



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

September 22, 2020

Ms. Patricia L. Lutz
51 Bear Creek Rd.
Little Mountain, SC 29075

Re: Patricia Lutz v. Eastpoint Properties, LLC
Appellate Case No. 2020-001224

Dear Ms. Lutz:

Since we have now received the \$250 fee required by Rule 242(c), South Carolina Appellate Court Rules (SCACR), I am returning your money order in the amount of \$50.

You have not filed a petition for a writ of certiorari which complies with the requirements of Rule 242(d), SCACR. Therefore, you will need to serve and file a petition which complies with this rule within fifteen (15) days of the date of this letter. Please be sure to include a proof service showing that a copy of the petition for a writ of certiorari has been served on opposing counsel.¹

¹ In response to your letter dated September 9, 2020, please note that sending a document by fax is not a permissible method of serving the document on opposing counsel or a party under either Rule 262(b), SCACR, or this Court's order regarding the Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020)(available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2505>).

For your convenience, I have enclosed a copy of Rule 242, SCACR,² along with Form 18 which provides an example of the suggested format for a petition for a writ of certiorari under Rule 242.

Very truly yours,



CLERK

Enclosures

Money Order
Copy of Rule 242, SCACR
Copy of Form 18

cc: Taylor Anthony Peace, Esquire
M. Alan Peace, Esquire

² Please note that under section (e) this Court's order regarding the Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020) you do not need to file an appendix. Instead, "the necessary documents to comprise the Appendix will be obtained from the electronic records of the case before the Court of Appeals."

**RULE 242
CERTIORARI TO THE COURT OF APPEALS**

(a) Authority of the Supreme Court. The Supreme Court, or any two (2) justices thereof, may in its discretion, on motion of any party to the case or on its own motion, issue a writ of certiorari to review a final decision of the Court of Appeals.

(b) Considerations Governing Review. A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

(c) Time for Petitioning and Filing Fee. A decision of the Court of Appeals is not final for the purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been acted on by the Court of Appeals. A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals. An original and six (6) copies of the petition shall be filed with the Supreme Court. The copies filed with the Supreme Court shall be accompanied by the filing fee set by order of the Supreme Court. [1] No filing fee shall be required in criminal cases or petitions filed by the State of South Carolina or its agencies or departments.

(d) Content of Petition. The petition for writ of certiorari shall contain the following:

- (1) Certification by counsel for petitioner that a petition for rehearing or reinstatement was made and finally ruled on by the Court of Appeals.
- (2) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court. A question presented will be deemed to include every subsidiary question fairly comprised therein.
- (3) A concise statement of the case, containing the facts material to the consideration of the questions presented.
- (4) A direct and concise argument in support of the petition. The argument on each question shall include citation of authority and specific reference to pertinent portions of the Record on Appeal. Failure of a petitioner to present with accuracy, brevity, and clarity the information and arguments that are essential to a ready and adequate understanding of the points requiring consideration will

be a sufficient reason for denying the petition. The total length of a petition shall not exceed twenty-five (25) pages.

(e) Appendix. At the same time the petition is filed, the petitioner shall also file two (2) copies of the Appendix with the Clerk of the Supreme Court. As provided by Rule 267(d), one copy filed with the Supreme Court shall be filed unbound. The Appendix shall include the following:

- (1) A copy of the Record on Appeal and brief(s), or in post-conviction relief matters, a copy of the Appendix, petition for writ of certiorari, return, reply and any briefs filed under Rule 243, SCACR.
- (2) If the matter was dismissed by the Court of Appeals for procedural or other reasons, the Appendix shall include any documents relevant to the dismissal including any motion to dismiss and any return or reply that may have been filed.
- (3) A copy of the decision of the Court of Appeals on which certiorari is sought.
- (4) A copy of the petition for rehearing or reinstatement filed in the Court of Appeals and the Court's ruling on that petition.

If the Appendix contains any of the documents specified in (2) above, a copy of the Appendix must be served on the opposing counsel and proof of service of the Appendix must be filed when the petition for writ of certiorari is filed.

(f) Return to Petition. Within thirty (30) days after service of the petition, respondent shall serve a copy of his return on opposing counsel, and shall file with the Clerk of the Supreme Court one original and six (6) copies of his return and proof of service showing that the return has been served. The return shall include an argument on each question and may include a counter-statement of the case and of the questions presented for review. The total length of a return shall not exceed twenty-five (25) pages. If review is being sought regarding a post-conviction relief case, the respondent need not file a return unless requested by the Supreme Court.

(g) Reply. The petitioner shall have ten (10) days from the date of service of the return to file with the Clerk of the Supreme Court an original and six (6) copies of a reply and proof of service showing that the reply has been served. The total length of the reply shall not exceed fifteen (15) pages.

(h) Consolidation. Where several cases that involve identical or closely related questions are sought to be reviewed on certiorari, the filing of a single petition for writ of certiorari shall suffice to cover all the cases.

(i) Consideration by the Supreme Court. The petition will be considered by the Supreme Court without oral argument. The petition may be granted or denied on any question presented. If the petition is granted, the Clerk shall notify each party or his attorney, specifying the question or questions to be considered, and the parties shall prepare briefs addressing the question(s). Petitioner shall have thirty (30) days from the date the petition is granted to serve a copy of his brief on all parties to the appeal, and file with the Clerk of the Supreme Court fifteen (15) copies of his brief, along with proof of service. At the time he files his brief, petitioner shall also file thirteen (13) additional copies of the Appendix. Within thirty (30) days after service of petitioner's brief, respondent shall serve a copy of his brief on all parties to the appeal, and file with the Clerk of the Supreme Court fifteen (15) copies of his brief, along with proof of service. Petitioner may file a reply brief. If a reply brief is prepared, petitioner shall, within ten (10) days after service of respondent's brief, serve a copy of his reply brief on all parties to the appeal and file with the Clerk of the Supreme Court fifteen (15) copies of his reply brief, along with proof of service. The briefs shall, to the extent possible, comply with the requirements of Rule 208(b). Oral argument shall not be permitted unless ordered by the Supreme Court.

(j) Costs When a Writ of Certiorari Has Been Granted.

(1) To Whom Awarded. Unless otherwise ordered by the Supreme Court or agreed to by the parties, costs shall be assessed against the appellant if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals. When the decision of the Supreme Court has the effect of reversing the judgment of the lower court or tribunal which was on appeal, costs shall be assessed against the respondent before the Court of Appeals. When the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court.

(2) Costs Allowed. The party entitled to recover costs may recover all those costs specified in Rule 222(b), to include the attorney's fee provided by that rule. Additionally, the party may, to the extent the party actually incurred these costs, recover: (1) the filing fee paid under Rule 242(c); (2) the cost of printing the Appendix under Rule 242(e) and (i); and (3) the cost of printing the party's brief(s) under Rule 242(i). The party may also recover an additional attorney's fee in an amount which shall be set by order of the Supreme Court. [2] The allowance of additional costs will generally not be allowed except in the most extraordinary circumstances.

(3) Costs for Printing Irrelevant Matter. A party who has unjustifiably designated irrelevant matter to be included in the Record on Appeal shall not be entitled to tax the cost of printing this matter in the Record on Appeal or in the Appendix. Further, a party not otherwise entitled to costs under this Rule shall be entitled to collect the cost the party incurred for printing irrelevant matter in the Record on Appeal and/or the Appendix which another party unjustifiably designated to be included in the Record on Appeal.

(4) Motion for Costs. A party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule. The motion shall comply with Rule 240. If costs are being sought under (2) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules. Any return or reply to the motion shall be served and filed in the manner provided by Rule 240. The return may oppose the request for costs or seek a reduction of the amount of costs to be awarded. The remittitur shall not be stayed by the filing of a motion for costs.

(5) Taxation. Costs under this Rule shall be taxed by the Supreme Court. If costs are taxed, they shall become part of the judgment of the appellate court and shall be added to the remittitur.

(6) Applicability. Costs shall not be awarded in criminal cases or post-conviction relief cases.

Last amended by Order dated October 9, 2018, effective October 15, 2018, by order of the same date.

[1] By order dated October 9, 2018, this filing fee was set at two hundred and fifty (\$250.00) dollars for a petition for a writ of certiorari filed on or after October 15, 2018.

[2] By order dated January 17, 2018, the amount of attorney's fee was set at \$2,500.

FORM 18
PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

George E. Brown, Circuit Court Judge

Opinion No. 0000 (S.C. Ct. App. filed Feb. 10, 2002)

Stephen L. Doe, as Personal
Representative of the Estate of
John B. Doe,

Respondent,

v.

Jane C. Roe,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI

John E. Smith
Post Office Box 123
Greenville, South Carolina 29000
(864) 000-0000
Attorney for Petitioner

Other Counsel of Record:
Mary P. Jones
Post Office Box 456
Greenville, South Carolina 29000
(864) 000-0000
Attorney for Respondent

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Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 2, 2002.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that this action is not barred by res judicata?
2. Did the Court of Appeals err in holding that petitioner had failed to timely object to the trial judge's charge on the burden of proof?

STATEMENT OF THE CASE

On February 1, 2000, John B. Doe brought this action. . . .

[Set forth facts relevant to the questions presented. Counsel may wish to simply give a brief history of the case at this point and set forth the facts in the argument on each question. Reference should be made to where the salient facts can be found in the Record on Appeal (i.e., R.p. 37, lines 7-8).]

The Court of Appeals affirmed the judgment of the circuit court. Stephen L. Doe, as Personal Representative of the Estate of John B. Doe v. Jane C. Roe, Op. No. 0000 (S.C. Ct. App. filed Feb. 10, 2002). Petitioner seeks a writ of certiorari to review that decision.

1. THE COURT OF APPEALS SHOULD HAVE HELD THAT THIS ACTION IS BARRED BY RES JUDICATA.

[Set out discussion and citations of authority.]

2. PETITIONER DID TIMELY OBJECT TO THE TRIAL JUDGE'S ERRONEOUS CHARGE ON THE BURDEN OF PROOF.

[Set out discussion and citations of authority.]

CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

March 27, 2002

/s/ John E. Smith
John E. Smith
Post Office Box 123
Greenville, South Carolina 29000
(864) 000-0000
Attorney for Petitioner