

**RECEIVED**

**Oct 01 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

---

Case No.: 2017-CP-42-02834

Appellate Case No.: 2018-001443

---

Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes .....Appellant,

v.

Bank of America National Association .....Respondent.

---

PETITION FOR REHEARING

---

Appellant respectfully moves this Honorable Court for a rehearing pursuant to South Carolina Appellate Rule 221. Appellant submits that the South Carolina survival statute allows for the survival of fraud-based claims as it provides that “[c]auses of action for and in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property” shall survive the death of a party, whether the claim is on behalf of or against the deceased, “. . . any law or rule to the contrary notwithstanding.” S.C. Code Ann. § 15-5-90 (1976).

Appellant submits that his fraud-based claims have been improperly dismissed, in part, based upon a court-created exception to the South Carolina survival statute which excludes fraud as a surviving cause of action. Appellant challenges this antiquated and arbitrary exception to the survival statute and requests a rehearing for this court to reconsider precedent in order to better reflect the rights of persons in a modern society. A review of the interpretation of the survival statute by South Carolina courts, as it pertains to fraud, reveals decades of precedent founded in error.

Further, Appellant respectfully submits that the fraud-based claims are not barred under the doctrine of *res judicata* nor by the statute of limitations. Appellant respectfully requests a rehearing in order to obtain a ruling by this Court that the lower court erred in finding Appellant's claims are barred by the statute of limitations and the doctrine of *res judicata*.

MIKE KELLY LAW GROUP, LLC  
Brad D. Hewett  
bhewett@mklawgroup.com  
D. Michael Kelly  
mkelly@mklawgroup.com  
Post Office Box 8113  
Columbia, South Carolina 29202  
(803) 726-0123  
(803) 252-7145  
Attorneys for Appellant

October 1, 2021

**RECEIVED**

**Oct 01 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

---

Case No.: 2017-CP-42-02834

Appellate Case No.: 2018-001443

---

Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes.....Appellant,

v.

Bank of America National Association .....Respondent.

---

PROOF OF SERVICE

---

The undersigned, attorneys in this matter for the Appellant, certifies that we have this 1st day of October 2021, served copies of the Petition for Rehearing upon counsel of record for the Respondent by causing them to be deposited in the United States mail, first class postage paid addressed to Robert A. Muckenfuss/Elizabeth M.Z. Timmermans, 201 N. Tryon Street, Suite 3000, Charlotte, NC 28202 and 434 Fayetteville St. Suite 2600, Raleigh, NC 27601.

MIKE KELLY LAW GROUP, LLC

Brad D. Hewett

bhewett@mklawgroup.com

D. Michael Kelly

mkelly@mklawgroup.com

Post Office Box 8113

Columbia, South Carolina 29202

(803) 726-0123

(803) 252-7145

Attorneys for Appellant

October 1, 2021