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**May 26 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Honorable Kristi F. Curtis, Circuit Court Judge

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Case No.: 2020-CP-26-06286  
Appellate Case No. 2023-000289

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Jack Kelly..... *Appellant,*

vs.

Roger D. Cox, Cox Millwork & Supply Inc, Waterside Drive Boat Ramp,  
LLC and Cox Properties, LLC ..... *Respondents.*

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**APPELLANT’S RESPONSE TO  
RESPONDENTS’ MOTION TO DISMISS APPEAL**

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Appellant Jack Kelly responding to Respondents’ Motion to Dismiss Appeal would respectfully ask the Court to deny the Motion and allow the Appellant to move forward. The Respondents’ Motion is based on the technicality that the Appellant failed to provide copies of the correspondence with the court reporter via electronic means.

Appellant would argue that this is not a jurisdictional error but a technical error that is easily corrected and has been. The Respondents have suffered no significant harm by the error. The Respondents referenced *Henning v Kaye*, 307 S.C. 436, 307 S.E.2d 794,794 (1992). Although the Court in the case said that “the South Carolina Appellate Court Rules are not mere technicalities” the Court went on to further say “Although this Court would be completely justified

in dismissing their appeal based on appellant's numerous violation of the Rules, we decline to do so and deny the motion to dismiss" id. (307 S.C. 438)

The Appellant would ask the Court to do the same here. Should this technical noncompliance cause any inconvenience to the Respondents Counsel the Appellant would request that the Respondents be given extended time to file their Initial Brief and Designation of Matter to correct any noncompliance that may have occurred on the Appellant's part.

Therefore, the Appellant would respectfully request that the Respondents motion to dismiss be denied.

Respectfully submitted.

May 26, 2023

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