

81566

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED
NOV 14 2016
SC Court of Appeals

Case No. 2016-000432

Linda A. Gibson, individually and in her capacity as
Trustee of the PAUL WILLIAM GIBSON FAMILY TRUST;
HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC;
and 3205 PALM BOULEVARD, LLC, Appellants,

vs.

ANDREW K. EPTING, JR., LLC; Andrew K. Epting, Jr.;
GEORGE J. KEFALOS, P.A.; George J. Kefalos;
GEDNEY M. HOWE, III, P.A.; Gedney M. Howe, III;
JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and John S. West, Respondents.

**APPELLANTS' MOTION TO CERTIFY CASE
FOR REVIEW BY THE SUPREME COURT**

Thomas A. Pendarvis, J.D.
Christopher W. Lempeis, Jr., J.D., LL.M.
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A1
Beaufort, SC 29902-4188

James R. Davis, Esq.
J. DAVIS LAW FIRM, P.C.
BB&T Plaza, Mail Stop Box #16
Daniel Island, South Carolina 29492

Counsel for Appellants

MOTION

Pursuant to Rules 204(b) and 240, SCACR, Appellants, Linda A. Gibson, individually and in her capacity as Trustee of the PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC, respectfully move to certify this case for review by the Supreme Court. The grounds for this motion are based on 1) the fact that the issues of significant public interest and also legal principles of major public importance are involved in this appeal, including, among other things, the factual and legal analysis to determine whether the Respondent lawyers charging their Appellant client a \$566,666 *reverse* contingency fee was excessive when the lawyers knew of facts and events beyond their control had eliminated the risk of an adverse judgment to the client; and 2) the judicial economy in reassigning this matter to the Supreme Court. There is no precedent or prior decisions by our Supreme Court on the specific issues in this appeal. Counsel for Respondents were asked if they had any objections to this motion, but have not responded.

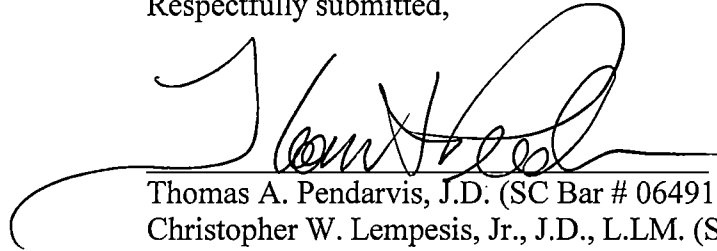
As noted by well-respected and honorable commentators, “[t]he Court of Appeals is an error-correction court, whereas the Supreme Court is a law-giving court.” Jean Hofer Toal, APPELLATE PRACTICE IN SOUTH CAROLINA, 12 (SC Bar ed., 2d ed. 2002). *Cf. Caldwell v. Wiquist*, 402 S.C. 565, 570, 741 S.E.2d 583, 586 (Ct. App. 2013) (Court of Appeals has “no authority to overrule Supreme Court precedent” citing *Blyth v. Marcus*, 322 S.C. 150, 155 n.1, 470 S.E.2d 389, 392 n.1 (Ct. App. 1996)). Like the trial court, the Court of Appeals is without the authority to create new law, including new law interpreting and applying the “reasonableness” standard under Rule 1.5, RPC, Rule 407, SCACR, to a *reverse* contingency fee to determine whether or when reverse contingent fees are excessive and unreasonable. Notwithstanding any ruling by the Court of Appeals in this matter, it is clear that a Petition for Certiorari will be filed by the party or parties who do not prevail

on their position.

CONCLUSION

WHEREFORE, Appellant, Linda A. Gibson, individually and in her capacity as Trustee of the PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC, respectfully requests this Court or the South Carolina Supreme Court issue an Order reassigning this case to the South Carolina Supreme Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tom Pendarvis", written over a horizontal line. The signature is fluid and cursive.

Thomas A. Pendarvis, J.D. (SC Bar # 064918)
Christopher W. Lempesis, Jr., J.D., L.L.M. (SC Bar # 77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A1
Beaufort, SC 29902-4188

James R. Davis, Esq. (SC Bar # 100358)
J. DAVIS LAW FIRM, P.C.
BB&T Plaza, Mail Stop Box #16
Daniel Island, South Carolina 29492

Counsel for Appellants

November 10, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2016-000432

RECEIVED

NOV 14 2016

SC Court of Appeals

Linda A. Gibson, individually and in capacity as
Trustee of the PAUL WILLIAM GIBSON FAMILY TRUST;
HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC;
and 3205 PALM BOULEVARD, LLC, Appellants,

vs.

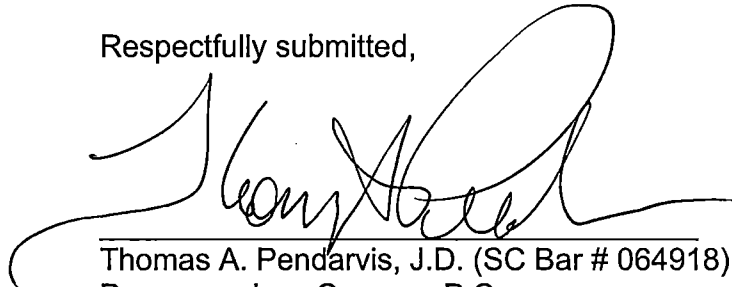
ANDREW K. EPTING, JR., LLC; Andrew K. Epting, Jr.;
GEORGE J. KEFALOS, P.A.; George J. Kefalos;
GEDNEY M. HOWE, III, P.A.; Gedney M. Howe, III;
JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and John S. West, Respondents.

PROOF OF SERVICE

I, Thomas A. Pendarvis, a lawyer with PENDARVIS LAW OFFICES, P.C., certify that I
have served one (1) copy of the Appellants' Motion to Certify Case For Review by the
Supreme Court on counsel for Respondents, M. Dawes Cooke, Jr. J.D. and Jeremy E.
Bowers, J.D., by depositing a copy of the same in the United States Mail, postage prepaid,
on the 10th day of November, 2016, addressed as follows:

M. Dawes Cooke, Jr. J.D.
Jeremy E. Bowers, J.D.
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas A. Pendarvis', written over a horizontal line.

Thomas A. Pendarvis, J.D. (SC Bar # 064918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A1
Beaufort, SC 29902-4188

Counsel for Appellants

November 10, 2016

PENDARVIS LAW OFFICES, PC



RECEIVED

November 10, 2016

NOV 14 2016

SC Court of Appeals

VIA US MAIL

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

**Re: Linda A. Gibson, et. al., v. Andrew K. Epting, Jr., et.al.
Appellate Case No. 2016-000432**

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of each of the APPELLANTS' MOTION FOR CERTIFICATION TO THE SUPREME COURT and PROOF OF SERVICE in regard to the above-referenced matter. Also enclosed is a \$25 dollar check representing the filing fee. Please return a clocked copy of each in the postage pre-paid, self-addressed return envelope enclosed for your convenience.

By copy of this letter, I am serving counsel for the Respondents with the same as indicated in the enclosed PROOF OF SERVICE.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis

TAP/sew
Enclosures

cc (w/ enclosures) : M. Dawes Cooke, J.D.
Jeremy E. Bowers, J.D.

ec (w/ enclosures): James R. Davis, J.D.
Linda A. Gibson

THOMAS A. PENDARVIS, J.D.
Admitted in SC and GA
Thomas@PendarvisLaw.com
Board Certified in Legal Malpractice
by the American Board of
Professional Liability Attorneys

710 BOUNDARY STREET, UNIT A1
BEAUFORT, SC 29902-4188
www.PendarvisLaw.com
843.524.9500

CHRISTOPHER W. LEMPESIS, JR.
Juris Doctor and Master of Laws
Chris@PendarvisLaw.com

Pendarivis Law Offices, P.C.
710 Boundary Street, Unit A-1
Beaufort SC 29902

\$2.620
US POSTAGE
FIRST-CLASS
FROM 29902
NOV 10 2016



06250009613051

stamps.com



The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211-1629

RECEIVED
NOV 14 2016
SC Court of Appeals