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**Feb 27 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Cristi F. Curtis, Circuit Court Judge

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Appellate Case No. 2019-001169

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Aracelis Santos, ..... Appellant,

v.

Harris Investment Holdings, LLC, ..... Respondent.

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**RESPONDENT’S RETURN TO MOTION TO RECALL REMITTITUR**

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Harris Investment Holdings, LLC (“Respondent” or “HIH”) submits this return to Appellant’s motion filed on February 14, 2023, to recall the remittitur issued following the Court’s disposition of this appeal. For the reasons stated below, the motion should be denied.

First, this Court lacks jurisdiction to recall the remittitur under the circumstances of this case. Rule 220(b), SCACR, provides that the remittitur may issue once 15 days have elapsed since the filing of the Court’s opinion disposing of the appeal. “When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. . . . The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court.” *Wise v. South Carolina Dept. of Corrections*, 372 S.C. 173, 174, 642 S.E.2d 551, 552 (2007) (internal citations omitted).

Appellant does not argue that *the Court* erred in issuing the remittitur.<sup>1</sup> She argues only that *she* erred in failing to timely file a petition for rehearing, which would have prevented issuance of the remittitur pursuant to Rule 222(a).<sup>2</sup> But no authority permits this Court to exercise jurisdiction over an untimely petition for rehearing, after the remittitur has issued, for any reason other than “mistake, error or inadvertence *of the Court*” in issuing the remittitur. *Wise*, 372 S.C. at 174, 642 S.E.2d at 552 (emphasis added). Accordingly, Appellant’s motion must be denied for this reason alone.

Appellant next argues that her filing of a timely petition for rehearing in a related appeal, Case No. 2021-000768, should have prevented the issuance of the remittitur in the instant appeal. But the Court never consolidated these appeals. In fact, the Court *denied* Appellant’s motion to consolidate the appeals via Order issued on August 4, 2022. Although the Court held argument on the two appeals at the same time, the appeals retained separate case numbers, and this Court issued separate opinions for each case. Moreover, Appellant’s motion for rehearing in Case No. 2021-000768 does reference any alleged error in the Court’s decision the instant appeal. Thus, this Court properly issued the remittitur in the instant appeal because no petition for rehearing was filed in this case.

Finally, although no authority permits this Court to recall the remittitur to consider an untimely petition for rehearing, Appellant presents no grounds to excuse her late filing. Appellant argues that she failed to timely file a petition for rehearing due to “excusable neglect,” but

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<sup>1</sup> The remittitur was properly issued on February 14, 2023, which was more than 15 days after this Court filed its decision disposing of the appeal on January 25, 2023.

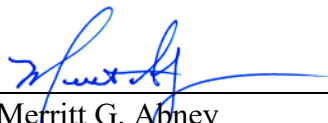
<sup>2</sup> “Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, judgment, or decree of the court.” Rule 220(a), SCACR. A timely petition for rehearing prevents issuance of the remittitur. Rule 222(b).

Appellant has not even established “good cause,” much less the more stringent requirements for “excusable neglect.” *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009) (discussing the two standards and explaining that “excusable neglect” requires a more particularized showing than “good cause”). Appellant acknowledges in her motion that all counsel received this Court’s opinion in the instant appeal via email on January 25, 2023. Appellant merely states that she “overlooked” the Court’s decision in this appeal. Appellant’s explanation is no grounds to excuse her failure to timely file. *See Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E.2d 263 (2009) (holding that mere negligent oversight does not constitute “good cause” to set aside default).

### CONCLUSION

For all the above reasons, Harris respectfully requests that the Court deny Appellant’s motion to recall the remittitur.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:   
Merritt G. Abney  
SC Bar No. 71893  
E-Mail: merritt.abney@nelsonmullins.com  
Olesya V. Bracey (SC Bar No. 101409)  
E-Mail: olesya.bracey@nelsonmullins.com  
151 Meeting Street / Sixth Floor  
Post Office Box 1806 (29402-1806)  
Charleston, SC 29401-2239  
(843) 853-5200

*Attorneys for Respondent, Harris Investment Holdings, LLC*

Charleston, South Carolina  
February 27, 2023

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I, the undersigned of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Harris Investment Holdings, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

**RESPONDENT'S RETURN TO MOTION TO RECALL THE  
REMITTITUR**

Counsel Served:

Thomas R. Goldstein, Esq.  
Belk, Cobb, Infinger & Goldstein, P.A.  
PO Box 71121  
Charleston, SC 29415-1121

*Attorneys for Appellant*



\_\_\_\_\_  
Lauren Lynch  
Paralegal Coordinator

February 27, 2023