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**Mar 15 2021**

**SC Court of Appeals**

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from the Administrative Law Court  
John D. McLeod, Administrative Law Judge

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Appellate Case No. 2017-001554

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Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown,  
Petitioners,

Of Which Town of Arcadia Lakes is the  
Appellant/Respondent,

v.

South Carolina Department of Health and Environmental Control,  
Respondent,

and Roper Pond, LLC  
Respondent/Appellant.

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**RESPONDENT SOUTH CAROLINA DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL'S  
RETURN TO PETITION FOR REHEARING**

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## **INTRODUCTION**

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent South Carolina Department of Health and Environmental Control (“SCDHEC”) respectfully submits this Return to Petition for Rehearing filed by Respondent-Appellant Roper Pond, LLC (“Roper”). In its Petition, Roper seeks review of Opinion No. 5802 filed on February 10, 2021 reversing the judgment of the Administrative Law Court (“ALC”) and correctly finding that the plain text of S.C. Code Ann. § 15-77-300(A) limits its application to civil actions of which a contested case before the ALC is not a civil action.

Roper relies on case law that has no precedential value in claiming that this Court should not have bolstered its decision by mentioning a proposed but failed amendment to S.C. Code Ann. §15-77-300(A) which would have extended the statute to administrative proceedings. Then, Roper wrongfully seeks to discount case law that does have precedential value to argue against the Court’s proper holding on the distinction between civil proceedings and administrative proceedings.

As discussed below, Roper’s claims are without merit. The Petition for Rehearing presents no new arguments or legal authority to show that the Court misapprehended the record or made an error of law. Therefore, the Petition for Rehearing should be denied.

## **ARGUMENT**

Despite Roper’s efforts to persuade the Court otherwise, the intent of the legislature is clear. The ALC lacks the power to award fees under S.C. Code Ann. § 15-77-300, because the ALC is an executive agency empowered to adjudicate administrative proceedings. This Court agreed, properly applying the plain meaning of the statute.

After making its holding on the plain meaning of the text in the statute, the Court referenced that its holding is bolstered by the fact the legislature did not specify it wished to include administrative proceedings for coverage under S.C. Code Ann. § 15-77-300. Going a step further, **while noting it is not conclusive of the legislature's intent**, the Court points out that the legislature directly confronted amending § 15-77-300 to include administrative proceedings, but such provision did not pass. (emphasis added). Ignoring the fact the Court already pointed out the failed amendment by the legislature is not conclusive of the legislature's intent, Roper attempts to cloud the Court's judgment by citing to cases with no precedential value in South Carolina urging the use of caution in looking to proposed amendments to legislation. Like the case law cited from outside this jurisdiction, Roper's argument is misplaced. The Court did exercise appropriate caution when considering proposed amendments and wrote as such in its opinion. While the Court mentions the proposed but failed amendment to bolster its holding, the Court's holding is rooted in the plain meaning of S.C. Code Ann. §15-77-300(A) that the statute and the remedies contained therein apply to civil actions and not to administrative proceeding before the ALC.

Additionally, to bolster its holding, the Court referenced case law setting forth the distinction between civil proceedings and administrative proceedings. Roper again attempts to cloud the Court's judgment, this time by rehashing the same arguments it made previously about a contested case hearing before the ALC being a civil action because some of the cannons and rules adopted by the Court apply to other courts and judicial proceedings. Roper then seeks to distinguish the case law cited by the Court holding that that administrative cases do not become "civil actions" until they leave the executive branch and enter the judicial branch for review. Roper's attempt to distinguish *South Carolina Department of Consumer Affairs v. Foreclosure Specialists, Inc.* is unfounded. Roper argues that, unlike the issue before the Court there, this case

doesn't require the Court to determine whether the ALC has authority to award the relief sought. This is not true. The issue before the Court in *South Carolina Department of Consumer Affairs* is identical to the issue in this case, whether the ALC has the jurisdiction to award the relief sought. Roper is seeking for the Court to uphold the ALC's decision to provide it relief by awarding attorney fees under S.C. Code Ann. §15-77-300(A). Like the code section which provides relief in *South Carolina Department of Consumer Affairs*, the statute at issue here governing the relief sought, S.C. Code Ann. §15-77-300(A), unambiguously precludes the ALC from granting the relief sought to civil actions. In addition to the case law already cited in its opinion, this Court look no further than a recent opinion by the South Carolina Supreme Court to bolster its holding. In *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env'tl. Control*, the Court recognized the critical distinction between the ALC's statutory administrative review and the circuit courts' judicial review of civil actions. 430 S.C. 200, 214-15, 845 S.E.2d 481, 488-89 (2020), *reh'g denied* (Aug. 7, 2020). Bearing in mind this critical distinction, this Court properly applied the plain meaning of S.C. Code Ann. § 15-77-300 in holding that the ALC conducting an administrative review of a contested case lacks the power to award fees under the statute because such proceedings are not civil actions.

### **CONCLUSION**

This Court did not overlook or misapprehend the issue or make any error of law. On the contrary, the Court properly applied the express terms of the statute and reversed the judgment of the ALC. Accordingly, SCDHEC respectfully requests the Court to deny the Petition for Rehearing.

*[Signature page follows]*

Respectfully submitted,

*/s/ Stephen P. Hightower*

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March 15, 2021  
Columbia, South Carolina

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Respondent/Appellant.

CERTIFICATE OF SERVICE

I, Sandra R. Wessinger, Paralegal with the South Carolina Department of Health and Environmental Control, hereby certify that I have this 15th day of March, 2021, served the foregoing *South Carolina Department of Health and Environmental Control's Reply to the Petition for Rehearing* upon counsel of record by electronic mail (at the address listed below) and

placing a copy of same in an envelope and depositing it for delivery in the United States mail with sufficient postage prepaid, at the address indicated below:

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/s/ Sandra R. Wessinger  
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March 15, 2021