

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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.

**RESPONDENT TCT1'S REPLY TO APPELLANT'S RETURN
IN REGARDS TO PETITIONER'S MOTION TO DISMISS**

Pursuant to Rule 240, SCACR, the Respondent, TCT1, LLC d/b/a Keller Williams Western
Upstate, files this Reply to Appellant's Return and again requests that the Court dismiss the appeal
under Rule 260, SCACR.

Respondent, TCT1, relies upon its Motion to Dismiss and further represents that until the
filing of the instant Motion, Appellant provided no contemporaneous copies of correspondence with

the court reporter, Rule 207(a)(1), SCACR. Appellant also did not seek any agreement not to order the transcripts of the entire proceedings. *Id.* By the exhibits attached to Appellant's Return and by the Appellant's own representations, as well as the exhibits attached to this Reply, the Motion to Dismiss should be granted due to an ongoing failure to comply with the requirements of Rule 207, SCACR.

The provisions of Rule 207, SCACR, required Appellant to do two things when ordering the transcript. First, Appellant "**shall contemporaneously furnish all parties**, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter." Rule 207(a)(1), SCACR (emphasis added). Second, Appellant "**shall provide copies of all correspondence with a court reporter** via electronic means as specified by Order of the Supreme Court." Rule 207(a)(7), SCACR (emphasis added). Appellant failed to notify the Respondent, TCT1, of this information and Appellant's Return only confirms that Appellant failed to comply with requirements of the Rule.

Appellant offered two exhibits, Exhibits B and C, to support the conclusion that the Motion to Dismiss is baseless; however, both exhibits directly contradict Appellant's conclusion. Both of these exhibits contain no indication that the parties or the clerk of the appellate court were copied on correspondence with the court reporter or upon receipt of the transcript on December 17, 2023. Both of these exhibits demonstrate Appellant's noncompliance with the mandatory duties of the appellant pursuant to Rule 207, SCACR. When the Appellant failed to provide notice to the clerk of the appellate court when the transcript was actually received on December 17, 2023, the Court of Appeals' Order dated January 5, 2024, was based upon a factual inaccuracy **only known to the Appellant**: "According to the motion, Appellant had the necessary transcripts by December 22,

2023.” *See Order of the Court of Appeals, filed January 5, 2024* (emphasis added). Appellant had the transcript as of December 17, 2023, but withheld that information from the parties and the clerk of the Court of Appeals and, in turn, Appellant benefitted from the extended deadlines afforded by the failure to comply with Rule 207, SCACR.

Until May 7, 2024, Respondent TCT1 had no knowledge of the transcript being produced. Respondent TCT1 had to bring the instant Motion to Dismiss in order to obtain any of the notice required under Rule 207 because Respondent TCT1 had received no notice of Appellant’s communication with the court reporter between November 1, 2023, and May 7, 2024.

From the outset, Appellant has consistently failed to provide counsel with copy of communications with the court reporter. When Appellant first received notice from the Court on October 19, 2023, that the time for ordering the transcripts had expired, the correspondence included a recitation of the requirements of Rule 207, SCACR, to “copy the Court, the Office of Court Administration and opposing counsel **with all correspondence concerning the transcript.**” *See Letter from Court of Appeals*, dated October 19, 2023 (emphasis added). As confirmed in Exhibit B of Appellant’s Motion to Reinstate Appeal, Respondent TCT1 was denied notice of the transcript because Appellant excluded Respondents from the e-mail chain after October 29, 2023. As a result of this failure to comply with Rule 207, the Court of Appeals issued an Order dismissing the appeal on December 8, 2023, because “Appellant has failed to timely order the transcript, as required by Rule 207.” *See Order from Court of Appeals*, dated December 8, 2023. Appellant’s Motion to Reinstate and the exhibits identify the core reason Appellant received a deficiency notice in October, an Order dismissing appeal in December, and now a Motion to Dismiss: without complying with Rule 207, neither the parties nor the Court can determine the appropriate briefing schedule under

Rules 208 and 209, SCACR.

Between the Motion to Reinstate dated December 11, 2023, and February 21, 2024, Appellant did not notify Respondent TCT1 of any communications with the court reporter—notably, Appellant continued to deny notice to the parties of receipt of the transcript on December 17, 2023. Even by February 21, 2024, Respondent TCT1 had no knowledge of the transcript being completed or delivered as Appellant’s Designation of Matter failed to designate the transcript in contravention of Rule 207(a)(1), SCACR, as the parties did not agree in writing that Appellant need not order “a transcript of the *entire proceedings below*.” Rule 207(a)(1), SCACR (emphasis added).

Turning next to Appellant’s Return to the Motion to Dismiss, Exhibit B evidences only that Appellant shielded their communications with the court reporter from all other parties by failing to copy any of the required recipients under Rule 207. *See Exhibit B, Appellant’s Reply to Motion to Dismiss*. Respondent TCT1 relies upon Appellant’s Exhibit C to further demonstrate the willful failure of Appellant to copy Respondent TCT1, any other parties, or the clerk of the Court of Appeals on any of the e-mails that comprise the e-mail chain. *See Exhibit C, Appellant’s Reply to Motion to Dismiss*. Importantly, Exhibit C demonstrates Appellant received the transcript as of December 17, 2023, and that the e-mail chain was solely and entirely between Appellant and the court reporter. The exhibits offered by Appellant support the relief sought by Respondent TCT1 because they unequivocally demonstrate failure to comply with Rule 207(a), SCACR, as well as the persistency of this failure from the inception of the appeal.


As to the history underpinning the instant Motion, Respondent TCT1 avers that only after filing the Motion to Dismiss did Appellant finally disclose he had the transcript for the July 27th hearing. On May 3, 2024, Respondent TCT1, by and through counsel, reached out to Appellant to

request the status of the July 27, 2023, transcript. Appellant informed Respondent TCT1 that they could not find the July 27th transcript, only the January 4, 2023, transcript, and that Appellant would follow-up about the July 27th transcript with counsel. On May 3, 2024, Appellant informed Respondent TCT1 in writing that they were unable to locate the July 27th transcript: “[Respondent TCT1] was also asking for the Transcript for July 27, 2023. I do not see it. Do you know if we have a copy?” *See E-mail Correspondence of May 3, 2024, attached as Exhibit A.*

On May 6, 2024, Respondent TCT1 again requested status of the transcript from Appellant. *See E-mail Correspondence of May 6, 2024, attached as Exhibit B.* On May 7, 2024, prior to filing the Motion to Dismiss, Respondent TCT1 again contacted Appellant to request the status of the transcript, but that without a response, Respondent TCT1 would have no choice but to file a motion. Respondent TCT1 did not receive a response until after noticing Appellant through the filing of the Motion to Dismiss. *See E-mail Correspondence of May 7, 2024, attached as Exhibit C.* This e-mail was the first indication the transcript had been received by the Appellant, who even then misrepresented to Respondent TCT1 that the transcript was received on December 27, 2023.

Therefore, Respondent TCT1, LLC, prays the Court consider the materials presented and grants Respondent TCT1, LLC’s Motion to Dismiss Appeal in Part pursuant to Rules 260 and 207, SCACR.

Respectfully submitted,


William B. Koontz, Esquire (SC Bar No. 106496)
John S. Nichols, Esquire (SC Bar No. 4210)
Bluestein Thompson Sullivan, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599

Columbia, SC
May 20, 2024

William@bluesteinattorneys.com
John@bluesteinattorneys.com
Attorneys for Respondent TCT1, LLC



From: [Lindsey Price](#)
To: [William Koontz](#)
Subject: Fwd: Moody, Zachary Leland and Kristina L. v. Gabriela B. Lopez a/k/a Gabriela Baltazar Lopen-Gutierrez Case No.: 2020-CP-23-2297
Date: Friday, May 3, 2024 3:36:54 PM
Attachments: [010423 Moody v Lopez Transcript.pdf](#)

From: Michelle Morgan <assistant@sc.legal>
Sent: Friday, May 3, 2024 10:51 AM
To: Lindsey Price <Lindsey@bluesteinattorneys.com>
Cc: Townes Johnson <tjohnson@sc.legal>
Subject: Moody, Zachary Leland and Kristina L. v. Gabriela B. Lopez a/k/a Gabriela Baltazar Lopen-Gutierrez Case No.: 2020-CP-23-2297

You don't often get email from assistant@sc.legal. [Learn why this is important](#)

[EXTERNAL EMAIL]

Lindsey,

Please see attached for the Transcript for January 4, 2023.

Townes,
Lindsey was also asking for the Transcript for July 27, 2023.
I do not see it. Do you know if we have a copy?
Thanks,
Michelle



From: [William Koontz](#)
To: assistant@sc.legal
Cc: tjohnson@sc.legal; [John Nichols](#)
Subject: Moody v. Lopez et al in re: Case No.: 2020-CP-23-2297
Date: Monday, May 6, 2024 3:30:00 PM
Attachments: [image001.png](#)

Good afternoon, Townes,

I wanted to touch base and see if your office had requested the transcript from the court reporter for the July 27, 2023, hearing on motion for summary judgment in the Moody v. Lopez *et al* matter. Your designation of matter did not identify the transcript from the July hearing so was just confirming.

I trust you're doing well and wish you the best.

With warm regards,
William



Listening. Lawyering. Leading.

WILLIAM B. KOONTZ, ESQ.

1614 TAYLOR STREET | PO BOX 7965

COLUMBIA, SOUTH CAROLINA 29202

O: 803.779.7599 F: 803 771.8097

WILLIAM@BLUESTEINATTORNEYS.COM

BLUESTEINATTORNEYS.COM



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From: [Townes Johnson](#)
To: [William Koontz](#); [Daniel Draisen](#); [ald@lylesfirm.com](#)
Cc: [jennifer@Injuredsc.com](#); [John Nichols](#); [Michelle Morgan](#)
Subject: RE: Zachary Moody, et al v. ServPro, et al - Appellate Case No.: 2023-001529
Date: Tuesday, May 7, 2024 4:39:19 PM
Attachments: [image001.png](#)

[EXTERNAL EMAIL]

William:

You are off based in your allegations of your motion. The 7/27/23 transcript was received via email from Betty Lyons on December 27, 2023.

Please withdraw your motion otherwise I will seek sanctions based on your false misrepresentation to the Court.

Townes

From: William Koontz <William@bluesteinattorneys.com>
Sent: Tuesday, May 7, 2024 4:19 PM
To: Daniel Draisen <daniel@Injuredsc.com>; Townes Johnson <tjohnson@sc.legal>; ald@lylesfirm.com
Cc: jennifer@Injuredsc.com; John Nichols <john@bluesteinattorneys.com>; Michelle Morgan <assistant@sc.legal>
Subject: Zachary Moody, et al v. ServPro, et al - Appellate Case No.: 2023-001529

Good afternoon,

Please find enclosed the Motion to Dismiss Appeal in Part in the above-referenced matter, which is being delivered this afternoon for filing to the Court of Appeals along with the Proof of Service and requisite filing fee. If you have any questions, please do not hesitate to contact me at your convenience.

With regards,
William Koontz



Listening. Lawyering. Leading.

WILLIAM B. KOONTZ, ESQ.

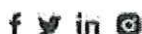
1614 TAYLOR STREET | PO BOX 7965

COLUMBIA, SOUTH CAROLINA 29202

O: 803.779.7599 F: 803.771.8097

WILLIAM@BLUESTEINATTORNEYS.COM

BLUESTEINATTORNEYS.COM



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May 20 2024

SC Court of Appeals

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Derham Cole, Circuit Court Judge

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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.

PROOF OF SERVICE

I certify that I have served a copy of the *Respondent TCT1's Reply to Appellant's Return to Motion to Dismiss* on counsel for the Appellants and counsel for Respondent ServPro as indicated herein below, by emailing a copy of the same on May 20, 2024, by address as follows:

Townes B. Johnson, III
tjohnson@sc.legal
Townes B. Johnson III, LLC
Greenville, SC

Allen L. DuPre
ald@lylesfirm.com
Lyles & Associates, LLC
Mt. Pleasant, SC

May 20, 2024



William B. Koontz

May 20, 2024

VIA ELECTRONIC MAIL (ctappfilings@sccourts.org)

The Hon. Jenny A. Kitchings
Clerk of the Court of Appeals
Court of Appeals of South Carolina
1220 Senate Street
Columbia, SC 29201

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

Dear Ms. Kitchings:

I have enclosed for filing the Reply of Respondent TCT1, LLC, to Appellant's Return to the pending Motion to Dismiss in regards to the above matter on appeal. I have also enclosed a Proof of Service upon counsel regarding the same.

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

With kind regards,



William B. Koontz, Esq.

WBK/

Enclosures as Stated

cc: John S. Nichols, Esq. (john@bluesteinattorneys.com)
Daniel Draisen, Esq. (daniel@injuredsc.com)
Allen Leland DuPre, Esq. (ald@lylesfirm.com)
Townes B. Johnson, III, Esq. (tjohnson@sc.legal)