

68414

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Presiding Judge

Case No. 2011-CP-32-1393

Clarence Edward Looney, and
Grover E. Lown, Jr.Respondents

v.

GrassRoots of SC, Inc., Ed Kelleher,
Robert Butler and Robert Holiday.....Appellants

PETITION FOR REHEARING

Pursuant to Rules 219 and 221(a) of the South Carolina Appellate Court Rules, Respondents above-named hereby file this Petition for Rehearing and Rehearing *En Banc* with respect to the Court's Opinion reversing the Order of the Honorable R. Knox McMahon. Respondents respectfully submit that rehearing and or issuance of a new opinion affirming the Trial Court's Order is warranted on the grounds that the Panel's Opinion misapplied, misconstrued, and/or overlooked or misapprehended matters of law and fact.

RECEIVED

MAY 16 2013

SC Court of Appeals

INTRODUCTION

On May 1, 2013 the Court issued Unpublished Opinion Number 2013-UP-177 reversing the Lower Court's Order dated May 16, 2011. Judge McMahon's Order granted Respondents Clarence Edward Looney and Grover E. Lown, Jr. a Preliminary Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. Judge McMahon's Order also required Appellants to provide Respondents with copies of certain requested corporate records and membership lists in accordance with South Carolina Law, at a reasonable time and place decided by the corporation and further, that the mail in ballot which retrieved votes to amend the Corporate Appellant's Articles of Incorporation to change the corporate structure of Appellant corporation was null and void. Judge McMahon's Order provided that once a mandatory annual meeting was held, as required by South Carolina Law, the Appellant Corporation may vote on the proposed Amendment only if it was in compliance with Appellant Corporation's bylaws and the South Carolina Nonprofit Corporation Act. (R. p.9).

ARGUMENTS

A. THE COURT'S OPINION OVERLOOKS AND MISCONSTRUES THE FACTS OF THE CASE AND THE RELIEF GRANTED BY JUDGE MCMAHON IN HIS ORDER

The Court's Opinion reversed Judge McMahon's Order in its entirety on the grounds that the Lower Court "failed to consider whether the Respondents would suffer irreparable harm if the injunction was not granted or if Respondents had an adequate remedy at law." The Court's Opinion further stated, "Accordingly we reverse the circuit court's prior order and remand so the circuit court can make the required findings of fact as to all the elements necessary to establish an injunction."

Even if the Court's opinion is correct as to the Lower Court's failure to make the necessary findings of fact, the Court erred in reversing the Lower Court's Order in its entirety. The Court's Opinion therefore overlooked and ignored the facts of this case and the relief granted by Judge McMahon in his Order.

In his Order dated May 16, 2011, in addition Judge McMahon correctly determined that in addition to a Rule 65 Preliminary Injunction, "...Plaintiffs (Respondents) seek to have access to the membership lists as well as access to financial records and other corporate records, in order to make copies at their own expense." Judge McMahon determined that the Appellant's actions with respect to this information was in violation of the South Carolina Nonprofit Corporation Act and ordered Appellants to furnish Respondents with Appellant's Grassroots' requested corporate documents and Membership list.

Judge McMahon's Order further found and ruled that the Respondent's actions with respect to the mail in ballot were in direct violation of its bylaws. Like the ruling requiring Respondent's to provide Appellants with certain corporate and membership information, this ruling of Judge McMahon was included in the Court's *Per Curium* Order reversing the Lower Court's Order in its entirety.

The purpose of a Petition for Rehearing is to aid the court in deciding correctly a case heard by it. The petition must show, according to the rule, "the points supposed to have been overlooked or misapprehended by the Court." *Arnold v. Carolina Power and Light*, 168 S.C. 163, 167 S.E. 234 (1933). In the case before the Court, the Per Curium opinion reverses Judge McMahon's Order in its entirety. The Court's Order, without stating grounds to do so, reverses not only the portion of the Order pertaining to the

Preliminary Injunction, but also the relief which was granted by Judge McMahon independent of his findings and rulings regarding the Preliminary Injunction. The Court's Opinion therefore overlooks and misconstrues the facts of the case, the actual relief granted by Judge McMahon and Respondent is entitled to rehearing and/or a rehearing *en banc*.

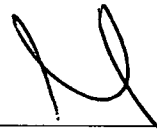
B. THE PANEL'S OPINION OVERLOOKED SOUTH CAROLINA LAW BY REVERSING JUDGE MCMAHON'S ORDER IN ITS ENTIRETY

It is unquestioned that the Appellate Court clearly has the power and authority to affirm or reverse portions of a Lower Court's Order. In reviewing decisions of the Lower Court, where a portion of the Lower Court's Order is divisible and without error, that portion of the Order should be affirmed. See, *L.D. Riley & Sons v. Southern Railway, Co.* 81 S.C.387, 62 S.E. 509, (1908), *Gray & Shealy v. Charleston and W.C. Ry. Co.* 81 S.C. 370, 62 S.E. 442 (1908).

In the case before the Court, the Court citing the need for further findings of fact with respect to the Preliminary Injunction reversed the Lower Court's Order in its entirety. This Opinion overlooked the facts of the case, and the Court's authority to affirm those portions of the Lower Court's opinion not affected by the alleged error found by the Court. The Opinion of the Court of Appeals is therefore fatally flawed and the Respondents respectfully submit they are entitled to a Rehearing and/or a *Rehearing en Banc*.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that this Court grant rehearing or rehearing *en banc* in the above-captioned matter.



S. Jahue Moore, SC Bar #4063
John C. Bradley, Jr., SC Bar #7869
Moore, Taylor, Thomas, P.A.
1700 Sunset Boulevard
Post Office Box 5709
Columbia, South Carolina 29171
(803) 796-9160
Attorneys for the Respondents

West Columbia, South Carolina

May 16, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Presiding Judge

Case No. 2011-CP-32-1393

Clarence Edward Looney, and
Grover E. Lown, Jr.Respondents

v.

GrassRoots of SC, Inc., Ed Kelleher,
Robert Butler and Robert Holiday.....Appellants

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing of Respondents Clarence Edward Looney and Grover E. Lowan, Jr. on the parties to the appeal by depositing a copy of it in the United States Mail, postage prepaid, on May 16, 2013, addressed to attorneys of record as follows:

Stephen Fulton Shaw, Esquire
27 S. Main Street
Travelers Rest, South Carolina 29690

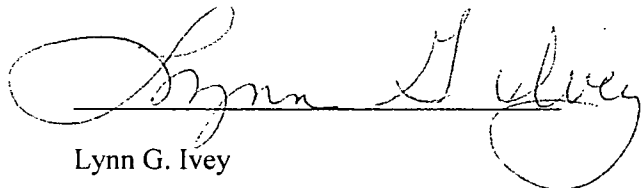
Jonathan P. Whitehead, Esquire
410 East Butler Road, Suite E
Mauldin, South Carolina 29662

RECEIVED

MAY 16 2013

SC Court of Appeals

May 16, 2013



Lynn G. Ivey

Assistant to John C. Bradley, Jr.

S. JAHUE MOORE
J. MARK TAYLOR*
DAVID L. THOMAS†
C. VANCE STRICKLIN, JR.
JAMES EDWARD BRADLEY
SHEILA McNAIR ROBINSON
ROBERT D. HAZEL
CHRISTIAN G. SPRADLEY††
C. DAVID SAWYER, JR.††
WILLIAM H. EDWARDS
STANLEY L. MYERS
JANE H. DOWNEY**
S. JAHUE MOORE, JR.
JOHN C. BRADLEY, JR.



1700 SUNSET BOULEVARD (HWY. 378)
POST OFFICE BOX 5709
WEST COLUMBIA, SOUTH CAROLINA 29171
TELEPHONE (803) 796-9160
FAX (803) 791-8410

MELISSA K. MOORE
WILLIAM B. FORTINO
R. NICHOLS "NICK" RILEY, JR.
M. BROOKS BIEDIGER
AMBER L. FULMER
SARAH TAYLOR CASSIDY
MARGARET "MEG" HAZEL

RETIRED:
BILLY C. COLEMAN††

††SALUDA OFFICE:
(864) 445-4544 OR (866) 604-4544
†GREENVILLE OFFICE:
(864) 271-6371

May 16, 2013

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Clarence Edward Looney and Grover E. Lown, Jr. v. GrassRoots of SC, Inc., Ed Kelleher, Robert Butler and Robert Holliday, Case No. 2011-CP-32-1393

Dear Ms. Kitchings:

I trust this letter finds you well. Enclosed please find an original and six copies of Respondents' Petition for Rehearing in the above-referenced matter. Please file the necessary copies and return the extra clocked in copies to my courier. Thank you in advance for your assistance in this matter. A check for \$25.00 is also enclosed.

Under cover of this letter I am serving opposing counsel Steven Fulton Shaw, Esquire and Jonathan P. Whitehead, Esquire with a copy of the same.

Sincerely,

A handwritten signature in cursive script that reads "Lynn G. Ivey".

Lynn G. Ivey
Assistant to John C. Bradley, Jr.

/lgi

Enclosure

cc: Stephen Fulton Shaw, Esquire
Jonathan P. Whitehead, Esquire

RECEIVED

MAY 16 2013

SC Court of Appeals