

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APR 22 2019

APPEAL FROM CHARLESTON COUNTY S.C. SUPREME COURT  
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-In-Equity

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Appellate Case No. 2018-000621  
Lower Court Case No. 2105-CP-10-00939

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Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Robert Blake Brisbane and Mildred Chapman, Plaintiffs,

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton, James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton, Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson, Jr., James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis Robertson, Dora Robinson, Jamie Williams, Desiree Williams, Mark Williams, Grace Ettison, Dannion Jordan, Ronald Williams, William Drayton, Keith Drayton, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Marie Brown, Starcia Stewart, James L. Brown, Jr., Glen Brown, Ernestine Brown, Veronica Brown, Calvin Brown, Jr., Harold Brown, Jr., Mary Anne Brisbane, Harvey Brisbane, Jr., Danny Bolds, Raymond Bolds, Michael Bolds, David Bolds, Carolyn Logan, Mary Jane Brown, Miriam Grant a/k/a Muriel Grant, Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata O'Kieffe, Martha Lions, Margie Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell, Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia Brisbane, Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary Brisbane, Carl Brisbane, Carlotta Bickham, George Brisbane, Elias Brisbane, Maxine Brisbane, Evan Brisbane, Jesse Simmons, Jr., Odell White, Christina Hartfield, Sarah Mitchell, Arthur Albert Mitchell, Suzanne Mitchell, Olethia Gadsen, Wand Mitchell Harley, Arthur Mitchell, Jr., Benjamin Mitchell, Barbara Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E. Nelson, Carolyn Singleton, LaMotta Nelson, Rodney Nelson, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie Richardson, Delores Richardson, William Richardson, Robert Heyward, Katina Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane, Kermit Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton, Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, insane persons, incompetents and persons in the military service of The United States of

America, being fictitious names designating as a class any unknown person or persons who may be an heir, distributee, devisee, legatee, widower, widow, assign, administrator, executor, creditor, successor, personal representative, issue or alienee of James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanna Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Albertha Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James LeRoy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mithcell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Brisbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manigault, Steven Christopher Brown and Rosetta Brisbane all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, Defendants.

And Associated Developers, Inc. and Nordic Group, LLC, Intervenors,

Of which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

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### **MOTION TO STRIKE APPELLANT'S PETITION FOR REHEARING**

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Respondent respectfully moves for an Order striking Appellant's Petition for Rehearing filed on April 18, 2019. As Respondent demonstrates below, Appellant is not permitted to seek reconsideration of this Court's Order dismissing the writ of certiorari as improvidently granted.

Rule 221(a), SCACR, instructs that "No petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR." The same rule applies when a previously granted writ of certiorari is subsequently dismissed as improvidently granted, which is precisely what happened here. *See Hollins v. Wal-Mart Stores, Inc.*, 392 S.C. 313, 313, 709 S.E.2d 625, 626 (2011) (holding "no petition for rehearing is permitted from a dismissal of a writ of certiorari as improvidently granted.") *Id.* at 314, 709 S.E.2d at 625. This Court explained,

“For purposes of Rule 221(a), a dismissal of a writ of certiorari as improvidently granted is equivalent to the denial of a petition for a writ of certiorari since both dispositions indicate this Court has determined there is no need to discuss or further review the merits of the case.”) (emphasis added).

In *Stogsdill v. S.C. HHS*, 415 S.C. 568, 784 S.E. 2d 669 (2016), this Court echoed its instruction in *Hollins* and reminded the bar that because the decision to dismiss a writ as improvidently granted is not subject to any petition for rehearing, the remittitur is properly sent when the opinion is filed. Again, that is what happened here. On April 3, 2019—the same day this Court dismissed the writ in the instant case—it also issued the remittitur to the trial court. This act represents the final disposition of the appeal precludes the subsequent filing of Appellant’s Petition for Rehearing. “The sending of the remittitur ended appellate jurisdiction over this case, and no further motions will be entertained after the remittitur is sent.” *Id.*

Appellant acknowledges, but ignores, this Court’s decision in *Hollins*, seeking to avoid the finality of its holding under the mistaken belief that Appellant should be allowed to seek reconsideration because of a single dissent to the order dismissing the writ. This argument holds no water. Rule 242(a) provides that at least two Justices are required to issue a writ of certiorari in the first place. Considering the vote of a single Justice would not permit the issuance of a writ in the first place, logic dictates that a single dissent from an order dismissing the writ does not afford Appellant the right to seek reconsideration. As Chief Judge Sanders wrote, “Appellate courts recognize—or at least they should recognize—an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter.” *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987).

CONCLUSION

Respondent respectfully requests that this Court adhere to its prior holdings in *Hollins* and *Stogsdill*, which are precisely on point, and issue an Order striking Appellant's improperly filed Petition for Rehearing and providing that Respondent is not required to respond thereto.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

By: 

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Attorneys for Respondent Associated  
Developers, Inc.

April 19, 2019  
Charleston, South Carolina

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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-In-Equity

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Appellate Case No. 2016-001298  
Lower Court Case No. 2015-CP-10-00939

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Of which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

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**AFFIDAVIT OF SERVICE**

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I, Caroline Boyce, an employee of Thurmond Kirchner & Timbes, P.A., attorney for the Respondents, do hereby certify that I have on this date, served a true and correct copy of the Respondent's Motion to Strike Appellant's Petition for Rehearing via US Mail to the following counsel of record:

**ATTORNEYS FOR THE APPELLANT:**

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**-AND-**

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*Caroline Boyce*

Caroline Boyce  
Paralegal to Michael A. Timbes

April 19, 2019  
Charleston, South Carolina

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