

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Karl A. Folkens, Special Referee
Fifteenth Judicial Circuit

Case Nos. 2015-CP-26-1084 / 2013-CP-26-5535 (combined)
Appellate Case No. 2017-001646

Supreme Court Case No. 2020-001478

Jericho State Capital Corp. of Florida..... Plaintiff

v.

Chicago Title Insurance Company,..... Defendant

AND

Lynx Jericho Partners, LLC..... Plaintiff

v.

Chicago Title Insurance Company..... Defendant

of whom Jericho State Capital Corp. of Florida and Lynx Jericho Partners, LLC

are the..... Respondents

and Chicago Title Insurance Company is the Petitioner.

**PALMETTO LAND TITLE ASSOCIATION’S REPLY TO RESPONDENT’S RETURN
TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON BEHALF OF
PALMETTO LAND TITLE ASSOCIATION**

Palmetto Land Title Association (“PLTA”) submits this reply to Respondent’s Return to Motion for Leave to File Amicus Brief on behalf of Palmetto Land Title Association (“PLTA’s Motion”).

In its Return, Respondent first reiterates its arguments set forth in its Motion to Strike Amicus Curiae Brief of Palmetto Land Title Association and to Disqualify Womble Bond Dickinson U.S., LLP (“Motion

to Strike”). In response to Respondent’s arguments that the Amicus Brief conditionally filed by PLTA should be stricken because PLTA purportedly has ties to Petitioner and because it was drafted by PLTA’s former counsel, PLTA incorporates the arguments set forth in PLTA’s Return to the Motion to Strike and refers to the Affidavits of Matthew Tillman and G. David Ziegler, Jr. in support of PLTA’s Return.¹ PLTA has no closer relationship with the Petitioner than any of the other title insurance corporations that it supports as a title industry organization. Instead, as an organization with members who are stakeholders across the real estate industry, PLTA’s perspective and arguments provide valuable input on the far-reaching impact of the Court of Appeal’s opinion in this case. PLTA’s proposed brief also provides helpful background related to title insurance and current practices concerning title searches, all of which assists this Court in assessing the full impact of the Court of Appeal’s opinion.

In its Return, Respondent attempts to minimize and reframe the scope and impact of the Court of Appeal’s opinion in this case, stating that it has no bearing on the scope of a standard title search or how title is certified, and that it only impacts the interpretation of title insurance (which would still impact PLTA’s members). Such a conclusion distorts the holdings of the Court of Appeals’ opinion and only further demonstrates the usefulness of PLTA’s brief, which explains the broader consequences of the Court of Appeals’ holdings.

First, it is axiomatic that an opinion that finds a property right that did not previously exist under South Carolina law impacts stake holders in the real estate industry, and warrants input from the PLTA as an organization that supports those stake holders. Further, despite the finding of a new, never before recognized property right by a governmental entity, the Court of Appeals failed to address the question of

¹ Respondent’s Return states that the undersigned counsel for PLTA, Mary Caskey, is a former Director of PLTA. This is incorrect. While other attorneys at Haynsworth Sinkler Boyd, P.A. are involved with PLTA, Ms. Caskey is not personally involved with the organization other than the representation of PLTA in this case.

whether or not it was a taking, something of extraordinary public importance. The Court of Appeals' holding further impacts the scope of all title insurance contracts, which are written and issued based on well-established practices for title searching utilized by real estate practitioners. Those practitioners base their title search practices and resulting title opinions and policies on well-settled South Carolina law as to what property interests impact the marketability of title. As a result, PLTA's brief discusses at length the Court of Appeals' error in transforming the subject ordinance into an encumbrance, and the resulting impact on the real estate industry as a whole. That discussion is relevant and helpful to this Court in assessing the opinion's effects beyond this case.

Second, Respondent discusses the "standard" title examination at length, arguing that real estate attorneys need not be concerned with the new property right identified by the Court of Appeals because the ordinance is not within the scope of a standard title search. Instead, Respondent argues that the ordinance falls within the "hidden risks" of title, arguing that "[n]ot even the most professional, thorough, and competent title search will identify them." However, real estate law in South Carolina, (and by proxy, best practices for title searches), has developed to promote the disclosure of interests in real estate as much as possible. Respondent's arguments fail to account for how title insurance policies are created and issued in the first place, and the law and real estate practices on which title insurers rely. Further, the inability to depend on the established practices is likely to have a chilling effect on development where public projects may—at some point in the future—occur. PLTA's brief provides information on all of these topics, and its perspective and analysis will be helpful to this Court.

For all of these reasons, PLTA should be granted leave to file the brief proposed in its Motion.

Respectfully submitted,

s/Mary M. Caskey

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