appellants will not employ a different contractor in an

effort to remove the trees.

4. Removal of these trees would make it impossible for the appellants to restore the subject area to its original condition, as ordered in the court's first Order, and would violate the injunction and "maintain the status quo" portions of the second Order.

5. The injunction and "maintain the status quo" portions of the Order of August 8, 2016 are not stayed on appeal. Rule 225(b)(8), SCACR. The appellants are attempting to violate those portions of the Order.

6. Respondent moves the Court for an order authorizing the Court of Common Pleas for Beaufort County³ to hear and decide a Rule to Show Cause regarding the matters alleged above.

Respectfully submitted,

David L. Tedder
S.C. Bar No. 7222
P.O. Box 1282
Beaufort, SC 29901
(843) 521-4222

James B. Richardson, Jr.
S.C. Bar No. 4718
1229 Lincoln Street
Columbia, SC 29201
(803) 799-9412

by: 
Attorneys for Respondent.

October 27, 2016.

³ The appellants believe that the service of Special Referee Spitz was discharged when he entered final judgment and adjudicated the parties' motions to alter or amend.

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of whom


Keith A. Guest and Stephanie C. Guest are the Appellants.

CERTIFICATE OF SERVICE

I certify that I served a copy of respondent's motion for leave to apply for relief in circuit court by first class mail, postage prepaid, addressed to appellants' attorney at his address of record, namely:

H. Fred Kuhn, Jr., Esq.
Moss, Kuhn, Fleming & Smith
P.O. Drawer 507
Beaufort, SC 29901-0507

on October 27, 2016.


James B. Richardson, Jr.
S.C. Bar No. 4718
1229 Lincoln Street
Columbia, SC 29201
(803) 799-9412

October 27, 2016.

Attorney for Respondent.

**Law Office of
James B. Richardson, Jr.**

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SC Court of Appeals

Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

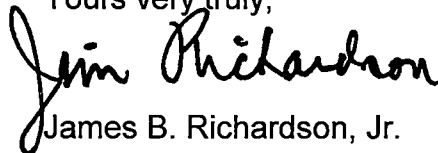
Re: Ewing v. Guest
Appellate Case No. 2016-001878

Dear Ms. Kitchings:

Enclosed for filing is respondent's Motion for Leave to Apply for Relief in Circuit Court.

Thanking you, I remain

Yours very truly,


James B. Richardson, Jr.

cc: H. Fred Kuhn, Jr., Esq.
David L. Tedder, Esq.