

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM Horry County  
Court of Common Pleas

The Honorable Larry B. Hyman, Jr.  
Circuit Court Judge

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DEC - 5 2019

S.C. SUPREME COURT

Opinion No. 27930  
Heard September 24, 2019 – Filed November 20, 2019  
Appellate Case No. 2018-001910

SKYDIVE MYRTLE BEACH, INC. ....Petitioner

v.

Horry County.....Respondent

**PETITION FOR REHEARING**

Robert B. Varnado (S.C. Bar # 0007850)  
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*Attorneys for Petitioner*

Other Counsel of Record:

Michael W. Battle, Esquire  
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Conway, SC 29528  
*Attorneys for Respondent*

Pursuant to the Decision mailed November 20, 2019, the Petitioner Skydive Myrtle Beach, Inc. (“SDMB”) respectfully files the following *Petition for Rehearing* pursuant to Rules 221(a) and 240 of the South Carolina Appellate Court Rules.

### ARGUMENT

At the hearing of September 24, 2019, SDMB’s counsel requested that the Supreme Court find its appeal was not moot and then remand the case to the South Carolina Court of Appeals. While this Court agreed with SDMB on the issue of mootness, it nevertheless determined (in Section III of the Opinion) that the execution of the Space Use Permit terminated the May 2012 Agreement. Thus, the Supreme Court found that SDMB had no right to occupy the bird hangar.

While this conclusion would at first blush seem to be a simple way to solve the “gordian knot,” SDMB believes the Court should reconsider it for three reasons.

First, SDMB made five (5) lengthy arguments in its *Supplemental Brief* to the Court, as well as its *Final Appeal Brief* and *Final Reply Brief* to the Court of Appeals which were not considered. One of these arguments [Argument IV in the *Final Appeal Brief*] is Space Use Permit was: (1) an illegal contract pursuant to violations of the Anti-Head Act, 49 U.S.C. § 40116; (2) therefore unenforceable pursuant to *Berkebile v. Outen*, 311 S.C. 50, 53, 426 S.E.2d 760, 762 n. 2 (1993); (3) was not a lease agreement, pursuant to *Robert Harmon and Bore, Inc., v. Jenkins*, 282 S.C. 189, 193-94, 318 S.E.2d. 371, 374 (Ct. App. 1984); and, finally, (4) was vague and ambiguous, and consequently not a novation, under *Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 73, 620 S.E.2d 86, 92 (Ct. App. 2005). [R. pp. 390-400]. None of the arguments is considered; in fact, Section III lacks any citation to any sort of law at all. If the Court wishes to provide the final word to the parties, then SDMB believes the Supreme Court owes it an analysis of these arguments.

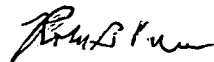
Second, as written, Section III operates a *res judicata* or collateral estoppel for SDMB's ongoing litigation in the companion case of 2014-CP-26-1193. SDMB wants to make the same arguments that the Supreme Court does not consider (i.e., that the Space Use Permit was illegal). However, the circuit court will say "well, the Supreme Court said the Space Use Permit was just hunky-dory." SDMB does not think that the Court *intends* for the Opinion to have a preclusive effect on SDMB's continuing litigation. But a barebones finding the Space Use Permit is fine by itself – as it can and will be argued that the Supreme Court apparently says in Section III – will have *precisely* that effect on the circuit court.

Third, Horry County employee Randy Haldi stated at both the Magistrate Court trial and before the Circuit Court that – in the eyes of Horry County – the Space Use Permit was "temporary" and used as a "bridging lease" but that the powers that be "forgot about it." This shows that the Space Use Permit was not intended by any party to be anything other than a temporary document – not something which took away SDMB's rights.

#### CONCLUSION

For these reasons, SDMB respectfully asks for rehearing, and for this Court to either reconsider its decision in Section III of the Opinion, or to remove it and remand the case back to the South Carolina Court of Appeals.

Respectfully submitted,



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S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Larry B. Hyman, Jr.  
Circuit Court Judge

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Opinion No. 5537  
Heard March 5, 2018 – Filed July 11, 2018  
Petition for Rehearing Denied September 20, 2018  
818 S.E.2d 224

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SKYDIVE MYRTLE BEACH, INC. ....Petitioner

v.

HORRY COUNTY.....Respondent

Appellate Case No. 2015-001868

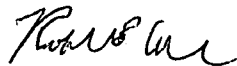
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**PROOF OF SERVICE**

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The undersigned attorney for Petitioner hereby certifies that a true copy of the *Petition for Rehearing* in the above-referenced matter has been served on all counsel of record by sending a copy via U.S. Mail on this the 4<sup>th</sup> day of December 2019, to the following:

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December 4, 2019