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**Jul 12 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY COURT OF COMMON PLEAS

Honorable R. Ferrell Cothran, Jr.  
Judge, Third Judicial Circuit

Appellate Case No. 2022-001554

Nicholas Sanfilippo.....Appellant,

vs.

Estate at Westbury Horizontal Property Regime a/k/a Estate  
at Westbury Owners Association (a multifamily real estate  
community) and High Tide Associates (a property and HOA  
management company) .....Respondent.

**RESPONDENTS' SECOND AMENDED MOTION TO DISMISS APPEAL**

Gary Coggin  
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(843)689-7777  
Attorney for Appellant

Nathan E. Akers  
SC Bar No. 103415  
PO Box 40  
Beaufort, SC 29901  
Attorney for Respondents

**YOU WILL PLEASE TAKE NOTICE THAT** Respondents will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the South Carolina Court of Appeals or such other person as may be designated to hear such matters, for an Order of this Court dismissing Appellant's Appeal of the Order of the Honorable R. Ferrell Cothran, Jr. dated and filed October 4, 2022 pursuant to Rules 260, 267, 240 and 262 of the South Carolina Appellate Court Rules, for a failure of the Appellant to timely cure his deficient Initial Brief, timely file an Initial Brief, comply with Appellate Rules and Procedure, and failing to provide notification or service upon Respondent of motions and filings with the court.

The Court of Appeals allowed the Appellant to file his Initial Brief out of Time in its Order, dated June 13, 2023. On the same day, the Court of Appeals issued a deficiency letter, attached hereto as Exhibit A, to the Appellant stating that the Appellant's Initial Brief was deficient and that "any deficiency must be corrected within ten (10) days of the date of this letter *or this matter will be dismissed.*" It has been a month since the deficiency letter was issued by the Court of Appeals to the Appellant and there has been no action or any indication that the Appellant wishes to address or cure the deficiencies noted by the Court. The Appellant has, again, run out of time and accordingly, based on the letters and orders from this Court, as well as the Rules of Appellate Procedure, the Appellant's Appeal must be dismissed.

The undue delay caused by the Appellant follows a pattern, to wit:

The Appellant filed and served his Notice of Appeal of the Grant of Respondent's Motion for summary judgment on October 27, 2022. On November 4, 2022 the Court advised the parties that all filings must comply with Rule 267 of the SCACR in its initial letter. Long after the time (30 days) to file his initial brief had already expired on or about the end of November 2022 pursuant to Rule 208, the Appellant requested an extension of time to file his initial brief to ninety (90) more days on January 25, 2023. On January 26, 2023, the Court sent the Appellant a deficiency letter regarding proof of service and filing fee and noted that the deficiencies must be corrected within ten (10) days of the letter; they were not corrected within that time frame set by the Court. Nevertheless, the extension was granted by the Court in its Order dated February 22, 2023 and gave the Appellant until May 17, 2023 to file his initial brief; the Order stated "*no further extension will be granted absent extraordinary circumstances.*"

Approximately three months were allotted to the Appellant to prepare his Initial Brief but none was filed. Thereafter, on May 30, 2023—nearly two weeks after the extension had already expired—the Court issued an overdue letter to the Appellant indicating that the Court had not received the Appellant's initial brief. The letter stated that "*within ten days of the date of this letter [Appellant] must serve and file your Initial Brief and designation of matter, along with a motion to file out of time, or this appeal will be dismissed.*" This Respondent filed its original motion to dismiss the Appellant's appeal on May 30, 2023 because the Appellant had failed to file his Initial Brief in accordance with a Court Order that stated it would be dismissed if it was filed after May 17, 2023 because it had

not yet been filed as of May 30, 2023. Thereafter, on June 6, 2023, the Appellant filed his Motion to File out of Time and Initial Brief; the brief appears to be a recycling of his original memorandum of law in opposition to this Respondent's Motion for Summary Judgment. The Initial Brief does not make an attempt to comply with the rules of the Court, specifically, SCACR 208 or SCACR 267, and this Respondent was not served with either the Initial Brief or the Motion to File out of Time as required by the previous Court Orders above and SCACR 262. The Court noted as much when on June 13, 2023 it sent yet another Deficiency letter stating the Appellant had failed to comply with the SCACR, but did not mention the Appellant's failure to properly serve the parties and provide proof thereof.<sup>1</sup>

The Appellant, in his Initial Brief and Motion to File out of time merely references<sup>2</sup>, but does not produce, the proof of service on this Appellant. Notably, the Respondent feels necessary to bring to the Court's attention that the only thing received from the Appellant regarding this appeal was an encoded email from a private mail carrier which did not appear to comply with the SCACR. The significance of Appellant's provision of his late Initial Brief and letter to this Respondent is that it is dated May 19, 2023—after the period for his extension had already expired by Order of the Court. It unclear why there are two different Initial Briefs filed by the Appellant with two separate dates, one which is dated

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<sup>1</sup> Respondent only discovered this filing by checking the SC Judicial Branch website for updated filings and received no proof of service from the Appellant.

<sup>2</sup> The Appellant attached an alleged TX report which appears to indicate that *an email* was sent on May 17, 2023 but the Appellant cannot demonstrate what it was or that what was sent was indeed the Initial Brief or that it complied with previous Court Orders or the SCACR or service requirements.

May 17, 2023 and represents to the Court that it complies with the extension to the Court on June 6, 2023 and one to the Respondent which does not comply with the extension which is dated May 19, 2023. In any case, neither the Appellant's Motion to File Out of Time nor his Initial Brief comply with the previous Orders of the Court or the SCACR and as such this Respondent was prejudiced in its ability to properly address the matters in a proper Return to Appellant's Motion under Rule 240(e).


Accordingly, no compliant Initial Brief or a compliant Motion to File out of Time has ever been filed within the ten-day (10) time limit set out by the Court in its May 30, 2023 Overdue Notice and as such the Appellant has failed to timely pursue this Appeal. "Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260. Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper." SCACR 208. See also Southland Mobile Homes of South Carolina, Inc. v. Associates Financial Services Co., Inc., 270 S.C. 525, 244 S.E.2d 211 (1978) (dismissing the appeal of appellant where, although notice of appeal was timely filed, the appellant failed to file and serve the proposed case and exceptions within the time allowed by section 18-9-70 of the South Carolina Code and Circuit Court rule 49 noting that "where [an appellant] failed to serve its proposed case and exceptions within time provided by statutes and circuit court rules, it was the duty of the circuit judge to dismiss the appeal."); Lawson v. Mills, 259 S.C. 308, 191 S.E.2d 637 (1972)

(Dismissing the appellant's appeal where the brief was "obviously prepared with virtually no regard for the rules of this Court" . . . and as such failed to fully comply with the rules of the Court.).

The Appellant had ten days to cure the deficiencies noted in the June 13, 2023 letter from the Court—it has been a month. The Court has been generous and lenient with the Appellant, but the Respondents insist that the latest failure of the Appellant to comply with the Orders and directives of the Court as well as the Rules of Appellate Procedure require a dismissal of the Appeal in this matter. In the interest of justice, judicial economy, time, and to spare the Respondents additional prejudice, the Respondents respectfully request that the Court DISMISS the Appellant's Appeal of the Order Granting Summary Judgment.

This motion shall be based upon the South Carolina Appellate Court Rules, the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings filed herein, and any and all affidavits which may be served on or before the date of hearing hereon.

HOWELL, GIBSON & HUGHES, P.A.

By:   
Nathan E. Akers | SC Bar No. 103415  
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July 12, 2023



Exhibit A

Respondent's Second Amended  
Motion to Dismiss Appeal

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

CATHERINE S. HARRISON  
DEPUTY CLERK

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June 13, 2023

Mr. Gary Patrick Coggin, Esquire  
PO Box 7092  
Hilton Head Island SC 29938

Re: Nicholas Sanfilippo v. Estate at Westbury Horizontal Property Regime  
Appellate Case No. 2022-001554

Dear Counsel:

Upon reviewing your initial brief of appellant, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The cover of your brief does not comply with Rule 267(a), SCACR. Specifically, the initial brief of appellant should only list counsel of record for the appellant.
- The initial brief is not accompanied by a designation of matter to be included in the record on appeal.

Very truly yours,

  
CLERK

cc: Nathaniel Edwin Akers, Esquire

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THE STATE OF SOUTH CAROLINA  
South Carolina Court of Appeals

APPEAL FROM COUNTY  
Court of Common Pleas

Appellate Case No. 2022-001554

Nicholas Sanfilippo.....Appellant,

vs.


Estate at Westbury Horizontal Property Regime a/k/a Estate  
at Westbury Owners Association (a multifamily real estate  
community) and High Tide Associates (a property and HOA  
management company) .....Respondent.

RESPONDENT'S PROOF OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing  
*Respondents' Second Amended Motion to Dismiss Appeal* upon all counsel of  
record via email and by affixing same with proper postage and placing same with  
the United States Postal Service on the 12<sup>th</sup> day of July, 2023 addressed to the  
following:

Gary Coggin [gcitylaw@aol.com](mailto:gcitylaw@aol.com)  
Gary Coggin Law Offices  
PO Box 7092  
Hilton Head Island, SC 29928

HOWELL, GIBSON & HUGHES, P.A.

By:   
Nathan E. Akers | SC Bar No. 103415  
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Beaufort, South Carolina

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SC Court of Appeals

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\* Certified Mediator

July 12, 2023

Via Email Only  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Re: Nicholas Sanfilippo vs. Estate at Westbury Horizontal Property  
Regime aka Estate at Westbury Owners Association and High Tide  
Associates  
Case No.: 2022-001554

Dear Madame Clerk:

Please find enclosed herewith for filing *Respondents' Second Amended Motion to Dismiss* with regard to the above referenced matter. I would appreciate your filing the same and returning a filed clocked copy to me via email to [NAkers@hghpa.com](mailto:NAkers@hghpa.com) and [LTownsend@hghpa.com](mailto:LTownsend@hghpa.com). If return of the clocked copy must be via U.S. Mail, please advise and I will provide a self-addressed, stamped envelope provided for same.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.



Nathan E. Akers  
NEA/lt  
Enclosures

cc: Gary Coggin [gcitylaw@aol.com](mailto:gcitylaw@aol.com)  
via email and U.S. Mail