

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable J. C. Nicholson, Jr., Circuit Court Judge

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AUG 21 2018

SC Court of Appeals

Appellate Case No. 2018-000653

Common Pleas Case No.: 2013-CP-10-1877

The RMUE through its General Officers Barbara B. Clark, Warren E. Hatcher, Cassie Deaton, Daniel Green, Powell Hampton, Amos Hatcher, Bobby Keaton, James Moseley and Willie B. Oliver.....Respondents

vs.

Herman Bolds, Richard Brown, Cecil Parker, Theodore Miller, Carl Miller, Joan S. Roper, Martha Mathews, Thomasina G. Walker, Marilyn S. Washington, Jaree R. Stanley, Audrey Wilder, Derrick Lucas, Willie Parker, Jr., James Cromwell, James A. Roper, III, Elizabeth R. Parker, Jacqueline R. Miller and Payne Church.....Appellants

RESPONDENTS' MOTION TO DISMISS APPEAL

Respondents hereby move for an Order of this Court dismissing the instant appeal on the grounds of res judicata and lack of jurisdiction. Respondents submit that the issues which Appellants seek to litigate were decided, or waived, in Appellants' previous appeal to this Court, and that this Court's decision in the previous appeal is final and not subject to further review.

This case has been pending since 2013, although the controversy among the parties has been going on much longer, and has been much litigated in the Courts. The present case (and the

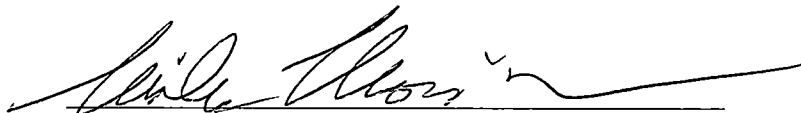
prior appeal) arose out of an Order of Judge Nicholson which, ironically, actually granted Appellants' Motion to Enforce Settlement Agreement. After intensive mediation, the parties had reached a settlement of the case, which Appellants moved to enforce, due to the Respondents' failure to formally ratify the agreement. Judge Nicholson granted Appellants' motion, and Appellants appealed that Order. The case was decided by this Court and Judge Nicholson's Order was affirmed. *See RMUE et al vs. Bolds, et al*, unpublished opinion 2018-UP-082. Respondent attaches Judge Nicholson's Order and this Court's opinion to this Motion.

The doctrine of res judicata originated in the public interest of bringing an end to litigation. Res judicata precludes the parties and their privies from relitigating an issue decided in one case in a subsequent case. *See eg. Price vs. City of Georgetown*, 297 S.C. 185, 375 S.E.2d 335 (Ct. App. 1985). Pursuant to South Carolina Appellate Court Rule 221(a): "Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court. A petition for rehearing shall be in accordance with Rule 240 and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. No petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR." In order to raise an issue on appeal, a party must timely raise the issue below. Lack of subject matter jurisdiction cannot be waived and can be raised at any time and in any forum. *See eg. Bardeen Properties vs. Eidolon Corporation*, 326 S.C. 166, 485 S.E.2d 371 (1997)

In the present case, Appellants simply seek to continue to litigate matters which were settled by mediation, ruled upon by Judge Nicholson and then affirmed by this Court. Appellants seem to take the position that the settlement agreement did not involve all issues and that Judge Nicholson reserved some issues for further litigation. Nothing in the settlement agreement, nor

Judge Nicholson's Order suggests that the issues Appellants now raise were reserved for later. Nothing in the record prior to the entry of this Court's prior decision reflect the issues which Appellants now raise. Appellants raise their new issues outside the time for a motion for reconsideration by this Court and outside the time for reconsideration by the Circuit Court. Being outside such time limits, neither the Circuit Court, nor even this Court, have the jurisdiction to consider new issues. This argument is made with all due respect to both this Court and to Judge Nicholson. Appellants cannot relitigate matters finally decided and, assuming they did not raise these issues, they were waived and not preserved for review in the prior appeal. For these reasons, this Court should dismiss the current appeal and, hopefully, bring an end to this long and protracted litigation.

Respectfully submitted this 17 day of AUGUST, 2018.



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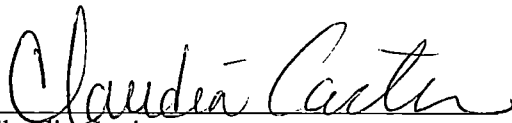
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PROOF OF SERVICE

I hereby certify that I have served a copy of Respondents' Motion for Extension of time to file Respondents' Initial brief and Designation of Matter, and Respondent's Motion to Dismiss Appeal by depositing a copy of it in the United States Mail, postage prepaid, on August 17th, 2018, to its attorneys of record, addressed to:

Eduardo K. Curry, Esquire
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North Charleston, South Carolina 29423



Claudia Cartier
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August 17, 2018

Clerk of Court- South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: RMU vs. Hermans Bolds et al
Appellate Case No.: 2018-000653

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SC Court of Appeals

Dear Clerk:

Enclosed please find for filing, two original and two (7) copies of each Motion for Extension of time to file Respondents' Initial brief and Designation of Matter, and Respondent's Motion to Dismiss Appeal the Proof of Service and two checks in the amount of Twenty-Five (\$25.00) Dollars each, for your filing fee in regards to the above matter.

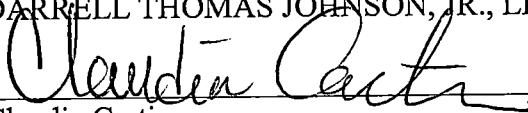
Please file the original and return a clocked copy to the in the return envelope provided.

Should you have any questions or concerns, please do not hesitate to contact me.

Thank you, and

With kindest regards,

LAW OFFICE OF
DARRELL THOMAS JOHNSON, JR., LLC



Claudia Cartier
Paralegal

DTJ/lme/enc
cc: Eduardo C. Curry, Esquire

✓

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