

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2015-CP-26-8179
Appellate Case No. 2016-002175

RECEIVED
DEC 20 2018
SC Court of Appeals

Robert DeCiero,.....Appellant,

v.

Horry County, State of South Carolina,.....Respondent.

**PETITION FOR REHEARING AND
PETITION FOR REHEARING *EN BANC***

Pursuant to Rules 219 and 221, SCACR, Respondent respectfully petitions this Court for rehearing *en banc* of its December 5, 2018, decision reversing the decision of the Circuit Court under Rule 12(b)(6), SCRCR and remanding the case. In the alternative, Respondent respectfully petitions the Court for rehearing.

The points overlooked or misapprehended by the three-judge panel in its decision without hearing oral argument are:

- (1) The divided three-judge panel of the Court (“the Panel”) overlooked the insufficiency of Appellant’s Complaint under Rule 8(a) and misapprehended the insufficiency of his failure to plead

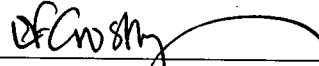
facts to establish a cause of action or make any prayer for relief, where the circuit court found no short plain statement of the grounds or facts showing Plaintiff is entitled to relief, no causes of action, and no prayer for relief. The Panel made a specific finding Appellant did not identify a cause of action, but excused it by finding he alleged elements necessary for a mandamus case, where mandamus was not pled or otherwise mentioned in Appellant's Complaint;

(2) The Panel misapprehended that neither of the three ordinances cited by Appellant in his Complaint restrict the number of occupants allowed in homes in his zoning district, as found by the circuit court. The Panel also mistakenly found the relevant ordinances do not appear in the record. The Panel overlooked Appellant's Complaint, which includes the text of two statutes he cites, and his reference to a statutory zoning district subsection, and overlooked the Affidavit in the Record of Attorney Janet Carter, Horry County Planning Director, defining the statutory subsection and stating there is *no* ordinance in Horry County addresses short term rental occupancy. The Panel missed that the "relevant ordinances" are either a) in the record as cited by Appellant or b) not in the record because they do not exist. To the extent either party cited other ordinances, this was properly cited to, not printed verbatim in a record.

(3) The Panel misapprehended the facts pled when it concluded Appellant pled facts to establish he suffered a concrete and particularized injury in fact to support standing.

Consideration by the full Court of Appeals is necessary to secure uniformity of the Court's decisions and to address a matter of exceptional importance; to wit, a county or political subdivision's zoning decisions. In the alternative, in the event the Court declines to rehear the appeal *en banc*, Respondent respectfully requests the Panel rehear and reconsider the matters identified herein as overlooked or misapprehended.

Respectfully submitted,



Elise F. Crosby #7077
CROSBY LAW FIRM, LLC
405 Dozier Street
Georgetown, South Carolina 29440
(843) 546-3103
Attorney for Respondent

Date: December 19, 2018
Georgetown, South Carolina

RECEIVED
DEC 20 2018
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2015-CP-26-8179
Appellate Case No. 2016-002175

RECEIVED

DEC 20 2018

SC Court of Appeals

Roberts DeCiero,Appellant,

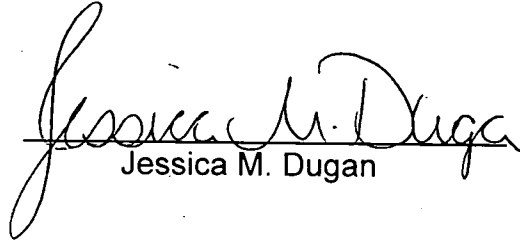
v.

Horry County, State of South Carolina,Respondent.

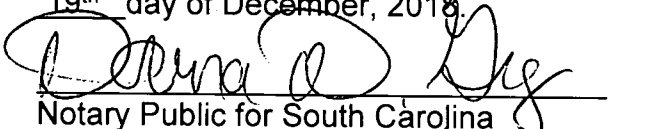
PROOF OF SERVICE

I, Jessica M. Dugan do herby certify that I am an employee of THE CROSBY LAW FIRM, LLC, attorney for the Respondent in the above-referenced action, do hereby certify that I did this 19th day of December, by first class mail, postage prepaid, serve a copy of the **Petition for Rehearing and Petition for Rehearing *En Banc* and Respondent's Memorandum in Support of Petition for Rehearing and Petition for Rehearing *En Banc*** to the following Attorney, addressed as follows:

Thomas C. Brittain, Esquire
The Brittain Law Firm, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577


Jessica M. Dugan

Sworn to before me this
19th day of December, 2018.


Notary Public for South Carolina
My Commission Expires: 1/23/22



JOE M. CROSBY
jcrosby@crosbyfirm.com

CROSBY LAW FIRM, LLC
405 DOZIER STREET
GEORGETOWN, S. C. 29440
TEL: (843) 546-3103 FAX: (843) 546-0747
www.crosbyfirm.com

ELISE F. CROSBY*
ecrosby@crosbyfirm.com
*Certified Family Court Mediator

December 19, 2018

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

RECEIVED

DEC 20 2018

RE: *Robert DeCiero vs. Horry County, State of South Carolina*
Appellate Case No.: 2016-002175

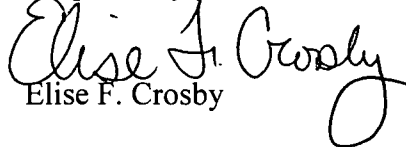
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find for filing in regards to the above-referenced case the original and six (6) copies of the Petition for Rehearing and Petition for Rehearing *En Banc* and Respondent's Memorandum in Support of Petition for Rehearing and Petition for Rehearing *En Banc*, along with Proof of Service.

With kindest regards,

Respectfully yours,


Elise F. Crosby

EFC/jmd
Enc

cc: Thomas C. Brittain, Esquire ✓