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May 25 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel Hall, Circuit Court Judge

Case No. 2019-CP-46-00310  
Appellate Case No: 2019-000979

Ex Parte, Ryan Powell, . . . . . Appellant,

In re LB PARK, LLC, . . . . . Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, . . . Respondents.

**Reply to Respondent's Return to Motion to Strike  
Respondent's Final Brief and Motion  
to Strike Respondent's Supplemental Record**

Comes now appellant, Ryan Powell ("Ryan"), who pursuant to Rule 240 (f) SCACR makes this Reply to Respondent's Return to Motion to Strike Respondent's Final Brief and Motion to Strike Respondent's Supplemental Record.

Respondent's excuse given for why it missed its Final Brief filing/service deadline is that "*Respondent has at all times complied with the Court's direction as to deadlines*"<sup>1</sup>. That sentence would be laughable if it wasn't so dishonest. The parties are required to "at

<sup>1</sup> See Respondent's Return, pg 1, last sentence of para. 1.

all times" comply with the appellate court rules and also comply with any court orders that may be in effect at any given time. Since when does an attorney with over 22 years experience, and who specializes in handling appeals to the State appellate courts, need "*direction as to deadlines*" from the clerks of this Court in order to determine her client's filing deadlines? Then in the last paragraph of its return Respondent changes its excuse, ever so slightly, to add the false statement that it has also complied with "*the applicable rules*" [Return, pg 2, last para. 2nd sentence]. If it had "*at all times*" complied with the court rules then it would not have missed its filing/service deadlines, and it would not have filed and served a Supplemental Record with neither Ryan's written consent nor leave of court which Rules 212(b) SCACR requires<sup>2</sup>.

Respondent's attorney knows and understands how to determine her client's filing deadlines. Respondent's attorney also knows that a clerk of this court cannot **write a letter** that gives legal advice or that directs a party to violate the rules of the Court, including changing any party's filing deadlines. Even though a clerk does have the authority to extend filing/service deadlines and/or holding deadlines in abeyance, that authority can only be exercised by issuing a court order **not** by writing a letter. Further, a court order can only be issued upon the filing and service of a motion requesting such relief.

As this Court is well aware, there is no rule in the appellate court rules that automatically holds in abeyance the timelines for perfecting an appeal when a motion to consolidate is filed and served<sup>3</sup>. Since there is no rule, then the ONLY method that can hold the timelines for perfecting an appeal in abeyance, is a court order. As conclusively demonstrated in Ryan's motion to strike, there was no court order in effect holding the timelines for perfecting this appeal in abeyance pending this Court's decision on Respondent's Motion to Consolidate. Further, Respondent has failed to evidence in its

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<sup>2</sup> See Rule 212(b) - "With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so."

<sup>3</sup> See Rule 240 (b) SCACR - "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."

frivolous Return that there was such an order in effect at the time Respondent's Final Brief was due to be served/filed.

As shown in Ryan's motion to strike, the actual reason for Respondent missing its deadlines is that Respondent's attorney, and the clerks of this Court have been colluding and conspiring in an attempt to defraud Ryan into "believing" the timelines for perfecting this appeal were being held in abeyance hoping that Ryan would "fall" for their fraud and miss one of his filing deadlines. Had Ryan fell for the conspirator's fraud, this appeal would have been immediately dismissed and would not have been re-instated<sup>4</sup>? Respondent's attorney knowingly and intentionally missed Respondent's filing deadline as part of the fraud she was perpetrating on Ryan. Therefore, Respondent must now pay the price for its attorney making that conscientious CHOICE.

As far as appellant's Motion to Strike Respondent's Supplemental Record, Ryan clearly demonstrated in his motion to strike that Respondent was required to get either Ryan's written consent or leave of court in order to file a supplemental record. Respondent failed in its Return to show that it meet either of those requirements so its supplemental record must be stricken as it violates Rule 212 (b) SCACR.

### **Conclusion**

For the reasons stated herein and also for all the reasons stated in Ryan's Motion to Strike Respondent's Final Brief and Motion to Strike Respondent's Supplemental Record, those two motions must be granted so that this perfected appeal's record can be corrected and this appeal can be marked as "ready for consideration".

May 25, 2023

/s Ryan Powell  
Ryan Powell, Appellant  
287 East Hawfields  
Pittsboro, NC 27312

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<sup>4</sup> Although fraud does vitiate everything it touches, this Court would have probably determined that Ryan should have "known better" than to take legal advice from the clerk's office in the form of a letter.

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Certificate of Service For  
Reply to Respondent's Return to Motion to Strike Respondent's Final Brief and  
Motion to Strike Respondent's Supplemental Record

I certify that I served Respondents with a copy of my Reply to Respondent's Return to Motion to Strike Respondent's Final Brief and Motion to Strike Respondent's Supplemental Record by and through their attorney of record by First Class Mail with proper postage affixed on the date below shown addressed as follows:

Sarah P. Spruill  
P.O. Box 2048 (29602)  
Greenville, SC 29601

Brett Osborne  
190 Aviation Lane,  
Gold Hill NC 28071

05/25/2023  
Date

/s Ryan Powell  
Ryan Powell, Appellant  
287 East Hawfields  
Pittsboro, NC 27312