

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge  
The Honorable Roger M. Young, Sr., Circuit Court Judge

Trial Court Case No. 2023-CP-10-01512  
Appellate Case No. 2023-001494

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Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC, and Michael Flanagan, Receiver.....Respondents,

v.

Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Capital Management, LLC, SC Two OP Holdings, LLC, and Samuel Goldner.....Appellants.

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RETURN TO MOTION FOR EXTENSION OF TIME TO FILE

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Respondent Michael Flanagan, Receiver (the “Receiver”) hereby submits his Return to the Appellants’ Motion for Extension of Time to File which was filed with the Court on February 20, 2024 (the “Motion”).

**I. APPELLANTS’ FAILURE TO RESPOND TO THE COURT’S FEBRUARY 9, 2024 LETTER REQUESTING APPELLANTS TO ADVISE THE COURT OF THE STATUS OF THE TRANSCRIPT WITHIN TEN DAYS RENDERS IT IMPOSSIBLE TO DETERMINE WHETHER THE RELIEF SOUGHT IN THE MOTION IS PROPER.**

**A. Background**

Appellants filed their Notice of Appeal with the Court on September 19, 2023. Pursuant to the Notice of Appeal, Appellants appealed (1) Judge McFaddin’s April 14, 2023 Order Appointing Receiver and April 27, 2023 Order Denying Appellants’ Rule 59(e) Motion for Reconsideration and Request for Stay Pursuant to Rule 62(a) (collectively, the “Judge McFaddin

Orders”), and (2) Judge Young’s August 23, 2023 Order Approving Receiver’s Entry into Operations Transfer Agreement and Lease Termination Agreement and September 8, 2023 Order Denying Appellants’ Motion for Reconsideration (collectively, the “Judge Young Orders”).

Rule 207 requires that an appellant, within ten (10) days of service of its notice of appeal, “make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript.” Rule 207(a)(1), SCACR. Once ordered, “[t]he court reporter shall transcribe and deliver the transcript to appellant no later than sixty (60) days after the date of the request.” Rule 207(a)(2), SCACR.

Appellants failed to request a transcript within ten (10) days of serving their Notice of Appeal. Consequently, on October 6, 2023, the Court sent a deficiency notice to counsel for the Appellants. On October 10, 2023 the Appellants finally requested copies of the transcripts and also filed their Motion to Request Transcript Out of Time (which Respondents did not oppose). The Court subsequently entered its order granting the Motion to Request Transcript Out of Time on October 27, 2023 which, among other things, requested that Appellants provide the Court “with an update regarding the delivery of the transcripts within sixty (60) days from the date of this order.”

On November 17, 2023, Respondents Charleston SC Property Holdings, LLC and Hanahan SC Property Holdings, LLC filed their Motion to Dismiss Part of Appeal (the “Motion to Dismiss”) which sought to dismiss the appeal of the Judge McFaddin Orders due to Appellants’ failure to file a timely appeal. The Court subsequently entered its Order granting the Motion to Dismiss on January 23, 2024. Therefore, the only orders that are still subject to appeal are the Judge Young Orders.

The Court sent a letter to counsel for the Appellants on February 9, 2024 (the “February 9<sup>th</sup> Letter”) noting that the transcript should have been delivered to Appellants and requested that Appellants “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.”

The Appellants filed the Motion on February 20<sup>th</sup> purportedly in response to the Court’s February 9<sup>th</sup> Letter. Notably, however, the Motion fails to address or otherwise respond to the Court’s request about the status of the transcript. Instead, the Motion seeks an order granting Appellants an additional thirty (30) day period to file their “Initial Brief and the Designation of Matter to be Included in the Record on Appeal.” *See* Motion at page 1.

As of the date of this filing, the Appellants have not filed anything with the Court regarding the status of the transcript since October 10, 2023, and the Receiver is not aware of any further correspondence from counsel for the Appellants or the court reporter regarding the status of the transcript.

**B. Relief Requested in Motion is Unwarranted Based on Respondents’ Inability to Determine Applicable Dates Under Rules 208 and 209**

The deadlines for an appellant to file its initial brief and its designation of matter to be included in the record on appeal are governed by Rules 208 and 209, respectively. Rule 208 provides that an appellant shall file and serve its initial brief “[w]ithin thirty (30) day after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal....” Rule 208(a)(1), SCACR. Rule 209 provides that an appellant’s designation of matter to be included in the record on appeal must be served “[a]t the same time a party serves his initial brief(s) under Rule 208....” Rule 209(a), SCACR.

As noted above, the Appellants failed to directly respond to the Court's request about the status of the transcript. Furthermore, the Appellants have not filed anything with the Court regarding the status of the transcript since October 10, 2023, and the Receiver is not aware of any further correspondence from counsel for the Appellants or the court reporter regarding the status of the transcript.

The Receiver's inability to determine when the Appellants received the transcript or whether the court reporter required additional time to complete the transcript pursuant to Rule 207(a)(3) has made it impossible for him, the other Respondents, and the Court to determine the date by which the Appellants' initial brief and designation of matter to be included in the record on appeal are due under Rules 208 and 209 (or to determine whether they are already past due). Without knowing the status of the transcript, it is impossible to determine whether Appellants' request for extensions of the time periods set forth in Rules 208 and 209 is even warranted.

## **II. THE MOTION FAILS TO SPECIFY SUFFICIENT CAUSE TO GRANT ANY EXTENSION OF TIME**

Assuming, *arguendo*, that the Receiver, other Respondents, and Court all knew what the status of the transcript was, the Motion fails to adequately provide a sufficient basis for any extension of Appellants' otherwise applicable deadlines under Rules 208 and 209.

The Motion states that it is "being made in good faith and for good cause" and "is necessary for the appropriate development of the appeal." Motion at page 1. However, the Motion does not provide any factual support for these bald assertions. The Motion does not specify what efforts the Appellants have undertaken to timely order, pay for, and procure a copy of the transcript or indicate whether the court reporter that was contacted on October 10, 2023 (nearly five months ago) required additional time to complete the transcript. Furthermore, the Motion does not even inform the Court or Respondents of the date that the Appellants received the transcript or provide

any reason why they were not able to timely prepare and file their initial brief and designation of matter to be included in the record on appeal (assuming that the Appellants actually paid for and previously obtained a copy of the ordered transcript).

For all of the foregoing reasons, the Receiver requests that the Court enter an order denying the Motion and granting such other relief as it deems just and appropriate.

Respectfully submitted,

/s/ Michael H. Weaver  
Michael H. Weaver (SC Bar # 72350)  
ROGERS TOWNSEND LLC  
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*Attorneys for Respondent Michael Flanagan, Receiver*

March 1, 2024

**RECEIVED**

**Mar 01 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
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The Honorable George M. McFaddin, Jr., Circuit Court Judge  
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v.

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**PROOF OF SERVICE**

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I certify that I served a Return to Motion for Extension of Time to File dated March 1, 2024 on behalf of the Respondent Michael Flanagan, Receiver and addressed to the Clerk of Court for the Court of Appeals by email addressed to counsel of record for the above-referenced parties using the following email addresses on March 1, 2024:

Christopher Todd Brumback, Esq.  
Brumback & Langley, LLC  
[chris@brumbacklangley.com](mailto:chris@brumbacklangley.com)

Charles P. Summerall, IV, Esq.  
Walker Gressette & Linton, LLC  
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Ross Conrad DuRant, Esq.  
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A copy of the email sent to the above-referenced counsel is attached.

Dated: March 1, 2024

ROGERS TOWNSEND LLC

*s/ Michael H. Weaver*  
\_\_\_\_\_  
Michael H. Weaver, Esq. (SC Bar # 72350)  
P.O. Box 100200  
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## Michael H. Weaver

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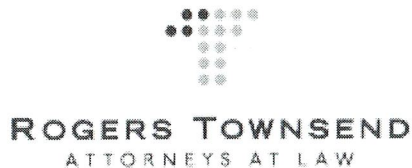
**From:** Michael H. Weaver  
**Sent:** Friday, March 1, 2024 1:27 PM  
**To:** 'Chris Brumback'; Charles Summerall; James W. Clement; Noah Siegel; Aharon Kaye; 'Ross Durant'  
**Subject:** Charleston SC Property Holdings, LLC et al. v. Rittenberg OP, LLC et al.; Appellate Case No. 2023-001494  
**Attachments:** Flanagan - for filing - Receiver\_s return to Appellants\_2.20.24 Motion for Extension of Time to File.PDF

Counsel,

Attached please find and hereby served on you is the Receiver's Return to Motion for Extension of Time to File (the "Return") that I am filing with the Clerk of Court for the Court of Appeals today in connection with the above-referenced matter. The Return, Proof of Service, and a copy of the cover letter to the Clerk of Court will be filed shortly.

Best regards,

Michael



**Michael H. Weaver**  
**Member**

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LICENSED IN SOUTH CAROLINA



March 1, 2024

**RECEIVED**  
**Mar 01 2024**  
**SC Court of Appeals**

**VIA ELECTRONIC SUBMISSION**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

**Re: Charleston SC Property Holdings, LLC, et al., *Respondents* v. Rittenberg OP,  
LLC, et al., *Appellants***

**Appellate Case No. 2023-001494**

Dear Ms. Kitchings,

I am writing you on behalf of Respondent Michael Flanagan, Receiver (the "Receiver") in regards to the above-referenced appeal. Enclosed for filing with the Court of Appeals, please find the Receiver's Return to Appellants' Motion for Extension of Time to File and Proof of Service.

Sincerely,

*Michael H. Weaver*

Michael H. Weaver

Enclosure

cc: Christopher Todd Brumback, Esq. (via e-mail) ([chris@brumbacklangley.com](mailto:chris@brumbacklangley.com))  
Charles P. Summerall, IV, Esq. (via e-mail) ([summerall@wglfirm.com](mailto:summerall@wglfirm.com))  
James Whittington Clement, Esq. (via e-mail) ([clement@wglfirm.com](mailto:clement@wglfirm.com))  
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