

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appellate Case No. 2023-001147

APPEAL FROM BEAUFORT COUNTY  
Master In Equity

Marvin H. Dukes, III, Master in  
Equity and Special Circuit Court Judge  
Case No. 2020-CP-07-00977

BOKF Real Estate Holding, LLC,

Respondent,

v.

T & S Management, Inc. and  
Turan Strange,

Appellants.

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RESPONDENT’S RETURN TO MOTION  
TO FILE OUT OF TIME

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Respondent BOKF Real Estate Holding, LLC (“Respondent”) respectfully submits this Return to the Motion of Appellants T&S Management, Inc. and Turan Strange (“Appellants”) to file out of time.

**I.**

**Facts Pertinent to Motion**

On May 8, 2023, the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County, entered an Order granting Respondent BOFK Real Estate Holding, LLC’s Motion for Summary Judgment against Appellants T&S Management, Inc. and Turan Strange.

On May 18, 2023, the Appellants filed a Motion to Alter, Amend and Reconsider the Order granting Summary Judgment pursuant to Rules 59 and 60, SCRPC (“Motion for

Reconsideration”). The Motion for Reconsideration was denied by the Master in an Order entered on June 9, 2023.

On July 6, 2023, Appellants served on Respondent’s counsel a Notice of Appeal which states:

T & S Management, Inc. and Turan Strange appeal the Order denying Defendants Motion to Alter, Amend and Reconsider the Court's Order granting Summary Judgment entered by the Honorable Marvin H. Dukes 111 on June 9, 2023. Appellants received written notice of entry of this order on June 9, 2023.

The Notice of Appeal was received by the Court of Appeals on July 14, 2023.

On August 31, 2023, the Clerk for the Court of Appeals notified Appellants’ counsel by letter that the time for Appellants to order the transcript had expired. The Clerk’s letter further warned Appellants’ counsel that the appeal would be dismissed if Appellants failed to advise the court of the status of the transcript order within ten (10) days of the date of the Clerk’s letter. Appellants did not respond within the ten-day period and, on October 2, 2023, the Court of Appeals dismissed the Appeal due to Appellants failure to comply with Rule 207, SCACR.

On October 10, 2023, Appellants served and filed a Motion to Reinstate the Appeal and a concurrent Motion to Amend the Notice of Appeal attempting to appeal the underlying Summary Judgment Order. On November 16, 2024, the Court of Appeals issued an Order granting the Appellants Motion to Reinstate the Appeal and thereby reinstated the appeal. In that same Order, the Court of Appeal also denied Appellants’ Motion to Amend the Notice of Appeal and held that the only order properly before Court for review is the circuit court’s June 9, 2023 order denying reconsideration.

On January 31, 2024, the Clerk for the Court of Appeals notified Appellants’ counsel by letter that Appellants’ the time for serving and filing their initial brief had expired. The letter further informed Appellants’ counsel that Appellants must serve and file their initial brief and a motion requesting permission to serve and file the initial brief outside the filing deadlines within ten days of the date of the letter.

On February 13, 2024, three days after the ten-day deadline, Appellants filed their initial brief. However, the Appellants initial brief was not accompanied by a motion requesting permission to serve and file the brief outside of the filing deadlines.

On February 14, 2024, the Clerk for the Court of Appeals notified Appellants' counsel by letter that Appellants' initial brief was deficient in that (a) it was not accompanied by a designation of matter, (b) no proof of service had been provided and (c) the initial brief was not timely filed.

On February 26, 2024, Appellants filed the present Motion to File Out of Time requesting the Court of Appeals to permit them to file their initial brief and designation of matter after the deadline. The reasons offered by Appellants' counsel for the delayed filing are that Appellants' counsel's office did not correctly calendar the filing dates and Appellants' counsel was attending to a family emergency. However, Appellants have not submitted an Affidavit or any other evidentiary matter to support their position.

## **II.**

### **Argument**

Rule 208(a)(1), SCACR, requires the Appellants within thirty (30) days of the date of service of the notice of appeal to serve their initial brief and file with the clerk of the appellate court a copy of the brief with proof of service. Appellants failed to comply with this deadline even after notice of deficiency was sent by the Clerk of the Court of Appeals.

Rule 209(a)(1), SCACR, requires the Appellants to also serve and file a Designation of Matter at the same time Appellants were required to serve their initial brief. Again, Appellants failed to comply with this deadline even after notice of deficiency was sent by the Clerk of the Court of Appeals.

The Court of Appeals may properly dismiss the Appeal pursuant to its authority under Rule 260(a), SCACR which provides, in part:

Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.

Rule 260(a), SCACR.

In this instance, the reasons offered by Appellants in their Motion to File Out of Time do not rise to the level of good cause, particularly inasmuch as Appellants failed to properly correct the timing deficiency even after their receipt of a deficiency notice from the Court. Furthermore, the Appellants' offered explanation of good cause is not supported by credible or admissible

evidence in that no testimony by Affidavit was submitted by Appellants. *See* Rule 240(c)(3), SCACR. (“Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.”)

Sufficient good cause does not exist to excuse Appellants from their filing and service deficiencies and, for such reason, the Appeal should be dismissed.

**III.**

**Conclusion**

Accordingly, based on the foregoing, Respondent respectfully requests that this Honorable Court deny Appellants’ Motion to File Out of Time and to issue an order dismissing the Appeal.

**NOVIT & SCARMINACH, P.A.**

By: /s/ Edward M. Kubec

Edward M. Kubec, Esq. (S.C. Bar #76576)

52 New Orleans Rd., Suite 400

Hilton Head Island, SC 29928

(843) 785-5850

ekubec@ns-lawfirm.com

**Attorneys for Respondent**

March 7, 2024

Hilton Head Island, South Carolina

**RECEIVED**

**Mar 07 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appellate Case No. 2023-001147

APPEAL FROM BEAUFORT COUNTY  
Master in Equity

Marvin H. Dukes, III, Master in  
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PROOF OF SERVICE

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On this 7<sup>th</sup> day of March 2024, the undersigned did serve Respondent's Return to Motion to File Out of Time on counsel for Appellants, by email and placing same in the United States mail to:

Michael W. Mogil, Esq.  
Mogil Law Firm  
2 Corpus Christie Place, Ste. 103  
Hilton Head Island, SC 29928  
mmogil@mogillaw.com

A copy of the service email is attached hereto.

**NOVIT & SCARMINACH, P.A.**

By:  /s/ Edward M. Kubec

Edward M. Kubec, Esq. (S.C. Bar #76576)

52 New Orleans Rd., Suite 400

Hilton Head Island, SC 29928

(843) 785-5850

ekubec@nslawfirm.com

**Attorneys for Respondent**

March 7, 2024

Hilton Head Island, South Carolina

## Edward Kubec

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**From:** Edward Kubec  
**Sent:** Thursday, March 7, 2024 11:25 AM  
**To:** 'Michael Mogil'  
**Cc:** Nicole Lucignoli  
**Subject:** BOKF Real Estate Holding, LLC v. T&S Management, LLC  
**Attachments:** 20240307\_Return to Motion to File out of Time.pdf; 20240307\_COS - Motion to File Out of Time.pdf

Mike:

I trust you are well.

Attached please find Respondent's Return to Appellants' Motion to File Out of Time in the above-referenced appealed matter and a Proof of Service.

Regards.

Edward M. Kubec, Esq.  
[ekubec@ns-lawfirm.com](mailto:ekubec@ns-lawfirm.com)



### **NOVIT & SCARMINACH, P. A.**

**The Jade Building Suite 400**

52 New Orleans Road  
Hilton Head Island, SC 29928

(843) 785-5850

#### **Mailing**

Post Office Drawer 14  
Hilton Head Island, SC 29938

[www.ns-lawfirm.com](http://www.ns-lawfirm.com)

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**NOVIT &  
SCARMINACH, P. A.**

*Attorneys at Law*

CHARLES A. SCARMINACH\*  
DANIEL A. SAXON  
CATHERINE A. SCARMINACH\*\*  
ROBERT M. DEEB, Jr.  
EDWARD M. KUBEC

**OF COUNSEL**  
ELIZABETH B. MAYO+  
HERBERT L. NOVIT

Edward M. Kubec  
Email: EKubec@ns-lawfirm.com

**HILTON HEAD ISLAND:**  
THE JADE BUILDING, SUITE 400  
52 NEW ORLEANS ROAD  
POST OFFICE DRAWER 14  
HILTON HEAD ISLAND, SC 29938  
(843) 785-5850  
FAX: (843) 785-2090

ALSO MEMBER NEW YORK BAR\*  
ALSO MEMBER OHIO BAR+  
ALSO MEMBER TENNESSEE BAR\*\*

**RECEIVED**

**Mar 07 2024**

**SC Court of Appeals**

March 7, 2024

**VIA EMAIL AND REGULAR MAIL**

Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

RE: BOKF Real Estate Holdings, LLC v. T&S Management, Inc. and Turan Strange  
Appellate Case No. 2023-001147

Dear Ms. Kitchings:

Enclosed please find Respondent's Return to Appellants' Motion to File Out of Time and Proof of Service in the above-referenced matter.

Kindly file the enclosed and return a clocked copy to the undersigned via return email.

The enclosed documents have been served upon counsel of record today as indicated in the Proof of Service.

Thank you for your assistance with this matter and please contact me if you have any questions.

Very truly yours,

**NOVIT & SCARMINACH, P.A.**

*s/Edward M. Kubec*

Edward M. Kubec

EMK/nll

Enclosures

cc: Michael W. Mogil, Esq. (via regular mail and email: [mmogil@mogillaw.com](mailto:mmogil@mogillaw.com))