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Oct 20 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appellate Case No. 2023-001147

APPEAL FROM BEAUFORT COUNTY  
Master In Equity

Marvin H. Dukes, III, Master in  
Equity and Special Circuit Court Judge  
Case No. 2020-CP-07-00977

BOKF Real Estate Holding, LLC,

Respondent,

v.

T & S Management, Inc. and  
Turan Strange,

Appellants.

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RESPONDENT’S RETURN TO MOTION  
TO REINSTATE APPEAL

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Respondent BOKF Real Estate Holding, LLC (“Respondent”) respectfully submits this Return to the Motion of Appellants T&S Management, Inc. and Turan Strange (“Appellants”) to reinstate the appeal.

**I.**

**Facts Pertinent to Motion to Amend**

On May 8, 2023, the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County, entered an Order granting Respondent BOFK Real Estate Holding, LLC’s Motion for Summary Judgment against Appellants T&S Management, Inc. and Turan Strange.

On May 18, 2023, the Appellants filed a Motion to Alter, Amend and Reconsider the Order granting Summary Judgment pursuant to Rules 59 and 60, SCRPC (“Motion for

Reconsideration”). The Motion for Reconsideration was denied by the Master in an Order entered on June 9, 2023.

On July 6, 2023, Appellants served on Respondent’s counsel a Notice of Appeal which states:

T & S Management, Inc. and Turan Strange appeal the Order denying Defendants Motion to Alter, Amend and Reconsider the Court's Order granting Summary Judgment entered by the Honorable Marvin H. Dukes 111 on June 9, 2023. Appellants received written notice of entry of this order on June 9, 2023.

The Notice of Appeal was received by the Court of Appeals on July 14, 2023.

On August 31, 2023, the Clerk for the Court of Appeals notified Appellants’ counsel by letter that the time for Appellants to order the transcript had expired. The Clerk’s letter further warned Appellants’ counsel that the appeal would be dismissed if Appellants failed to advise the court of the status of the transcript order within ten (10) days of the date of the Clerk’s letter. Appellants did not respond within the ten-day period and, on October 2, 2023, the Court of Appeals dismissed the Appeal due to Appellants failure to comply with Rule 207, SCACR.

On October 10, 2023, Appellants served and filed the present Motion to Reinstate the Appeal.

## **II.**

### **Argument**

Rule 207(a), SCACR, requires the Appellant to order a transcript of the proceedings of which the Appellant has appealed within thirty (30) days of the date of service of the notice of appeal. Rule 207(a), SCACR, further requires the Appellant to contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

Appellants failed to order a transcript of the underlying proceedings and did not respond to the Clerk’s warning letter of potential dismissal of the Appeal. As a result, the Court properly dismissed the Appeal pursuant to its authority under Rule 260(a), SCACR which provides, in part:

Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not

be reinstated except by leave of the court, upon good cause shown, after notice to all parties.

Rule 260(a), SCACR.

In this instance, the reasons offered by Appellants in their motion to reinstate the Appeal do not rise to the level of good cause. While the Appellants failure to receive the Clerk's warning letter by email because it was delivered to a spam folder is understandable, the Clerk may have also mailed the letter to Appellants' counsel. Likewise, the Appellants should have been aware of the Court's deadlines without the need to rely on a warning letter.

Furthermore, the Appellants' offered explanation of good cause is not supported by credible or admissible evidence in that no testimony by Affidavit was submitted by Appellants.

Finally, Appellants supposition that Respondent would not be prejudiced by the Appellants' failure to order the transcripts is misleading. While there may not have been a reporter transcribing the hearing on Appellants' Motion for Reconsideration (which is the only Order referenced in the Notice of Appeal), there was a reporter present at Respondent's Motion for Summary Judgment. Now, five months later, the Appellants for the first time have put the Respondent and the Court on purported notice (in a separate Motion to Amend Appeal filed concurrently with the instant motion) that Appellants are seeking to appeal not only the Master's Order denying the Motion for Reconsideration but also the Master's Order granting Summary Judgment in favor of Respondent.

Sufficient good cause does not exist to reinstate the dismissal of the Appeal.

### **III.**

#### **Conclusion**

Accordingly, based on the foregoing, Respondent respectfully requests that this Honorable Court deny Appellants' Motion to Reinstate the Appeal.

**NOVIT & SCARMINACH, P.A.**

By: /s/ **Edward M. Kubec**

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**Attorneys for Respondent**

October 20, 2023

Hilton Head Island, South Carolina

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appellate Case No. 2023-001147

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in  
Equity and Special Circuit Court Judge  
Case No. 2020-CP-07-00977

BOKF Real Estate Holding, LLC,

Respondent,

v.

T & S Management, Inc. and  
Turan Strange,

Appellants

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PROOF OF SERVICE

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On this 20<sup>th</sup> day of October 2023, the undersigned did serve Respondent's Return to Motion to Reinstate Appeal on counsel for Appellants, by email and placing same in the United States mail to:

Michael W. Mogil, Esq.  
Mogil Law Firm  
2 Corpus Christie Place, Ste. 103  
Hilton Head Island, SC 29928  
[mmogil@mogillaw.com](mailto:mmogil@mogillaw.com)

A copy of the service email is attached hereto.

**NOVIT & SCARMINACH, P.A.**

By: 

Nicole L. Lucignoli, Paralegal  
52 New Orleans Rd., Suite 400  
Hilton Head Island, SC 29928  
(843) 785-5850  
[nlucignoli@ns-lawfirm.com](mailto:nlucignoli@ns-lawfirm.com)

October 20, 2023  
Hilton Head Island, South Carolina

## Nicole Lucignoli

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**From:** Nicole Lucignoli  
**Sent:** Friday, October 20, 2023 10:44 AM  
**To:** 'mmogil@mogillaw.com'  
**Cc:** 'Edward Kubec'  
**Subject:** BOKF Real Estate Holding, LLC v. T&S Management, LLC  
**Attachments:** 2023-10-19 Return to Motion to Reinstate Appeal.pdf; Proof of Service.pdf

Good morning,

Attached please find Respondent's Return to Appellants' Motion to Reinstate Appeal in the above-referenced matter and Proof of Service.

Thank you,  
Nicole



### **Nicole L. Lucignoli**

Corporate Paralegal  
Assistant to Charles A. Scarminach  
[nlucignoli@ns-lawfirm.com](mailto:nlucignoli@ns-lawfirm.com)

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#### **Mailing**

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*Due to recent reports of attempted fraud involving the hacking of email accounts and the misdirection of wired funds, please phone our office to verify wiring instructions prior to sending funds.*

**Our wiring instructions DO NOT CHANGE.**

**Please note all funds for closing must be in the form of a wire. If you have not received our firm's wiring instructions, please advise and we will send them to you. Thank you.**