

99453

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

JUL 27 2023  
SC Court of Appeals

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2022-001727  
Civil Action No. 2014-CP-40-07037

Century Capital Group, LLC, **Appellant**,

v.

Midtown Development Group, LLC; Richland Joint Venture Group, LLC;  
Windsor Richland Mall, LP; and BRC Richland, LLC, Defendants,

Of whom Windsor Richland Mall, L.P. is the **Respondent**.

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**MOTION TO DISMISS APPEAL**

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Pursuant to Rules 208 and 260, SCACR, Respondent Windsor Richland Mall, L.P. (“Windsor”) hereby moves this Court for an order dismissing the above-captioned appeal by Appellant Century Capital Group, LLC (“Century”). Throughout this case, Century has missed court a hearing, requested multiple extensions, engaged in delay tactics, and has now missed the deadline for filing its initial brief and designation of matter.

**FACTS**

On September 23, 2022, Circuit Court Judge the Honorable Alison Lee granted Windsor’s motion for attorney’s fees, awarding Windsor \$71,816.46. Century did not bother to show up for the hearing on Windsor’s motion, despite receiving multiple notices of the hearing date both

through the Court's electronic system and from counsel for Windsor. *See Ex. A*, June 19, 2022, email.

Nevertheless, on December 8, 2022, Century appealed Judge Lee's Order, initiating the above-captioned appeal. The transcript was supposedly ordered the same day. After more than two months had passed, counsel for Windsor contacted counsel for Century asking for a status update, as Century had done nothing to check on the status of its transcript order. *See Ex. B*, February 14, 2023, email. Only after counsel for Windsor had alerted counsel for Century of its lack of a transcript was the transcript delivered on April 3, 2023 – five months after the appeal was first initiated (and outside of the 60-day window for receiving a transcript under Rule 207(a)(2) & (5), SCACR).

Century then proceeded to request a series of extensions to its initial brief deadline. The first extension was granted on May 2, 2023; the second extension was granted on June 7, 2023, setting a final filing deadline of July 3, 2023. The second extension stated in no uncertain terms that “no further extensions will be granted absent extraordinary circumstances.”

Despite this hard deadline, Century failed to file its brief by July 3, 2023. At 7:41 p.m., Century served its brief on the undersigned counsel, but sent its Initial Brief, Designation of Matter, and Proof of Service to the incorrect email address for the Court of Appeals. *See Ex. C*, July 3, 2023, email. Counsel for Century supposedly did not realize this error until Saturday, at 3:28 p.m. *See Ex. D*, July 8, 2023, email. This is odd, because undersigned counsel tested the email address incorrectly used for the Court of Appeals and immediately received an error message. *See Ex. E*, July 10, 2023, emails entitled “Test.” Thus, counsel for Century also would have been immediately notified that it had used the wrong email address and been able to rectify the problem

within the five hours left on July 3, 2023, before the deadline had passed. Instead, Century waited five days to attempt to correct its misfiling.

### ARGUMENT

The law instructing dismissal here is simple. Rule 208(a)(4), SCACR, provides unequivocally that “[u]pon 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.<sup>1</sup>” Dismissal of an appeal for failure to timely file a brief has been the standard practice of South Carolina’s appellate courts for decades. *See, e.g., Roberts v. LaConey*, 375 S.C. 97, 100, 650 S.E.2d 474, 475-76 (2007) (dismissing appellant’s appeal for failing to serve and file the record and brief); *Nimmons-Adams Lumber Co. v. Whitten*, 202 S.C. 197, 24 S.E.2d 272, 273 (1943) (dismissing appellant’s appeal to the Supreme Court on account of the failure of the appellant to file his brief within the time prescribed by the rules).

Here, Century’s filing deadline was Monday, July 3, 2023. It did not file its brief until Monday, July 10, 2023. Under Rule 208(a)(4), SCACR, this Court should dismiss Century’s appeal.

### CONCLUSION

Deadlines exist for a reason: to ensure the expedient administration of justice. Century has missed the deadline by which it was required to perfect its appeal, after two extensions and over six months of delay. Century has had every opportunity to contest the Circuit Court’s award of

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<sup>1</sup> Rule 260, SCACR, allows for reinstatement of an appeal only “upon good cause shown.” Although this argument is not ripe for this Court to consider until after it has dismissed this appeal, Century will not be able to show “good cause.” Waiting five days to fix its filing error despite receiving immediate notice that its brief was not correctly filed does not constitute “good cause” for reinstatement of its appeal.

attorney's fees to Windsor. Instead, it has missed a court-ordered hearing, engaged in multiple delays, and now missed the filing deadline for its appeal. Century clearly does not care about this appeal. It should be dismissed before Windsor is required to expend more attorney's fees to obtain the fees it has already been awarded.

Respectfully submitted,

**WILLIAMS MULLEN**

By: s/ Ruth A. Levy

Ruth A. Levy (S.C. 103371)

rlevy@williamsmullen.com

1230 Main Street, Suite 330

Columbia, South Carolina 29201

(803) 567-4600

*Attorney for Respondent Windsor  
Richland Mall, L.P.*

July 27, 2023

Columbia, South Carolina

# **Exhibit A**

**Levy, Ruth**

---

**From:** Levy, Ruth  
**Sent:** Tuesday, July 19, 2022 3:37 PM  
**To:** Ryan McCabe; Martin-Rothrock, Kimberly  
**Cc:** ALEELC@sccourts.org; Tamasitis, John; Tyer, Sara; Trippett.boineau@mgclaw.com; robert.thomas@rtt-law.com; Valerie Giovanoli; Deanne Peele  
**Subject:** RE: Century Capital Group LLC vs Midtown Development Group LLC , defendant, et al. / Case Number: 2014CP400737

Ryan – As further proof of notice:

McCabe, Donald Ryan Jr.	7/19/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/29/
Boineau, Robert Trippett III	7/19/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/29/
McAlister, Allen Keith Jr.	7/19/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/29/
Levy, Ruth Ann	7/19/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/29/
Ravenel, D. Cravens	7/19/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		06/29/

Thank you,

Ruth

**From:** Levy, Ruth  
**Sent:** Tuesday, July 19, 2022 3:35 PM  
**To:** Ryan McCabe <Ryan.McCabe@mccabetrotter.com>; Martin-Rothrock, Kimberly <kmartin-rothrock@williamsmullen.com>  
**Cc:** ALEELC@sccourts.org; Tamasitis, John <jtamasitis@williamsmullen.com>; Tyer, Sara <styer@williamsmullen.com>; Trippett.boineau@mgclaw.com; robert.thomas@rtt-law.com; Valerie Giovanoli <Valerie.Giovanoli@mccabetrotter.com>; Deanne Peele <Deanne.Peele@mccabetrotter.com>  
**Subject:** RE: Century Capital Group LLC vs Midtown Development Group LLC , defendant, et al. / Case Number: 2014CP400737

Ryan,

We received a notice from the Court on June 29, calendaring it for a hearing. You were on the email distribution for the Court, so also would have received the same notice.

Just as you received the Order we submitted, you also received the Affidavit of Attorney's Fees and our Memorandum of Law which we filed seven days ago leading up to the hearing (see attached).

Thank you,

Ruth

**Ruth A. Levy | Attorney | Williams Mullen**

1230 Main Street, Suite 330 | P.O. Box 8116 (29202) | Columbia, SC 29201  
T 919.981.4029 RAL, 803.567.4613 COL | C 919.818.2439 | F 919.981.4300 | [rlevy@williamsmullen.com](mailto:rlevy@williamsmullen.com)  
[www.williamsmullen.com](http://www.williamsmullen.com)

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**From:** Ryan McCabe <[Ryan.McCabe@mccabetrotter.com](mailto:Ryan.McCabe@mccabetrotter.com)>

**Sent:** Tuesday, July 19, 2022 3:15 PM

**To:** Martin-Rothrock, Kimberly <[kmartin-rothrock@williamsmullen.com](mailto:kmartin-rothrock@williamsmullen.com)>

**Cc:** [ALEELC@sccourts.org](mailto:ALEELC@sccourts.org); Levy, Ruth <[rlevy@williamsmullen.com](mailto:rlevy@williamsmullen.com)>; Tamasitis, John <[jtamasitis@williamsmullen.com](mailto:jtamasitis@williamsmullen.com)>; Tyer, Sara <[styer@williamsmullen.com](mailto:styer@williamsmullen.com)>; [Trippett.boineau@mgclaw.com](mailto:Trippett.boineau@mgclaw.com); [robert.thomas@rtt-law.com](mailto:robert.thomas@rtt-law.com); Valerie Giovanoli <[Valerie.Giovanoli@mccabetrotter.com](mailto:Valerie.Giovanoli@mccabetrotter.com)>; Deanne Peele <[Deanne.Peele@mccabetrotter.com](mailto:Deanne.Peele@mccabetrotter.com)>

**Subject:** Re: Century Capital Group LLC vs Midtown Development Group LLC , defendant, et al. / Case Number: 2014CP400737

I am on a family vacation and can't find where I received notice of this hearing. I do not have access to my computer so I will coordinate with my office to figure out what's going on. I would not miss a hearing intentionally I would not miss a hearing intentionally. My apologies My apologies. Thank you, Ryan

Sent from my iPhone

On Jul 19, 2022, at 2:39 PM, Martin-Rothrock, Kimberly <[kmartin-rothrock@williamsmullen.com](mailto:kmartin-rothrock@williamsmullen.com)> wrote:

Good afternoon, Judge Lee:

Please find the attached submitted to you on behalf of Attorney Ruth Levy in connection with the above-referenced matter, which was E-Filed with the Court this afternoon following today's hearing regarding same.

Sincerely,

**WILLIAMS** : Kimberly A. Rothrock  
**MULLEN** : Legal Administrative Assistant  
: T 803.567.4604  
: [email](mailto:) | [website](http://)

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*DEBT COLLECTOR: This firm collects debts for our clients who are creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.*

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# **Exhibit B**

## Levy, Ruth

---

**From:** Ryan McCabe <Ryan.McCabe@mccabetrotter.com>  
**Sent:** Tuesday, February 14, 2023 11:42 AM  
**To:** Levy, Ruth  
**Cc:** James Stewart  
**Subject:** Re: Century v. Windsor Appeal

Ruth,

We did order the transcript. We have not received it yet. Will check status and report back.

James,

Please provide Ruth with copies of all communications with the court reporter.

Thanks  
Ryan

Sent from my iPhone

On Feb 14, 2023, at 11:19 AM, Levy, Ruth <rlevy@williamsmullen.com> wrote:

Ryan,

Where does this appeal stand? Under Rule 207, SCACR, the court reporter was supposed to provide written confirmation of your transcript request within 5 days, and deliver it within 60 days, at the latest. You were also supposed to copy me on all correspondence. If you've sent or received any correspondence, etc. from any court reporter, please provide me with a copy before noon tomorrow.

Thank you,

Ruth

**Ruth A. Levy | Attorney | Williams Mullen**  
1230 Main Street, Suite 330 | P.O. Box 8116 (29202) | Columbia, SC 29201  
T 919.981.4029 RAL, 803.567.4613 COL | C 919.818.2439 | F 919.981.4300 | rlevy@williamsmullen.com  
[www.williamsmullen.com](http://www.williamsmullen.com)

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# **Exhibit C**

## Levy, Ruth

---

**From:** Ryan McCabe <Ryan.McCabe@mccabetrotter.com>  
**Sent:** Monday, July 3, 2023, 7:41 PM  
**To:** ctappfilings@sccourts.og  
**Cc:** Levy, Ruth; jtamasitis@willaimsmullen.com; Marilyn Gomez  
**Subject:** Century Capital Group, LLC v. Midtown Development, et al; / 2022-001727  
**Attachments:** Appellant's Initial Brief.pdf; Appellant's Designation for Record on Appeal.pdf; Proof of Service.pdf.pdf; Century Capital Group, LLC v. Midtown Development, et al; / 2022-001727

RE: Century Capital Group, LLC v. Midtown Development, et al  
C/A No.: 2014-CP-40-07037  
Appellate Case No.: 2022-001727  
MTB File No.: 000696.00077

Good evening,

Please see attached for filing Appellant's Initial Brief, Designation of Matter, Proof of Service and copy of email serving same upon Counsel of record.

Thank you,  
D. Ryan McCabe Jr.  
McCabe, Trotter, & Beverly, P.C.  
4500 Fort Jackson Blvd., Suite 250  
Columbia, SC 29209  
Direct: (803) 724-5005  
[ryan.mccabe@mccabetrotter.com](mailto:ryan.mccabe@mccabetrotter.com)



McCABE, TROTTER & BEVERLY, P.C.  
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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*construed as an attempt to collect a debt, but only as an attempt to enforce a lien.*

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# **Exhibit D**

## Levy, Ruth

---

**From:** Ryan McCabe <Ryan.McCabe@mccabetrotter.com>  
**Sent:** ~~Saturday, July 8, 2023, 3:28 PM~~  
**To:** ctappfilings@sccourts.org  
**Cc:** Levy, Ruth; Tamasitis, John; Marilyn Gomez  
**Subject:** FW: Century Capital Group, LLC v. Midtown Development, et al; / 2022-001727  
**Attachments:** Appellant's Initial Brief.pdf; Appellant's Designation for Record on Appeal.pdf; Proof of Service.pdf; Century Capital Group, LLC v. Midtown Development, et al; / 2022-001727

Good afternoon,

I just realized that the email addresses were incorrect for the Court and Mr. Tamasitis. I apologize. Please see below and attached.

Thank you,  
Ryan

D. Ryan McCabe Jr.  
McCabe, Trotter, & Beverly, P.C.  
4500 Fort Jackson Blvd., Suite 250  
Columbia, SC 29209  
Direct: (803) 724-5005  
[ryan.mccabe@mccabetrotter.com](mailto:ryan.mccabe@mccabetrotter.com)



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COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

**From:** Ryan McCabe  
**Sent:** Monday, July 3, 2023 7:41 PM  
**To:** 'ctappfilings@sccourts.org' <ctappfilings@sccourts.org>  
**Cc:** 'rlevy@williamsmullen.com' <rlevy@williamsmullen.com>; 'jtamasitis@willaimsmullen.com' <jtamasitis@willaimsmullen.com>; Marilyn Gomez <Marilyn.Gomez@mccabetrotter.com>  
**Subject:** Century Capital Group, LLC v. Midtown Development, et al; / 2022-001727

RE: Century Capital Group, LLC v. Midtown Development, et al  
C/A No.: 2014-CP-40-07037  
Appellate Case No.: 2022-001727  
MTB File No.: 000696.00077

Good evening,

Please see attached for filing Appellant's Initial Brief, Designation of Matter, Proof of Service and copy of email serving same upon Counsel of record.

Thank you,  
D. Ryan McCabe Jr.  
McCabe, Trotter, & Beverly, P.C.  
4500 Fort Jackson Blvd., Suite 250  
Columbia, SC 29209  
Direct: (803) 724-5005  
[ryan.mccabe@mccabetrotter.com](mailto:ryan.mccabe@mccabetrotter.com)



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# **Exhibit E**

**Levy, Ruth**

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**From:** Levy, Ruth  
**Sent:** Monday, July 10, 2023 10:42 AM  
**To:** [ctappfilings@sccourt.org](mailto:ctappfilings@sccourt.org)  
**Subject:** Test

**WILLIAMS** : Ruth A. Levy  
**MULLEN** : *Attorney*  
: T 919.981.4029 RAL, 803.567.4613 COL  
: [email](#) | [v-card](#) | [website](#) | [LinkedIn](#)

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**Levy, Ruth**

---

**From:** Mail Delivery Subsystem <MAILER-DAEMON@mx0b-00264101.pphosted.com>  
**Sent:** Monday, July 10, 2023 10:42 AM  
**To:** Levy, Ruth  
**Subject:** ~~Returned mail: see transcript for details~~  
**Attachments:** Test

Williams Mullen Security Disclaimer, This message originated from an external source.

**Levy, Ruth**

---

**From:** Mail Delivery Subsystem <MAILER-DAEMON@mx0b-00264101.pphosted.com>  
**To:** ctappfilings@sccourt.og  
**Sent:** Monday, July 10, 2023 10:42 AM  
**Subject:** Undeliverable: Test

The original message was received at Mon, 10 Jul 2023 10:42:29 -0400  
from [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_m0116603.pops.net&d=DwIBAg&c=Ey4eW6FyjuP3VQxHFMnsZcjQYJ1SR4w9HsYx4wFXyJk&r=wuuNDfGF7HW2w2axTCQgQ1E4j\\_t5OjF84WRebam0tfQ&m=v8FBaxozAZoTnyjLh021GhPLSY4mWKnYfta72u-JNVd1iFVzLhCo7rcjoBQoyEfX&s=utiZ7\\_wO8TzoZi5qjLfNLJxaga0aJFoj40ju7-fPwxY&e=\[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_127.0.0.1&d=DwIBAg&c=Ey4eW6FyjuP3VQxHFMnsZcjQYJ1SR4w9HsYx4wFXyJk&r=wuuNDfGF7HW2w2axTCQgQ1E4j\\_t5OjF84WRebam0tfQ&m=v8FBaxozAZoTnyjLh021GhPLSY4mWKnYfta72u-JNVd1iFVzLhCo7rcjoBQoyEfX&s=D7NuqqqhATiJ2ZPuvJOHURrBcxmOzrOJ4ITIP3OToAg&e= \]](https://urldefense.proofpoint.com/v2/url?u=http-3A__m0116603.pops.net&d=DwIBAg&c=Ey4eW6FyjuP3VQxHFMnsZcjQYJ1SR4w9HsYx4wFXyJk&r=wuuNDfGF7HW2w2axTCQgQ1E4j_t5OjF84WRebam0tfQ&m=v8FBaxozAZoTnyjLh021GhPLSY4mWKnYfta72u-JNVd1iFVzLhCo7rcjoBQoyEfX&s=utiZ7_wO8TzoZi5qjLfNLJxaga0aJFoj40ju7-fPwxY&e=[https://urldefense.proofpoint.com/v2/url?u=http-3A__127.0.0.1&d=DwIBAg&c=Ey4eW6FyjuP3VQxHFMnsZcjQYJ1SR4w9HsYx4wFXyJk&r=wuuNDfGF7HW2w2axTCQgQ1E4j_t5OjF84WRebam0tfQ&m=v8FBaxozAZoTnyjLh021GhPLSY4mWKnYfta72u-JNVd1iFVzLhCo7rcjoBQoyEfX&s=D7NuqqqhATiJ2ZPuvJOHURrBcxmOzrOJ4ITIP3OToAg&e= ])

-----The following addresses had permanent fatal errors:-----

<ctappfilings@sccourt.og>  
(reason: 550 Host unknown)

----- Transcript of session follows -----

550 5.1.2 <ctappfilings@sccourt.og>... Host unknown (Name server: sccourt.og.: host not found)

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

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Appellate Case No. 2022-001727  
Civil Action No. 2014-CP-40-07037

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Century Capital Group, LLC, **Appellant**,

v.

Midtown Development Group, LLC; Richland Joint Venture Group, LLC;  
Windsor Richland Mall, LP; and BRC Richland, LLC, Defendants,

Of whom Windsor Richland Mall, L.P. is the **Respondent**.

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**PROOF OF SERVICE**

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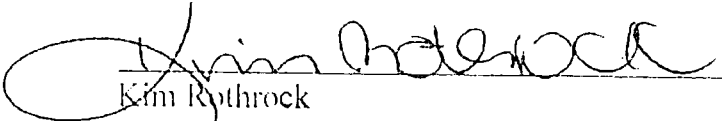
I certify that I have served the Motion to Dismiss, as the undersigned employee of the law offices of Williams Mullen, attorneys for Respondent, does hereby certify that service of the Motion to Dismiss was made on all counsel of record, specified below, by electronically mailing a copy of the same to the following addresses:

*[Counsel served and signature block on the following page.]*

**MCCABE, TROTTER & BEVERLY, P.C.**

D. Ryan McCabe, Jr. (SC Bar 16977)  
4500 Fort Jackson Blvd., Suite 250  
Columbia, SC 29209  
(T): 803-724-5000  
ryan.mccable@mccabetrotter.com

*Attorneys for Appellant Century Capital Group, LLC*

  
Kim Rothrock  
Legal Administrative Assistant

July 27, 2023

Columbia, South Carolina

# WILLIAMS MULLEN

Ruth A. Levy, Esquire  
Direct Dial: 803.567.4613  
rlevy@williamsmullen.com

July 27, 2023

RECEIVED

JUL 27 2023

SC Court of Appeals

**VIA HAND DELIVERY and E-MAIL ONLY**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201  
ctappfilings@sccourts.org

Re: Century Capital Group, LLC v. Windsor Richland Mall, L.P., et al.  
Appellate Case No. 2022-001727

Dear Ms. Kitchings:

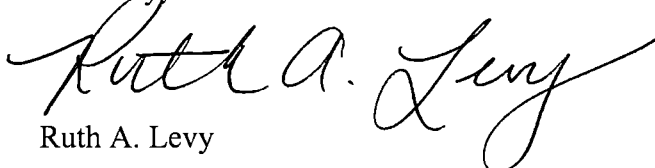
Please find enclosed Respondent Windsor Mall, L.P.'s Motion to Dismiss Appeal. Kindly please file the same and return a clocked-in copy to my office via e-mail.

Also enclosed, please find this firm's check in the amount of \$50.00 which represents the filing fee associated with the enclosed motion.

The enclosed documents have been served upon counsel today via electronic mail as indicated in the Proof of Service.

Should you have any questions or require additional information, please do not hesitate to contact my office.

Sincerely,

  
Ruth A. Levy

RAL/kmr

Enclosures: As referenced.

Cc: Counsel of record w/ encl. via e-mail only

 **WILLIAMS MULLEN**  
1230 Main Street  
Suite 330  
Columbia, SC 29201

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**RECEIVED**  
JUL 27 2023  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**BY HAND**