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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No.: 2019-001894

H. Marshall Hoyler,Petitioner,

v.

The State of South Carolina, Merry Land Properties, LLC,
Sherbert Living Trust, Supan Living Trust, Elizabeth R. Levin,
Edward McCray Wise Revoc. Living Trust, Carol Ann DeVries
Wise Revoc. Living Trust, Amelie Cromer, Philip Cromer, Robert Chiavello,
Tocharoen Living Trust, Helen M. Olesak, Lesley Anne Glick a/k/a Lesley Ann Glick,
Shirley G. Lackey, Patricia Banfield, Bertrand Cooper, Jr.,
NHP SH South Carolina I, LLC n/k/a CCP Bayview 7176 LLC,
Oyster Cove Homeowners Ass., Shirley Anne Moyer, Barry D. Malphrus,
Garry D. Malphrus, Donnie Malphrus, Rita Brown, Houston Family Partnership,
Joan Taylor Trustee, Michael Bull, Nancy Bull, Marny H. VonHarten,
Dianne M. Donaldson, Brian R. Evans, Stephen Durbin, Valerie Durbin,
Phillip Marti, Jane Marti, Michael Woodworth, Georgiana M. Cooke,
Daniel B. Walsh Janet E. Walsh,Defendants,

Of which The State of South Carolina and
Merry Land Properties, LLC are the, Respondents.

**RETURN
TO MOTION FOR LEAVE TO FILE
BRIEF OF *AMICUS CURIAE* BEAUFORT RIVER DEVELOPMENT, LLC**

Jefferson D. Griffith, III, S.C. Bar #: 2299,
Richard L. Whitt, S.C. Bar #: 62895
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Attorneys for Petitioner.

Other Counsel of Record:

Mary Duncan Shahid,
205 King Street, Suite 400
Charleston, South Carolina 29401
Counsel for Respondent, Merry Land Properties, LLC

J. Emory Smith, Jr.
1000 Assembly Street
Columbia, South Carolina 29201
Counsel for Respondent, State of South Carolina

INTRODUCTION

Beaufort River Development, LLC, (hereinafter as, “Beaufort River”), filed and served its Motion for Leave to File *Amicus Curiae* Brief on December 20, 2019 (hereinafter as, “*Amicus Curiae*”). Beaufort River’s *Amicus Curiae* contained a **material omission** that should have been disclosed to this Court. Accordingly, Petitioner provides the details of that material omission in the Return that follows.

ARGUMENT IN RETURN

Petitioner’s Return is submitted because of the extraordinary circumstances of Beaufort River’s *Amicus Curiae*. Namely, Beaufort River has failed to disclose to this Court that Beaufort River was previously a Party to this litigation, with full rights of participation. Almost ten years ago, **Beaufort River voluntarily chose to relinquish its status as a Party in this litigation.**

Factually, Beaufort River asked the Lower Court to dismiss Beaufort River as an Intervenor/Party on March 25, 2010, (copy of Stipulation of Dismissal attached hereto as Exhibit “A”).

It would be improper for Beaufort River to seek and receive a dismissal from the Lower Court in this litigation and then to seek to return as a Party after an almost ten-year period of litigation. The problem with Beaufort River’s procedural posture is exacerbated by the Representatives of Beaufort River’s apparent failure to inform its putative *Amicus Curiae* counsel that Beaufort River was a Party to this litigation until successfully seeking dismissal from this litigation, in 2010.

CONCLUSION

Based on the foregoing, Beaufort River's prior status as a Party in this litigation, and Beaufort River's material omission of that fact, this Court should deny Beaufort River's *Amicus Curiae* request.

WHITT LAW FIRM, LLC



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(803) 995-7719

As Counsel for Petitioner.

December 27, 2019
Irmo, South Carolina



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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

H. MARSHALL HOYLER,
Plaintiff,

Case No. 07-CP-07-3212

vs.

THE STATE OF SOUTH CAROLINA,
Defendants.

**STIPULATION OF DISMISSAL AS TO
DEFENDANT BEAUFORT RIVER
DEVELOPMENT**

MERRY LAND PROPERTIES, LLC
AND BEAUFORT RIVER DEVELOPMENT,
LLC
Defendants/Intervenors.

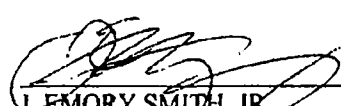
Pursuant to South Carolina Rule of Civil Procedure 41(a)(1)(B), it is hereby stipulated by and through the undersigned counsel that the Defendant/Intervenor Beaufort River Development hereby dismisses its claims as a Defendant/Intervenor and that all claims made by Beaufort River Development shall be and hereby are dismissed without prejudice.

This Stipulation shall not affect in any way nor shall it be construed to dismiss any other party's claims in this action.

WE SO STIPULATE:

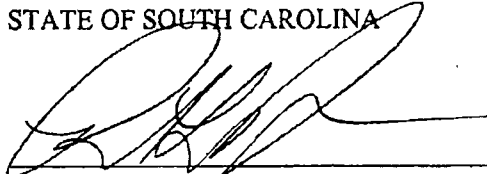


JEFFERSON D. GRIFFITH, III
ATTORNEYS FOR THE PLAINTIFF

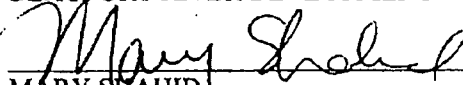


LEMOREY SMITH, JR.
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STATE OF SOUTH CAROLINA

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RICHARD L. TAPP, JR.
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MARY SHAHID
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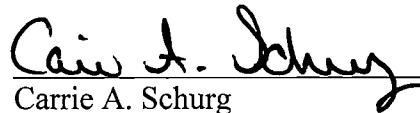
AFFIDAVIT OF SERVICE

I, Carrie A. Schurg, an employee of Whitt Law Firm, LLC, certify that I have served copies of the Return to Motion for Leave to File Brief of *Amicus Curiae* Beaufort River Development, LLC and this Affidavit of Service, via, U.S. Mail on December 27, 2019, as indicated on the following page.

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Carrie A. Schurg

December 27, 2019
Irmo, South Carolina