

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

101728  
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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

MAY 07 2024  
SC Court of Appeals

Derham Cole, Circuit Court Judge

Appellate Case No. 2023-001529  
Trial Court Case No. 2020-CP-23-02297

Zachary Leland Moody and Kristina L. Moody,.....Appellants,

v.

Gabriela B. Lopez a/k/a Gabriela Baltazar Lopez-Guiterrez, an individual, Leopoldo Vera Hernandez, an individual, Santa Fe Construction, LLC, Juan Carlos Maldonado, an individual, ServPro of Pickens County d/b/a Blue Moon Enterprises, Inc., Scott D. Caufield, an individual, Keller Williams Western Upstate, The Haro Group of Keller Williams, Creasy Construction, LLC, Harry James Creasy, an individual, and John Allen Drew, an individual,.....Defendants

of which ServPro of Pickens County d/b/a Blue Moon Enterprises, Inc. and TCT1, LLC d/b/a Keller Williams Western Upstate., are the..... Respondents.

**MOTION TO DISMISS APPEAL IN PART**

Pursuant to Rule 240, SCACR, the Respondent, TCT1, LLC d/b/a Keller Williams Western Upstate requests that the Court dismiss the appeal under Rule 260, SCACR, as it relates to the Notice of Appeal filed September 25, 2023, appealing the Orders of The Honorable G.D. Morgan, Jr., as filed August 22, 2023, and September 20, 2023.

**I. Procedural History**

This matter stems from two separate motions for summary judgment filed by the separate

Respondents. The notices of appeal filed and served by Appellants seek to appeal two separate Orders Granting Summary Judgment. Respondent ServPro d/b/a Blue Moon Enterprises, Inc., filed a Motion for Summary Judgment on September 27, 2022, which was heard on January 4, 2023, resulting in an Order filed on July 10, 2023. Respondent TCT1, LLC d/b/a Keller Williams Western Upstate filed a Motion for Summary Judgment on May 9, 2023, which was heard on July 27, 2023, resulting in an Order filed on August 22, 2023. The two notices of appeal were consolidated by this Court by letter dated October 4, 2023.

On October 19, 2023, this Court notified Appellants that the transcript had not been requested within the time frame set by Rule 207, SCACR. Appellants filed a Motion for Extension of Time in which to order the transcripts on October 29, 2023. This Court filed an Order on October 31, 2023, extending the time to order and file the transcripts until November 29, 2023. Ultimately, this Court dismissed the appeal by Order dated December 8, 2023, due to Appellants' failure to comply with Rule 207, SCACR, and the Court's order of extension.

Appellants filed a Motion to Reinstate on December 11, 2023, wherein Appellants sought reinstatement of the appeal because "the transcripts in this matter were timely requested by counsel on October 29, 2023." The motion averred that the transcript for the first motion had been received as of November 25, 2023, and that the transcript for the second motion "will be available by Friday, December 22, 2013 (*sic*)."

On January 4, 2024, this Court filed an Order that reinstated the appeal because "[a]ccording to the motion, Appellants had the necessary transcripts by December 22, 2023." Respondent TCT1 is informed and believes that the Appellants do not have possession of the transcript for the July 27, 2023, hearing. Respondent TCT1 has attempted to confirm that

Appellants did order and receive both of the transcripts; however, Respondent TCT1 has been unable to receive any response from Appellants as to whether they have satisfactorily complied with the procedural requirements of Rule 207, SCACR.

## II. Argument

This Motion is brought pursuant to Rule 260, SCACR, as the Appellants have failed to comply with the requirements of Rule 207, SCACR, in that no transcript has been received by the Appellants for one of the two hearings from which orders were issued that Appellants seek to appeal. Further, Appellants have not sought a written agreement to limit the transcripts *required* to be ordered. Rule 207(a)(1), SCACR (“Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below.”). Rule 260 provides that failure “to comply with the requirements of these Rules, the clerk shall issue an order of dismissal...” Rule 260(a), SCACR.

Appellant’s failure to comply with the South Carolina Appellate Court Rules during the pendency of this appeal has been problematic from the start with this Court having to raise to the Appellants deficiencies regarding Proof of Service and ordering the transcript. After failing to comply with this Court’s order granting an extension to November 29, 2023, this Court dismissed the appeal for failure to comply with Rule 207, SCACR. After the reinstatement of the appeal by Order of this Court, Respondent TCT1 reached out to Appellants and discovered Appellants has been unable to locate the transcript for the July 27, 2023, hearing.

Appellants are required to order a transcript of the entire proceedings below when a record of the hearing exists. Rule 207(a)(1), SCACR. It is axiomatic that “the appellant bears primary responsibility for compiling the record.” JEAN HOEFER TOAL, ET AL., APPELLATE

PRACTICE IN SOUTH CAROLINA 15.II (SC Bar CLE Div. 2017). As Justice Toal further writes, “[t]his burden finds early expression in the requirement that the appellant order the trial (or hearing) transcript from the court reporter within ten days after serving the notice of appeal.” *Id.* “If a party fails to adhere to the requirements of the SCACR, the clerk of the appellate court where the matter is pending will issue an order of dismissal having ‘the same force and effect as an order of the appellate court.’” *Id.* at 13.III (quoting Rule 260(a), SCACR).

Respondent TCT1 is informed and believes that no transcript had been received by Appellants for this July 27, 2023, hearing in violation of Rule 207, SCACR, and in contravention of the information Appellants gave to this Court in Appellants’ Motion to Reinstate. Poignantly, Appellants have only furnished the Court and Respondents with communications confirming possession of the January 4, 2023, hearing transcript. At no point since December 11, 2023, have Appellants notified Respondent TCT1 of the receipt of the July 27, 2023, transcript nor have Appellants furnished Respondent TCT1 with correspondence with the court reporter. Moreover, at no point has Appellants communicated a failure to receive the transcript under Rule 207(a)(5), SCACR.

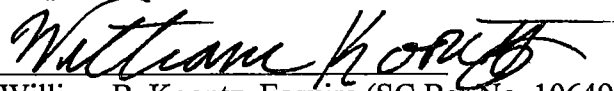
Respondent TCT1 has attempted on four separate occasions to resolve this issue without a single response from Appellant. Additionally, there is no reference in Appellants’ Designation of Matter to the July 27, 2023, hearing transcript, which would indicate its possession by Appellant. Appellants did not indicate they wished to order less than the full transcript for the entire proceeding, and no such written agreement exists to do so. Rule 207(a)(1), SCACR.

### **III. Conclusion**

This Court should decline to provide additional extensions to the Appellants because of

Appellant's repeated failure to abide by the South Carolina Appellate Court Rules, and if they have received a transcript, they have failed to comply with the Appellate Court Rules mandating Appellants communicate with Respondents regarding the transcripts. Pursuant to Rules 260 and 207, SCACR, Respondent TCT1 moves for a dismissal as to the notice of appeal contesting the Order Granting Defendant TCT1, LLC d/b/a Keller Williams Western Upstate's Motion for Summary Judgment as filed August 21, 2023, and the Form 4 Order as filed September 20, 2023.

Respectfully submitted,



William B. Koontz, Esquire (SC Bar No. 106496)

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Attorneys for Respondent TCT1, LLC

Columbia, SC  
May 7, 2024

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Derham Cole, Circuit Court Judge

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Appellate Case No. 2023-001529  
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of which ServPro of Pickens County d/b/a Blue Moon Enterprises, Inc. and TCT1, LLC d/b/a Keller Williams Western Upstate., are the..... Respondents.

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**PROOF OF SERVICE**

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I certify that I have served a copy of the *Motion to Dismiss Appeal in Part* on counsel for the Appellants and counsel for Respondent ServPro as indicated herein below, by emailing a copy of the same on May 7, 2024, by address as follows:

Townes B. Johnson, III  
[tjohnson@sc.legal](mailto:tjohnson@sc.legal)  
Townes B. Johnson III, LLC  
Greenville, SC

Allen L. DuPre  
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May 7, 2024

  
\_\_\_\_\_  
William B. Koontz

May 7, 2024

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SC Court of Appeals

**VIA HAND DELIVERY**

The Hon. Jenny A. Kitchings  
Clerk of the Court of Appeals  
Court of Appeals of South Carolina  
1220 Senate Street  
Columbia, SC 29201  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

RE: Zachary Leland Moody and Kristina L. Moody v. Gabriela B. Lopez et al.  
Appellate Case No.: 2023-001529

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of a Motion to Dismiss Appeal in Part in this case. I have also enclosed the following:

- 1.) A filing fee of \$50.00;
- 2.) Proof of Service of the Motion on counsel of record.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

With kind regards,

  
William B. Koontz, Esq.

WBK/

Enclosures as Stated

cc: John S. Nichols, Esq. ([john@bluesteinattorneys.com](mailto:john@bluesteinattorneys.com))  
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