

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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

Appellate Case No. 2019-001894

Case No. 2007-CP-07-03212

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'n; 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 Woodsworth;
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.

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE
BRIEF OF *AMICUS CURIAE* BEAUFORT RIVER DEVELOPMENT, LLC
IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Pursuant to Rules 213 and 240(f), SCACR, Beaufort River Development, LLC respectfully submits this reply in support of its motion for leave to file an *amicus curiae* brief in in opposition to the petition for a writ of certiorari.

Argument

Hoyler's sole argument against Beaufort River Development's request to file an *amicus* brief is that, because Beaufort River Development was a brought in as a defendant in the trial court and then dismissed without prejudice almost a decade ago, Beaufort River Development cannot file an *amicus* brief now. He is wrong. Nothing in Rule 213 prohibits Beaufort River Development from filing this brief.

Rule 213 permits the filing of a "brief of an *amicus curiae*." Rule 213, SCACR. An *amicus curiae* is a "person who *is not* a party to a lawsuit." *Black's Law Dictionary* 98 (9th ed. 2009) (emphasis added). Beaufort River Development *is not* a party. Thus, under the plain language of Rule 213, Beaufort River Development is eligible to file an *amicus* brief. See *Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 107–08, 727 S.E.2d 407, 416 (2012) (explaining that courts must give effect to the plain language of rules of procedure).

The fact that Beaufort River Development *was* briefly a party a decade ago does not matter. As soon as it was dismissed without prejudice and with Hoyler's consent, Beaufort River Development reverted to a nonparty. That Beaufort River Development could have remained a party did not preclude it from becoming a nonparty again. And as a nonparty, Beaufort River Development faced certain risks that all nonparties face. For example, Hoyler could have asserted claims at any point

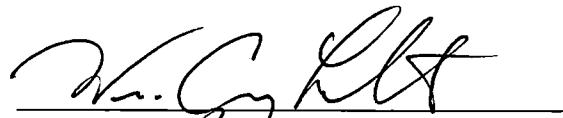
over the last decade in a different lawsuit against Beaufort River Development, either had Beaufort River Development proceeded with building its dock or had he wanted to seek preemptive declaratory relief that Beaufort River Development's permit declared invalid. Even now, as a nonparty not bound by any judgment here, if Hoyler did prevail in this case and was held to have title to the marsh, he could then bring a claim against Beaufort River Development.

Tellingly, Hoyler cites no case law (from this or any other jurisdiction) that prohibited someone in Beaufort River Development's position from filing an *amicus* brief. Without any case law supporting his position and the plain language of Rule 213 against him, Hoyler's opposition fails.

Conclusion

The motion for leave to file an *amicus curiae* brief should be granted.

Respectfully Submitted,



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December 31, 2019
Columbia, SC

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CERTIFICATE OF SERVICE

This Motion for Leave to File Brief of *Amicus Curiae* was served on all counsel
of record via first class U.S. Mail, postage prepaid, on December 31, 2019:

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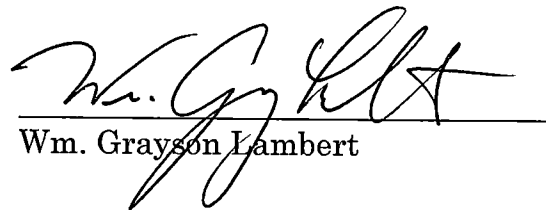
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