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Nov 09 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.

RESPONDENTS' REPLY TO
APPELLANTS' RETURN TO MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Appellate Court Rules and this Honorable Court's instructions, dated November 2, 2023, Respondents R&R Landscape and Design, LLC and Mark Gonzalez, through their undersigned counsel, hereby submit this brief Reply.

Appellants' Return notably fails to cite a single case, rule, or statute in support of maintaining the instant appeal. The reason for Appellant's failure to cite any authority is clear: There is no legal justification for pursuing an appeal where the appellant fails to raise even a single issue with the lower court. *Cullen v. McNeal*, 390 S.C. 472, 492, 702 S.E.2d 378, 390 (Ct. App. 2010) (ruling that because the circuit court did not rule on the arguments and because no Rule 59(e), SCRCF motion

was filed, the arguments were not preserved for appellate review).

The only two orders on appeal in this case are an order appointing Joseph Qualey, Esquire as receiver and a subsequent formal order setting forth his authority. Appellants do not dispute that they raised zero objections to Mr. Qualey's appointment at the August 11, 2023 hearing and that they failed to seek reconsideration of the order appointing him. Appellants also do not dispute that they failed to seek reconsideration of the subsequent formal order setting forth Mr. Qualey's authority as receiver. Yet, these are the very orders they now seek to appeal.

Faced with dilemma, Appellants resort to mischaracterizing the September 25, 2023 order as an *ex parte* order, intimating they lacked notice as to its filing. It is not an *ex parte* order. Indeed, the August 11, 2023 Order appointing Mr. Qualey as Receiver states that "Joseph K. Qualey, Esq. is appointed as the Court's Receiver with all authority allowed by statute" and specifically states, "Formal order to follow." As set forth below, that is precisely what the September 25, 2023 order is: a formal order, which Appellants knew would be forthcoming. It is not an *ex parte* order sprung on Appellants without notice or hearing. This is not just Respondents' view of the case. Just today, the lower court entered an order finding Mr. Anthony in civil contempt of Court for his repeated failure to provide Plaintiffs with adequate financial information in violation of its prior orders. (Order, attached as Exhibit A). The Order addresses the relevant procedural history of this case, stating:

Defendant's counsel notably made no objection to Mr. Qualey's appointment as receiver at the [August 11, 2023] 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 did not seek reconsideration of this Order pursuant to Rule 59(e), SCRCF. Thereafter, on September 25, 2023, this Court entered a formal order setting forth Mr. Qualey's authority as receiver. Defendants did not seek

reconsideration of this Order either. Instead, Appellants filed a Notice of Appeal as to the two Orders without having raised even a single issue as to Mr. Qualey's appointment or authority as receiver to this Court.

Contrary to Defendants' contention at the present hearing, the September 25, 2023 order was not an *ex parte* order. Defendants and their attorney were in fact present at the August 11, 2023 hearing appointing Mr. Qualey as receiver. They raised no objection to his appointment at the hearing. This Court's August 11, 2023 order appointed Mr. Qualey as Receiver and specifically advised the parties: "Formal Order to Follow." That is precisely what the September 25, 2023 Order is: a formal order, which Appellants were specifically advised would be forthcoming. It is not under, any possible interpretation, an *ex parte* order.

(Order, p. 7, attached as Exhibit A. Emphasis in original)

But even if the September 25, 2023 Order was an *ex parte* order, Appellants still fail to offer *any* explanation as to why they did not seek reconsideration of the order from the lower court pursuant to Rule 59(e), SCRCP. Appellants cannot get around the undisputed fact that the lower court never heard a single argument from them as it relates to Mr. Qualey's appointment or as to his authority as receiver prior to filing the instant appeal. See *Cullen v. McNeal*, 390 S.C. 472, 492, 702 S.E.2d 378, 390 (Ct. App. 2010), cited *supra*, (ruling that because the circuit court did not rule on the arguments and because no Rule 59(e), SCRCP motion was filed, the arguments were not preserved for appellate review). Here, it is undisputed that Appellants have taken zero steps to preserve even a single issue for appeal.

Further, Respondent's Return fails to cite *any* authority, let alone authority stating that an appellant is somehow entitled to raise issues for the first time on appeal. See *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (issue deemed abandoned where appellant failed to provide arguments or supporting authority for his assertion); *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("[S]hort, conclusory

statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.”).

Appellants’ Return also makes the unsubstantiated claim that “Mr. Anthony has provided the information requested by the parties in this case.” Appellants’ claim is wholly without merit and directly contradicted by the Record in this case. See Order at Exhibit A, referenced *supra*. Further, as set forth in the Receiver’s affidavit, attached hereto as Exhibit B, Mr. Anthony has refused to cooperate in any meaningful way, repeatedly refusing to disclose information related to his income and/or assets in an effort to “run out the clock” on Respondents’ ability to collect on the judgment.

Finally, Appellants have not complied with the Court’s instruction or the appellate court rules. In fact, Appellants are *still* not in compliance despite receiving clear and unambiguous instructions from this Court. On October 23, 2023, this Court sent Appellants’ counsel a deficiency letter noting that the time for ordering the transcript had expired and specifically instructed as follows: “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.” [Emphasis added]. To this date, Appellants have still not served or filed a motion requesting permission to order the transcript outside the filing deadlines set forth by Rule 207. Moreover, Appellants continue to file motions without enclosing the requisite filing fees, expecting this Court to simply look the other way and ignore the same repeated violations. “[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. The present appeal has been filed for no other purpose than to delay proceedings and “run out the clock” on Respondents’ ability to collect on the judgment.

Conclusion

For each of the foregoing reasons, Respondents respectfully request that this Honorable Court grant their motion and dismiss this appeal. It is undisputed that the lower court never heard a single argument from Appellants as it relates to Mr. Qualey’s appointment or as to his authority as receiver prior to the filing of the appeal. 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.

[Signature on following page]

Respectfully submitted,

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November 9, 2023
Mount Pleasant, South Carolina

Attorney for Respondents R&R Landscape and Design,
LLC and Mark Gonzalez

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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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.

EXHIBITS TO REPLY
TO APPELLANTS' RETURN TO MOTION TO DISMISS

1. Exhibit A – Supplemental Proceedings Order – Finding Defendant in Civil Contempt of Court, filed November 9, 2023.
2. Exhibit B – Affidavit of Court-Appointed Receiver, Joseph K. Qualey, Esq.

[Signature on following page]

Respectfully submitted,

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Attorney for Respondents

R&R Landscape and Design, LLC and Mark Gonzalez

November 9, 2023

Mount Pleasant, South Carolina

EXHIBIT A

[Supplemental Proceedings Order – Finding Defendant in Civil Contempt of Court, filed November 9, 2023]

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
)	
R&R LANDSCAPE AND DESIGN)	CASE NO.: 2010-CP-10-09857
LLC F/K/A R&R LANDSCAPING)	
INC. AND MARK GONZALEZ,)	
)	
Plaintiff,)	SUPPLEMENTAL PROCEEDINGS
)	ORDER – FINDING DEFENDANTS IN
)	CIVIL CONTEMPT OF COURT
)	
vs.)	
)	
THE BROADBAND COMPANIES)	
LLC AND FRED ANTHONY,)	
)	
Defendants.)	
)	

A HEARING was held in the above-captioned case on **November 6, 2023 at 11:30 A.M.** pursuant to Plaintiff’s Rule to Show Cause and Citation for Contempt of Court filed on October 26, 2023. Present at the hearing were Plaintiffs’ counsel, Jesse Sanchez, Esq.; Defendant Fred Anthony, individually, and on behalf of the Broadband Companies, LLC; Defendants’ counsel Dwayne Green, Esq.; the court-appointed Receiver, Joseph Qualey, Esq.; and the Receiver’s associates, Zac Smith, Esq. and William C. Kennedy, Esq. This Court also heard arguments pursuant to Plaintiffs’ Motion to Lift Stay and Motion for Sanctions, filed October 25, 2023, which are addressed by way of a separate order.

Plaintiffs sought to hold Mr. Anthony in Contempt for his repeated failure to produce financial documents and information, 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.

PROCEDURAL HISTORY

Pursuant to an Order dated December 12, 2022, Defendants The Broadband Companies LLC and Fred Anthony, were ordered to appear before this Court on January 13, 2023, to answer questions under oath concerning their respective assets, to produce certain documents, and to show cause why their property should not be applied toward satisfaction of the Judgment set out in the Plaintiffs' Petition for an examination of Defendants. Defendants were duly served with a copy of the Order to appear but failed to personally appear and to comply with the Order.

Pursuant to an Order dated February 1, 2023, Defendants were then ordered to appear before me on March 10, 2023, to answer questions under oath and to produce the documents set forth in the December 12, 2022 Order. Defendant Fred Anthony appeared along with his Counsel and for that reason was not held in contempt. However, Defendants did not produce any of the court-ordered documents.

Pursuant to an Order filed March 23, 2023, Defendants were again ordered to provide to the McCarty Law Firm the documents set forth in the December 12, 2022 Order. Defendants were duly served with a copy of the March 23, 2023 Order.

On April 27, counsel for Plaintiffs and Defendants corresponded with this Court with regards to scheduling Supplemental Proceedings in this matter. The Court offered a hearing date of June 9, 2023, which counsel for Plaintiffs accepted, but counsel for Defendants objected to because it conflicted with his daughter's summer vacation. As a result, on that same date, April 27, 2023, the Court offered a hearing date of July 14, 2023, which Counsel for Plaintiffs and Counsel for Defendants both agreed to via email to the Court. Consequently, a hearing for Supplemental Proceedings was scheduled for July 14, 2023.

On May 5, 2023, Counsel for Plaintiffs filed an Affidavit in Support of Rule to Show Cause on the grounds that Defendants had failed to comply with this Court's December 16, 2022, February 2, 2023, and March 23, 2023 Orders having failed to produce all of the documents commanded to be produced therein. As a result, an Order was issued by this Court on May 16, 2023 commanding that Defendants appear before it on July 14, 2023—the same date that Supplemental Proceedings had already been scheduled and agreed to by the parties.

On July 14, 2023, Counsel for Plaintiffs appeared for the previously-scheduled and agreed to hearing for Supplemental Proceedings, and the hearing on the Rule to Show Cause. Neither Defendants nor Defendants' Counsel appeared at the hearing. Instead, this Court received an email from the Defendant Fred Anthony, which did not copy Plaintiffs, stating that he was unable to attend the hearing due to an undisclosed medical condition affecting his ability to drive and because Mr. Green was under an Order of Protection, which was obtained *after* agreeing to attend the July 14, 2023 hearing. The Court did not hold Defendants in contempt at that time, but rather continued the hearings until August 11, 2023 at 10:00AM.

Pursuant to a Rule to Show Cause entered on July 26, 2023, this Court, again, 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 and provide relevant financial information, which Plaintiffs have been requesting since December of 2022, and which this Court has on numerous occasions ordered him to produce.

Mr. Anthony appeared with his Counsel, Mr. Dwayne Green, at the August 11, 2023 hearing after failing to appear at the earlier, court-ordered hearing on July 14, 2023. Plaintiffs'

counsel argued that Defendants had not produced all requisite financial documents, which Defendants' counsel conceded.

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.

(August 11, 2023 H'rng Tr., p. 12:5-8).

Defendant, through his counsel, then assured the Court that he would cooperate in producing copies of cancelled checks and other financial documents requested by Plaintiffs' counsel.

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.

(August 11, 2023 H'rng Tr., pp. 20:6 -21:7).

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 the Broadband 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, 2023 hearing, this Court specifically advised Mr. Anthony of its intent to hold him in contempt of court for violations of prior court orders, but then offered him one last opportunity to cooperate with Plaintiffs. Specifically, the Court ruled that it was appointing Joe Qualey, Esq. 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 more so 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 book keeper, 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.

(August 11, 2023 H'rg Tr., pp. 25:24-27:19). Emphasis added.

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 did not seek reconsideration of this Order pursuant to Rule 59(e), SCRPC. Thereafter, on September 25, 2023, this Court entered a formal order setting forth Mr. Qualey's

authority as receiver. Defendants did not seek reconsideration of this Order either. Instead, Appellants filed a Notice of Appeal as to the two Orders without having raised even a single issue as to Mr. Qualey's appointment or authority as receiver to this Court.

Contrary to Defendants' contention at the present hearing, the September 25, 2023 order was not an *ex parte* order. Defendants and their attorney were in fact present at the August 11, 2023 hearing appointing Mr. Qualey as receiver. They raised no objection to his appointment at the hearing. This Court's August 11, 2023 order appointed Mr. Qualey as Receiver and specifically advised the parties: "Formal Order to Follow." That is precisely what the September 25, 2023 Order is: a formal order, which Appellants were specifically advised would be forthcoming. It is not under, any reasonable interpretation, an *ex parte* order.

On November 3, 2023, the court-appointed Receiver filed an affidavit setting forth his efforts to obtain financial information from Defendants and stating that his requests had been met with inadequate and/or incomplete answers, if not entirely ignored. Moreover, despite Mr. Anthony's claims of being "broke," Mr. Qualey discovered that Mr. Anthony had, in actuality, received salary in excess of \$200,000 from the Broadband Companies. This is in stark contrast to Mr. Anthony's deposition testimony, where he claimed to have received no salary at all. Mr. Anthony has failed to provide both the Receiver and the Plaintiffs with adequate financial information, including but not limited to, failing to account for approximately \$438,691.00 he personally received in income.

FINDINGS

Defendant has appeared before this Court on several occasions over the past year in this supplemental proceedings matter. Each hearing has resulted in an order requiring Defendant to produce financial documents.

The Court finds there is clear and convincing evidence that the Defendant, Fred Anthony, has not been truthful or forthcoming about his salary, businesses, and bank accounts, and that he has repeatedly failed to provide Plaintiffs with adequate financial documents and information so as to allow them the opportunity to collect on their judgment.

The Court finds by clear and convincing evidence that the Defendant, Fred Anthony, is in direct contempt of court by his willful failure to comply with the prior orders of this court to furnish adequate financial records and information to Plaintiffs. In Re: Combis, 439 S.C. 485, 888 S.E. 2d 1 (Ct. App. 2023).

As a separate and distinct ground for contempt, the Court also finds by clear and convincing evidence that the Defendant, Fred Anthony, is in direct contempt of court by his willful failure to cooperate with the court-appointed Receiver. Id.

IT IS ORDERED, ADJUDGED AND DECREED that Defendant, Fred Anthony, is in civil contempt of court due to his actions and inactions. As such, Mr. Anthony shall be transported to the Charleston County Detention Center where he shall be held in confinement until December 23, 2023, or until such time as he purges himself from contempt upon (1) payment of attorney's fees to Plaintiffs' counsel as set forth in their filed affidavits, (2) payment to Plaintiff's counsel for costs they have incurred from services rendered by the Court-appointed Receiver, Joseph Qualey, Esquire **and** (3) upon providing Plaintiffs' counsel with copies of all checks (and wire transfers) paid to and received by Fred Anthony, the Broadband Companies, and any all companies of which Mr. Anthony holds an interest for the past four (4) years.

Specifically, Mr. Anthony shall pay The Law Office of Jesse Sanchez, LLC, \$12,663.23 in attorneys' fees and costs, and \$11,925.00, which Plaintiffs' counsel have incurred in billings from

the court-appointed receiver, and finally \$6,063.30 in attorneys' fees and costs incurred by Brian Knowles, P.C., for a total of **\$30,651.53** in payments.

Counsel for Plaintiffs shall be required to file an affidavit with the Clerk of Court upon Mr. Anthony's satisfaction of the above requirements, so as to allow for his release.

IT IS SO ORDERED.

Mikell R. Scarborough,
Master in Equity, Charleston County

Charleston, South Carolina
November __, 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: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

EXHIBIT B

[Affidavit of Court-Appointed Receiver –
Joseph K. Qualey, Esq.]

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 R&R Landscape and Design, LLC, f/k/a)
 R&R Landscape Inc., and Mark)
 Gonzalez,)
)
 Plaintiffs,)
)
 vs.)
)
 The Broadband Companies, LLC, and)
 Fred Anthony,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 Civil Action No.: 2010-CP-10-09857

AFFIDAVIT OF RECEIVER

PERSONALLY APPEARED BEFORE ME, Joseph K. Qualey, Receiver appointed by the Master in Equity Court of Charleston County, being first duly sworn, deposes and states as follows:

1. I am an attorney with the Qualey Law Firm in Charleston, South Carolina, and this firm is the Court appointed Receiver for the Defendants above-named.
2. That on or about August 22, 2023, I was appointed by this Court by Order as the Receiver for the Defendants above-named for the purposes of investigating and assessing the finances of said Defendants and to assume control of the Defendants' assets in order to satisfy the Judgment confessed by the Defendants.
3. That in this capacity, I investigated payroll and bank account records of Defendant Broadband Services and Defendant Fred Anthony to discover that Defendant Anthony has received a salary in an amount approximately \$200,000.00 over the last (18) months.
4. That on or about September 11, 2023, I sent a series of inquiries to Defendants' attorney, Dwayne Green, including but not limited to those concerning Defendant Fred Anthony's living finances, names of those family members and associates who have given him charity, the

records showing approximately \$200,000.00 Defendant Anthony has received in salary over the last (18) months, the origin and flow of business and individual finances, and various other questions related to assets and finances that could be used to satisfy the Judgment to which the Defendants have confessed.

5. That on or about September 12, 2023, an additional set of inquiries was made to Mr. Green for the Defendants.

6. That on or about September 15, 2023, Mr. Green responded to these inquiries via email. The responses were inadequate, incomplete, were denied in part or in full, and/or were ignored.

7. That on September 21, 2023, I sent a reiterated and revised my inquiries to Mr. Green.

8. That on or about September 25, 2023, Mr. Green emailed and refused to expand on his first response stating that the Defendants' intent to appeal the Order Appointing Receiver and the Supplemental Order filed on this same date clarifying the Receiver's scope and authority.

9. That on or about September 27, 2023, I sent an email to Mr. Green again inquiring as to the approximately \$200,000.00 Defendant Anthony received in salary from the beginning of 2022 until the second quarter of 2023 and requesting dates for depositions. I requested that Mr. Green provide a response by September 29, 2023. Mr. Green's responses did not address the question either fully or completely, and also stated that he would not accept service of my Notices of Depositions.

10. That on or about October 4, 2023, Mr. Green emailed his Notice of Appeal of Appointment of Receiver and again refused to answer Receiver's inquiries or respond otherwise.

11. On or about October 11, 2023, I provided Notice to Mr. Green of a pending Subpoena *Duces Tecum* for the previously named Defendant, Donnamarie Seltzer, and again requested dates for the deposition of Defendant Anthony. Mr. Green refused to provide dates and accept service, claiming a stay under his Appeal.

12. On or about October 17, 2023, I attempted to serve the Subpoena *Duces Tecum* on Donnamarie Seltzer via an independent process server. Notice was again given to Mr. Green prior to these attempts at service. All attempts that were made were unsuccessful as Ms. Seltzer effectively dodged service.

13. From October 4, 2023, to date, the Defendants, by and through their attorney, have ignored, denied, and/or failed to respond to Receiver's requests fully and completely, and otherwise refused to cooperate with the Receiver and this Court. They have made appeals and have claimed that the Receiver's actions are stayed until the appeal is heard all in an attempt to run out the clock on this Judgment and to avoid the administration of justice.

14. To date, I have spent more than (16) hours making inquiries to Mr. Green as to Defendants' finances, all of which have been met with denials, incomplete answers, attempts to delay the Receiver's efforts, and attempts to thwart the administration of justice. These refusals, denials, and delays by the Defendants and the Defendants' attorney has amounted to \$6,275.00 in attorney's fees and costs as set forth in my Affidavit of Receiver's Fees.

[Signature on the Following Page.]

FURTHER AFFIANT SAYETH NOT.

Respectfully submitted,

Qualey Law Firm

s/ Joseph K. Qualey _____
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joequaley@qlawfirm.com

SWORN TO and subscribed before me,
This 3rd day of November 2023.



Notary Public for South Carolina

Printed Name: William Zachary Smith

My Commission Expires: 9/9/2025

RECEIVED

Nov 09 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' *Reply to Appellants' Return to Motion to Dismiss* and corresponding *Exhibits* via electronic mail on Dwayne Green, Esquire, and Shawn M. French, Esq., Counsel for Appellants The Broadband Companies, LLC, and Fred Anthony, at their AIS-designated email address (dwayne@greenlawsc.com and shawn@thefrenchlawfirm.com) on November 9, 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 9, 2023



From: Jesse Sanchez jesse@jessesanchezlaw.com 
Subject: 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
Date: November 9, 2023 at 4:31 PM
To: Dwayne Green dwayne@greenlawsc.com, ShawnM French, Sr. shawn@thefrenchlawfirm.com
Cc: Keith McCarty ikeithmccarty@gmail.com, Brian Knowles brian@knowlesinternational.com, Joe Qualey joequaley@qlawfirm.com, Will Kennedy wckennedy@qlawfirm.com

Dwayne and Shawn,

Attached for service, please find Appellants' Reply to Respondents' Return to the Motion to Dismiss, Exhibits, 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

On Thu, Nov 2, 2023 at 8:56 AM Jesse Sanchez <jesse@jessesanchezlaw.com> wrote:
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
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--

PLEASE NOTE WE HAVE A NEW ADDRESS:

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RR Landscape v Broadband -
Letter to Kitchings 110923.pdf



RR Landscape v Broadband -
Respondents Reply to MTD...



**RR Landscape v Broadband -
Exhibits to Reply to MTD.pdf**
1.2 MB



November 9, 2023

VIA ONEDRIVE ELECTRONIC SUBMISSION

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:

Pursuant to this courts instructions, dated November, 2, 2023, Enclosed for filing please find the following:

- (1) Respondents' Reply to Appellants' Return to Motion to Dismiss,
- (2) Exhibits to the Reply to Appellants' Return to Motion to Dismiss, and
- (3) Proof of Service

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)
Shawn M. French, Esq. (Via Email Only)
I. Keith McCarty, Esq. (Via Email Only)
Brian M. Knowles, Esq. (Via Email Only)
Joseph Qualey, Esq. (Via Email Only)