

**RECEIVED**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

AUG 28 2023

APPEAL FROM RICHLAND COUNTY  
CIRCUIT COURT

SC Court of Appeals

DeAndrea Gist Benjamin, Circuit Court Judge  
Case No. 2019-CP-40-00919

Appellate Case No. 2022-001434

Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended.....Appellant,

v.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants,

of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association ,.....Respondents.

**REPLY TO RESPONDENTS' MOTION TO DISMISS**

**TO: DOUGLAS W. MACKELCAN, ESQUIRE AND SKYLAR C. WILSON, ESQUIRE, ATTORNEYS FOR THE RESPONDENTS AND TO THE RESONDENTS NAMED ABOVE:**

The Appellant Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended, herein files his Reply to Respondents' Motion to Dismiss and would show as follows:

## **BACKGROUND**

Appellant filed his appeal arising out of the Court Granting Respondents' Motion for Summary Judgment heard on January 7, 2021. The Court took the matter under advisement and issued a Form 4 Order Granting Respondents' Motion for Summary Judgment (the "Order"). Appellant filed a Motion to Reconsider the Order. Appellant's Motion to Reconsider the Order was denied by Form 4 Order filed September 19, 2022. Appellant file his Notice of Appeal on October 11, 2022, and ordered a copy of the transcript of the hearing from the January 7, 2021 Motion for Summary Judgment hearing.

The Clerk of Court for the South Carolina Court of Appeals notified Appellant's counsel on December 7, 2022, that the time for ordering the transcript had expired. Appellant and the staff at the Goodwyn Law Firm spent numerous hours and sent multiple emails to the underlying court, the clerk for the South Carolina Court of Appeals attempting to locate the court reporter and obtain a copy of the transcript from the January 7, 2021, hearing. Respondent's Exhibit 2 to its Motion to Dismiss is replete with the numerous attempts Appellant and the Goodwyn Law Firm's staff made with to obtain a copy of the transcript from the January 7, 2021.

In addition to the alleged missing transcript and other problems, including audio difficulties with the transcript, Attorney Charles G. Blackburn began work with the Goodwyn Law Firm in May 2022. When the court reporter had been identified, the Court reporter would not produce a copy of the transcript to Mr. Blackburn until Mr. Blackburn received an Order from the underlying Court that Mr. Blackburn was working for the Goodwyn Law Firm, LLC. The Goodwyn Law Firm, LLC received an Order filed January 5, 2023, allowing the Goodwyn Law Firm, LLC and attorney T. Jeff Goodwyn to receive a copy of the transcript from January 7, 2021.

The court reporter then informed Mr. Blackburn by email of January 6, 2023, that the courts in January 2021, were experiencing technical difficulties and that she would do her best to prepare a transcript with no or few audibles and that it would take a “few weeks” to prepare the transcript.

A timeline of events outlining the significant issues Appellant encountered during his pursuit of the transcript is outlined below. The chronology of the efforts made by Appellant’s counsel to obtain a copy of the transcript, illustrates the significant problems encountered by the Appellant during its pursuit of a copy of the transcript.

<b>1</b>	10-11-22	Transcript Request Form (the day the appeal was filed)
<b>2</b>	12-7-22	Letter from Court of Appeals notifying Appellant the time for ordering the transcript expired
<b>3</b>	12-12-23	Appellant’s letter to Court of Appeals saying transcript cannot be found
<b>4</b>	12-19-22	Letter from Court of Appeals saying file a Motion to obtain transcript
<b>5</b>	12-28-22	Letter to Judge Benjamin requesting Order allowing copy of transcript be produced to the Goodwyn Law Firm
<b>6</b>	1-4-23	Our letter to Judge Benjamin with Proposed Order for Transcript
<b>7</b>	1-5-23	Filed Order allowing transcript be produced to the Goodwyn Law Firm
<b>8</b>	1-6-23	Email from Court Reporter regarding difficulties with transcribing the transcript
<b>9</b>	1-18-23	Appellant’s Motion for Extension of Time to file Initial Brief
<b>10</b>	1-20-23	Order Extending Filing Time to March 20, 2023
<b>11</b>	1-25-23	Letter to Respondent from Court of Appeals regarding deficiency in Order of Substitution for Respondent attorney Michael Masciale

<b>12</b>	2-2-23	Order substituting attorney Michael Masciale
<b>13</b>	3-20-23	Appellant's Second Motion for Extension of Time to File Initial Brief
<b>14</b>	3-29-23	Order Holding in Abeyance time to serve Initial Brief
<b>15</b>	8-11-23	Email from Court Reporter to attorney Blackburn with attached transcript from January 7, 2021 hearing with notation that the court reporter did the best she could with the poor quality of the Webex audio as there was great interference
<b>16</b>	8-18-23	Respondent filed Motion to Dismiss
<b>17</b>	8-18-23	Email from attorney Blackburn to Respondents notifying them of receipt of the transcript with the numerous inaudibles and "she did the best she could considering the poor quality of the Webex audio."

The emails from the court reporter are contained as exhibits in the Appellant's Motion for Extension to file Initial Brief and Designation of Matter filed with this Court on January 18, 2023, that are reiterated in the August 11, 2023, email from the Court Reporter to attorney Blackburn. Appellant has finally obtained a poor-quality transcript from the Court Reporter that covered the January 7, 2021, hearing to prepare Appellant's initial brief.

### Argument

Respondents base its Motion to Dismiss on essentially two grounds: 1) the time it has taken Appellant to obtain a copy of the hearing from January , 2021; and 2) Appellant not copying co-counsel with communications between the Appellant and the Court Reporter.

The Respondents move for an order of dismissal, pursuant toe Rules 207, 208, 240 and 260 of the South Carolina Appellate Court Rules.

Good cause is the standard that determines if an appeal can be reinstated. "The good cause standard exists to ensure the interests of justice are protected even when a party missteps,

so a harmless procedural foot fault does not spring a trap door that mindlessly jettisons innocent parties out of court, regardless of the circumstances.” *Jordan v. Hartford Fin. Grp., Inc.*, 453 S.C. 501, 868 S.E.2d 400 (S.C. App. 2002).

To jettison Appellant out of court over the inability to obtain a copy of a transcript despite multiple efforts and time spent to obtain the transcript is unconscionable harmless error. Goodwyn Law Firm did everything in its power to obtain a copy of the transcript of the transcript so that this appeal would not be jettisoned out of court.

Furthermore, the Respondents’ argument that Appellant did not copy the Court, the Office of Court Administration, and Respondents’ counsel with **all** correspondence concerning the transcript is not accurate. Counsel for Appellant was in constant communication with the court reporter attempting to obtain a copy of the transcript. Although Appellant did not copy **all** communications with the court reporter to the above-mentioned parties and entities, counsel for Appellant did make sure all said parties and entities were kept apprised of the status of the search for the transcript.

“Where there is a good faith mistake of fact, and, no attempt to thwart the judicial system, there is basis for relief.” *Columbia Pools, Inc. v. Galvin*, 228 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986). Appellant made a good faith attempt to contact counsel for respondent and the court concerning the status of the transcript. To grant Respondents’ Motion to Dismiss over technicalities’ when prejudice is absent from the scene is prejudicial to Appellant, especially at this stage of the Appeal. “The practice of law is challenging enough without having to endure the overbearing enforcement of technicalities when prejudice is absent from the scene.” *Supra Jordan*.

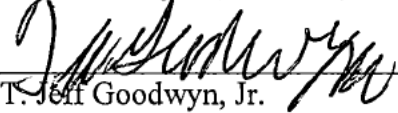
The touchstone here is good cause, a standard designed to excuse honest, harmless human mistakes so a case may be judged on its merits rather than its missteps” Id *Jordan*; See *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 348 S.E. 2d 617 (Ct. App. 1986).

**Conclusion**

For good cause, as referenced herein, including the lack of prejudice and harmless human mistakes similar to *Jordan*, the Respondents’ Motion to Dismiss must be denied so this appeal may be heard on the merits.

Respectfully submitted,

**The Goodwyn Law Firm, LLC**

  
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Columbia, South Carolina  
August 27, 2023

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
CIRCUIT COURT

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2019-CP-40-00919

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**PROOF OF SERVICE**

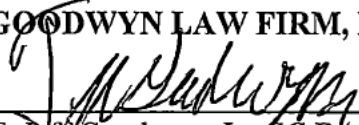
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I certify that I have served a copy of **Appellant’s Reply to Respondents’ Motion to Dismiss** on Douglas W. Mackelcan, Esquire, and Skylar C. Wilson, Esquire, counselors for the Respondents at the address below via email and by depositing a copy of same in the United States Mail, postage prepaid, on August 28, 2023.

Douglas W. Mackelcan, Esquire  
Skylar C. Wilson, Esquire  
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40 Calhoun Street, Suite 400  
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*(Signature on next page)*

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August 28, 2023

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SC Court of Appeals

**VIA HAND DELIVERY**

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

RE: *Emad Tadros, M.D. v. Holder Properties, Inc.*  
*Appellate Case No.: 2022-001434*  
*Our File No.: 4000-0007*

Dear Ms. Kitchings:

Enclosed for filing, please find the original and one copy of Appellant's Reply to Respondents' Motion to Dismiss and Proof of Service in regards to the above referenced matter. Please file the original and return a filed copy of same to me in the self-addressed stamped envelope provided.

As evidenced in the enclosed Proof of Service, I have served all interested parties, with a copy of same.

Thank you for your attention to this matter and should you have any questions, please do not hesitate to contact me.

Sincerely,



T. Jeff Goodwyn, Jr.

TJG/msb

Enclosures

cc: Douglas W. Mackelcan, Esquire  
Skyler C. Wilson, Esquire  
Emad Tadros