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Dec 20 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2020-CP-07-0231

APPELLATE CASE NO. 2023-000438

Georgia Harrison, Barbara Harrison,
Joyce Ellen Harrison, William S. Harrison III,
Stanley Roberts, and
Diana Mendheim, Individually and as agent and attorney in fact,

Respondents,

vs.

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,
Kieta Nicole White, Cheryl Kirkland, William Charles Kirkland,
Paulette Kirkland, Paul T. Allbright, Christopher Kirkland and
Shawn Kirkland,

Defendants,

of whom Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nicole White and Cheryl Kirkland are Appellants.

**RESPONDENTS' RETURN TO APPELLANTS' MOTION FOR EXTENSION OF TIME
TO FILE FINAL BRIEF AND RECORD ON APPEAL AND RESPONDENTS'
REQUEST FOR SANCTIONS PURSUANT TO SCACR 269**

INTRODUCTION

Currently pending before this Court is the Appellants' December 19, 2023 "Motion For Extension Of Time To File Final Brief And Record On Appeal." The Respondents object to any extension being granted because the Appellants' are gaming the system and intentionally delaying the proper administration of justice by continuing a never-ending pattern of unnecessary and inappropriate requests to extend deadlines, all of which are calculated to disrupt and delay the sale of property that will benefit all of the owners—including the 98 plus percent owner Respondents and the less than two percent owner Appellants. The delaying tactics have become so egregious and so obvious that the Respondents pray this Court also impose sanctions upon the Appellants and their counsel pursuant to SCACR 269 to discourage like conduct in the future.

BRIEF FACTUAL BACKGROUND

This is the second appeal filed by these Respondents in this case, the prior appeal (2022-000277) that was filed on March 9, 2022 having been dismissed by this Court's Order of March 15, 2023. That dismissal followed the Supreme Court's admonition to these Appellants of January 27, 2023, which denied the Appellant's Petition For a Writ of Mandamus and warned the Appellants that the Respondents could "resubmit" their request for sanctions "should Petitioner [the Appellants] continue to act in a manner inconsistent with bringing this matter to a timely conclusion." See Exhibit A. This second appeal to this honorable Court then followed on March 22, 2023.

Following their Notice of Appeal in this second appeal, the Appellants' Initial Brief was filed on June 20, 2023, after the Appellants received and took advantage of this Court's Order

extending their time for filing their Initial Brief by sixty (60) days, from the original due date of April 23, 2023 until June 20, 2023. The Respondents' counsel then filed an "Amended Initial Brief" the next day, June 21, 2023. The June 21, 2023 "Amended" Initial Brief substantively expanded the Respondents' arguments, from two cited arguments in the June 20, 2023 Initial Brief, to eight cited arguments in the June 21, 2023 Initial Brief. (The June 21, 2023 Amended Initial Brief also cited eleven (11) "Issues on Appeal, compared to the two (2) Issues on Appeal cited in the original June 20, 2023 Initial Brief.) The Respondents at that time urged the Court to deny that Motion, even though Appellants' counsel had advised the Clerk of Court by email of June 21, 2023 that he filed the original June 20, 2023 Initial Brief "in error" while tired (thereby arguably setting forth a factual basis for the Motion). Over the Appellants' objection, the Court on October 11, 2023 granted that Motion, effectively allowing the Appellants to then delay the appellate process by another three months.

In sum, the Appellants have successfully delayed their briefing requirements by six months, during which time the intended purchaser of the property, Rotunda Land & Development Group, LLC, notified the Respondents (who own over 98 percent of the property) that Rotunda would not close on the purchase of the property "due to the outstanding, pending legal appeal filed by Houston concerning ownership of the property." See Exhibit B, a letter from Rotunda's counsel Terry A. Finger dated July 27, 2023. The Appellants now seek to continue their delaying tactics, acting in a "manner inconsistent with bringing this matter to a timely conclusion" as set forth by the Supreme Court earlier. The Respondents respectfully pray that this Court deny the requested extension and pursuant to SCACR 269, impose upon the Appellants and their attorney, such sanctions as the circumstances of the case and discouragement of like conduct in the future require.

ARGUMENT AND CITATION OF AUTHORITY

The Court is well aware from earlier filings and Orders in 2022-000277, that this case involves the sale of a large tract of land that was previously heirs property on Hilton Head Island, of which the Appellants own less than a 1.2 percent interest (with the Respondents owning the remaining 98.8 percent), and that the continuing delays occasioned by the repeated filings made by Mr. Houston on behalf of the Appellants, has caused the initial, proposed purchaser to refuse to close.

In specific response to the pending motion, the Respondents note that the motion itself, filed at the last minute (filed on December 19, 2023 at 3:46 p.m. when the Record on Appeal is due on December 20, 2023), shows that it is but another delaying tactic.

First, the motion seeks an order extending the time “for filing the Appellants Final Brief and the Record on Appeal for a period of Thirty (30) days,” contending “the Appellants Final Brief is due on December 20, 2023.” The Final Brief of the Appellants is not due until twenty (20) days after the Appellants serve the Record on Appeal on the Respondents, which is due to be served today, December 20, 2023. The only thing due today, December 20, 2023, is a single copy of the Record On Appeal that was to be served on the Respondents’ counsel with a Proof of Service filed with the Clerk. The Appellants have confused the required filing dates and requirements in their last-minute motion, which candidly speaks volumes as to the actual efforts being made by the Appellants to appropriately move this appeal forward in a timely manner.

As far as the “grounds in support” cited by the Appellants, the Respondents respectfully note as follows:

1. The alleged “flurry of activity” in the lower court is actually but another delaying tactic occasioned by the Appellants’ recent filing of a “Motion To Void Master’s Deed And Motion To Enforce Right Of First Refusal Under Pinckney Act” that was filed in the Circuit Court by these Appellants on October 26, 2023, a copy of which is attached to their pending motion herein as Exhibit 1. The Appellants now seek an extension of time in this Court to serve the basic Record On Appeal, based in large part upon alleged lower court activities the Appellants and their counsel have supposedly been forced to address at the expense of their ability to prepare the Record on Appeal, all of which were created by their own filings.
2. The Appellants’ counsel’s assertion that he has been relocating his residence and law office during November and December 2023 is irrelevant to the issue of preparation of the Record On Appeal, and clearly the Appellants’ counsel found the time to prepare a lengthy, delaying motion in the lower court while moving.
3. The Appellants also assert that “printing shops are overloaded with Christmas/ Holiday/ New Year printing orders and are unwilling to give a commitment date for completion.” Respondents respectfully suggest that this bald-face assertion without any type of evidentiary support by Affidavit, shows that it is interposed improperly simply as another delaying tactic—especially since the Rules of this Court only require that Appellants serve a single copy of the Record on Appeal this date on the Respondents.

The pending motion for extension of time is frivolous and taken solely for the purposes of delay, and this Court should deny the motion and impose upon the Appellants and their counsel such sanctions as the circumstances of the case and the discouragement of like conduct in the

future require. The Supreme Court's earlier admonition to the Appellants went unheeded and this Court should now impose sanctions that will bring this appeal to a timely conclusion and allow the 98 percent landowners, many of whom are elderly, to move forward with a sale of the property.

CONCLUSION

There being no reason why the Appellants could not have timely served the Record on Appeal upon the Respondents this date, after delaying this appellate process by more than six months, no actual good cause having been shown to support the motion, and since prejudice to the Respondents will result from such an Order, the Respondents urge this Court to deny the Appellants' Motion For Extension Of Time To File Final Brief And Record On Appeal as was filed on December 19, 2023 and impose sanctions upon the Appellants and their attorney pursuant to SCACR 269.

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Bluffton, South Carolina
December 20, 2023

Exhibit A

The Supreme Court of South Carolina

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,
Kieta Nicole White, and Cheryl Kirkland, Petitioner,

v.

The Court of Appeals of South Carolina and The
Honorable Marvin H. Dukes, Respondent.

In Re: Appellate Case No. 2022-000277
Court of Common Pleas Case No. 2020-CP-07-2301

Georgia Harrison, Barbara Harrison, Joyce Ellen
Harrison, Williams S. Harrison, III, Stanley Roberts, and
Diana Mendheim Individually and as Agent and Attorney
in Fact, Respondents,

v.

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,
Kieta Nicole White, and Cheryl Kirkland, Appellants.

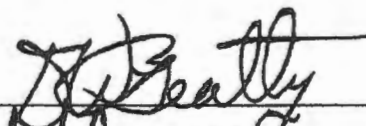
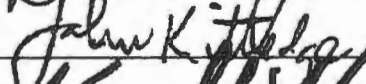
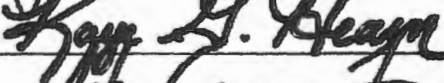
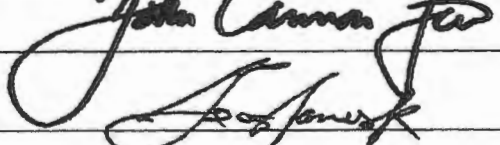
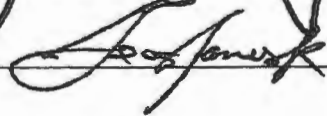
Appellate Case No. 2022-001628

ORDER

Petitioner seeks a writ of mandamus in this Court's original jurisdiction to require the South Carolina Court of Appeals to issue an order of supersedeas and set a supersedeas bond. Petitioner has not made the requisite showing for a writ of mandamus. *See City of Rock Hill v. Thompson*, 349 S.C. 197, 201, 563 S.E.2d 101, 102 (2002) (holding to obtain a writ of mandamus, the petitioner must show: (1) a duty of the respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary;

and (4) a lack of any other legal remedy). Therefore, the petition for a writ of mandamus is denied.

Respondents ask the Court to impose sanctions on Petitioner. This request is denied without prejudice to Respondent's right to resubmit the request should Petitioner continue to act in a manner inconsistent with bringing this matter to a timely conclusion.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
January 25, 2023

cc:
Charles E. Houston, Jr., Esquire
Alan McCrory Wilson, Esquire
Thomas C Taylor, Esquire
Chester C. Williams, Esquire
The Honorable Jenny Abbott Kitchings

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Also admitted in:
* Georgia
† New York
I Ohio

◻ Court Certified Mediator
• Court Certified Arbitrator / Mediator

July 27, 2023

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Thomas Taylor, Esquire
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Re: Response to Letter, dated July 13, 2023 (the "July 13 Letter")

Dear Chet and Tom:

Please accept this correspondence as Rotunda Land & Development Group, LLC's and its affiliate Hilton Head Mitchelville Development Partners, LLC's (collectively, "Rotunda") formal response to your July 13 Letter, which states that Rotunda must either (i) proceed with the Closing by July 23, 2023; or (ii) terminate the Contract and obtain a refund of its Earnest Money.¹

As your client is well aware, pursuant to Section 7(a)(ii) of the Contract, one of the conditions precedent to Closing is that "[t]he Title Company shall be unconditionally prepared to issue an owner's title insurance policy on the ALTA form." To date, however, the Title Company cannot and will not issue the requisite title insurance policy due to the outstanding, pending legal appeal filed by Houston concerning ownership of the Property. Until that appeal is resolved, the Title Company simply will not issue the necessary title policy. Please see attached letter from Kensington Title.

¹ All capitalized terms in this letter are used in accordance with the definitions set forth in the parties' 2020 Purchase and Sale Agreement, as amended through December 7, 2021 Sixth Amendment to Purchase and Sale Agreement (the "Contract")

Chet Williams, Esquire
Thomas Taylor, Esquire
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While we understand the Seller has taken certain steps to solve the underlying title problem, as we and the Title Company have pointed out, that problem is not yet resolved. Pursuant to the Contract (including but not limited to Section 4(b)), Seller has a duty to cure the subject title problem. As a result, any termination of the Contract would be as a result of a Seller default. To be clear, Rotunda fully intends to proceed with the Closing once the Title Company can issue the title policy, but because that condition precedent remains outstanding, the Closing cannot be scheduled in accordance with Section 6(a) of the Contract. Therefore, Rotunda denies your contention that is in default of any term of the Contract and denies that it must either (i) proceed with the Closing by July 23, 2023; or (ii) terminate the Contract and obtain a refund of its Earnest Money. The Contract remains in full force and effect and Rotunda shall schedule the Closing as soon as the Title Company is in a position to issue the necessary title policy.

Very truly yours,

FINGER, MELNICK, BROOKS &
LABRUCE, P.A.



Terry A. Finger

TAF/ao

cc: P. Lange