

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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Respondents Charleston SC Property Holdings, LLC and Hanahan SC Property Holdings, LLC, hereby submit their 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, Request for Stay Pursuant to Rule 62(a), and Offer of Bond (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 required 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.

On February 21, Respondents filed a letter with the Court pointing out the Appellants’ failure to address the status of the transcript, and asking whether the Court intends to dismiss the appeal in accordance with the Court’s February 9 Letter. 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 Respondents are 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 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 Respondents are not aware of any further correspondence from counsel for the Appellants or the court reporter regarding the status of the transcript.

The Respondents' inability to determine whether or 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 them, the Receiver, 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 Respondents, the Receiver, 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 Respondents request that the Court enter an order denying the Motion, dismissing the appeal pursuant to the Court's February 9 Letter, and granting such other relief as it deems just and appropriate.

*(Signature page to follow)*

Respectfully submitted,

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*Attorneys for Respondents Charleston SC Property Holdings, LLC, and Hanahan SC Property Holdings, LLC*

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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The Honorable George M. McFaddin, Jr., Circuit Court Judge  
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Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Capital Management, LLC, SC Two  
OP Holdings, LLC, and Samuel Goldner.....Appellants.

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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 on behalf of  
Respondents Charleston SC Property Holdings, LLC and Hanahan SC Property Holdings,  
LLC, 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)

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A copy of the email sent to the above-referenced counsel is attached.

WALKER GRESSETTE & LINTON LLC

s/Charles P. Summerall  
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*Attorney for Respondents Charleston SC Property  
Holdings, LLC, and Hanahan SC Property Holdings, LLC*

## Elisha Wetmore

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**From:** Charles Summerall  
**Sent:** Friday, March 1, 2024 1:34 PM  
**To:** Michael H. Weaver; Chris Brumback; James W. Clement; Noah Siegel; Aharon Kaye; Ross Durant  
**Cc:** Elisha Wetmore  
**Subject:** RE: Charleston SC Property Holdings, LLC v. Rittenberg OP, LLC (2023-001494) - Respondents' Return to Motion for Extension of Time  
**Attachments:** Return to Motion for Extension of Time to File 3-1-2024.pdf

Counsel,

Attached please find and hereby served on you is a copy of the Respondents' Return to Motion for Extension of Time, which I am sending to and filing with the Clerk of Court for the Court of Appeals today in connection with the above-referenced matter. The Return and proof of service will be filed shortly.

Regards,

Charles



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