

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
J. Cordell Maddox, Jr., Circuit Court Judge

Case No.: 2013-CP-23-05102
Appellate Case No. 2015-000593

RECEIVED

AUG 09 2017

SC Court of Appeals

Ronald J. Ferguson,

Appellant

vs.

John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller,
and Michael Stehney, individually and as members of the
Architectural Committee of Mill Creek Estates,

Respondents

and

Millcreek, LP

Defendant.

**MEMO OPPOSING APPELLANT'S REQUEST
FOR REHEARING**

The Respondents, John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller and Michael Stehney, individually and as members of the Architectural Committee of Mill Creek Estates, pray the Court appropriately determine that the appeal was interlocutory and premature. The Appellant appeals the Order of the Circuit Court that granted intervention of the Respondents. Intervention was not only appropriate, but it was necessary since there are multiple cases involving the same issue and the same parties. Specifically, the Restrictive Covenants in a subdivision is the issue in two cases.

Issues Presented.

- I. **Did the Court of Appeals review the conduct of the trial court conduct based on Rule 24 and 5, SCRPC, under the criteria set forth in Davis vs. Jennings and Ex Parte Reichlyn?**

The Respondents, John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller and Michael Stehney, individually and as members of the Architectural Committee of Mill Creek Estates will attempt to address the issues presented by the Appellant.

Again, the appeal was premature as it was an interlocutory issue. The Circuit Court appropriately addressed the issue of intervention and granted it. The Appellant is bringing up numerous issues that are not in the record. The Appellant never mentioned the four part test or asked the Circuit Court to address it. It is not in the record. It was never requested by the Appellant. The issue of Judge Verdin's Order default is completely irrelevant.

The Circuit Court appropriately determined that the parties were already involved in another lawsuit regarding the Appellant's violation of Restrictive Covenants in Millcreek subdivision. The subject matter of this action is to render the Restrictive Covenants invalid.

The Appellant has not even named the appropriate parties for a judgment to be rendered with regard to the Restrictive Covenants. He has not named any property owners but only a shell corporation that was not dissolved after the subdivision was developed.

The Appellant had never put the Respondents or any property owners on notice of this action. The action does not have the appropriate parties and it violates South Carolina Rules of Civil Procedure 12(b)(8) by having multiple actions regarding the same issue. Furthermore, the Defendant named by the Appellant is a party without any standing to fight the lawsuit.

It would be hard to find a reason for the Court not to have granted intervention of the Respondents who are property owners and members of the Architectural Committee of Millcreek subdivision. Intervention was appropriate and necessary.

- II. Did Intervenors failure to disclose their ex parte communications with Master-in-Equity Charles B. Simmons, Jr., regarding this case some two months prior to filing the motion to intervene affect the trial court's consideration of the elements in Davis vs. Jennings which preclude the issuance of an order granting intervention under Ex Parte Reichlyn.**

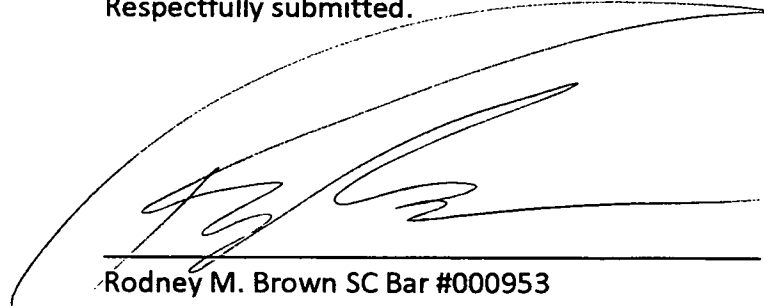
This issue is completely irrelevant to any matter raised in this action. This action was never before The Honorable Charles B. Simmons, Jr. He has not rendered any decisions or Orders in this case. He is overseeing the other three cases involving the Appellant. The argument is baseless, frivolous and irrelevant.

IN CONCLUSION

The Respondents request that the Appellant's motion for rehearing be denied. The Court of Appeals is clearly correct in determining that the appeal from a Motion to Intervene is interlocutory and premature. Furthermore, not only was intervention appropriate, it was necessary to get a party with proper standing to be involved in the case. There are motions presently before the Circuit Court to get this case straightened out with the necessary parties being joined. Those motions were stayed when the Appellant filed this motion for rehearing.

The Respondents respectfully request the Court of Appeals to deny the motion and remit the case to the Court of Common Pleas.

Respectfully submitted.

A large, stylized handwritten signature in black ink, appearing to read 'R. M. Brown', is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Rodney M. Brown SC Bar #000953
Attorney for Respondents, John D. Hatcher,
Rachel Shaluly, James F. Gilbert, Molly A. Miller and
Michael Stehney, individually and as members of the
Architectural Committee of Mill Creek Estates
210 S. Main Street
Fountain Inn, SC 29644
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August 7, 2017

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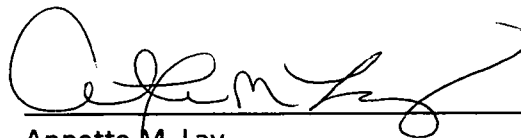
Millcreek, LP

Defendant.

CERTIFICATE OF SERVICE

The undersigned employee of Rodney M. Brown, P.A., counsel for John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller and Michael Stehney, individually and as members of the Architectural committee of Mill Creek Estates, does hereby certify that service of the Memo Opposing Appellant's Request for Rehearing was made upon Appellant by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this 7th day of August, 2017.

Ronald J Ferguson
103 Mill Creek Road
Piedmont SC 29673



Annette M. Lay

RODNEY M. BROWN PA
ATTORNEY AT LAW

August 7, 2017

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AUG 09 2017

SC Court of Appeals

S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Ronald Ferguson vs. Mill Creek LP
Appellate Case Number 2015-000593
Lower Court Case No. 2013-CP-23-05102

Dear Sir or Madam:

Enclosed herein please find an original and six (6) copies of the Memo Opposing Appellant's Request for Rehearing on the above matter.

As always, your time and cooperation is appreciated.

Sincerely,


Rodney M. Brown

aml

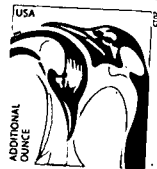
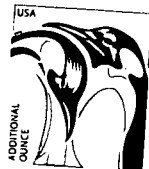
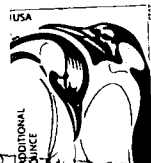
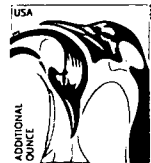
Enclosures

cc: Ronald J. Ferguson

RODNEY M. BROWN, PA

ATTORNEY AT LAW

210 S. Main Street • Fountain Inn, South Carolina 29644



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SC Court of Appeals

