

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE KERSHAW COUNTY  
Court of Common Pleas

Jeffrey M. Tzerman, Master-in-Equity

**RECEIVED**

JAN 30 2017

SC Court of Appeals

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CIVIL ACTION NO.: 2006-CP-28-0433  
APPELLATE CASE NO.: 2014-002455

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Palmetto Residential Builders, LLC ..... Appellant,

Michael Cox and Elizabeth Cox ..... Respondents.

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**RETURN TO APPELLANT'S PETITION FOR REHEARING**

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January 27, 2017

R. Charles Richards  
Richards Law Firm, LLC  
1635 Sunset Boulevard  
West Columbia, South Carolina 29169  
(803) 796-9982  
Attorney for Respondents

## MEMORANDUM IN OPPOSITION TO PETITION FOR REHEARING

Petitioner claims that the Court misapprehended that the Appellant was seeking to attach all of the funds in Mr. Cox's ERISA covered, employer provided retirement account as opposed to only the funds placed in the account after Appellant won the judgment.

This Court found that Mr. Cox did not increase his contribution to his retirement fund after judgment was entered. All contributions made by Mr. Cox into his ERISA covered, employer qualified pension plan after the judgment was entered against him on February 13, 2008 are not subject to attachment or levy by a judgment creditor. None of the transfers made by Mr. Cox into this retirement fund were fraudulent. Mr. Cox began making contributions into his pension plan on July 1, 1992 and has not modified them.

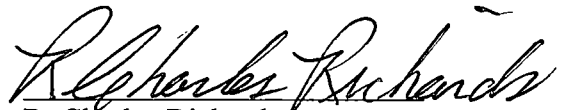
Opposing counsel argues "If the law is that a money (sic) deposited into a retirement account after entry of judgment is immune from claims of judgment creditors, then any judgment debtor can protect his assets by simply establishing a retirement account and depositing any money not spent on living expenses into that account."

This argument fails to recognize that the retirement account in question was set up more than fifteen (15) years prior to judgment being rendered, the pension account was created pursuant to the Employee Retirement Income Security Act of 1974, and no adjustments in the amount of money contributed were made after the judgment.

Different types of pension plans have different levels of protection from creditors. The pension plan at issue here is afforded the highest level of protection provided by law and may not be levied against by judgment creditors.

The Respondents respectfully request that this Court deny the Appellant's motion.

January 27, 2017



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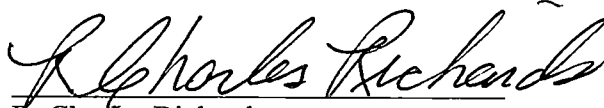
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Palmetto Residential Builders, LLC ..... Appellant,  
Michael Cox and Elizabeth Cox ..... Respondents.

**PROOF OF SERVICE**

I certify that I have served a copy of the Respondent's Return to Appellant's Petition for Rehearing by depositing a copy of them in the United States Mail, postage prepaid, on Friday, January 27, 2017, addressed to Appellant's attorney Benjamin C. Bruner, Esquire by depositing same in the United States Mail with sufficient postage affixed and addressed it to their attorney of record Benjamin C. Bruner, at P.O. Box 61110, Columbia, South Carolina 29260.



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S.C. Bar No: 11765

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[Rcharlesresq@gmail.com](mailto:Rcharlesresq@gmail.com)

Via U.S. Mail

Date: January 27, 2017

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Palmetto Residential Builders, LLC v. Michael and Elizabeth Cox  
Lower Case No.: 2006-CP-28-0433  
Appellate Case No. 2014-002455

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the Respondents' Return to Petition for Rehearing in the above-referenced case and a Proof of Service. Please file the original and return the clocked-in copy to my office in the self-addressed, stamped envelope enclosed. By copy of this letter and enclosures herein, I serve opposing counsel with the same.

Thanking you for your attention in this matter, I am

Sincerely,

R. Charles Richards

RCR/dmy

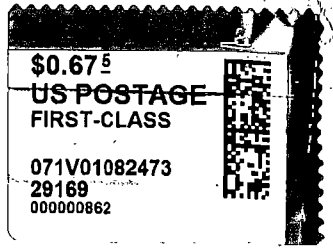
Enclosures

cc via regular mail and e-mail:

Benjamin C. Bruner, Esquire  
Michael & Elizabeth Cox

Richards Law Firm, LLC  
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1635 Sunset Blvd.  
West Columbia, SC 29169

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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