

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Hon. John C. Hayes, III  
Presiding Circuit Court Judge

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Case No. 2010-CP-46-2326

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Juontonio Pinckney, et al. .... Appellants,

v.

Epcn Communities, Inc., Epcn Communities Franchising, Inc.,  
Brock L. Fankhauser, Fankhauser Property Group, Inc.,  
Stonecrest Villas of Tega Cay, LLC,  
and

Stonecrest Villas of Tega Cay Owners' Association, Inc. .... Respondent

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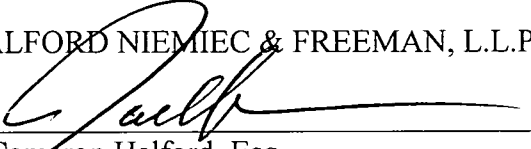
APPELLANTS' REPLY TO RESPONDENT  
CROSS APPELLANT RETURN AND MEMORANDUM

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Appellants file their Reply and Memorandum in response to Respondents May 22, 2013, Return and would respectfully show pursuant to SCACR 233(a)(2) that service of Appellants motion for extension was timely after a dismissal motion dated April 4, 2013. Appellants have further moved the court, by separate motion, to hold the deadlines in abeyance and establish a briefing schedule due to multiple notices of appeal, *see* SCACR 206 and pending motions to dismiss, *see* SCACR 240.

Respectfully submitted,

HALFORD NIEMIEC & FREEMAN, L.L.P.

  
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Attorneys for Appellants

**RECEIVED**

MAY 24<sup>th</sup> 2013

**SC Court of Appeals**

Other Counsel of Record:

**(Via U.S. Mail and E-mail)**

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May 23, 2013

## MEMORANDUM

Responding to Respondent Cross Appellants Return, pages 3, 5 and 7, Appellants would respectfully show the court that the appeal filed by Appellants in this case (case no. 2013-00327) was, despite captioned differences, inadvertently filed in 2012-213730. Respondent acknowledges this and that there exist multiple notices of appeal. Additionally, Respondent Cross Appellant stops short of citing the full text of rule 240(b), which specifically states as follows:

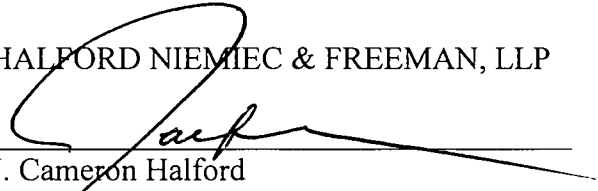
**(b) Stay of Time Limits.** Unless otherwise provided by these Rules, *or ordered by the appellate court*, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. *A motion to dismiss an appeal* or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided. Appellant's motion to dismiss the Cross Appeal filed April 4, 2013.

The March 28, 2013 Notice of Cross Appeal filed by Respondent clearly states that Respondent received the Notice of Appeal on March 25, 2013, but neglects to note receipt was via e-mail. The Notice is, in fact, dated March 25, 2013 and distributed electronically to all counsel late the same date, then subsequently mailed. Rule 234 SCACR does not address email. It addresses mailings via United States mail. It provides that the day of the act, event or default after which the designated period of time begins to run is not to be included, except for petitions for rehearing (Rule 221) and motions for reinstatement (Rule 231). Filing pursuant to SCACR 233 is accomplished by: (2) depositing the document in the U.S. mail, properly addressed....” SCACR 233(2). Additionally, times prescribed by the rules “may be extended or shortened by the appellate court, or by any judge of justice thereof.” SCACR 234(b). Appellants’ motion to extend deadlines for the purpose of transcript delivery – *subsequent to* motions to

dismiss on April 4, 2013, were timely pursuant to SCACR 233(a)(2). The trial court, as implicated in the last two orders, cites the application of the business judgment rule. The oral arguments of December 19, 2013, and March 20, 2013, are relevant to the trial court's reviews.

As confirmed by Respondent, this appeal involves multiple notices of appeal. SCACR 206. The court has now received confirmation that Appellants have received transcript of the March 20, 2013 oral arguments, and should establish the briefing schedule for the parties pending resolution of dismissal motions where proper notice and no prejudice exists.

HALFORD NIEMIEC & FREEMAN, LLP



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Stonecrest Villas of Tega Cay, LLC,  
and

Stonecrest Villas of Tega Cay Owners' Association, Inc. .... Respondent

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PROOF OF SERVICE

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I hereby certify that I am the attorney for the Plaintiffs/Appellants in the above captioned case number and that on May 23, 2013 I served a copy of the foregoing Reply to Respondent Cross Appellant Return on all counsel by the means indicated below.

**(Via U.S. Mail and E-mail)**

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**RECEIVED**

MAY 24<sup>05</sup> 2013

**SC Court of Appeals**

Columbia, South Carolina 29202  
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Villas of Tega Cay, L.L.C.


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May 23, 2013

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May 23, 2013

Jenny Abbott Kitchings, Clerk of Court  
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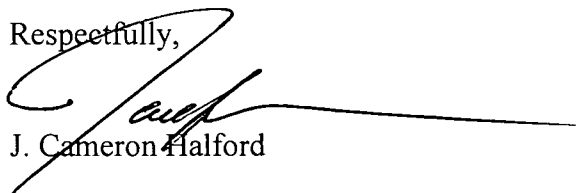
Re: *Juontonio Pinckney, et al. v. Brock L. Fankhauser, et al.*  
York County Consolidated Case No.: 2010-CP-46-2326  
South Carolina Appellate Case No.: 2013-000327

Dear Ms. Kitchings:

Please find enclosed an original and six copies of **Appellants Reply to Respondent Cross Appellant Return and Memorandum** and Proof of Service in the above matter. Please file the originals and return a filed copy to me in the envelope enclosed. Respondents and all counsel for parties appearing in the above case are copied. Thank you.

With kind regards, I remain

Respectfully,

  
J. Cameron Halford

JCH/klw  
Enclosures

cc: *(Via U.S. Mail and E-Mail w/ enclosures):*  
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*(Via E-Mail Only w/ enclosures):*  
Curtis Dowling, Esquire  
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Harold Craig Spears, Esquire  
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