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**Nov 02 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough  
Master-in-Equity

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Appellate Case No. 2023-001562

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The Broadband Companies, LLC, and  
Fred Anthony,

Appellants

v.

R&R Landscape and Design, LLC, f/k/a  
R&R Landscape, Inc., and Mark Gonzalez

Respondents.

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MOTION TO DISMISS APPEAL  
AND FOR EXPEDITED HEARING

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Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondents R&R Landscape and Design, LLC and Mark Gonzalez, through their undersigned counsel, hereby move to dismiss the instant appeal. The grounds for this Motion are (1) Appellants have not preserved any issues for appeal, having failed to raise even a single objection in the lower court as to the orders it now seeks to appeal, (2) Appellants have filed the instant action for the impermissible purpose of delay and as part of a concerted and well-documented effort to “run out the clock” on Plaintiffs’ ability to collect on a judgment, and (3) Appellants have not complied with the appellate court rules and this Honorable Court’s instructions.

Additionally, Respondents respectfully request that this Honorable Court grant an expedited ruling on this Motion due to the looming deadline for Respondents to collect on the subject judgment, which is discussed in further detail below.

### **Relevant Procedural History**

On August 11, 2023, a Supplemental Proceedings hearing was held before the Honorable Mikell R. Scarborough, wherein Judge Scarborough appointed Joseph Qualey, Esquire as receiver in the present action. Mr. Qualey was appointed as a result of Appellants' failure to comply with the Court's prior orders, including Appellants' repeated failure to provide Plaintiffs' counsel with financial documents. (H'ring Tr., pp. 25:24 – 27:19, attached as Exhibit A). Appellants' counsel did not raise a single objection to Mr. Qualey's appointment at the hearing. That same day, the Court issued a Supplemental Proceedings Order, formally appointing Mr. Qualey as receiver. (Order, attached as Exhibit B). Appellants did not seek reconsideration of this order pursuant to Rule 59(e), SCRCF, nor did it file an appeal within 30 days of receiving notice of its entry. (Public Index, attached as Exhibit C). On September 25, 2023, the Court entered an additional Supplemental Proceedings Order setting forth Mr. Qualey's authority as receiver. (Order, attached as Exhibit D). Appellants did not file a motion for reconsideration as to this order either. As a result, not a single issue has been raised by Appellants to the lower court as to Mr. Qualey's appointment or his authority as receiver. As set forth below, this appeal should be dismissed because Appellants cannot raise issues as to these orders for the first time on appeal.

### **Legal Standard**

“It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.” *Pye v. Estate of Fox*, 369 S.C. 555,

564, 633 S.E.2d 505, 510 (2006). While a party is not required to use the exact name of a legal doctrine in order to preserve the issue, the party nonetheless must be sufficiently clear in framing his objection so as to draw the court's attention to the precise nature of the alleged error. *Buist v. Buist*, 410 S.C. 569, 766 S.E.2d 381 (2014), citing *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) and *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). “If the party is not reasonably clear in his objection to the perceived error, he waives his right to challenge the erroneous ruling on appeal.” *Id.*, citing *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007).

### Argument

**I. The Appeal should be dismissed because Appellants have not preserved any issues for appeal, having failed to raise even a single objection in the lower court as to the Receiver's appointment or as to his authority as receiver.**

It is indisputable that Appellants did not raise a single objection in the lower court as to Mr. Qualey's appointment or as to his authority as receiver. (08/11/23 Hr'ng Transcript, pp: 25:24 – 29:14, Exhibit A). It is also indisputable that Appellants did not seek reconsideration of either of the lower court's Supplemental Proceedings Orders pursuant to Rule 59(e), SCRCP. (Public Index, Exhibit C). Specifically, Appellants did not seek reconsideration of the August 11, 2023 order appointing Mr. Qualey as receiver or the September 25, 2023 order setting forth his authority as receiver. As a result, not a single issue has been raised by Appellants to the lower court as to Mr. Qualey's appointment or as to his authority as receiver.

“It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.” *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006). While a party is not required to use the exact name of a legal

doctrine in order to preserve the issue, the party nonetheless must be sufficiently clear in framing his objection so as to draw the court's attention to the precise nature of the alleged error. *Buist v. Buist*, 410 S.C. 569, 766 S.E.2d 381 (2014), citing *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) and *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). “If the party is not reasonably clear in his objection to the perceived error, he waives his right to challenge the erroneous ruling on appeal.” *Id.*, citing *S.C. Dep’t of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007).

Here, there is not even a question as to the clarity of Appellants’ objections because Appellants failed to make any objections in the first place. The lower court has never heard a single argument from Appellants as it relates to Mr. Qualey’s appointment or as to his authority as receiver. Accordingly, the appeal should be dismissed because an appellant cannot raise issues as to these orders for the first time on appeal. This alone is sufficient reason to dismiss the appeal.

**II. The Appeal should be dismissed because Appellants have filed the instant action for the impermissible purpose of delay and as part of a concerted and well-documented effort to “run out the clock” on Plaintiffs’ ability to collect on a judgment.**

Appellants have a long, documented history of attempting to prevent Plaintiffs from collecting on the judgment in this case, including leaving the state, evading service, not appearing for court-ordered supplemental proceedings hearings, failing to produce documents, and now, more recently, failing to cooperate with the court-appointed receiver. The most recent Rule to Show Cause/Citation for Contempt of Court filed by the lower court provides a glimpse at the recent history in this case and is illustrative of Appellants’ complete disregard for the judicial process. (Rule to Show Cause, Exhibit E). As stated therein, “This Court notes that Mr. Anthony’s repeated failures to follow this Court’s orders evidence more than an alleged incapacity to answer questions at

the time of the deposition, but also a demonstrated disregard for the judicial process, indicative of his wish to “run out the clock” in an attempt to prevent Plaintiffs’ from collecting on their judgment.” (Exhibit E at p. 4).

The lower court also specifically took note that Appellants’ counsel did not raise a single objection to the appointment of Mr. Qualey as receiver or seek reconsideration of the orders before filing the instant appeal, and that “it appears to this Court that Mr. Anthony is engaging in further actions to impede Plaintiffs from collecting on their judgment, and that his Appeal has been filed for the impermissible purpose of delay.” (Exhibit E at p. 6). Indeed, the confession of judgment in this case, which currently exceeds \$250,000.00 with post-judgment interest, was entered on December 23, 2013. (Exhibit F). Since then, Respondents have taken an inordinate number of steps to avoid enforcement. The filing of the present appeal is simply one last misguided attempt to run out the clock on Plaintiffs’ ability to collect. The appeal is frivolous and taken solely for the impermissible purpose of delay.

Plaintiffs, through their counsel, have written Appellants’ counsel and requested that Appellants withdraw the appeal, but have only been met with resistance. (Letter, Exhibit G). Appellants’ bad faith acts are an abuse of process, and should not be rewarded. Accordingly, Respondents respectfully request that this Honorable Court grant their Motion to Dismiss Appeal so as to allow them an opportunity to collect on their judgment.

**III. This appeal should be dismissed because Appellants have not complied with the appellate court rules and this Honorable Court’s instructions.**

Appellants have repeatedly failed to comply with the appellate court rules and this Court’s clear and unambiguous instructions since filing their appeal. First, Appellants failed to file the correct filing fee with their Notice of Appeal pursuant to Rule 203, SCACR. The Court sent

Appellants' counsel a letter noting the deficiency, which he corrected. Then, Appellants failed to timely order a transcript of the underlying hearing pursuant to Rule 207, SCACR. As a result, on October 23, 2023, the Court sent Appellants' counsel another deficiency letter, noting that the time for ordering the transcript had expired and instructing Appellants' counsel as follows:

Within ten days of the date of this letter, you must file a copy of the letter showing that you have timely ordered the transcript from the court reporter. If you have not timely ordered the transcript, you must serve and file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR, along with a copy of your letter addressed to the court reporter.

Be sure to copy the Court, the Office of Court Administration and opposing counsel with all correspondence concerning the transcript.

[...]

You must advise the Court of the status of the transcript within ten (10) days of the date of this letter, or your appeal will be dismissed.

(October 23, 2023 letter, attached as Exhibit H).

Appellants notably failed to order the transcript within the time prescribed by Rule 207, SCACR. Specifically, Appellants failed to order the transcript by October 13, 2023, ten days after service of the Notice of Appeal. Having failed to comply with this deadline, Appellants then failed to comply with this Court's instructions to file and serve a Motion requesting permission to order the transcript outside of the filing deadline. Instead, Appellants simply waited until October 31, 2023 to request a copy of the out-of-time transcript from the Court Reporter, notably failing to copy Plaintiffs' counsel on the communications as required by Rule 207(a)(1) and as they were specifically instructed to do by this Court in its deficiency letter. "[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." *Henning v. Kaye*, 415 S.E.2d 794, 307 S.C. 436, 437 (1992). Appellants repeated failure to comply with the Appellate Court Rules and

correct its deficiencies are indicative of its intent to drag along the appellate process to the detriment of Respondents. Accordingly, Respondents respectfully request that the appeal be dismissed.

### **Conclusion**

For each of the foregoing reasons, Respondents respectfully request that this Honorable Court grant their motion and dismiss this appeal. The lower court has never heard a single argument from Appellants as it relates to Mr. Qualey's appointment or as to his authority as receiver. Yet these are the very orders which Appellants now seeks to appeal. The Appeal should be dismissed because Appellants cannot raise issue as to these orders for the first time on appeal. This alone is sufficient grounds for dismissing the appeal.

The Appeal should also be dismissed because Appellants have filed the instant action for the impermissible purpose of delay and as part of a concerted and well-documented effort to "run the clock" on Plaintiffs' ability to collect on a judgment. Appellants' bad faiths acts are an abuse of process, which should not be rewarded.

Finally, the Appeal should be dismissed because Appellants have repeatedly failed to comply with the appellate court rules and this court's subsequent instructions, including failing to timely request the transcript in this case, failing to copy Respondents' counsel on communications related to the transcript request, and failing to file a motion requesting permission to order the transcript outside of the filing deadline as they were specifically instructed to do so by this Court.

[Signatures on following page]

Respectfully submitted,

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R&R Landscape and Design, LLC and Mark Gonzalez

November 2, 2023  
Mount Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough  
Master-in-Equity

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Appellate Case No. 2023-001562

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The Broadband Companies, LLC, and  
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Respondents.

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EXHIBITS TO  
MOTION TO DISMISS APPEAL  
AND FOR EXPEDITED HEARING

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1. Exhibit A – August 11, 2023 Supplemental Proceedings Hearing Transcript.
2. Exhibit B – Supplemental Proceedings Order, filed August 11, 2023, appointing Joseph Qualey, Esquire, as Receiver.
3. Exhibit C – Public Index reflecting Appellant’s failure to seek reconsideration of the underlying orders.
4. Exhibit D – Supplemental Proceedings Order, filed September 25, 2023, re: Authority of Receiver.
5. Exhibit E – Rule to Show Cause – Citation for Contempt of Court, filed October 26, 2023.
6. Exhibit F – Confession of Judgment, filed December 23, 2013.

7. Exhibit G – Letter to Appellants’ counsel requesting withdrawal of appeal.
8. Exhibit H – Deficiency letter from Court of Appeals to Appellants, dated October 23, 2023

Respectfully submitted,

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November 2, 2023  
Mount Pleasant, South Carolina

# EXHIBIT A

(August 11, 2023 Supplemental Proceedings Hearing Transcript)

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT  
3 CASE NUMBER 2010-CP-10-09857  
4

5 R&R Landscape and Design, LLC, f/k/a )  
6 R&R Landscape Inc., and Mark )  
7 Gonzalez, )  
8 ) Supplemental  
9 Plaintiffs, ) Proceedings  
10 )  
11 vs. ) August 11th,  
12 ) 2023  
13 Fred Anthony, )  
14 )  
15 Defendant. )  
16  
17  
18

19 Hearing before the Honorable Mikell R.  
20 Scarborough, reported by Josie Allen Boehm, Registered  
21 Professional Reporter and Notary Public, at 100 Broad  
22 Street, Courtroom 2A, Charleston, South Carolina,  
23 August 11th, 2023 commencing at 10:15 a.m.  
24  
25

## APPEARANCES

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1           THE COURT: We're here, this is supplemental  
2 proceedings in the case of R&R Landscape versus the  
3 Broadband Companies and Fred Anthony. Case number is  
4 2010-CP-10-9857.

5           This, I believe, is the fourth or fifth  
6 hearing we've had. I was back there reviewing the  
7 record and then I read my latest rule to show cause,  
8 and it pretty well sets forth what's been going on in  
9 this case.

10           I am aware from an e-mail I got from  
11 Mr. Green who represents the defendants that y'all had  
12 some depositions this week.

13           So tell me where we stand. Mr. Sanchez?

14           MR. SANCHEZ: Thank you, Your Honor. I think  
15 this is our fourth time here before Your Honor. So we  
16 had a deposition on Wednesday of this week and it was  
17 our hope that we would be able to go over some of the  
18 materials that Mr. Anthony had produced.

19           What we found out during the course of the  
20 deposition was that he was on an opiate and muscle  
21 relaxer which he said affected his memory and his  
22 ability to answer questions that day.

23           So we went through a series of questions  
24 where we tried to identify who certain family members  
25 were that he might have had loans with. He wouldn't

1 know a person's last name, he wouldn't know where they  
2 lived, he wouldn't know their address.

3 Also, we had no notice of this prior to the  
4 deposition. So we went to the expense of hiring the  
5 court reporter, taking time out of our schedules,  
6 having him come there.

7 And once we get through the analysis, you  
8 know, we were going through bank statements and I  
9 would point out large sum deposits and said, well,  
10 where did this money come from? And every answer was,  
11 I don't remember. I don't recall.

12 So we did come to an agreement on some issues  
13 that I would like to put before Your Honor, which is  
14 apparently he's got a bookkeeper, Roche (ph) Financial  
15 Services here in Charleston. And I believe Mr. Green  
16 can agree and stipulate to this.

17 We would just ask that she produce her entire  
18 file with all canceled checks.

19 THE COURT: Why don't you just give it to a  
20 receiver? Why don't you just ask somebody to step in  
21 there and take over his business? I mean, clearly  
22 he's not complying.

23 I figured y'all would have asked for a  
24 receiver every time. It's going to cost you some  
25 money, but you've got a limited amount of time to get

1 in there. Looking at this stuff isn't going to get  
2 you anywhere. You need to have somebody step in, take  
3 over the business, and start running the business.

4 How about the payment of the attorney's fees;  
5 has that been done?

6 MR. SANCHEZ: Partially, Your Honor.

7 THE COURT: How much has been paid of the  
8 22,000?

9 MR. SANCHEZ: 15,278.70.

10 THE COURT: All right. Okay.

11 MR. SANCHEZ: And one was a credit card  
12 payment and the other one was a check that I just got  
13 here.

14 THE COURT: So who didn't get paid?

15 MR. MCCARTY: Probably me, Your Honor.

16 MR. SANCHEZ: Well, they all have my name on  
17 it but I'm not dumb enough to spend it all, Your  
18 Honor.

19 THE COURT: Okay. All right.

20 MR. SANCHEZ: So that's that issue. So our  
21 main issues, Your Honor, are we have no documentation  
22 that he's actually on medication or has a need for  
23 that stuff and we haven't received any documents  
24 related to Broadband Companies or Broadband IT, which  
25 Mr. Anthony in his deposition says he did produce. I

1 looked through my files and there's nothing there on  
2 those documents.

3 And so with that, we will follow Your Honor's  
4 suggestion as to the receiver. I think that's all we  
5 can probably do. I don't know if Your Honor would be  
6 willing to hold Mr. Anthony in contempt today or not,  
7 but it's been a ride.

8 These documents were requested back in  
9 August. And I will say for the record --

10 THE COURT: I think the documents were  
11 requested back in December. I have been ordering them  
12 to be produced since January if I remember right.

13 MR. SANCHEZ: That's right, Your Honor. And  
14 I will say that Mr. Green has been a pleasure to work  
15 with. He's been very communicative. He has dropped  
16 off documents at my office. And I don't think it's a  
17 question at all about him having any involvement in  
18 withholding these documents. We truly believe it's  
19 Mr. Anthony not producing the documents that were  
20 court ordered.

21 THE COURT: All right. Mr. Green?

22 MR. GREEN: Your Honor, may it please the  
23 Court. And thank you, Your Honor, for your indulgence  
24 and patience. I do have a very succinct response to  
25 the last hearing, and I can share that including

1 medical documents.

2 As Your Honor knows, last hearing, I had an  
3 emergency situation where I had to pick up my daughter  
4 from a camp in Asheville. And without going into the  
5 whole length of that, it's a camp that my older  
6 daughter went to for three years and my younger  
7 daughter goes to it. It's in Asheville. Both my  
8 parents are in their 80s. My dad no longer drives.

9 And so it was incumbent on me when I got this  
10 notice from my, you know, ex-wife that I was to pick  
11 up my daughter. And I do that every year. She drops  
12 off; I pick up.

13 THE COURT: Is it a month-long camp?

14 MR. GREEN: It is a month-long camp, about  
15 six weeks. In either event, you know, knowing that I  
16 had to be up there and I had two other hearings also  
17 that were scheduled the next week with absentee other  
18 parties, I wanted to make sure I wasn't unable to pick  
19 her up. So that was the reason for the protection.  
20 It wasn't specifically for this court. It was for  
21 that whole weekend when I had to pick her up.

22 THE COURT: In reviewing the record, it  
23 looked like we had pushed it back from I believe in  
24 June because the basis was you were taking the child  
25 to camp. We didn't do it in June, so it was an

1 agreed-upon date. We get an agreed-upon date, and it  
2 doesn't happen. So I understand that.

3 MR. GREEN: And in accordance with Rule 11, I  
4 did contact opposing counsel who was very gracious.  
5 So we didn't ask for a continuance. I just knew that  
6 this was something I had to do and it was only after  
7 August 11th was identified as an alternate date, I  
8 said I will readily agree to this other date because  
9 my purpose is not to delay. That would give us some  
10 additional time.

11 What I didn't know and what also was very  
12 germane is that on July 1st, Mr. Anthony, my client,  
13 was involved in a biking accident which cracked his  
14 dental area and requires surgery and requires  
15 medication. And I have all of that.

16 Again, this is information not to be shared  
17 with anyone else, but if I may approach.

18 THE COURT: Just show it to Mr. Sanchez is  
19 fine.

20 MR. GREEN: So I just offer this as  
21 verification that it wasn't a willful disregard. So  
22 if I might -- I know Your Honor is reviewing that.  
23 The way the timeline worked out was that, again, we  
24 spoke to opposing counsel. He was gracious and said  
25 that for various reasons he could not agree to moving

1 it to August 11th despite my family situation.

2 So, you know, the issue was then would  
3 Mr. Anthony be able to appear without counsel. And so  
4 when Your Honor responded to Mr. Sanchez's request,  
5 that was the evening before. The hearing was to be  
6 that next morning. Mr. Anthony was already under  
7 treatment.

8 As soon as I heard the information from Your  
9 Honor's clerk, I forwarded it to Mr. Anthony late that  
10 evening. But the morning where we had that  
11 discussion, that was the first time hearing you still  
12 need to be in court even though your lawyer is  
13 excused.

14 At that point, he had two issues. One is he  
15 could not drive. He was under doctor's orders.

16 THE COURT: Not to drive more than two hours,  
17 it says.

18 MR. GREEN: Correct. And so but we knew,  
19 Your Honor, that the August 11th date was one that we  
20 could be here for and, fortunately, we're here today.

21 So I do ask on Mr. Anthony's behalf, he was  
22 simply following doctor's orders, not in a position to  
23 drive, and even if he were, since he was under  
24 treatment having recently broken his dental plate, all  
25 these things, he was not in a condition to testify.

1           What we were able to do -- and, again, I  
2 appreciate Mr. Sanchez's words because I don't know  
3 what the previous attorney's experience was, but I've  
4 had good dealings with them. And what I have agreed  
5 is, look, Mr. Anthony doesn't maintain every book for  
6 every contract he has, but he does have a very good  
7 bookkeeper, who I personally happen to know, and  
8 that's Ms. Roche who is in downtown Charleston.

9           Mr. Anthony testified truthfully despite  
10 being under medication that while I don't sign all the  
11 checks for my company or my former company, my  
12 accountant and bookkeeper do have that information.

13           So what we have agreed without the necessity  
14 of having to go through a long wait to get that  
15 information is since we all agreed that Ms. Roche is a  
16 competent bookkeeping official that she would have all  
17 the canceled checks, everything, that opposing counsel  
18 is requesting.

19           So, you know, as we were talking earlier on  
20 and as we talked last time, my priority is always to  
21 get opposing counsel the information which they need.  
22 And if Ms. Roche has that and they're comfortable that  
23 she will give what is relevant. We will give that --  
24 we have no objection to that.

25           And so what we would ask, Your Honor, is

1 based on the fact that Mr. Anthony truthfully was  
2 following doctor's orders, did not know that he would  
3 be required to appear under medication, you know, not  
4 being able to drive on the morning he was informed --  
5 when I last spoke with him, the order with Judge Young  
6 had been previously put because of these other cases  
7 so it wasn't in response obviously to Your Honor's  
8 ruling. I didn't learn about the ruling until  
9 Mr. Sanchez had told me that he copied me on that  
10 e-mail which Martha I believe was the respondent to  
11 that.

12 I think it was maybe 4:37 that we found out  
13 about it that Thursday night. And then he's under  
14 medication. I'm thinking I have protection. And so  
15 from the morning on the road to Asheville, I tell him,  
16 you know, please write the Court and let him know your  
17 situation so that there's no lack of answer.

18 And so we believed, Your Honor, if Your Honor  
19 saw the proof that he was under medication for a  
20 serious injury which requires surgery that will be  
21 coming up that that was the reason.

22 And, again, it was only after consulting with  
23 opposing counsel and finding out that August 11th was  
24 an available date that we said well, what we can't do  
25 today, we'll get taken up in this deposition and also

1 this hearing.

2 So it's our position, Your Honor, that what  
3 was requested, which is really the information, you  
4 know, that is readily accessible from Ms. Roche.

5 THE COURT: The question is whether or not  
6 it's been produced. And it has not yet been produced,  
7 correct?

8 MR. GREEN: It has not yet produced.

9 THE COURT: Why was that not done? Can you  
10 answer that question? It was ordered in December.

11 MR. GREEN: So I did not come in until after  
12 December. But Ms. Roche, her identity is someone who  
13 has all the information.

14 THE COURT: Why was that not produced to the  
15 plaintiff's counsel since it's been ordered since  
16 December?

17 And if you like, I can go through the orders.  
18 One in December. One in January. Actually, executed  
19 February 2. One in March, March '23.

20 And I'm looking through the record here.  
21 Tideland's Health, he was excused from 7/21, which was  
22 after the July 14 date we last had a hearing, until  
23 August the 7th. And so here we are on the 11th.  
24 Y'all had a meeting on the 8th or 9th. Deposition was  
25 on the 9th, right?

1           MR. SANCHEZ: Yes, sir.

2           MR. GREEN: So what we did do, Your Honor, is  
3 there was a zip drive that had all the financial  
4 information that I understood to be relevant to this  
5 case and that were on point. Because Your Honor  
6 previously put a scope I think of three years, a  
7 parameter of three years.

8           And so we understand that Mr. Sanchez wanted  
9 to go beyond those three years but that was turned  
10 over to the opposite side prior to then. And also,  
11 there's some question about what the previous attorney  
12 supplied.

13           And so I didn't have full knowledge of what  
14 he would have supplied. But my understanding was that  
15 Mr. French, before he passed over this case to me, did  
16 respond to discovery.

17           So that's -- again, that's something that we  
18 believe was cured and is cured by that disc -- or not  
19 the disc, that zip drive being provided. And, you  
20 know, I do understand they had financial information  
21 that was germane to the request. Canceled checks and  
22 things of that nature, that is something that now can  
23 be produced through the bookkeeper. We did not have  
24 that. When I say we, the defendant, did not have all  
25 the canceled checks.

1           And to use an example, even a small  
2     contracting job, there may be several 1099s or  
3     contractors who aren't employees of any company. And  
4     the bulk of whatever income comes from a client goes  
5     to these subcontractors, so a portion may go to  
6     Broadband. But all of that is what the bookkeeper  
7     would have and only she would have.

8           THE COURT: And who's got access to the  
9     accounts? Who writes the checks? The bookkeeper  
10    doesn't write the checks, does she?

11          MR. GREEN: She writes some checks is my  
12    understanding.

13          THE COURT: Mr. Anthony has got authority.  
14    You're telling me the bookkeeper has authority. Who  
15    else has authority to write the checks?

16          MR. GREEN: Well, obviously Mr. Anthony. But  
17    he has the check signature stamps.

18          THE COURT: Right.

19          MR. GREEN: And so for the run-of-the-mill  
20    checks that are within the scope, you know. So my  
21    understanding --

22          THE COURT: This is still an ongoing  
23    business, is it not?

24          MR. GREEN: It is winding down. I think they  
25    had one contract in the last year with a church, maybe

1 one or two that were mentioned in the deposition  
2 yesterday. Very small contracts.

3 THE COURT: What other businesses does he  
4 have? Did y'all get an answer to that?

5 MR. SANCHEZ: So far, Mr. Anthony has  
6 identified Broadband Companies, LLC and Broadband IT.  
7 There were a couple of entities that we found on the  
8 Secretary of State's website which appeared to be real  
9 estate holding companies, but Mr. Anthony says he had  
10 no involvement with any of these companies despite the  
11 fact that he's listed as the registered agent and his  
12 previous home address is listed as the address with  
13 the registered agent on it.

14 I don't know if there's anything in those  
15 companies, but Mr. Anthony swore under oath yesterday  
16 that there wasn't or that he had no idea what -- had  
17 no involvement with those entities whatsoever, that he  
18 had not agreed to be the registered agent for that  
19 company.

20 But right now as it stands, Your Honor, the  
21 ones that we are aware of is Broadband Companies, LLC  
22 Broadband IT, and then obviously Mr. Anthony  
23 individually.

24 THE COURT: Right. The confession was to  
25 Broadband and himself?

1           MR. SANCHEZ: Yes, sir. And if I could  
2 quickly address a couple points. Yes, we did receive  
3 certain bank statements, but they are the style of  
4 bank statements that are more summaries than  
5 statements.

6           So it will say, you know, \$75,000 deposited  
7 in June and then it will say \$45,000 withdrawn. And  
8 then it will have like certain debit card line items.  
9 But we don't know any of the checks that were written.  
10 We don't know where they came from. We don't know who  
11 the checks were written to. None of that information  
12 has been provided.

13           THE COURT: Do you have the banks and bank  
14 account numbers and have that information?

15           MR. SANCHEZ: We do. We subpoenaed the banks  
16 and are waiting for those documents to be delivered to  
17 us based off of the last document production that we  
18 received.

19           THE COURT: How many accounts are we talking  
20 about?

21           MR. SANCHEZ: So far, we've identified about  
22 four bank accounts. There's two for the business and  
23 two for Mr. Anthony individually.

24           We do not have a bank account for Broadband  
25 IT. I did want to address quickly one point on the

1 record, Your Honor, is the rule to show cause, we  
2 asked that Mr. Anthony produce three years of  
3 documents. We didn't ask him to produce seven or ten  
4 years because that's not going to be helpful to us.

5 But we believe that given that this is almost  
6 a ten-year judgement, there is nothing impeding us  
7 from subpoenaing the bank and asking for seven years  
8 of records because that's what they would have.

9 So even though the rule says that Mr. Anthony  
10 only has to produce three years of records, his  
11 objection to the subpoenas, because they go behind the  
12 three-year scope, I think that those are not sound  
13 objections given that this is a ten-year judgement and  
14 we have subpoena powers with the banks.

15 THE COURT: Well, it's certainly within the  
16 relevant timeframe, is it not?

17 MR. SANCHEZ: Yes, sir.

18 THE COURT: And my understanding was the  
19 objection had been withdrawn; is that right?

20 MR. GREEN: Correct, Your Honor. In full  
21 credit, I hope, you know, Mr. Sanchez will acknowledge  
22 that we spoke about this. My main concern, as was my  
23 client's, were twofold. One is that any subpoenas  
24 going out, we obviously want to get a copy of the  
25 subpoena and we want to see what was subpoenaed. He

1       agreed to do so.

2               And, secondly, with regard to the information  
3       that could be utilized, I mean, again, we're looking  
4       at those three years. We're not saying that they  
5       don't have an opportunity to go back seven years and  
6       look at things.

7               But what's relevant to this case, Your Honor,  
8       is the past three years, particularly with what he was  
9       to provide. So my understanding is that --

10              THE COURT: I would say what's relevant is  
11       probably the last ten years. We're about four months  
12       short of ten years.

13              The action was commenced in 2009 or '10. So,  
14       you know, I mean that's going back a much longer time  
15       period. Confession of judgement for \$125,000 was  
16       entered sometime in 2013. Must have been December of  
17       '13. Your deadline is approaching.

18              They got the right to look into this stuff,  
19       and it's been -- there was a long delay in getting in  
20       here, I know that. Because, again, I looked through  
21       the records today.

22              MR. GREEN: And in accordance with Rule 11,  
23       that motion -- when I realized that not only was it  
24       being used for a proper purpose but that there was no  
25       -- there was a concern that some neighbors that the

1 client may have disseminated, that was all resolved.  
2 So we withdrew that motion on the agreement that we  
3 would be supplied all of the subpoenas.

4 MR. SANCHEZ: And I'll have to look through  
5 my records, Your Honor. Mr. Knowles, who is an  
6 attorney who is not here today, is the attorney who  
7 issued the subpoenas and thought Mr. Green was copied  
8 on those e-mails, but I will have to verify.

9 THE COURT: Yeah, you should be copied on it.  
10 I think the thing to do is for y'all to appoint a  
11 receiver and have a receiver go look into this stuff,  
12 have him go meet with the Ms. Roche. Is that her  
13 name?

14 MR. SANCHEZ: Ms. Roche.

15 THE COURT: And have him get her bank  
16 information if you've got it and then just figure out  
17 what's there. You either got something or you don't.  
18 Somebody is going to look into whether or not the LLC  
19 owns -- I assume those are LLCs -- owns real estate.  
20 And if they do and he's got a personal interest in it,  
21 y'all got a right to get whatever his distribution  
22 would be.

23 You don't become an owner of the LLC. You  
24 become entitled to whatever receipt the income may  
25 come off of it. So that's kind of where we are now.

1           MR. SANCHEZ: Thank you, Your Honor.

2           MR. GREEN: And, Your Honor, just, again, I  
3 don't know enough about what happened. I don't know  
4 everything that happened in the ten years prior, but  
5 in the roughly six months I've been involved, there's  
6 the euphemism of drinking through a fire hose. But  
7 what I've been trying to do is, with the Anthonys'  
8 cooperation, get what they need.

9           And it's my belief, and I can represent that  
10 to the Court, that between going to the bookkeeper who  
11 did the checks, who had knowledge of all the accounts,  
12 that that is the place where opposing counsel could  
13 find the documentation.

14          THE COURT: Well, my concern is that should  
15 have been disclosed before now. I don't know when  
16 that came out. But here we are ten months into this  
17 process.

18          I don't know when you got into it, Mr. Green.  
19 But if that's where the answers lie then that's who  
20 should be referred to rather than hanging around out  
21 there. Because it's pretty apparent what's going on  
22 here, you know. I don't think there's any question  
23 about that.

24          MR. GREEN: What I can do, Your Honor, even  
25 though I wasn't working with Shawn French at the time,

1 I can apologize on behalf of the defendant in that I  
2 can tell you as I've told opposing counsel anything  
3 that we have that will help get the information that  
4 they need, there's no attempt to delay. There's no  
5 attempt to stop them from getting that information.

6 THE COURT: I would tend to disagree with  
7 that statement.

8 MR. GREEN: Since I have been in involved.

9 THE COURT: I'm just telling you that's my  
10 position.

11 Mr. Anthony, let me ask you. What happened  
12 on the bike? You fell off a bike? You got run over?  
13 What happened?

14 FRED ANTHONY: I took my medication. I did  
15 take medication this morning. I'm still under  
16 doctor's care.

17 THE COURT: Do you remember what happened  
18 with the bike incident?

19 FRED ANTHONY: Yes.

20 THE COURT: So tell me what happened.

21 FRED ANTHONY: Well, it's the weekend of  
22 Fourth of July. We had some relatives coming in.  
23 Fourth of July is kind of in the middle of the week.  
24 They were going to --

25 THE COURT: It was a Wednesday. Bad time of

1 year for the Fourth of July.

2 FRED ANTHONY: I told my wife this would be  
3 the perfect time for me to have one last quiet, you  
4 know, getaway. They were bringing the kids and all  
5 that stuff.

6 So basically I took the bike out on the bike  
7 trial. Doing my best to go as fast as I could trying  
8 to relieve some stress and had my headphones on.

9 I looked up, there was a pedestrian -- well,  
10 driveway. Pedestrian crosswalk. Stripes. Next thing  
11 I know, boom.

12 I remember it being -- not a metal sound but  
13 I think I hit the tire. The car turned. And I looked  
14 up, there it was. I remember in the air, airborne.  
15 And last thing I remember was looking up in the sky  
16 and seeing birds flying around.

17 THE COURT: So you hit the car or the car hit  
18 you?

19 FRED ANTHONY: I looked up, and the car was  
20 there.

21 THE COURT: I'm with you.

22 FRED ANTHONY: So I didn't really -- like I  
23 said, it was a quiet --

24 THE COURT: It was a driveway?

25 FRED ANTHONY: Yes, sir. This person was

1 turning into an elementary school. And being it was  
2 on the weekend, I've walked that trail many times.  
3 And that type of morning, all you see is the birds and  
4 the rabbits and things like that. It's pretty quiet.  
5 It surprised me that the car was there when I looked  
6 up.

7 Like I said, I remember being airborne and  
8 ended up in a tall, grassy ditch looking up at the  
9 sky.

10 Mr. Sanchez asked why I didn't go to the  
11 emergency room. I considered myself a tough guy and  
12 normally don't take drugs for anything. My wife will  
13 attest to that. So I decided to, you know, go home  
14 and tough it out. Took some over-the-counter drugs.

15 I did call my doctor immediately and I was  
16 able to see a doctor that Monday. I think the  
17 incident happened on the 2nd or 3rd. So I went in  
18 there. And he says, hey, you got to go to this  
19 doctor, so I went to that doctor. You gotta go to  
20 this doctor, so I went to a third doctor, and ended up  
21 prescribed medication, muscle relaxers, Oxycodone, as  
22 well as Ambien. Ambien is the word for it. That's  
23 for sleep.

24 And so I was directed to go to the hospital  
25 to get X-rays, which I did. Immediately went from

1 doctor's office straight to the hospital. I did get  
2 those X-rays. I was directed to attend physical  
3 therapy.

4 I was directed to come back to my doctor,  
5 which I saw probably three times in one week because  
6 my condition was getting progressively worse which  
7 included my head when I fell. I hit the ground. My  
8 teeth separated. I had neck issues, back issues, and  
9 knee issues.

10 I'm 67 years old. And right now, I'm a  
11 candidate for knee replacement, so everything hurts.  
12 Prior to the incident, I had a lower-back outpatient  
13 ablation injection. I gave the X-rays to Mr. Green,  
14 and you could see there's some things in the works.

15 THE COURT: I saw some on your neck.  
16 Diagnosed you with neck strain is what I saw.

17 FRED ANTHONY: That was what was determined.  
18 Didn't break anything.

19 THE COURT: And the dentist? I rode my bike  
20 this morning. I'm always watching out for cars.

21 MR. GREEN: Your Honor, I'm not an  
22 experienced biker. I took that opportunity to have  
23 what I perceived to be a quiet moment before the  
24 storm.

25 THE COURT: Well, it hurts too much to run.

1 Mr. Sanchez?

2 MR. SANCHEZ: The only thing we would add is  
3 that I understand there was -- according to Fred  
4 Anthony, there was an that occurred that day. We  
5 haven't seen a police report or anything that was  
6 filed. I would think if you got hit by a car or ran  
7 into a car that you might file a police report.

8 THE COURT: Was that done? Any kind of  
9 report done?

10 FRED ANTHONY: No. You know, at the time --

11 THE COURT: You went to the doctor but nobody  
12 called the police?

13 FRED ANTHONY: No. To me, that was a non  
14 police issue.

15 THE COURT: Did you speak to the driver?

16 MR. GREEN: No. It was an elderly woman and  
17 she was handicapped. I saw the handicapped placard in  
18 the mirror.

19 THE COURT: You didn't go thank her for  
20 running you over, did you?

21 FRED ANTHONY: She said, Are you okay, Sonny  
22 Boy? I said, yes, ma'am.

23 So there was no reason to call the police.

24 THE COURT: All right. Well, let me just  
25 tell you. When I came in here this morning, it was my

1 full intention to hold you in contempt for failure to  
2 comply and probably send you off to the jail. Okay?  
3 That was my thought process when I came in here this  
4 morning.

5 And as I read through the record, it told me  
6 moreso to do that. Okay? But what I'm going to do is  
7 I'm going to order the appointment of a receiver. I'm  
8 going to name Mr. Joe Qualey to be your receiver. He  
9 moves fast and gets stuff done. You've got a limited  
10 amount of time to get these things done.

11 What I will need is -- I will do a form  
12 order. What I need is y'all to set forth what  
13 documentation and evidence that you have so he knows  
14 where the bank is, what it is.

15 Y'all asked him for the records. I haven't  
16 gotten any kind of response from any bank as to  
17 whether or not they're going to comply. But I'm  
18 assuming they should be based upon what you've told me  
19 this morning.

20 Then he's entitled to meet with the  
21 bookkeeper, Ms. Roche. I need y'all to provide her  
22 name and address so they can go over there and poke  
23 around in the records.

24 And then, Mr. Anthony, he's going to be  
25 calling you and talking to you and he's going to be

1       inquiring of the status of whatever is going on. I  
2       need you to cooperate with him because the receiver is  
3       an arm of the Court.

4                If the receiver tells me Mr. Anthony is not  
5       cooperating with me, I'm going to issue a rule and/or  
6       order for arrest and get your attention however I can.  
7       Okay? That's what I'm going to do. I just wanted you  
8       to know that. I'm not going to do that today. But I  
9       need you to cooperate with him. Y'all need to  
10      communicate and go from there.

11               Either there are or there are not assets.  
12      That's the only question that I've got is if there are  
13      then they're used to satisfy the judgement. If they  
14      are not, well, there's nothing with which to pay. But  
15      they are entitled absolutely to investigate that  
16      matter. That's what they're entitled to do. And  
17      under our law, they're entitled to do it for ten  
18      years. They've been chasing this rabbit for a while  
19      now.

20               So that's my ruling. Gentlemen, I am not  
21      going to put you in contempt. I do need you to pay  
22      the rest of that money, though. That needs to get  
23      done within another 15 days. Okay? You said you had  
24      15 or 16,000?

25               MR. SANCHEZ: We received 15,278.70. So

1 there's a balance of \$7200 left.

2 THE COURT: 7200 bucks. Okay. You can do  
3 that?

4 FRED ANTHONY: I'm going to do my best, Your  
5 Honor. We're a small business. I had to really  
6 maneuver to get loans to pay the amount that we did.  
7 I have an issue that I just discussed with my  
8 attorney, and I'm hopeful he can bring that up at this  
9 point.

10 MR. GREEN: One of the questions, Your  
11 Honor -- I understand that part of the reason these  
12 attorney's fees were ordered were because of the  
13 failure to appear which we know now were doctor-  
14 related issues. So there were two orders. I know  
15 there was an earlier order with a lower amount --

16 THE COURT: I think these fees were from the  
17 prior hearings when the stuff was not getting  
18 produced. I don't think there was anything from the  
19 last one.

20 All of that data was prior stuff. Okay?  
21 That's my recollection.

22 MR. GREEN: And so what Mr. Anthony has done  
23 is ask for additional time. What we've done is pay by  
24 credit card yesterday. There's no willingness to  
25 disobey the orders. It's a matter of getting those

1 funds.

2 THE COURT: When were these funds paid?

3 MR. SANCHEZ: We received a check today, Your  
4 Honor, for \$8,478.70 and we received a credit card  
5 payment a couple of days ago for \$6800.

6 MR. GREEN: We'll continue to work on that,  
7 Your Honor, and have that, you know, worked on to get  
8 when those other funds are available.

9 THE COURT: Okay. How about the Tuesday  
10 after Labor Day? I think that's the 5th. Okay? I'll  
11 give you until then. All right?

12 MR. GREEN: Thank you, Your Honor.

13 THE COURT: Okay. All right, gentlemen.  
14 Very good. Appreciate you coming in.

15 (Off the record at 10:48 a.m. on August 11th,  
16 2023.)

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## 1 COURT REPORTER'S CERTIFICATE

2  
3 I DO HEREBY CERTIFY THAT THE TESTIMONY  
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO  
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A  
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A  
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE  
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED  
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR  
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF  
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY  
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,  
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 10th DAY OF OCTOBER 2023.

16 *Josie Boehm*  
-----

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32  
19  
20  
21  
22  
23  
24  
25

# EXHIBIT B

(Supplemental Proceedings Order, filed August 11, 2023,  
appointing Joseph Qualey, Esquire, as Receiver.)

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
**R&R Landscape and Design, LLC f/k/a  
R&R Landscaping Inc., and Mark  
Gonzalez,**

Plaintiffs,

vs

**The Broadband Companies, LLC, and  
Fred Anthony,**

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: **2010-CP-10-09857**

**SUPPLEMENTAL PROCEEDINGS ORDER**

A HEARING was held in the above captioned case on **August 11, 2023 at 10:00 AM.**

- 1. No Assets were discovered.
- 2. The Defendant agreed to pay \_\_\_\_\_.
- 3. The Defendant was not served; the hearing is rescheduled for \_\_\_\_\_ AM.
- 4. The Defendant did not appear; a RTSC is scheduled for \_\_\_\_\_ AM.  
RTSC Pleadings and Order, supporting affidavit from Counsel, and required hearing fee  
and filing fees must be submitted by Counsel to the Master in Equity.
- 5. The Parties requested a continuance; the hearing is rescheduled for \_\_\_\_\_ AM.
- 6. The Plaintiff elected not to proceed, and the Motion has been withdrawn.
- 7. **Defendant Fred Anthony appeared with counsel at the hearing. Joseph K. Qualey, Esq. is appointed as the Court's Receiver with all authority allowed by statute and who is specifically authorized to receive and review all records of the Defendant Broadband Companies to include the LLC and IT and any companies in which Mr. Anthony may have an interest. The Receiver shall also meet with Defendant's Bookkeeper to review all records and shall be entitled to signature authority on any accounts of the businesses. Furthermore, the Receiver shall have authority to review Mr. Anthony's personal bank accounts, assets, and liabilities to fulfill his duties and shall report back to this Court his findings. Mr. Anthony is to fully cooperate with the Receiver and is cautioned that he could be held in contempt for failure to do so which could result in monetary sanctions and/or incarceration.**

**Mr. Anthony is released from contempt of Court upon payment of the remaining sums due for attorneys' fees from this Court's contempt order of July 26, 2023 provided this payment is made on or before September 5, 2023. Formal order to follow.**

8. The Supplemental Proceeding is held open until \_\_\_\_\_.  
After this date, the matter will be closed without prejudice.

9. The Supplemental Proceeding is dismissed and cancelled without prejudice. All restraining Orders and Injunctions are hereby lifted, cancelled, voided, and dismissed. The case may be re-opened by filing new pleadings seeking a Supplemental Proceeding, and a new Order of Reference from the Administrative Judge for the Ninth Judicial Circuit, with required hearing and filing fees.

(JUDGE'S SIGNATURE PAGE TO FOLLOW)



Charleston Common Pleas

**Case Caption:** Rr Landscape & Design L L C Etc , plaintiff, et al VS Broadband  
Companies Llc The Etc , defendant, et al  
**Case Number:** 2010CP1009857  
**Type:** Order/Supplemental Proceedings Order

So Ordered

s/Mikell R. Scarborough 3062

# EXHIBIT C

(Public Index reflecting Appellant's failure to seek reconsideration of the underlying orders.)

[Print Case Details](#)

**Case #** 2010CP1009857 **Plaintiff** RR LANDSCAPE & DESIGN L L C ETC , **Defendant** BROADBAND COMPANIES LLC THE ETC **Sub Type** BREACH OF CONT 140 **File Date** 11/30/2010 **Case Status** ENDED **Disp. Date** 02/26/2013

**vs** PLAINTIFF, ET AL , DEFENDANT, ET AL

Parties

Filings

Events

Associated Cases

Settings

Date	Filing	Document
10/26/2023	NEF(10-25-2023 04:46:45 PM) ORDER/ORDER COVER SHEET \$25...	
10/26/2023	ORDER/RULE TO SHOW CAUSE CITATION F/CONTEMPT OF COURT	
10/26/2023	NEF(10-26-2023 01:10:10 PM) ORDER/RULE TO SHOW CAUSE	
10/25/2023	AFFIDAVIT/JESSE SANCHEZ IN SUPPORT RULE TO SHOW CAUSE	
10/25/2023	MOTION/LIFT STAY & F/SANCTIONS	
10/16/2023	NEF(10-15-2023 10:22:59 AM) NOTICE/OTHER	
10/15/2023	NOTICE OF APPEAL ORDERS FILED AUGUST 11 & SEPT 25 2023/SRV	
09/26/2023	NOTICE OF APPEARANCE, GREEN	
09/26/2023	NOTICE OF APPEAL OF SUPPLEMENTAL ORDER FROM MIE; CRT/SVC	
09/26/2023	NEF(09-26-2023 08:06:53 AM) NOTICE/NOTICE OF APPEARANCE	
09/25/2023	SUPPLEMENTAL ORDER IN RE: AUTHORITY OF RECEIVER PREVIOUSLY	
09/25/2023	NEF(09-25-2023 02:22:18 PM) ORDER/OTHER	
08/11/2023	ORDER/SUPPLEMENTAL PROCEEDINGS ORDER	
08/11/2023	NEF(08-11-2023 01:24:05 PM) ORDER/SUPPLEMENTAL PROCEEDIN...	

# EXHIBIT D

(Supplemental Proceedings Order, filed September 25, 2023,  
re: Authority of Receiver.)



Carolina Code, and may begin the dissolution of the Defendant Businesses, to direct them to or protect them from bankruptcy proceedings, and to assume complete control of these Defendant Businesses, any affiliated businesses or companies, or any businesses or companies in which Defendant Anthony or Defendant Donnamaire Seltzer has an interest.

**I FIND** that the Receiver, in accordance with its charge by this Court, shall be and hereby is granted the complete authority of this Court to exercise full dominion and autonomy in the accessing, controlling, and freezing any and all business and individual financial accounts in the names of The Broadband Companies, LLC, Fred Anthony, or any account in which these Defendants are tangentially associated.

**I FIND** that the Receiver, in accordance with its charge by this Court, shall be and hereby is granted the complete authority of this Court to exercise full dominion and autonomy in the accessing, controlling, and freezing any and all business and individual financial accounts in the names of all Defendants named in the original Summons and Complaint, including those of Defendants Broadband IT, Donnamarie Seltzer, and Neil Bailey.

**I FIND** that the Receiver, as an extension and with all authority of this Court, shall compel the cooperation of any financial institution doing business in the State of South Carolina as if a specific Order was directed from this Court.

**I FIND** that the Receiver may use this access to make payments on the Judgment, in part or in whole, as previously set forth by this Court.

**I FURTHER FIND** that the Receiver, has the full authority of this Court, at the Receiver's discretion, to subpoena, depose, and demand immediate access to any and all financial information and property records belonging to the Defendants, the Defendants' affiliated businesses or subsidiaries, and the Defendant Broadband Companies' members, officers, or associates, including

but not limited to Donnamarie Seltzer and Neil Bailey, and may compel full cooperation, under threat of Contempt of this Court for failure to comply, which could result in monetary sanctions or incarceration.

**AND IT IS SO ORDERED** this \_\_\_\_\_ day of September 2023.

\_\_\_\_\_  
The Honorable Mikell R. Scarborough  
Master-In-Equity

Charleston, South Carolina  
September \_\_\_\_, 2022



Charleston Common Pleas

**Case Caption:** Rr Landscape & Design L L C Etc , plaintiff, et al VS Broadband  
Companies Llc The Etc , defendant, et al  
**Case Number:** 2010CP1009857  
**Type:** Order/Other

So Ordered

s/Mikell R. Scarborough 3062

# EXHIBIT E

(Rule to Show Cause – Citation for Contempt of Court,  
filed October 26, 2023.)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
<b>R&amp;R LANDSCAPE AND DESIGN</b>	)	CASE NO.: 2010-CP-10-9857
<b>LLC F/K/A R&amp;R LANDSCAPING</b>	)	
<b>INC. AND MARK GONZALEZ,</b>	)	
	)	
Plaintiff,	)	<b>RULE TO SHOW CAUSE</b>
	)	<b>CITATION FOR CONTEMPT OF COURT</b>
	)	
	)	
vs.	)	
	)	
<b>THE BROADBAND COMPANIES</b>	)	
<b>LLC AND FRED ANTHONY,</b>	)	
	)	
Defendants.	)	
	)	

Pursuant to a Rule to Show Cause entered on July 26, 2023, this Court ordered that Defendant Fred Anthony, individually and on behalf of the Broadband Companies, LLC, appear before this Court on August 11, 2023 to show cause as to why he should not be held in contempt of court for repeatedly failing to produce financial documents, which Plaintiffs have been requesting since December of 2022, and which this Court has on numerous occasions ordered him to produce. As set forth below, Mr. Anthony has a long, documented history of violating and evading this Court’s orders, and has, until now, been spared a finding of contempt.

Mr. Anthony appeared with his Counsel, Mr. Dwayne Green, at the August 11, 2023 hearing after failing to appear at an earlier, court-ordered hearing on July 14, 2023.<sup>1</sup> Plaintiffs’ counsel stated that Defendants had not produced all requisite financial documents, which Defendants’ counsel conceded.

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<sup>1</sup> This is not the first court-ordered hearing Mr. Anthony has failed to attend, having also failed to appear at a hearing on January 13, 2023.

THE COURT: The question is whether or not it's been produced. And it has not yet been produced, correct?

MR. GREEN: It has not yet produced.

(H'rng Tr., p. 12:5-8).

Defendant, through his counsel, then assured the Court that he and his Wife, Donna Marie Seltzer, would cooperate in producing copies of cancelled checks and other financial documents requested by Plaintiffs' counsel.<sup>2</sup>

MR GREEN: [...] But what I've been trying to do is, with **the Anthonys'** cooperation, get what they need. And it's my belief, and I can represent that to the Court, that between going to the bookkeeper who did the checks, who had knowledge of all the accounts, that that is the place where opposing counsel could find the documentation.

THE COURT: Well, my concern is that should have been disclosed before now. I don't know when that came out. But here we are ten months into this process. I don't know when you got into it, Mr. Green. But if that's where the answers lie then that's who should be referred to rather than hanging around out there. Because it's pretty apparent what's going on here, you know. I don't think there's any question about that.

MR. GREEN: What I can do, Your Honor, even though I wasn't working with Shawn French at the time, I can apologize on behalf of the defendant in that I can tell you as I've told opposing counsel anything that we have that will help get the information that they need, there's no attempt to delay. There's no attempt to stop them from getting that information.

THE COURT: I would tend to disagree with that statement.

(H'rng Tr., pp. 20:6 -21:7, emphasis added).

This Court also heard argument relating to Mr. Anthony's uncooperative behavior and evasive answers at a court-ordered deposition, held earlier that week on August 9, 2023. Mr. Anthony appeared at the deposition, but then claimed he could not remember basic facts concerning himself and Broadband

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<sup>2</sup> Defendants' Wife Donna Marie Seltzer, was present in the Court room, sitting next to Mr. Anthony and his counsel. This Court notes that Ms. Seltzer has been present at all prior court hearings before it, and was present at Mr. Anthony's Court-ordered deposition on August 9, 2023.

Companies. For example, after initially refusing to identify friends and family he had borrowed money from, Mr. Anthony stated he could not remember their last names or contact information. (Depo Tr. pp. 20-26). Mr. Anthony also testified that he could not remember which banks he and Broadband Companies dealt with. For example:

Q. Okay. Other than the two banks you identified do you have any bank deposits anywhere at other lending institutions?

A. Well, that information was provided to you guys months ago which you do have in your possession. So I'm not understanding the question.

Q. Do you have or do you do business with any other banks in the area besides the two you've already identified?

A. I don't remember.

Q. You don't know?

A. I don't know and I don't remember. Okay. What I know is you were provided with the last three years of banks statements and documentation from the previous attorney as well as the current attorney.

Q. I understand that you provided documents, but you're here to give your oral testimony today. Now, we can do it today like this or we can wait and do it in front of the judge and he'll instruct you to answer. I'm easy either way if you want to do it that way—

A. Your choice.

Q. -- but in this case here I think – I think if you want to take some time to confer with your attorney about this I think this would be the best way to handle it.

A. I don't need that.

Q. Okay. All right. So your testimony is, you don't remember what banks, if any, that you have current relationships with in this area other than the two you've previously identified?

A. I gave you an answer to the two banks that I aggressively deal with. The other two I can't recall at this point.

Q. Okay. So there are at least two more?

A. I can't answer that. There could be three. (Depo Tr., pp. 19:9 to 20:21).

After evading a series of questions from Plaintiffs' counsel, Mr. Anthony and his attorney, Mr. Green, informed the parties that Mr. Anthony was under the influence of a prescribed pain reliever and muscle relaxer, which could affect his memory and ability to answer questions. Despite having knowledge of his condition, neither Mr. Anthony nor his attorney informed Plaintiffs' counsel of this alleged incapacity prior to the convening of the deposition so as to afford them the opportunity to reschedule it for a time where such alleged incapacity would not be present. As a result, Plaintiffs' counsel expended time and expense, which could have been avoided.

This Court notes that Mr. Anthony's repeated failures to follow this Court's orders evidence more than an alleged incapacity to answer questions at the time of the deposition, but also a demonstrated disregard for the judicial process, indicative of his wish to "run out the clock" in an attempt to prevent Plaintiffs' from collecting on their judgment.

At the August 11 hearing, this Court specifically ruled that it was appointing Mr. Joe Qualey as Receiver and made it abundantly clear that Defendants' cooperation with the Receiver was paramount:

THE COURT: All right. Well, let me just tell you. When I came in here this morning, it was my full intention to hold you in contempt for failure to comply and probably send you off to the jail. Okay? That was my thought process when I came in here this morning.

And as I read through the record, it told me moreso to do that. Okay? But what I'm going to do is I'm going to order the appointment of a receiver. I'm going to name Mr. Joe Qualey to be your receiver. He moves fast and gets stuff done. You've got a limited amount of time to get these things done. What I will need is -- I will do a form order. What I need is y'all to set forth what documentation and evidence that you have so he knows where the bank is, what it is.

Y'all asked him for the records. I haven't gotten any kind of response from any bank as to whether or not they're going to comply. But I'm assuming they should be based upon what you've told me this morning. Then he's entitled to meet with the bookkeeper, Ms. Roche. I need y'all to provide

her name and address so they can go over there and poke around in the records.

**And then, Mr. Anthony, he's going to be calling you and talking to you and he's going to be inquiring of the status of whatever is going on. I need you to cooperate with him because the receiver is an arm of the Court. If the receiver tells me Mr. Anthony is not cooperating with me, I'm going to issue a rule and/or order for arrest and get your attention however I can. Okay? That's what I'm going to do. I just wanted you to know that. I'm not going to do that today. But I need you to cooperate with him. Y'all need to communicate and go from there.**

(H'rg Tr., pp. 25:24-27:19).

Defendant's counsel notably **made no objection** to Mr. Qualey's appointment as receiver at the hearing. On August 11, 2023, this Court entered a Supplemental Proceedings Order, formally appointing Mr. Joseph Qualey as receiver, and advising Mr. Anthony as follows: **"Mr. Anthony is to fully cooperate with the Receiver and is cautioned that he could be held in contempt for failure to do so which could result in monetary sanctions and/or incarceration."** Mr. Anthony's attorney did not appeal this Order appointing Mr. Qualey as Receiver within thirty (30) days of its issuance.

It appears Mr. Anthony and his attorney have not been cooperative with the Receiver and has:

- Failed to timely provided answers to the Receiver as requested.
- Failed to answer all requests of the Receiver fully, completely, and honestly.
- Failed to cooperate on setting dates for depositions.
- Attempted delay after delay in order to run out the clock on the judgement.
- Mr. Green has refused to accept service on behalf of his clients.
- Mr. Green, after acknowledging Mr. Qualey's role as Receiver, has appealed the Order appointing the Receiver and Supplemental Order (untimely) in an attempt to delay Receivers task of enforcing judgement.
- Mr. Green has refused to cooperate with the service of subpoenas duces tecum.
- Mr. Anthony has failed to be forthright about his salary and bank account.
- Mr. Anthony has failed to inform the Receiver as to what has happened to the ~\$200,000 dollars he has received in compensation from Broadband in the last 18 months
- Mr. Anthony has failed to show where these funds were transferred, though he claims they were invested "back into the business" and
- Mr. Anthony has refused to provide names for those who he claims to be living off of during this alleged time of financial crisis

Additionally, on October, 3, 2023, Mr. Anthony, through his Counsel, filed a Notice of Appeal of the August 11, 2023 Supplemental Proceedings Order and this Court's September 25, 2023 Supplemental Orders further setting forth Mr. Qualey's wide powers as Receiver. It appears that Mr. Anthony, through his counsel, now maintains that Mr. Anthony need not cooperate with this Court or the receiver as a result of this appeal, which he claims automatically stays all proceedings.

Considering Mr. Green's failure to object to Mr. Qualey's appointment at the August 11<sup>th</sup> hearing and his failure to appeal the August 11, 2023 Supplemental Order within thirty (30) days, and Mr. Anthony's repeated failure to comply with the Court's prior orders, it appears to this Court that Mr. Anthony is engaging in further actions to impede Plaintiffs from collecting on their judgment, and that his Appeal has been filed for the impermissible purpose of delay. In addition to the Rule to Show Cause scheduled below, this Court will hold a hearing on that date to address the lifting of any alleged stays related to Mr. Anthony's appeal.

Based on the foregoing, and the previously filed affidavits by Plaintiffs' counsel,

IT IS ORDERED, ADJUDGED AND DECREED that Defendants Broadband Companies LLC and Fred Anthony appear before me at **11:30 a.m. on November 6, 2023** at 100 Broad Street, Courtroom 2A, Charleston, South Carolina 29401, to SHOW CAUSE, if they can, on why they should not be held in contempt of Court for such disobedience and comply with each of the following:

1. Produce each and every one of the records previously ordered for them to produce to pursuant to this Court Order dated December 12, 2022, and all subsequent Orders concerning The Broadband Companies, LLC, Fred Anthony, Individually, and any and all other business(es) in which Mr. Anthony has an ownership interest in; and
2. Provide a satisfactory and justifiable reason for their continued failure to comply with this Court's Orders dated December 12, 2022, March 23, 2023, May 16, 2023, August 11, 2023, and September 25, 2023, including their most recent failure to cooperate with Mr. Qualey, whom this Court appointed as Receiver in this case, without objection from Mr. Anthony; and

IT IS ORDERED, ADJUDGED AND DECREED that Defendants are to produce each and every one of the records previously ordered for them to produce pursuant to this Court's Orders dated December 12, 2022, March 23, 2023, and May 16, 2023, concerning The Broadband Companies, LLC, Fred Anthony, Individually, and any and all other business(es) which Mr. Anthony has an ownership interest in; and produce any and all documents requested by the Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the documents are to be produced by 12:00 PM on November 3, 2023.

**IF YOU DO NOT APPEAR AS ORDERED, THE COURT WILL ISSUE A BENCH WARRANT FOR YOUR ARREST.**

Let a copy of this Order be forthwith served upon the Defendants.

**IF YOU DO NOT APPEAR AS ORDERED, YOU WILL BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.**

---

The Honorable Mikell R. Scarborough  
Master in Equity  
Charleston County Ninth Judicial Circuit

Charleston, South Carolina  
October \_\_\_\_, 2023



Charleston Common Pleas

**Case Caption:** Rr Landscape & Design L L C Etc , plaintiff, et al VS Broadband  
Companies Llc The Etc , defendant, et al  
**Case Number:** 2010CP1009857  
**Type:** Order/Rule To Show Cause

So Ordered

s/Mikell R. Scarborough 3062

# EXHIBIT F

(Confession of Judgment, filed December 23, 2013)



# EXHIBIT G

(Letter to Appellants' counsel requesting withdrawal of appeal)

October 31, 2023



VIA EMAIL ONLY (dwayne@greenlawsc.com)

Dwayne Green, Esquire  
The Green Law Offices  
720 Magnolia Road, Suite 24  
Charleston, SC 29407

RE: R&R Landscape and Design, LLC v. The Broadband Companies, LLC  
Appellate Case No. 2023-001562, Case No. 2023-001562

Dwayne,

We are writing to request that you withdraw the appeal filed in this case. As set forth in my October 4, 2023 email, the appeal is clearly frivolous and filed for the impermissible purpose of delay. Significantly, there are zero issues which have been preserved for appeal.

As you are aware, Judge Scarborough appointed Joe Qualey as receiver at the August 11, 2023 hearing. You raised zero objections to Mr. Qualey's appointment at the hearing. The Court also issued a Supplemental Proceedings Order on August 11, 2023, formally appointing Mr. Qualey as receiver. Your clients did not seek reconsideration of this order, nor appeal it within 30 days. Finally, on September 25, 2023, the Court entered a Supplemental Proceedings Order setting forth Mr. Qualey's authority as Receiver. Your clients did not file a Motion for Reconsideration as to this order. As a result, no issues have been raised to the lower court as to Mr. Qualey's qualifications and/or his authority as receiver.

I would like to direct your attention to the South Carolina Supreme Court's Decision in *Buist v. Buist*, expressly stating that an issue cannot be raised for the first time on appeal:

"It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006). While "a party is not required to use the exact name of a legal doctrine in order to preserve the issue," *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011), the party nonetheless must be sufficiently clear in framing his objection so as to draw the court's attention to the precise nature of the alleged error, *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). If the party is not reasonably clear in his objection to the perceived error, he waives his right to challenge the erroneous ruling on appeal. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007). *Buist v. Buist*, 410 S.C. 569, 766 S.E.2d 381 (2014)

**THE LAW OFFICE OF JESSE SANCHEZ, LLC**

751 Johnnie Dodds Blvd., Suite 200, Mount Pleasant, SC 29464 P: 843.814.8181 F: 843.284.3953  
jesse@jessesanchezlaw.com jessesanchezlaw.com

October 31, 2023  
Letter to Dwayne Green, Esq.  
Page 2 of 2

The Court's appointment of Mr. Qualey was proper, particularly given Mr. Anthony's repeated failure to comply with prior orders. But even if it wasn't, there is no basis for appeal because no issues have been preserved as it relates to Mr. Qualey's appointment and/or authority. Given the above, we ask that you withdraw the appeal by end of day tomorrow.

As always, please feel free to call us if you would like to further discuss this matter.

Regards,

A handwritten signature in black ink, appearing to read "Jesse Sanchez", with a long horizontal flourish extending to the right.

Jesse Sanchez

Cc (via email only):  
I. Keith McCarty, Esquire  
Brian Knowles, Esquire  
Joe Qualey, Esquire  
Zac Smith, Esquire

# EXHIBIT H

(Deficiency letter from Court of Appeals to Appellants,  
dated October 23, 2023)



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

CATHERINE S. HARRISON  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

October 23, 2023

Mr. Dwayne Marvin Green, Esquire  
720 Magnolia Road  
Suite 24  
Charleston SC 29407

Re: R&R Landscape and Design, LLC v. The Broadband Companies, LLC  
Appellate Case No. 2023-001562

Dear Counsel:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have timely ordered the transcript from the court reporter. If you have not timely ordered the transcript, you must serve and file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR, along with a copy of your letter addressed to the court reporter.

Be sure to copy the Court, the Office of Court Administration and opposing counsel with all correspondence concerning the transcript. The address for Court Administration is as follows:

South Carolina Office of Court Administration  
1220 Senate Street, Suite 200  
Columbia, SC 29201

You must advise the Court of the status of the transcript within ten (10) days of the date of this letter, or your appeal will be dismissed.

Very truly yours,

*Catherine Hannigan, deputy*

CLERK

cc: Ivon Keith McCarty, Esquire  
Mark Thomas Rainsford, Esquire  
Brian Morris Knowles, Esquire  
Jesse Sanchez, Esquire

**RECEIVED**

**Nov 02 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough  
Master-in-Equity

---

Appellate Case No. 2023-001562

---

The Broadband Companies, LLC, and  
Fred Anthony,

Appellants

v.

R&R Landscape and Design, LLC, f/k/a  
R&R Landscape, Inc., and Mark Gonzalez

Respondents.

---

PROOF OF SERVICE

---

I, the undersigned, certify that I have served Respondents' *Motion to Dismiss Appeal and for Expedited Hearing* via electronic mail on Dwayne Green, Esquire, Counsel for Appellants The Broadband Companies, LLC, and Fred Anthony, at his AIS-designated email address (dwayne@greenlawsc.com) on November 2, 2023.

Pursuant to Rule 262(C)(3), SCACR, and the Order of The Supreme Court of South Carolina, RE: Methods of Electronic Filing Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), a copy of the aforementioned email correspondence to counsel is attached.

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esquire (SC Bar No. 101906)

751 Johnnie Dodds Boulevard, Suite 200

Mount Pleasant, SC 29464

jesse@jessesanchezlaw.com


(843) 814-8181

**Attorney for Respondents**

Mount Pleasant, South Carolina

November 2, 2023



**From:** Jesse Sanchez [jesse@jessesanchezlaw.com](mailto:jesse@jessesanchezlaw.com)   
**Subject:** R&R Landscape and Design, LLC, and Mark Gonzalez, Respondents, v. The Broadband Companies, LLC and Fred Anthony, Appellants. Appellate Case No. 2023-001562  
**Date:** November 2, 2023 at 8:56 AM  
**To:** Dwayne Green [dwayne@greenlawsc.com](mailto:dwayne@greenlawsc.com)  
**Cc:** Keith McCarty [ikeithmccarty@gmail.com](mailto:ikeithmccarty@gmail.com), Brian Knowles [brian@knowlesinternational.com](mailto:brian@knowlesinternational.com), Joe Qualey [joequaley@qlawfirm.com](mailto:joequaley@qlawfirm.com), Zac Smith [wzsmith@qlawfirm.com](mailto:wzsmith@qlawfirm.com)

Dwayne,

Attached for service, please find Respondents' Motion to Dismiss Appeal, Exhibits to the Motion, and the corresponding Cover Letter, all of which are being filed momentarily with the South Carolina Court of Appeals via OneDrive electronic submission.

Regards,

Jesse

-----  
**PLEASE NOTE WE HAVE A NEW ADDRESS:**

Jesse Sanchez  
The Law Office of Jesse Sanchez, LLC  
751 Johnnie Dodds Blvd., Suite 200  
Mount Pleasant, SC 29464  
Office: (843) 804-4753  
Direct: (843) 814-8181  
Fax: (843) 284-3953  
[jesse@jessesanchezlaw.com](mailto:jesse@jessesanchezlaw.com)

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Motion to Dismiss Appeal.pdf**  
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**RR Landscape v Broadband -  
Exhibits to Motion.pdf**  
2.5 MB



**RR Landscape v Broadband -  
Letter to Kitchings 110223.pdf**  
100 KB



November 2, 2023

VIA ONEDRIVE ELECTRONIC SUBMISSION  
AND U.S. First Class Mail

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



RE: R&R Landscape and Design, LLC, and Mark Gonzalez, Respondents,  
v. The Broadband Companies, LLC and Fred Anthony, Appellants.  
Appellate Case No. 2023-001562

Dear Ms. Kitchings:

Enclosed for filing please find the following:

- (1) Respondents' Motion to Dismiss Appeal and for Expedited Hearing,
- (2) Exhibits to the Motion to Dismiss Appeal and for Expedited Hearing,  
and
- (3) Proof of Service

A check for the fifty-dollar (\$50.00) filing fee has been placed in today's outgoing mail. Thank you for your assistance with this matter. Should you have any questions or wish to discuss the filing, please do not hesitate to contact me directly.

Sincerely,

s/Jesse Sanchez

Jesse Sanchez (SC Bar No. 101906)

Enclosures (as stated)

Cc: Dwayne Green, Esq. (Via Email Only)  
I. Keith McCarty, Esq. (Via Email Only)  
Brian M. Knowles, Esq. (Via Email Only)  
Joseph Qualey, Esq. (Via Email Only)