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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Honorable Daniel Coble, Circuit Court Judge

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Appellate Case No. 2023-000460

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Joe Clemons……Appellant

v.

William S. Helmly/President & CEO of Home Telecom Co. …… Respondent

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# AMENDED FINAL RESPONDENT'S BRIEF

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Robert E. Kneece III
Turner Padget Graham & Laney, P.A.
Post Office Box 22129
Charleston, South Carolina 29413
Direct: 843-576-2829
Fax: 843-577-1639
RKneece@TurnerPadget.com

ATTORNEYS FOR RESPONDENT

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## STATEMENT OF THE ISSUES ON APPEAL

I. Should this Court affirm the Circuit Court's dismissal because Appellant has failed to comply with a number of the requirements of Rule 208, SCACR?

II. Should this Court affirm because the Circuit Court correctly held that Appellant did not state a valid claim upon which relief could be granted, because an identical complaint had already been dismissed in a prior lawsuit between the same parties?

## STATEMENT OF THE CASE

On October 10, 2022, Appellant Joe Clemons filed a Summons and Complaint captioned *Joe Clemons v. William S. Helmly, President & CEO, Home Telecom Company, (jointly and severally liable)* (2022-CP-08-02427) in the Court of Common Pleas of Berkeley County, South Carolina. (R. 4/22/24[1], pp. 57-58). In that Complaint, Appellant contended that in "March of 2018," he went to Home Telecom's office to request a "detail (sic) record of all calls that was (sic) made, by his land line number 843-753-7007, from March 1, 2017 to May 31, 2017." (R. 4/22/24, p. 60, ¶ 7). According to Appellant's Complaint, "the copy of the detail calls record that was requested, had all the calls that was (sic) made, only all the calls that was (sic) made to State Farm Insurance Company Corp. offices, and all the calls made to Mrs. Peggy Pennell's local agency was (sic) missing, from March to May, that I needed to prove that I spoke to certain people on certain

[1] Appellant filed an Initial Record on Appeal on 12/14/23, a Corrected Record on Appeal on 12/15/23 and a Supplemental Record on Appeal on 4/22/24. The Supplemental Record on Appeal filed on 4/22/24 does not include certain documents designated by the parties that were included in the prior versions of the record on appeal. As such, Respondent's references specify by date which version of the record on appeal contains the referenced documents. Additionally, Respondent filed a Motion to Dismiss Appeal on May 1, 2024 regarding deficiencies in the Record on Appeal, and that motion has not been ruled on. Respondent files this Amended Final Brief out of an abundance of caution, considering the Court's April 2, 2024 Order, which ordered the parties to "serve and file their amended final briefs within ten days of the date of service of the supplemental record on appeal." Respondent explicitly preserves and does not waive the Motion to Dismiss and the arguments contained therein.

days." (R 4/22/24, p. 60, ¶ 8). Appellant's Complaint included causes of action for (1) breach of contract, (2) breach of fiduciary duty, (3) negligence, (4) negligent misrepresentation, (5) constructive fraud, (6) civil conspiracy, (7) punitive damages, and (8) attorney's fees. (R. 4/22/24, pp. 61-66).

On November 16, 2022, Respondents filed a Motion to Dismiss or Alternatively, for Judgment on the Pleadings, and Motion for Sanctions. (R. 4/22/24, pp.14-87). Respondents' motion was based on the following grounds: (1) Appellant had previously filed an identical lawsuit, captioned *Joe Clemons v. William S. Helmly, President & CEO, Home Telecom Company (jointly and severally liable)* (2021-CP-08-02709), which had been dismissed without an appeal, (2) the doctrine of *res judicata* barred the filing of the lawsuit, and (3) Appellant should be sanctioned pursuant to South Carolina's Frivolous Proceedings Sanctions Act. (R. 4/22/24, pp. 24-41)

On January 5, 2023, Plaintiff filed a Response to Defendant's Motion to Dismiss. (R. 12/15/23, pp. 36-38). Respondent's motion was heard before the Honorable Daniel Coble on January 31, 2023, via WebEx. The Circuit Court subsequently filed an order on February 6, 2023, granting Respondents' Motion to Dismiss. (R. 12/15/23, pp. 18-19). That order stated "[t]he Complaint filed in this lawsuit is identical to a complaint Plaintiff filed on December 23rd, 2021, against the same Defendants and containing the same allegations as in the case at hand." (R. 12/15/23, p. 18, ¶ 2). The order went on to state that dismissal was warranted pursuant to Rule 12(b)(6) of the South Carolina Rules of Procedure because "Plaintiff's Complaint does not state a valid claim upon which relief can be granted because Judge Young already dismissed an identical complaint in August 2022." (R. 12/15/23, p. 19, ¶ 2). Judge Coble denied Respondents' motion for sanctions. (R. 12/15/23, p. 19, ¶ 3).

On February 16, 2023, Appellant filed a Motion for Reconsideration. (R. 12/15/23, pp. 40-43). In that motion, Appellant contended the Circuit Court was "not accurate in [its] statement that this complaint is exactly the same as the one of October 7, 2022 that came before Judge Young." (R. 12/15/23, p. 40, ¶ 3 – p. 41, ¶ 1). Appellant further argued that Respondents were "not telling the truth about what was stated and presented at the hearing of the first and second hearing to consider dismissal, in both hearing I stated and presented documents that clearly proved the things and statements and argument the defendant presented was not accurate, consistent, and concocting was not true." (R. 12/15/23, p. 41, ¶ 1). Appellant further alleged it appeared the Circuit Court "did not look or listing (sic) to the CD disk or paperwork's (sic) I has (sic) as exhibits." (R. p 12/15/23, 42, ¶ 3 – p. 43, ¶ 1). Respondents subsequently filed a Response to Plaintiff's Motion to Reconsider on March 3, 2023. (R. 4/22/24, pp. 90-93).

On March 10, 2023, the Circuit Court denied Appellant's Motion for Reconsideration, and in doing so held "[a]fter reviewing the applicable law and considering the arguments raised in the Motion and Defendant's Response, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered." (R. 4/22/24, pp. 95-97).

On March 20, 2023, Appellant filed and served a Notice of Appeal. Appellant then filed his Initial Brief on August 11, 2023 with the Court of Appeals (Appellant Case No. 2023-000460).

## STATEMENT OF FACTS

Appellant previously filed an identical lawsuit in the Berkeley County Court of Common Pleas on December 23, 2021 captioned *Joe Clemons v. William S. Helmly, President & CEO, Home Telecom Company (jointly and severally liable)* (2021-CP-02709) (hereinafter "First Lawsuit"). (R. 4/22/24, p. 24-41). Defendants in the First Lawsuit, who are the same defendants

in the present matter, filed a Motion to Dismiss, which was heard before the Honorable Roger M. Young, Sr. on July 18, 2022.[2] At the hearing of that motion, Plaintiff handed up documents for Judge Young to consider, which were filed with the Court. (R. 4/22/24, p. 4-9). Following that hearing, Judge Young issued an Order on August 8, 2022, granting Defendants' Motion to Dismiss on the grounds that: (1) Plaintiff failed to properly serve the Defendants, (2) Plaintiff's claims are barred by the statute of limitations, and (3) Plaintiff failed to set forth any claims upon which relief could be granted. (R. 4/22/24, pp. 42-53). Plaintiff subsequently filed a Motion to Reconsider on August 31, 2022, and Judge Young issued an Order on September 20, 2022 denying that motion. (R. 4/22/24, p. 11-13). Plaintiff did not file any notice of appeal in that case. Instead, Plaintiff filed the present lawsuit, with the same parties as the First Lawsuit. (R. 4/22/24, pp. 57-88). The Summons and Complaint in the present lawsuit is completely identical to the Summons and Complaint in the First Lawsuit, with the only addition being that Plaintiff has now attached 21 pages of exhibits to the Complaint in the present lawsuit, some of which are the same documents Plaintiff handed up to Judge Young at the July 18, 2022 hearing. (R. 4/22/24, p. 67-87).

## STANDARD OF REVIEW

Rule 12(b)(6), SCRCP sets forth a defense for "failure to state facts sufficient to constitute a cause of action." "On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" *Hager*

[2] Plaintiff's Initial Record on Appeal on 12/14/23, Corrected Record on Appeal on 12/15/23 and Supplemental Record on Appeal on 4/22/24 all failed to include the Motion to Dismiss.

*v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022) (quoting *Morris*, 381 S.C. at 646, 675 S.E.2d at 433). "If the facts and inferences would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Id.*

## ARGUMENT

### I. THIS COURT SHOULD AFFIRM THE CIRCUIT COURT'S DISMISSAL BECAUSE APPELLANT HAS FAILED TO COMPLY WITH A NUMBER OF THE REQUIREMENTS OF RULE 208, SCACR

#### (A) Appellant's Initial Brief Failed to Identify the Issues on Appeal as Required by Rule 208(b)(1), SCACR, and this Court Should Affirm

As an initial matter, Appellant has failed to comply with a number of the requirements of Rule 208, SCACR, governing Initial Briefs and has therefore abandoned any issues on appeal. Rule 208(b)(1) states "the brief of appellant shall contain under appropriate headings and in the order here indicated: . . . (b) Statement of Issues on Appeal." That rule further provides the Statement of Issues on Appeal shall contain the following:

> A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.

Despite the fact that Appellant's Table of Contents purports to contain a "Statement of Issues on Appeal," his brief does not contain any such statement. *See Buckson v. State*, 423 S.C. 313, 321, 815 S.E.2d 436, 441 (2018) ("While we seek to be flexible interpreting issue statements, 'Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.'" (quoting Rule 208(b)(1)(B), SCACR)). "Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without

having to 'grope in the dark' to ascertain the precise point at issue." *Forest Dunes Assoc. v. Club Carib, Inc.*, 301 S.C. 87, 89, 390 S.E.2d 368, 370 (Ct. App. 1990) (citation omitted); *Dawkins v. Sell*, 434 S.C. 572, 589 n.3, 865 S.E.2d 1, 10 (Ct. App. 2021) ("Dawkins does not list these as issues in his statement of issues on appeal, and we decline to address them."). Appellant's failure to state the issues on appeal amounts to an abandonment of any issues, and this Court should affirm the Circuit Court.

(B) Appellant's Initial Brief Failed to Contain References to the Record as Required by Rule 208(b)(4), SCACR, and this Court Should Affirm

Appellant has also failed to comply with Rule 208(b)(4), SCACR, which states that a party's initial brief "shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged." That rule requires Appellant's initial brief to include "References . . . to where relevant objections and rulings occurred in the transcript . . . these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced . . . ." The only instance in Appellant's brief in which Appellant even remotely addresses the Circuit Court's basis for dismissal is contained in Appellant's Statement of the Case, in which Appellant alleges the following:

> During that hearing on January 31, 2023, before Judge Daniel Coble, the judge allowed Mr. Robert Kneece III to give his reasons for dismissal of my case and he stated that I had the very same case before Judge Young and everything was exactly the same and he used all of the same reasoning that was used before Jude Young, he told a lied (sic) to Judge Daniel Coble saying that He and Mr. William Helmly was present at the hearing that was dismissed before Judge Young, he and Mr. William Helmly was not present at the first hearing before Judge Young, he and Mr. William Helm[l]y were not there, so not only did he (Respondent) have lied to the court, but that is Hearsay and Hearsay is not acceptable in a court of law.

As such, the crux of Appellant's appeal appears to be based on alleged statements at the January 31, 2023 hearing before Judge Coble, as well as arguments at a prior hearing before Judge Young. However, Appellant's initial brief fails to include any references to any such statements or arguments at any hearing or in any order. Instead, Appellant's brief states as follows:

**Table of Authorities**

> Because of the uniqueness of this case and the unjudicial things that were done in this case, there is no authority that can be found to validate and support, also they (sic) are (sic) no valid transcript for this reason and because of this there is not authority that can be found to validate this case.

As such, Appellant has failed to include references to the record to support the salient facts alleged, and has therefore not sufficiently identified with particularity any alleged error. *See State ex rel. Wilson v. Ortho-Mcneil-Janssen Pharm.*, 414 S.C. 33, 72-73, 777 S.E.2d 176, 197 (2015) (citing Rule 208(b)(4) in holding that "Janssen fails to identify any specific trial court rulings claimed to constitute error. Because of this, Janssen's argument does not sufficiently identify with particularity the alleged error, and Janssen has abandoned its claim on appeal."). While the crux of Appellant's appeal is apparently reliant on statements purportedly made at multiple hearings and which individuals were present at such hearings, Appellant concedes in both his Table of Authorities and Designation of Matter that he has "no valid transcript" and "no reliable transcript." South Carolina Appellate Court Rules provide an appellate court "will not consider any fact which does not appear in the Record on Appeal." Rule 210(h), SCACR. Rule 210(c) states, "The Record on Appeal shall include all matter designated to be included by any party . . . ." Rule 210(c), SCACR. "[The] appellant has the burden of proving an adequate record on appeal." *Solley v. Navy Fed. Credit Union, Inc*., 397 S.C. 192, 214, 723 S.E.2d 597,608 (Ct. App. 2012). Appellant has

failed to submit an adequate record on appeal to allow this Court to determine the issues on appeal, and this Court should dismiss this appeal.

(C) Appellant's Initial Brief Does Not Contain Any Authority in Support of Any Arguments, nor does it Contain any Reference to the Standard of Review, as Required by Rules 208(b)(1)(A), 208(b)(1)(D), and 208(b)(1)(E), SCACR, and this Court Should Affirm

As conceded by Appellant in his Table of Authorities, Appellant's Initial Brief does not contain any authority in support of any arguments, nor does it contain any reference to the standard of appellate review, as required by Rules 208(b)(1)(A), 208(b)(1)(D), and 208(b)(1)(E). This amounts to an abandonment of any issues on appeal. South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and are insufficient to preserve an argument for review. *Glasscock, Inc. v. U.S. Fidelity and Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691-2 (Ct. App. 2001); *see also Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011) ("An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory."); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 327 n.1, 730 S.E.2d 282, 284 (2012) (citing Rule 208(b)(1)(D) and holding "Lewis counterclaimed for breach of contract, and the master denied her relief. Although Lewis has raised this issue on appeal, we find it abandoned as the argument in her brief is purely a recitation of facts, devoid of any citation to legal authority, with the summary conclusion that Atlantic breached the lease."); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (finding the failure to provide arguments or cite to authority in support of argument constitutes abandonment of issue on appeal). Therefore, this Court should affirm the Circuit Court.

## II. THIS COURT SHOULD AFFIRM BECAUSE THE CIRCUIT COURT CORRECTLY HELD THAT APPELLANT DID NOT STATE A VALID CLAIM UPON WHICH RELIEF COULD BE GRANTED, BECAUSE AN IDENTICAL

**COMPLAINT HAD ALREADY BEEN DISMISSED IN A PRIOR LAWSUIT BETWEEN THE SAME PARTIES**

Appellant's initial brief states the following as to Appellant's Argument:

> If the judges in the lower courts would base their decisions on the facts, proofs, evidence and the documents that was presented at those hearing (sic) and not hearsay, lies, opinions and influence and the law, my case (the appellate) could not have been dismissed by [J]udge Daniel Coble because the respondent and his lawyer was not at the first hearing before [J]udge Young and Mr. Rober[t] Edward Kne[e]ce the Respondent lawyer never presented any facts or proofs to validate or verify and prove anything he was saying because all of his statements was (sic) based on hearsay and lies. For these reasons this case should have gone to trial to be judged by a jury because a jury is poor man (sic) only hope.

As previously noted, the only instance in Appellant's brief in which Appellant even remotely addresses the Circuit Court's basis for dismissal is actually contained in Appellant's Statement of the Case, in which Appellant alleges the following:

> During that hearing on January 31, 2023, before Judge Daniel Coble, the judge allowed Mr. Robert Kneece III to give his reasons for dismissal of y case and he stated that I had the very same case before Judge Young and everything was exactly the same and he used all of the same reasoning that was used before Jude Young, he told a lied (sic) to Judge Daniel Coble saying that He and Mr. William Helmly was present at the hearing that was dismissed before Judge Young, he and Mr. William Helmly was not present at the first hearing before Judge Young, he and Mr. William Helm[l]y were not there, so not only did he (respondent) have lied to the court, but that is Hearsay and Hearsay is not acceptable in a court of law.

Even in the above-cited portion of Appellant's brief, Appellant fails to offer any argument as to why the Circuit Court erred in granting Respondents' 12(b)(6) motion on the basis that "Plaintiff's Complaint does not state a valid claim upon which relief can be granted because Judge Young already dismissed an identical complaint in August 2022." *See Atl. Coast Builders*, 398 S.C. at 327 n.1, 730 S.E.2d at 284 (citing Rule 208(b)(1)(D) and holding "Lewis counterclaimed for breach of contract, and the master denied her relief. Although Lewis has raised this issue on

appeal, we find it abandoned as the argument in her brief is purely a recitation of facts, devoid of any citation to legal authority, with the summary conclusion that Atlantic breached the lease."); *First Sav. Bank*, 314 S.C. at 363, 444 S.E.2d at 514 (finding the failure to provide arguments or cite to authority in support of argument constitutes abandonment of issue on appeal).

The Circuit Court correctly dismissed Plaintiff's lawsuit pursuant to Rule 12(b)(6), as the lawsuit was barred under the doctrine of *res judicata*. That doctrine "bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Riedman Corp. v. Greenville Steel Structures*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992). As mentioned above, Appellant filed his Complaint in this lawsuit on October 22, 2022 (2022-CP-08-02427). That Complaint was identical to a Complaint he filed the year prior in an identically-captioned lawsuit (2021-CP-08-02709) ("the First Lawsuit"). The First Lawsuit was dismissed on a number of grounds, including (1) Appellant failed to properly serve Respondents, (2) Appellant's claims were barred by the statute of limitations, and (3) Appellant failed to set forth any claims upon which relief could be granted.

Appellant did not file any timely appeal following the Circuit Court's orders dismissing the First Lawsuit and denying Appellant's Motion to Reconsider; as such, the orders entered in the First Lawsuit were final. *See* Rule 203, SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."); *Garvin v. Garvin*, 21 S.C. 83, 84 (1884) (the trial court's final order and judgment, which denied

the borrower's action to enjoin the execution, was *res judicata* because the borrower failed to timely appeal the adverse decision that was entered against him). Given that none of the grounds of the First Lawsuit were appealed, Judge Young's orders, which included rulings that Appellant's claims were barred by the statute of limitations and Appellant failed to set forth any claims upon which relief could be granted, are final judgments. Therefore, the Circuit Court correctly ruled in the present lawsuit that this lawsuit is barred by the doctrine of *res judicata*.

"The doctrine of *res adjudicata* (or *res judicata*) in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action." *S.C. Dep't of Soc. Servs. v. Basnight*, 346 S.C. 241, 248, 551 S.E.2d 274, 278 (Ct. App. 2001) (quoting *First Nat'l Bank v. United States Fid. & Guar. Co.*, 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945)). "Under the doctrine of *res judicata*, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action." *Foran v. USAA Cas. Ins. Co*., 311 S.C. 189, 190-91, 427 S.E.2d 918, 919 (Ct. App. 1993). "*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *RIM Assocs. v. Blackwell*, 359 S.C. 170, 183, 597 S.E.2d 152, 159 (Ct. App. 2004) (quoting *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)).

"In order to establish a plea of *res judicata*, three elements must be established: (1) identity of parties; (2) identity of subject matter; and (3) adjudication of the issue in the former suit." *Sealy v. Dodge*, 289 S.C. 543, 545, 347 S.E.2d 504, 505 (1986). Here, all three elements are clearly established: the identity of the parties in the First Lawsuit and the present lawsuit are the same, the

subject matter of the First Lawsuit and the present lawsuit are identical, and the issues of the First Lawsuit were adjudicated by way of final, unappealed judgments dismissing the lawsuit and denying Plaintiff's Motion to Reconsider. As such, the Circuit Court correctly dismissed the present lawsuit.

## CONCLUSION

Respondents respectfully ask this Honorable Court to affirm the Circuit Court's rulings on the grounds that (1) Appellant has failed to comply with a number of the requirements of Rule 208, SCACR, and (2) the Circuit Court correctly held that Appellant did not state a valid claim upon which relief can be granted, because an identical Complaint had already been dismissed in a prior lawsuit between the same parties.

Respectfully submitted,

*/s/ Robert E. Kneece III*
Robert E. Kneece III
SC Bar No. 101279
Post Office Box 22129
Charleston, South Carolina 29413
Direct: 843-576-2829
Fax: 843-577-1639
RKneece@TurnerPadget.com

ATTORNEYS FOR RESPONDENT

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