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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

OCT 11 2023

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.

MOTION TO REMAND FOR NEW HEARING TO CREATE TRANSCRIPT AND RECORD FROM HEARING

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Appellant hereby moves to remand the case to the trial court to allow for the creation of a transcript of record, given the approximately fifty-four (54) inaudible and noise interference contained in a sixty-nine (69) page transcript to be used in the appeal.

Factual Background

This case involves ADESSO (“ADESSO”) condominiums and commercial units located at 601 Main Street, Columbia, South Carolina 29201. ADESSO is constructed over a two-level parking garage with four (4) commercial units owned by Appellant on the first ground floor. The commercial units are part of ADESSO Horizontal Property Regime and members of ADESSO Homeowners’ Association.

Respondent ADESSO/Columbia, LLC is identified, in the Master Deed, as the Grantor and sole owner of the land and improvements of ADESSO and responsible for compliance with the Master Deed. The Master Deed set forth many contractual obligations including, but not limited to, complying with all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over ADESSO. The Master Deed assigns a certain number of parking spaces to the exclusive use of the commercial units owned by Appellant and the City of Columbia Planning and Zoning Development requires that a certain number of parking spaces be allocated for the exclusive use of the commercial units.

The Respondents have converted, changed and altered the commercial unit parking spaces so that the parking spaces do not comply, and have never complied, with the Master Deed or the City of Columbia Planning and Zoning Development’s ordinances. Respondents knew its actions in failing to comply with the City of Columbia Planning and Zoning Department parking space requirements for the commercial units violated the City of Columbia Planning and Zoning Department parking space requirements from the beginning of construction of the project. Respondents did not take necessary actions to correct the violations of the zoning requirements set forth in the Master Deed and amendments to the Master Deed.

The Respondents, through deception and misrepresentation, created a parking situation for the commercial units that did not comply with the City of Columbia Planning and Zoning Department's ordinances. Appellant was not aware of the zoning violations when he purchased the commercial units in December 2014 and relied upon the false and misleading information, he received regarding the parking spaces during his purchase of the commercial units all to his detriment.

Furthermore, ADESSO HOA, required Appellant to pay monthly rent for certain parking spaces that should have been allocated to the commercial units I addition to costs, expenses, and budget items that should have been specifically attributable only to the residential units and not to the commercial units in violation of the Master Deed. Respondents refused to provide Appellant with a clear explanation, itemization or quantification of annual budgets applicable to the costs for maintenance of the common areas of the commercial units compared to that of the residential condominiums and refused to provide Appellant with an accounting of the monthly fees charged to the commercial units when Appellant purchased the commercial units in 2014.

In 2017 ADESSO HOA filed suit against the original developer and several subcontractors concerning construction defects existing at ADESSO. The Plaintiff was not aware of the lawsuit, even though Plaintiff was named as a Plaintiff, and refused to execute the Settlement Agreements and Releases as part of the 2017 settlement. However, the HOA's attorney assured the Appellant that the execution of the Settlement Agreements and Releases would not preclude Appellant from pursuing the claims he had against the developer and contractor.

The Respondents moved for summary judgment and were heard on January 7, 2021. The circuit court waited a year before ruling on, and granting, the Respondents' motions for summary judgment. The transcript from the January 7, 2021, hearing, took almost a year to be produced

and contains approximately fifty-four (54) “inaudible” and “noise interference” notations in the transcript from the hearing. The numerous inaudible and noise interference make a meaningful record of the hearing impossible.

Argument

The transcript of the case does not provide the court with the ability to conduct a meaningful appellant review given the 50+ sections that are inaudible.

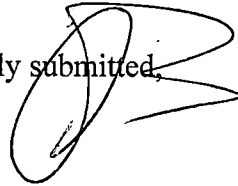
“The transcript in the case should provide the court with the ability to conduct a meaningful appellate review.” *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (S.C. Ct. App. 2007). Appellant argued at the hearing that the provisions of the Master Deed were violated in several ways, including the parking allocated to the commercial units and the Release and Settlement Agreement. The transcript of the Respondents’ Motion for Summary Judgment hearing makes a clear record of Appellant’s argument in opposition to Respondents’ Motion for Summary Judgment impossible.

For example, Appellant was threatened to execute the Release and Settlement under duress. This portion of the transcript is completely missing as being noted as “inaudible, sound cut out.” Appellant, in addition to the execution of the Release and Settlement Agreement, the Appellant complained of the regime fees charged to Appellant’s commercial units. There are approximately five (5) “inaudibles” in three (3) pages of the transcript concerning the regime fees charged to the Appellant. The regime fees charged to the Appellant is one of the grounds for the Appellant’s appeal and a clear record of the hearing is meaningful and necessary for the Court to understand Appellant’s full argument on appeal. “A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting

a meaningful appellate review.” *Adams v. H.R. Allen, Inc., CNA, and Zurich North America*, 397 S.C. 652, 726 S.E.2d 9 (S.C. App. 2012).

Because the transcript has significant omissions and inaudible sections, the court cannot conduct a meaningful appellate review. As a result, the court should remand the case to the Circuit Court for another summary judgment hearing.

Respectfully submitted,



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Columbia, South Carolina
October 11, 2023

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PROOF OF SERVICE

I certify that I have served a copy of a **Motion to Remand for New Hearing to Create Transcript and Record from Hearing** 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 October 11, 2023.

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October 11, 2023

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*Also Licensed in Georgia
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** Of Counsel

October 11, 2023

VIA HAND DELIVERY

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

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SC Court of Appeals

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

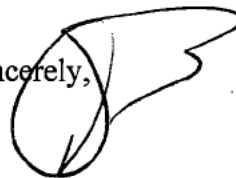
Dear Ms. Kitchings:

Enclosed for filing, please find the original and one copy of a Motion to Remand for new Hearing to Create Transcript and Record from Hearing 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. Also, enclosed is a check in the amount of \$50.00 representing the filing fees.

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

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

Sincerely,



Charles G. Blackburn

CGB/msb
Enclosures

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