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Jan 20 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS
EDGAR W DICKSON, CIRCUIT COURT JUDGE

Appellate Case No. 2022-001070

Rosen Hagood, LLC,Respondent/Appellant,

v.

Albert T. Henson, Jr.,Appellant/Respondent,

**APPELLANT/RESPONDENT’S MOTION TO FILE BRIEF OUT OF TIME
and
RESTURN TO MOTION TO STRIKE**

I. Motion To File Out of Time

Pursuant to Rule 240, Appellant/Respondent files this motion for leave to have his previously filed brief in this matter accepted despite having been filed out of time for the reasons set forth as follows:

1. The undersigned counsel was retained as counsel for Appellant-Respondent Henson (hereinafter “Henson” for clarity) in the above-captioned matter on December 27, 2022.
2. Prior to that date, Henson had been pro se, and had sought an extension of time in which to file his own appellant’s brief. The order extending the deadline for that brief was issued on November 28, 2022, and set a deadline of January 3, 2023. See attached **Exhibit A**.

3. Upon initial calendaring of deadlines by the undersigned, however, our office mixed up two dates.
4. We set the deadline for Henson's initial appellant's brief as falling on December 28, 2022. That error is reflected in the motion seeking an extension of the same deadline, which was submitted on December 28, 2022 and incorrectly asserts the understanding that the deadline to file was the same date. **Exhibit B.**
5. That motion was granted, and the deadline was extended for a second time (hence the referenced to good cause being necessary for any future extensions). **Exhibit C.** In doing so, however, the extension was calculated as 30 days from that date, rather than from the true prior-established deadline of January 3, 2023.
6. The other calendaring mix-up was setting the date of January 3, 2023 as the deadline date for filing of Henson's return brief following Respondent-Appellant's initial brief that had been filed in November, rather than its actual and proper due date of December 28, 2022.
7. While operating on the mistaken belief that such return was due January 3, 2023, Henson filed his brief in response on January 3, 2023.
8. On Wednesday, January 11, 2023, opposing counsel notified the undersigned as to the late filing of Henson's return brief. The undersigned set about to investigate the issue raised, and thereby pieced together the referenced mix-up of filing deadlines explained above. Prior to the opportunity to acknowledge that error and file a motion for acceptance of his brief out of time, Respondent-Appellant filed a motion seeking to strike the brief (and seek other relief as is discussed further below).
9. As is clear from the information above, Henson acknowledges the responsive brief was late, but was the product of confusion on the part of the undersigned upon retention on

the eve of relevant deadlines. The undersigned filed a motion for continuance the day of the relevant deadline, but failed to appreciate the scope of the continuances needed, otherwise the request would have been dual-faceted.

10. Regardless of reason, however, Respondent-Appellant has not been prejudiced in any way by such a brief delay of five days, which had included the actual New Year's Day and the state observation thereof the following day. The brief was filed on January 3, the first business day after the new year.
11. Because the deadline for filing of a responsive brief is not jurisdictional in nature, and thus is within the power of this Court to extend, Appellant-Respondent Henson respectfully requests that the filing of his responsive brief submitted January 3, 2023 be accepted and treated as timely filed.

II. Response to Motion to Strike

1. As discussed above, Henson's initial brief and designation of matter were filed on January 3, 2023.
2. In his initial brief, Henson requested that the Court take judicial notice of several documents pursuant to Rule 201, SCRE. These documents were also set forth in Henson's designation of matter.
3. Rule 201(d), SCRE provides that it is mandatory for a court to take judicial notice if requested by a party and supplied with the necessary information. Further, judicial notice may be taken at any stage of the proceeding. Rule 201(f), SCRE. These rules are made applicable to the Court of Appeals by Rule 1101, SCRE and Rule 101, SCRE.

4. These documents of which Henson requested the Court to take judicial notice are also contained in public records maintained by the Judicial Branch.
5. While these documents and records originate from separate litigation, these materials are relevant because it is necessary for the Court to examine the underlying litigation preceding this appeal considering that the disputes underlying the current dispute arose from the underlying litigation.
6. By taking judicial notice of these materials, the Court will be able to understand the full context of the issues that were not disclosed to the circuit court when granting summary judgment to Respondent-Appellant.
7. For the reasons set forth above, Appellant-Respondent Henson respectfully requests that the Court deny Respondent-Appellant's Motion to Strike.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
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COUNSEL FOR APPELLANT/RESPONDENT
ALBERT T. HENSON JR.

January 20, 2023



The South Carolina Court of Appeals

Rosen Hagood, LLC, Respondent/Appellant,

v.

Albert T. Henson, Jr., Appellant/Respondent.

Appellate Case No. 2022-001070

The Honorable Edgar W. Dickson
Dorchester County
Trial Court Case No. 2020CP1802003

ORDER

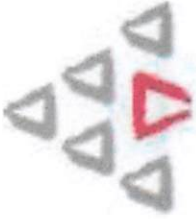
The time for serving and filing the appellant's initial brief and designation of matter of appellant/respondent is hereby extended until January 3, 2023.

FOR THE COURT
BY Catherine Hannibal, deputy
CLERK

Columbia, South Carolina

cc:
Albert T. Henson, Jr.
Forrest Truett Nettles, II, Esquire

FILED
Nov 28 2022



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.



Desa Ballard
Harvey M Watson III
Haley Hubbard

226 State Street West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

December 28, 2022

Via Email (ctappfilings@sccourts.org)
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
Dec 28 2022
SC Court of Appeals

Re: *Rosen Hagood, LLC v. Albert T. Henson, Jr.*
Appellate Case No.: 2022-001070

Dear Ms. Kitchings:

Please allow this correspondence to advise that our firm has been retained to represent Albert T. Henson, Jr. in the above-referenced matter. Based upon information we have received, Mr. Henson's Initial Brief of Appellant/Respondent and Designation of Matter in the above-referenced matter are due to be served and filed today, December 28, 2022. Unfortunately, we need to request a 30-day extension to file this brief. If this request for a 30-day extension is granted, the new deadline would be Friday, January 27, 2023. We have contacted Counsel for Respondent/Appellant to obtain consent for this request, but as of the time of this filing, we have not heard back with a response.

Pursuant to paragraph (c) of the Supreme Court's administrative order dated August 25, 2021 ("Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules") a check for the filing fee is being forwarded separately via US mail. If a more formal motion filing is required, please let us know and one will be submitted immediately.

Thank you in advance for your consideration of this request. If you have any questions, please do not hesitate to contact my office. With warm personal regards, I am,

Sincerely yours,

s/Desa Ballard

Desa Ballard
desab@desaballard.com

cc: *Via Email*
Forrest Truett Nettles II, Esquire
Albert T. Henson, Jr.



The South Carolina Court of Appeals

Rosen Hagood, LLC, Respondent/Appellant,

v.

Albert T. Henson, Jr., Appellant/Respondent.

Appellate Case No. 2022-001070

The Honorable Edgar W. Dickson
Dorchester County
Trial Court Case No. 2020CP1802003

ORDER

The time for serving and filing the appellant's initial brief and designation of matter of appellant/respondent is hereby extended until January 27, 2023. No further extension will be granted absent extraordinary circumstances.

FOR THE COURT

BY Jenny A. Kitzly
CLERK

Columbia, South Carolina

FILED
Dec 30 2022

cc:
Desa Ballard, Esquire
Forrest Truett Nettles, II, Esquire

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Rosen Hagood, LLC, Respondent/Appellant,

v.

Albert T. Henson, Jr., Appellant/Respondent,

PROOF OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on January 20, 2023, I served a copy of the **Appellant/Respondent's Motion to File Brief Out of Time and Return to Motion to Strike** in the above-captioned case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

F. Truett Nettles II, Esquire
Rosen Hagood LLC
tnettles@rosenhagood.com



Beth Cogan, Paralegal

January 20, 2023
West Columbia, South Carolina

Beth Cogan

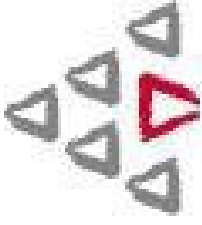
From: Beth Cogan
Sent: Friday, January 20, 2023 11:58 AM
To: F. Truett Nettles II
Cc: Desa Ballard; Haley Hubbard
Subject: (Rosen Hagood, LLC v. Albert T. Henson, Jr. 2022-001070) Ltr to COA encl Motion to File Out of Time and Return to Motion to Strike
Attachments: 2023 01 20 Ltr to COA encl Motion to Fle out of time and Return to Motion.pdf; 2023 01 20 Motion to File out of Time and Return to Motion to Strike.pdf; 2023 01 20 POS Motion to File Out of Time and Return to Strike.pdf

Good morning,

Please see the attached Motion and Return that is being file today with the Court of Appeals for the above-referenced matter.

Kindest Regards,
-Beth

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January 20, 2023

Via Email (ctappfilings@sccourts.org)
The Honorable Jenny Abbot Kitchings
Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
Jan 20 2023
SC Court of Appeals

Re: *Rosen Hagood, LLC v. Albert T. Henson, Jr.*
Appellate Case No.: 2022-001070

Dear Ms. Kitchings:

Please find enclosed for filing the **Appellant/Respondent's Motion to File Brief Out of Time and Return to Motion to Strike** in the above-referenced matter. By copy of this letter and as evidenced by the Proof of Service, these filing has been served upon counsel for the Respondent/Appellant.

Pursuant to paragraph (c) of the Supreme Court's administrative order dated August 25, 2021 ("Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules") a check for the filing fee is being forwarded separately via US mail.

Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office. With warm personal regards, I am,

Sincerely yours,

s/Desa Ballard

Desa Ballard
desab@desaballard.com

Enclosures

cc: *Via Email*
F. Truett Nettles II, Esquire
Al Henson