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Mar 24 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2022-001673

The Eaglewood Retreat Homeowners Association, Inc.,.....Respondent,

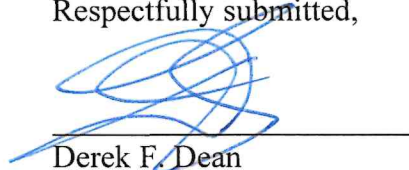
v.

Jason R. Patno,Appellant.

RESPONDENT’S MOTION TO DISMISS

Pursuant to the South Carolina Appellate Court Rules (“SCACR”), Rule 240, Respondent respectfully moves for an Order dismissing Appellant’s appeal of the above referenced matter.

Respectfully submitted,



Derek F. Dean
S.C. Bar No. 65279
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(843) 762-9132
dfdean@charlestonattorneys.net
Attorneys for Respondent

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v.

Jason R. Patno,.....Appellant.

RESPONDENT’S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Pursuant to the Notice of Appeal filed by Appellant on November 28, 2022, with the Court of Appeals, Appellant is appealing four orders issued by the circuit court on October 13, 2022.

STATEMENT OF THE CASE

Respondent is the homeowner’s association for the community known as Eaglewood Retreat in Charleston County. Appellant is, and has been at all relevant times hereto, the owner of real property located in Eaglewood Retreat (“Home”), which is part of Respondent. On or about January 2022, Patno began operating a twenty-four (24) hour professional towing service, CAP Towing, from the Home. To that end, in addition to his four (4) cars, Appellant parked his large, diesel, commercial tow truck marked with a logo on the Home and/or the streets of Eaglewood Retreat, and answered/dispatched tow and service calls from the Home. Around March 29, 2022, Appellant added a second large, diesel, commercial flatbed, rollback tow truck to his fleet. The operation of Appellant’s twenty-four (24) hour towing business out of his Home requires the frequent driving of these tow trucks through the neighborhood to and from the Home at all times of the day and night. Both of the tow trucks are in excess of twenty (20) feet in length, and make significantly more noise than a regular car or truck.

On or about June 14, 2022, Respondent filed its complaint and motion seeking the circuit court's assistance in enforcing against Appellant the provisions of its Declaration of Covenants, Conditions, Restrictions and Easements for Eaglewood Retreat ("Declaration") and By-Laws of Eaglewood Retreat Homeowners Association, Inc. ("Bylaws"), each as may be amended, recorded in Book L565 at Page 492 on December 9, 2005, and re-recorded in Book H591 at Page 400 on July 17, 2006, with the Charleston County Register of Deeds, South Carolina, as well as its Policy Resolution No. 02-2009 Rules and Regulations ("Rules") recorded January 14, 2019, in Book 0772 at Page 208 with the Charleston County Register of Deeds, South Carolina (Declaration, Bylaws, Rules, and any promulgated rules, regulations, guidelines, policies and the like hereinafter collectively referred to as the "Governing Documents", and are or may be public records filed with the Charleston County Register of Deeds Office).

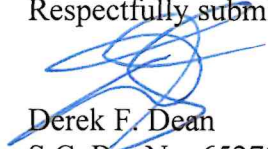
On August 25, 2022, a hearing was held for Appellant's motion to dismiss the action on the ground that Respondent's complaint failed to allege cognizable damages or irreparable harm, and Respondent's motion for a preliminary injunction. The circuit court issued orders October 13, 2022, denying Appellant's motion to dismiss the case and granting Respondent's motion for a preliminary injunction against Appellant. Appellant timely filed a Motion to Reconsider or to Clarify, which motion was denied November 2, 2022. Appellant's notice of appeal for all orders followed.

Appellant ordered the transcript from the court reporter on December 8, 2022. On December 16, 2022, Respondent filed Respondent's Motion to Dismiss Appellant's appeal of the circuit court's denial of Appellant's motion to dismiss. On December 19, 2022, the court reporter e-mailed the transcript to both Appellant and Respondent.

Normally, Appellant would have been required to serve Appellant's Initial Brief within thirty days after receiving the transcript per Rule 208. However, per Rule 240(b), the time limit to do so was stayed until after Respondent's Motion to Dismiss filed December 16, 2022 was decided. This Court issued its Order filed February 15, 2023 granting Respondent's Motion to Dismiss. Therefore, at most, Appellant had thirty days from that date to serve Appellant's Initial Brief. Appellant has not done so. In addition, Appellant has not moved for an extension of time to serve the Initial Brief. Based thereon, Respondent hereby contends that Appellant has failed to timely serve his Initial Brief, and Respondent therefore asserts that this Appeal should be dismissed.

Based upon the foregoing, Appellant's appeal of the circuit court's prior orders should be dismissed.

Respectfully submitted,



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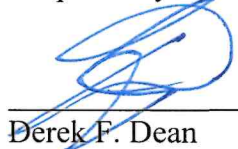
v.

Jason R. Patno,Appellant.

PROOF OF SERVICE

I certify that I have served Respondent’s Motion to Dismiss and Respondent’s Memorandum in Support of Motion to Dismiss by emailing it to counsel for the Appellant to their email addresses, as provided in AIS.

Respectfully submitted,



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Attorneys for Respondent

March 24, 2023
Charleston, SC

Brenda Casey

From: Brenda Casey
Sent: Friday, March 24, 2023 11:25 AM
To: sarah@harrisonfirm.com; drew@harrisonfirm.com
Cc: Derek F. Dean
Subject: The Eaglewood Retreat Homeowners Association, Inc. v. Patno (2022-001673)
Attachments: Clerk 3-24-23.pdf; Motion to Dismiss & Memo in Support.pdf

Good morning,

Attached is Respondent's Motion to Dismiss and Respondent's Memorandum in Support of Motion of Dismiss in connection with the above-referenced matter that will be emailed to the Court of Appeals today for filing.

Thanks,
Brenda

Brenda Casey
Paralegal
SIMONS & DEAN
147 Wappoo Creek Drive
Suite 604
Charleston, SC 29412
843-762-9132/843-406-9913 *facsimile*
brenda@simonsanddean.com

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Keating L. Simons, III klsimons@simonsanddean.com
Derek F. Dean dfdean@simonsanddean.com
I. Sonja Taylor istaylor@simonsanddean.com

March 24, 2023

VIA EMAIL ONLY: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: *The Eaglewood Retreat Homeowners Association, Inc. v. Jason Patno*
Appellate Case No.: 2022-001673

Dear Ms. Kitchings:

Enclosed for filing is Respondent's Motion to Dismiss, Respondent's Memorandum in Support of Motion of Dismiss and Proof of Service on behalf of The Eaglewood Retreat Homeowners Association, Inc. Upon filing, please return a clocked-in copy to me via email.

Additionally, I have mailed our check in the amount of \$50.00 for the filing fee.

With kind regards,

Sincerely,



Derek F. Dean

DFD/

Enclosures

cc: Mr. Mike Marcovich (via e-mail w/o enc.)
Andrew S. Radeker, Esq. (via email w/enc.)
Sarah Larabee, Esq. (via email w/enc.)