

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

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MAY 07 2013

Civil Action No. 08-CP-40-8425

SC Court of Appeals

Caroline LeGrande, H. Paul LeGrande, Jr.,
and Marion Mancini,Appellants,

v.

South Carolina Electric & Gas Company,Respondent.

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING

Respondent South Carolina Electric and Gas Company (SCE&G) respectfully submits its Return in Opposition to the Petition for Rehearing ("Petition") filed by the Appellants, Caroline LeGrande, H. Paul LeGrande, Jr., and Marion Mancini (collectively, "LeGrande"). LeGrande's Petition incorrectly asserts this Court overlooked or misapprehended an issue, and therefore, should be denied.

LeGrande argues that the Court's "opinion appears to decide this case on the basis of issues which were not expressly ruled upon by the trial court nor addressed squarely, if at all, in the parties' briefs on appeal." [Petition, p. 5] LeGrande asserts that the Court should not have considered the application of S.C. Code Ann. § 58-9-2020, a 1936 easement to Broad River Power

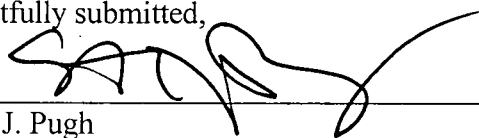
Company and that the Court's opinion somehow misconstrues the 1967 activities between the Plaintiff's predecessor in interest, H.P. LeGrande, and the South Carolina Highway Department, as predecessor to the South Carolina Department of Transportation ("SCDOT"). LeGrande's argument is unfounded and should be rejected.

SCE&G addressed all facts and law stated in this Court's opinion in its Final Brief. Specifically, S.C. Code Ann. §§ 58-9-2020 and 58-27-130 were cited and discussed on pp. 21-23 of SCE&G's Final Brief. The 1936 easement to Broad River Power Company was attached as Tab A to SCE&G's Memorandum in Support of its Motion for Summary Judgment, which is in the Record on Appeal and forms the basis for this appeal. The trial judge specifically considered this easement in her ruling [Tr. pp. 32 and 40] and this easement was cited and discussed in SCE&G's Final Brief, pp. 4-5. The 1967 SCDOT right of way was the basis for LeGrande's declaratory judgment action against the SCDOT which resulted in Master in Equity Joseph M. Strickland's Final Order.

Because this Court's grounds for affirming the trial judge are either in the record on appeal or properly raised in SCE&G's Final Brief, this Court properly affirmed the trial court. See I'On L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) (stating an appellate court may affirm for any reason appearing in the record); Kreutner v. David, 320 S.C. 283, 465 S.E.2d 88 (1995) (same); R. 220(c), SCACR. Further, to the extent LeGrande contends SCE&G did not present certain arguments to the trial judge and thus it was improper for this Court to consider them in its decision, SCE&G respectfully submits such an argument is specious and likewise, should be rejected. See I'On at 338 S.C. at 420 ("Consequently, it is not always necessary for a *respondent*—as the winning party in the lower court—to present his issues and arguments to the lower court and obtain a ruling on them in order to preserve an issue for appellate review.").

This Court affirmed the trial judge's grant of summary judgment based on facts, issues, and arguments in the record; therefore, this Court did not overlook or misapprehend any issue. Accordingly, SCE&G respectfully requests that the Petition for Rehearing be denied.

Respectfully submitted,



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**Attorneys for Respondent South Carolina
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Columbia, South Carolina

May 7, 2013

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Respondent SCE&G, do hereby certify that I have this date served the foregoing Respondent's Return to Appellant's Petition for Rehearing by hand delivery to the following:

Robert B. Ransom
Leventis & Ransom
Post Office Box 11067
Columbia, SC 29211



Vonja Szatkowski

May 7, 2013

REPLY TO: Columbia
E-Mail: spugh@richardsonplowden.com
Direct Dial: (803) 576-3721

May 7, 2013

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, SC 29201

Re: Caroline Legrande, et al v. South Carolina Electric & Gas Company
S.C. Court of Appeals Case Tracking # 2011-204148
Our File No.: 3637-26

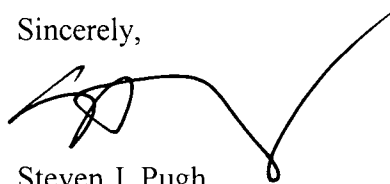
Dear Ms. Kitchings:

I am enclosing for filing the original and seven copies of Respondent South Carolina Electric & Gas Company's Return to Appellant's Petition for Rehearing, along with proof of service.

Please return a clocked copy of the Return to our courier.

Thank you for your assistance. If you should have any questions, please do not hesitate to contact us.

Sincerely,



Steven J. Pugh

cc: Robert B. Ransom, Esq. (w/Enclosure) – via hand-delivery

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