

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, III, Master in Equity

\*\*\*\*\*

Case No. 2007-CP-46-4305

\*\*\*\*\*

SunTrust Mortgage, Inc., ..... Respondent,

v.

Mark Ostendorff, ..... Appellant.

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**RETURN TO PETITION FOR REHEARING**

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Attorney for Respondent

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DEC 06 2012

**SC Court of Appeals**

In his Petition for Rehearing, Appellant Mark Ostendorff attempts to use Rule 224(c)(3), SCACR to submit an affidavit raising new facts that were not addressed by the Master-In-Equity, S. Judge Jackson Kimball, III, at the hearing on the motion for summary judgment held on December 10, 2009. However, matters not raised in the lower court cannot be relied on in the appellate court and should not be considered by, the reviewing court. Atlantic Coast Builders & Contractors, LLC v. Lewis, 396 S.C. 479, 722 S.E.2d 213 (S.C. 2011); See Wilson v. Clary, 212 S.C. 250, 47 S.E.2d 618 (S.C. 1948). Therefore, questions and facts not preserved for appeal and raised by appellant for the first time in his Petition for Rehearing should not be considered on review by this Court. Moreover, because the Record on Appeal has been filed, Rule 224(c)(3), SCACR does not allow the record to be supplemented by an affidavit attached to a motion.

#### CONCLUSION

Consequently, for the reasons above, this Court should not reconsider and rehear this matter and should affirm the decision of the Master-In-Equity.

December 5, 2012.

Respectfully Submitted,

TATUM LAW FIRM, PLLC



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**CERTIFICATE OF SERVICE**

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I, Brian Steed Tatum, attorney at the Tatum Law Firm, PLLC, do hereby certify that I have served a copy of the **RETURN TO PETITION FOR REHEARING**, by causing a copy of the same to be deposited in the United States mail, with postage prepaid and addressed as follows:

Mark Ostendorff  
137 King Street  
Central, SC 29630



Brian Steed Tatum

Charlotte, North Carolina  
December 5, 2012

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