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**Sep 28 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

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Case No. 2021-CP-07-00482  
Appellate Case No. 2022 - 001097

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MFM Properties, LLC; and MFM  
Properties, LLC,..... Respondents,

v.

Rotunda Land & Development Group, LLC; and  
Calloway Title & Escrow, LLC,..... Defendants,

Of Which Rotunda Land & Development Group, LLC, is the.....Appellant.

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**MOTION TO DISMISS APPEAL**

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Pursuant to Rule 208(a)(4) and Rule 260, SCACR, Respondents move to dismiss the above-captioned appeal. This is an appeal from the Beaufort Court of Common Pleas. Appellant filed its Notice of Appeal on August 5, 2022. Appellant has filed no Initial Brief as of the time of this Motion. For the below reasons, the Appeal must be dismissed.

Rule 208(a)(1), SCACR, provides: “(a) Time for Serving and Filing Initial Briefs. (1) Brief of Appellant. Within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief

on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.”

With respect to the ordering of a transcript, Rule 207(a)(1), SCACR provides in pertinent part:

(1) Ordering the Transcript. Where a transcript of the proceeding must be prepared by the court reporter, appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript. In appeals from the court of common pleas, masters-in-equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal. . . . Appellant shall contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter. The court reporter must acknowledge receipt of the request by responding to the appellant within five business days.

(Emphasis added.)

The Respondents have received no notice that a transcript was ever ordered by Appellant, nor have Respondents received notice from the court reporter acknowledging receipt of such order. Thus, Appellant did not order a transcript. Because no transcript was ordered, Appellant’s Initial Brief was due September 5, 2022. Appellant has not filed an Initial Brief, nor has it filed a Designation of Matter to be Included in Record on Appeal pursuant to Rule 209, SCACR.

Rule 208(a)(4) designates what must occur in this situation:

(4) Failure to File. Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260. Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper.

As noted by the Court of Appeals in a criminal case apply the Appellate Rules:

Though South Carolina affords criminal defendants the opportunity to appeal, the right to an appeal may be lost through a variety of actions by an appellant, such as: (1) failure to timely serve a notice of appeal under Rule 203, SCACR; (2) failure to serve and file an initial brief and designation of matter under Rule 208(a)(4),

SCACR; or (3) failure to serve and file a record on appeal and final brief under Rules 210 and 211, SCACR. See Rule 231, SCACR. Furthermore, the burden is on the appellant to provide the appellate court with an adequate record for review.

*State v. Serrette*, 375 S.C. 650, 652, 654 S.E.2d 554, 555 (Ct. App. 2007) citing *State v. Williams*, 321 S.C. 455, 464 n. 4, 469 S.E.2d 49, 54 n. 4 (1996)(emphasis added).

Simply put, the failure of the Appellant to file an Initial Brief in the timelines required mandates dismissal of the appeal. *Roberts v. LaConey*, 375 S.C. 97, 100, 650 S.E.2d 474, 475–76 (2007). Thus, per Rule 208(a)(4), the Clerk of the Court of Appeals should dismiss the Appeal.<sup>1</sup>

Respectfully submitted,

Dated: September 28, 2022

BURR & FORMAN LLP

By *s/Benjamin E. Nicholson, V*  
Benjamin E. Nicholson, V  
SC Bar # 10137  
[nnicholson@burr.com](mailto:nnicholson@burr.com)  
1221 Main St., Suite 1800 (29201)  
P.O. Box 11390 (29211)  
Columbia, South Carolina  
Tel. (803) 799-9800  
Fax. (803) 753-3278

*Attorneys for Respondents,  
MFM Properties, LLC and  
MFM Residential Properties, LLC*

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<sup>1</sup> This is not the first time Appellant has attempted an appeal from this lawsuit improperly. Appellant's prior appeal of one of the same orders subject of this appeal was dismissed by the Court on September 15, 2022 in Appellate Case No. 2022-000875.