THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court Of Common Pleas

The Honorable George C. James, Jr., Judicial Circuit Court Judge
Case No.: 2012-CP-08-1801

Appellate Case No. 2015-002481

Charles Taylor.....Appellant,

v.

Stop "N' Save, Inc., d/b/a El Cheapo Plus #7 and
Roy Rahal. .....Respondents.

RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING

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ATTORNEYS FOR RESPONDENTS

Pursuant to Rules 221 and 240 of the South Carolina Rules of Civil Procedure, Respondents Stop "N' Save, Inc., d/b/a El Cheapo Plus #7 and Roy Rahal ("Respondents") submit this return to the Petition for Rehearing ("Petition") filed by Appellant Charles Taylor ("Appellant"). The Petition alleges this Court overlooked the following issues in its opinion affirming the circuit court: granting Respondents' summary judgment motion; denying Appellant's motion for sanctions; and denying Appellant's motion to amend his pleadings. (Appellant's Petition p. 1).

ARGUMENT

As an initial matter, Appellant simply reasserts all of his arguments and alleged factual support relating to his claims of error in his Petition. Furthermore, Appellant creates new arguments and / or conspiracy theories to support his Petition. The purpose of a petition for rehearing is not to present points which the losing parties have overlooked or misapprehended, nor is the purpose of a petition for rehearing to have a case tried in the appellate court a second time. *See Kennedy v. S.C. Retirement Sys.*, S.C. Sup. Ct. Order dated July 23, 2001 ("Shearouse Adv. Sh. No. 27 at 61) (refusing to consider appellant's previously unpresented arguments when deciding whether to grant a petition for rehearing). *See also* Jean H. Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina*, 2d Ed. 293 (2002) (citing *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E.2d 234 (1933)). Appellant is using his Petition as a vehicle to assert new arguments and simultaneously reargue his entire case again. This is improper and on this basis alone, the Petition should be denied.

I. Appellant's Assertion Of Error Regarding The Court's Affirmance Of The Grant Of Respondents' Motion For Summary Judgment Is Meritless.

For brevity and judicial efficiency, Respondents will not address each of Appellant's bald assertions of fact and law in his claim of error as to the grant of summary judgment, and Respondents reiterate that Appellant's Petition is replete with new arguments and the same myriad of allegations and conspiracies regarding his claims, none of which are proper for a petition for rehearing. *See Kennedy, supra.*

Moreover, as this Court has stated, "[a] party opposing summary judgment must do more than rely on mere allegations." *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 307, 657 S.E.2d 67, 70 (Ct. App. 2008) (citing *Dyer v. Moss*, 208 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985)). There was no misapprehension of fact or law in this Court's opinion affirming the grant of summary judgment to Respondents. Appellant's argument for rehearing is premised on bald assertions and an incorrect view of the Court's holding. By contending that the Court failed to address his arguments, Appellant ignores the Court's opinion and citations, wherein it reiterated that summary judgment is warranted when the pleadings, depositions, affidavits, and discovery show there is no genuine issue of material fact and that the non-moving party cannot simply rest on the mere allegations or denials contained in his pleadings. *See* Opinion, p. 2. Necessarily embedded within the Court's decision are implicit findings that there was no genuine issue of material fact regarding the elements of Appellant's vicarious liability, gross negligence and intentional infliction of emotional distress claims. Thus, there is no merit to Appellant's dramatic claim that the Court overlooked or ignored the main issues and elements of his causes of action because, as the Court found, as a matter of law the evidence failed to support his claims.

II. Appellant's Assertion Of Error Regarding The Court's Affirmance Of The Denial Of Appellant's Motion For Sanctions Is Meritless.

As to Appellant's claim of error regarding his sanctions motion, Respondents reiterate that Appellant's Petition is replete with new arguments and the same myriad of allegations and conspiracies regarding his claim of sanctions and falsehoods, none of which are proper for a petition for rehearing. *See Kennedy, supra.* As he has done time and time again, Appellant improperly fails to accurately recount the facts, discovery, and testimony in the record, while simultaneously ignoring the standards applicable to a sanctions motion and a review of a sanctions motion. Just as he did below and during initial briefing, Appellant relies on cherry-picked deposition testimony to weave a conspiracy theory of falsehoods and deceptions by the undersigned attorneys. However, as explained in Respondents' brief reviewed by this Court, the testimony was clarified as to the truck rental and the discovery responses claimed as "falsehoods" were supplemented to expressly clarify the transaction. Moreover, as cited by the Court, Appellant's assertion that he does not have to prevail on the merits in order to prevail on a sanctions motion is misguided. *See* S.C. Code Ann. § 15-36-10(C)(1) (providing the court shall determine if a claim or defense is frivolous under the Act at the conclusion of a trial or a case that has been dismissed upon the motion of the prevailing party).

Again, implicit in the Court's ruling and citations therein, the Court did not overlook or misapprehend the facts, but rather reviewed the facts in accordance with its own view of the evidence and necessarily affirmed the circuit court's denial of the motion. Appellant is simply unhappy with the Court's opinion—however, this is not the standard for a petition for rehearing and his arguments regarding the sanctions motion are meritless.

III. Appellant's Assertion Of Error Regarding The Court's Affirmance Of The Denial Of Appellant's Motion To Amend Is Meritless.

Finally, as to Appellant's claim of error regarding his motion to amend his pleadings, the Court did not misapprehend or overlook Appellant's arguments in issuing its opinion. Initially, Appellant fails to address what the Court overlooked or misapprehended regarding this issue, and states only,

> [A]s it relates to the issue of Appellant's motion to amend to add U-Haul (appropriate / applicable / entity) as a Defendant; that in light of all of the foregoing, Appellant petitions this court, most respectfully, to accordingly rehear (reconsider), its finding of futility in relevant section its opinion, as such relates to the issues raised and argued in (*Appellant's Main Brief p. 38 sec 5 of 6 5A – 5J*).

(Appellant's Petition, p. 14).

Again, the purpose of a petition for rehearing is not to have a case tried in the appellate court a second time. *See Kennedy, supra.* Moreover, Rule 221(a) provides the relevant standard and mandates that a petition for rehearing "shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221, SCACR. Appellant's one-sentence paragraph addressing the motion to amend is not sufficient or proper for a petition for rehearing. Moreover, on the merits, the Court properly considered the motion to amend and the futility standard, and determined that the circuit court did not abuse its discretion in denying the motion. As such, Appellant's claim of error, to the extent he's asserted one, is meritless.

CONCLUSION

Appellant has simply not carried his burden of demonstrating that this Court "overlooked or misapprehended his argument." *Kennedy v. S. Carolina Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322 (2001). For the foregoing reasons, this Court should deny Appellant's Petition for Rehearing.

Respectfully submitted,
GALLIVAN WHITE & BOYD, P.A.

By: _____

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PROOF OF SERVICE

I, Laura Sabo, the undersigned employee of Gallivan, White & Boyd, P.A., attorneys for Respondents, hereby certify that on July 11, 2017, I served a copy of RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING, United States Mail, postage prepaid to the following:

Charles Taylor
332 Myrtle Beach Highway
Sumter, SC 29153
Pro Se Appellant

July 11, 2017 Laura Sabo

GWB
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Complex experience for complex matters

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July 11, 2017

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: *Charles Taylor, Appellant v. Stop 'N' Save, Inc., d/b/a El Cheapo Plus #7 and Roy Rahal, Respondents*
Appellate Case No.: 2015-002481
GWB File No.: 8566-1

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of Respondents' Return to Appellant's Petition for Rehearing. Please return a clocked-in copy to our courier.

Should you have any questions, please do not hesitate to contact this office.

With kind regards, I am

Very truly yours,

GALLIVAN, WHITE & BOYD, P.A.

Gray T. Culbreath

GTC/lhs
Enclosures
cc: Charles E. Taylor
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