

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Roger M. Young, Sr. Circuit Court Judge

Appellate Case No. 2023-001494

Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC,.....Respondents,
v.
Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Management, LLC, SC Two
OP Holdings, LLC, and Samuel Goldner.....Appellants.

MOTION TO REINSTATE PURSUANT TO RULE 260, SCACR

In response to the Court’s March 18, 2024 Order dismissing the above-referenced appeal on the grounds of failure to advise the Court of the status of the transcripts, Appellant hereby moves the Court to reinstate the appeal for good cause and to grant Appellants’ Motion for extension of time in which for Appellants to file their initial brief and the designation of matter to be included in the record on appeal, which was previously filed on February 20, 2024 in response to the Court’s February 9, 2024 correspondence. "The good cause standard exists to ensure the interests of justice are protected even when a party missteps, so a harmless procedural foot fault does not spring a trap door that mindlessly jettisons innocent parties out of court, regardless of the circumstances." Jordan v. Hartford Fin. Grp., Inc., 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021).

Undersigned counsel apologizes for inadvertently failing to provide supplemental explanation of the information provided in Appellants’ February 20, 2024 Motion. On March 1, 2024 seven (7) different emails were transmitted concerning the above-captioned appeal and

specifically Appellants' February 20, 2024 Motion for Extension of time for Appellants' initial brief and designation, which included four (4) emails from Respondents and Receiver and three (3) emails from the Court. Believing that Appellants' February 20, 2024 Motion fully responded to the Court's February 9, 2024 correspondence and that the Respondents and Receiver's Returns to a first Motion for Extension to file Appellants' initial brief and designation did not merit or require a reply under the circumstances where the Court had just decided a partial Motion to Dismiss that directly and materially impacted the scope and argument to be presented in Appellants' initial brief and the matter to be designated for inclusion in the record on appeal, undersigned counsel mistakenly thought the emails from the Court were simply the filing confirmations and not a request for information undersigned counsel believed he already provided to the Court in the February 20, 2024 Motion for Extension. Regardless, undersigned counsel nonetheless, apologizes for this error and the inadvertent failure to provide supplemental correspondence and clarity to the Court explicitly verifying the transcript's receipt. That said, and as was stated in the first sentence thereof, Appellants' February 20, 2024 Motion for Extension of time to file their initial brief and designation of matter was expressly filed "[i]n response to the Court's February 9, 2024 correspondence" regarding Appellants' receipt of the transcripts and the Court's non-receipt of Appellants' initial brief, and, as such, contained the responsive factual information to confirm that the transcript had been received by Appellant, that the deadlines of Rules 208(a)(1) and 209(a), SCACR, had been triggered by Appellants' receipt of the transcript, and that, as a result thereof, undersigned counsel was requesting a thirty (30) day extension of time to file Appellants' initial brief and designation of matter following the Court's decision on Respondents partial Motion to Dismiss.

So as to eliminate any further question, undersigned counsel hereby expressly states that subsequent to the submission of the Transcript Request Form on October 10, 2023, the WebEx transcripts were received on October 18, 2023. Accordingly, pursuant to Rules 208(a)(1) and 209(a), SCACR, the deadline for service and filing of Appellants' initial brief and designation of matter was November 17, 2023. The November 17, 2023 deadline was the express reason undersigned counsel specifically explained in the February 20, 2024 Motion for extension of time to file Appellants' initial brief and designation of matter that "Appellants intended to file a Motion for Extension on November 17, 2023, however prior to the filing of a Motion for Extension, Respondents filed their Motion to Partially Dismiss, which undersigned counsel understood to automatically stay the time limits applicable to the appeal pursuant to Rule 240(b), SCACR." Rules 208(a)(1) and 209(a), SCACR, unequivocally state that the trigger for the thirty (30) day deadline for service and filing of an appellant's initial brief and designation of matter in an appeal in which a transcript has been requested is the receipt of the transcript. Rule 208(a)(1). SCACR ("Within thirty (30) days after receiving the transcript or...appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.") (emphasis added); Rule 209(a), SCACR ("At the same time a party serves his initial brief(s) under Rule 208...he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal..."). Accordingly, Appellant intended that the filing of the February 20, 2024 Motion for extension of the deadlines imposed by Rules 208(a)(1) and 209(a) upon receipt of the transcript in conjunction with the explanation contained therein regarding Appellants' intent, prior to Respondents' November 17, 2023 partial Motion to Dismiss automatically stayed all deadlines, to file a motion for extension

on November 17, 2023 to indicate to the Court that the transcript had been received and that Appellants were, consequently, requesting an extension of the time to file their initial brief and designation following the Court's February 9, 2024 decision on Respondents' partial Motion to Dismiss. See Rule 240(b), SCACR ("A motion to dismiss an appeal...automatically stay the time limits for perfecting the appeal until the motion is decided.).

Even in the absence of the explanation that Appellants, prior to the filing of Respondents' partial Motion to Dismiss, intended to file a motion for extension on November 17, 2023, undersigned counsel nonetheless expressly stated in the first sentence of the February 20, 2024 Motion for Extension to file Appellants' initial brief and designation of matter that it was being filed "[i]n response to the Court's February 9, 2024 correspondence" regarding the transcript and the non-receipt of Appellants' initial brief by the Court. Specifically the Court's February 9, 2024 correspondence, transmitted on the same date as the Court's Order granting Respondents' partial Motion to Dismiss, stated that "you have not notified us that you have failed to receive the transcript, nor have we received your initial brief." Since the transcript had been received, there was no cause to notify the court that undersigned counsel had "failed to receive the transcript." Instead, given that Appellants' initial brief and designation of matter were now due following the lifting of the automatic stay under Rule 240(b), SCACR, undersigned counsel believed that an appropriate and sufficient response to the Court's February 9, 2024 correspondence stating it had not received Appellants' initial brief was to file the Motion for extension of time to file Appellants' initial brief and designation. The intent in expressly stating the February 20, 2024 Motion for extension was "[i]n response to the Court's February 9, 2024 correspondence" was to indicate to the Court that Rules 208(a)(1) and 209(a), SCACR, had been triggered by receipt of

the transcript and Appellants' initial brief and designation were now due absent the Court granting Appellants' first Motion for Extension of time to file their initial brief and designation. Absent receipt of the transcript, which is the triggering event for the deadlines imposed by Rules 208(a)(1) and 209(a), SCACR, Appellants (1) would be unable to draft their initial brief or designate material to be included in the record on appeal, (2) would have had no cause to request an extension of the deadline to file their initial brief and designation until receipt of the transcript and the lapse of thirty (30) days therefrom, and (3) would have, instead of moving for an extension of time to file Appellants' initial brief and designation, simply sent the Court a letter stating the transcript had not yet been received.

Nonetheless, undersigned counsel apologizes for any confusion caused by counsel's inadvertent failure to provide the Court supplemental clarification regarding the transcript's receipt or that arose as a result of Appellants' Motion for Extension of time to file failing to more explicitly detail the timeline with regard to (1) the transcript receipt on October 18, 2023, (2) Appellants' intent, prior to the filing of Respondents' partial Motion to Dismiss, to file a motion for extension on November 17, 2023, (3) the Court's February 9, 2024 correspondence and decision on Respondents' partial Motion to Dismiss, and (4) Appellants' resultant filing of the February 20, 2024 Motion for Extension of the deadline triggered under Rules 208(a)(1) and 209(a), SCACR, by Appellants' receipt of the transcript. Undersigned counsel realizes that the Court has many cases pending before it at any given time and that, although procedural subtleties may be apparent to counsel involved in the weeds of a particular appeal, the Court's busy docket and limited judicial resources do not provide the Court the luxury of being intimately aware of the intricacies of every case on its docket. Consequently, undersigned counsel again apologizes

for mistakenly not providing the Court with additional correspondence and clarity as to the receipt of the transcript and instead operating under the misconception that the receipt of the transcript and the triggering of the deadlines of Rules 208(a)(1) and 209(a), SCACR, was appropriately evidenced in and by the filing of Appellants' February 20, 2024 Motion for Extension "[i]n response to the Court's February 9, 2024 correspondence." In the event the Court graciously grants this Motion to Reinstate so that Appellants' meritorious arguments may be decided by this Court, undersigned counsel offers, to the extent the failure to provide additional clarification as to the status of the transcript beyond that provided in the February 20, 2024 Motion for Extension caused a brief delay in the progress of this appeal, to respectfully reduce the length of the extension requested by Appellants' February 20, 2024 Motion for Extension from thirty (30) days to fifteen (15) days in an effort to mitigate any delay erroneously caused.

Respectfully submitted,

BRUMBACK & LANGLEY, LLC

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PROOF OF SERVICE

I certify that I have filed with the Court of Appeals and served Appellants’ Motion for Reinstatement Pursuant to Rule 260, SCACR, on Respondents’ attorney, Charles Summerall, by email, summerall@wglfirm.com, and Counsel for the Receiver, Michael Weaver, by email, Michael.Weaver@rogerstownsends.com, on March 20, 2024.

Respectfully submitted,

BRUMBACK & LANGLEY, LLC

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SC Court of Appeals

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APPELLATE PRACTICE
CRIMINAL DEFENSE
PERSONAL INJURY

March 20, 2024

VIA ELECTRONIC SUBMISSION & U.S. MAIL

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

Re: *Charleston SC Property Holdings, LLC et al. v. Rittenberg OP, LLC et al.*
Appellate Case No. (2023-001494)—Motion to Extension of Time to File

Dear Ms. Kitchings:

I hope this correspondence finds you well. Please find submitted herewith, Defendants' Motion for Reinstatement. In addition to this electronic submission, a hard copy of this letter without enclosures will be mailed to the Office of the Clerk of Court for the Court of Appeals enclosing a check for the Fifty and No/100 Dollars (\$50.00) filing fee for the Motion for Reinstatement.

With kindest regards, I am

Truly yours,

s/Christopher T. Brumback

Christopher T. Brumback, Esq.
Brumback & Langley, LLC

CTB/

cc: Charles Summerall, IV(via email)
Michael H. Weaver (via email)