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Jul 29 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

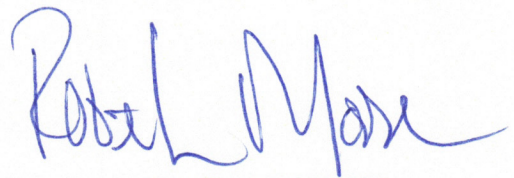
Appellate Case No. 2024-000557

Roberta Moore, Appellant,

v.

Rebecca Giesler, Respondent.

**RESPONSE TO RESPONDENT'S MOTION TO DISMISS APPEAL
AND MEMORANDUM IN SUPPORT THEREOF**



Roberta Moore
3194 Pine Bluff Way
Indian Land, South Carolina 29732
(803) 524-1842
Appellant

NOW COMES Appellant Roberta Moore, and hereby moves this Court to dismiss this Motion to Dismiss Appeal that has been filed by Respondent, Rebecca Giesler in its entirety pursuant to South Carolina Appellant Court Rules (“SCACR” or the “Rules”) 260. The Appellant’s Motion is based on Respondent participating in Ex Parte communications with Clerk and Judge of the Circuit Court According to SC Code of Laws Section 58-3-260, Ex Parte communication is not permissible because the communication of the Respondent directly relates to the Judgment Order of the case and all parties should have been present and/or notified of these communications. The Appellant further responds as follows:

RESPONSE TO INTRODUCTION

Respondent, Rebecca Giesler, filed a Motion for Summary Judgement on January 8, 2024, and said motion was heard by the Circuit Court on February 12, 2024. On March 5, 2024, the Circuit Court granted Summary Judgment in favor of Respondent and ordered Respondent’s counsel to submit a formal order within 10 days of the Form 4 Order. The Respondent failed to meet the court required deadline. In Respondent’s Motion For Dismissal, Respondent admits to contacting the Trial Clerk Administrator, as well as, the Honorable Judge Brian Gibbons without notifying the Appellant of any communications. According to SC Code 58-3-260, this is not allowed. All parties should either be present or notified of any communications with the court and/or the Judge seeing that the communication would have a direct impact on the decision of the case. Respondent’s counsel failed to file paperwork by the stated deadline of the court, as well as, had Ex Parte communications with the court and based on these actions that both go against the judicial procedure, the Respondent’s Motion for Dismissal should be denied and the prior ruling of the court should be overturned..

Respondent also admits in writing in her Motion To Dismiss, that she had contacted the Trial Court Administrator (and included written evidence in her Motion For Dismissal) requesting signature on 1 of 2 documents that she submitted for the Honorable Judge Brian Gibbons to sign, again, failing to include the Appellant in any communications with the Trial Clerk Administrator or the Judge on March 26th. She also indicates that she filed electronically both documents on March 26th, 2024, neither of which were copied or mailed to the Appellant and both of which were directly related to the outcome of the Judgment Order. The Appellant was not notified of any of these communications by the Respondent, the Respondent's Counsel, the Trial Clerk Administrator, nor the Honorable Judge Brian Gibbons and therefore should be dismissed and the Judgment Order should be nullified based on SC Rule 58-3-260.

Appellant filed a Request for Appeal with this Court on April 2, 2024. On April 19, 2024, the Court sent a letter confirming receipt of the appeal and assigned an appellate case number. The Appellate Court sent a notice of Deficiency to the Appellant and all Deficiencies were corrected by the timeline given by the Court. The Court granted the request from the Appellant to order the transcripts of the circuit court case outside of the allowed timeframe. Once received, transcripts were submitted to the Court. The Appellant has also submitted the corrected Deficiencies as required by the Court of Appeals for the Designation of Matter. The Appellant has also submitted for filing, a Revised Initial Brief.

Respondent notes that Appellant's Initial Brief was formatted incorrectly, however, a revised Initial Brief has already been submitted to the court. Respondent indicated that Appellant's initial brief is incomplete; fails to comply with formatting rules set out under Rule 208, SCACR; states erroneous facts; cites cases and statutes from Arizona and California; lists inappropriate is making an assumption by stating that there is no law to support the appeal. The

revised Initial Brief along with the Declaration of Matter that was submitted based on the Court's request includes the law and rationale for which the case is based. According to the format given by the State on the Form for Declaration of Matter, if only one code, case, or law supports all, then only one code needs to be used. This leaves the Respondent's comment regarding the lack of law thereof void of nature.

RESPONSE TO ARGUMENT

The Respondent is requesting dismissal because Appellant has failed to comply to South Carolina Appellate Court Rules and states that the Appellant has failed to preserve any purported issues for Appellate Review. The Appeals Court has in place a process by which all Appellant's and Respondents must follow, which includes, the noting of Deficiencies with a timeframe by which they must be corrected. The Appellant has adhered to all the requests of the Appellate Court and has corrected the noted deficiencies by the deadlines given. The Respondent, notes the deficiencies of the Appellant but failed to note that she too had to correct deficiencies, inclusive of failing to pay the required fee for filing. The Respondent notes Rule 260(a), however, the Appellant has not failed to comply with the rules. All deficiencies were noted by the Appellate Court Clerk and corrected within the timeframe allotted. The respondent notes the following rules for appeal: (1) failure to timely serve a notice of appeal under Rule 203, SCACR; (2) failure to serve and file an initial brief and designation of matter under Rule 208(a)(4). However, the Appellant has met both of the rules for Appeal. The Deficiencies have been corrected and the paperwork was filed by the deadline given.

- 1. Appellant's Table of Contents do not accurately reference the section(s) to the pages of the Brief and fail to list the argument outline.*

The Respondent indicates that the Appellant's Initial Brief failed to comply with South Carolina Appellate Court Rules. This was not noted by the Clerk upon submission and all deficiencies have been corrected and submitted within the timeframe allotted. The Appellant has also submitted for filing a revised Initial Brief, as well as, the Designation of Matter that was noted as a Deficiency.

The Respondent indicates that the Appellant's Statements of Issue on Appeal and Standard of Review fail to comply with the Rules. The Respondent is making an assumption that the statements are not concise. The revised Initial Briefing which is on file clarifies the statements to include the following as noted:

1. *DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT ON MARCH 8TH, 2024 WHEN OUR CASE CONTINUED BASED ON JUDGE'S DISPOSITION ON JULY 25, 2023 FOR REASONABLE EVIDENCE TO PROVE BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT?*
2. *BASED ON COURT RULES AND PROCEDURES, COUNSEL FOR THE RESPONDENT FAILED TO MEET COURT ORDERED TIMELINE FOR FILING FINAL PAPERWORK, WHICH IN ESSENCE IS THE SAME REASON SHE WAS GRANTED SUMMARY JUDGEMENT.*
3. *DID THE JUDGE ERR IN GRANTING SUMMARY JUDGMENT WHEN THE RESPONDENT FAILED TO INCLUDE ALL LEGAL CONTRACTS IN*

QUESTION THAT WERE A PART OF THE COURT FILING IN HER REQUEST FOR SUMMARY JUDGMENT?

4. *DID COUNSEL ERR IN FORMAL PAPERWORK SUBMITTED WHERE SHE INDICATED THAT THERE WERE NO OBJECTIONS IN COURT WHEN A LIST OF NOTARIZED OBJECTIONS WERE GIVEN TO HER AND THE COURT AT THE TIME OF THE PROCEEDING? ALL INTERROGATORIES THAT WERE ASKED AND ANSWERED IN WRITING WERE ALL A PART OF PUBLIC RECORD AND HAD BEEN SUPPLIED TO THE RESPONDENT PREVIOUSLY AND WAS UNNECESSARY AND DUPLICATIVE.*

2. Appellant's Statements of Issue on Appeal and Standard of Review fail to comply with the Rules.

The Respondent questions the conciseness of the Appellant's statements. Please note the following for clarity. (1) On the disposition dated, January 8th, 2024, the Honorable Judge Brian Gibbons indicated that "the breach of contract and breach of contract accompanied by a fraudulent act" were not dismissed. (2) Respondent's counsel failed to file the final paperwork by the timeframe ordered by the Honorable Judge Brian Gibbons and openly admits in her Motion for Dismissal that she proceeded to have Ex Parte communications with the Judge, as well as, the Trial Court Clerk which in turn should nullify the Judgment Order that was rendered in the Circuit Court. (3) Respondent's Counsel failed to include the Contract Addendum in her motion for dismissal which was a crucial part of the Appellant's case and was submitted as one of the documents in question. (4) Respondent's Counsel did err in saying that there were

no objections. Objection was given and a formal document was presented listing the objections to interrogatories.

The Appellant has submitted the Designation of Matter and a Revised Initial Brief that addresses the Respondent's failure to respond to the criminal codes that coincide with the aforementioned causes of action that include Breach of Contract and Breach of Contract Accompanied by a Fraudulent Act.

3. The Respondent indicates that the Appellants Statement of Case is incomplete, lists erroneous information, and fails to comply with the rules.

For clarity, on April 24th, 2023, the Appellant filed a complaint against the Respondent Rebecca Giesler. On May 7th, 2023, the Respondent filed their answer. On June 8th, 2023, the Appellant filed an amended Summons and Complaint. On June 19th, the Respondent filed their amended Answer along with a Motion to Dismiss. The Appellant filed a response to the Amended Answer on June 29th, 2023. On July 25th, 2023, the Honorable Judge filed a Partial Order of Dismissal (dismissing all but the Breach of Contract and Breach of Contract accompanied by a Fraudulent Act). On November 15th, the Respondent filed for Summary Judgement but the Appellant never received a copy of the filing. On January 8th, 2024, the Court issued an order indicating that the previous Motion To Dismiss did not include the causes of action for Breach of Contract and Breach of Contract accompanied by a fraudulent act. The Motion for Summary Judgement was heard by the Circuit Court on February 12th, 2024. On March 5th, 2024, the Circuit Court granted Summary Judgment in favor of Respondent and ordered Respondent's counsel to submit a formal order within 10 days of the Form 4 Order. On March 8th, 2024, Respondent's counsel emailed two formal, proposed orders to the Honorable Judge Brian Gibbons, stating that because the Form 4 Order did not specify whether Summary

Judgment was granted for both the Appellant's Complaint and Respondent's Counterclaim, or solely against Appellant's Complaint. After failing to receive a reply, Respondent's counsel forwarded the proposed orders to the trial court administrator on March 26th, 2024, and she advised to electronically file both orders and Judge Gibbons could review and sign the correct one. The Respondent's counsel indicates that on the same day, Judge Gibbons signed an Order in favor of Respondent as to Appellant's Complaint in its entirety and in favor of Respondent's counterclaim of breach of contract against Appellant. **The Appellant did not receive any documentation stating that and no records are included in the public index regarding the Ex Parte communications, the judge signing additional documents, or any changes in the final order that was received.**

The Appellant filed a Request for Appeal with this Court on April 2nd, 2024. On April 19th, 2024, this Court sent a letter confirming receipt of her appeal and assigning an appellate case number. The Court sent a deficiency letter to Appellant stating she had failed to file a copy of the Notice of Appeal with the Circuit Court. The Appellant had filed the paperwork but the Circuit Court Clerk was unsure of what to do with it and filed it away without scanning it into the system. After returning to the Circuit Court Clerk after receiving the notice of deficiency, the documents were resubmitted and properly scanned into the Public Index. The noted deficiencies (filing fee and filings with Circuit Court) were both corrected in in the timeframe given

On April 29th, 2024 the Appellant was advised by the Appeals Clerk that the time to order the transcript had expired because the deadline was based on the initial date of filing and not the date after which the deficiency had been corrected. On May 8th, 2024, The Appellant filed a Motion for late ordering of transcript which was granted.

On July 5th, 2024, Appellant filed her initial brief. The Clerk of Appeals Court noted the deficiency of not receiving the Designation of Matter on July 17th, 2024, giving a deadline of 10 days to submit The Designation of Matter which was submitted by the given deadline, along with an Amended Initial Brief.

4. *The Respondent states that the Appellant's Legal Arguments lack case law, statutory law, and arguments supporting this appeal.*

The Appellant's initial brief was inclusive of case law and has been amended to include more statutory law even though there is no limit in law indicating how many cases of law or statutory law have to be included in the Initial Brief.

5. *The Respondent indicated that the Appellant's Initial Brief fails to reference the record.*

The Amended Brief which has already been submitted for filing does contain the reference of record.

6. *The Respondent indicated that Appellant failed to file a designation of matter to be included in the record on appeal.*

This was noted by the Appeals Court Clerk and a Statement of Deficiency was sent out to the Appellant to which the Appellant submitted all the necessary changes prior to the given deadline.

The Respondent gave an alternative to stating that the Court should issue an order directing the Appellate to resubmit her Initial Brief and Designation of Matter. The Appellant

has already submitted both the Amended Initial Brief and the Designation of Matter to the Court of Appeals for filing.

For all the foregoing reasons, inclusive of the Respondent's admission in writing of Ex Parte communications with the clerk and Judge of the Circuit Court in her Motion to Dismiss this Motion for Dismissal should be denied and the ruling of the Circuit Court should be reversed in favor of the Appellant. The Respondent admittedly acted in misconduct by communicating with the Clerk and the Judge of the Circuit Court in regard to the judgment order and because the Respondent is represented by Counsel, it is perceived to be intentional since Counsel is aware of the law concerning Ex Parte communications and the actions taken by contacting and requesting signatures on Orders without the Appellant's knowledge is an act where the Respondent made efforts to circumvent the law. (*"SC Rule 2.9 (A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter ..."*)

The Respondent and the Counsel for the Respondent acted egregiously in that they intentionally committed and act of omission in contacting Judge Gibbons (as noted in Respondent's Motion For Dismissal) without including the Appellant on any communications prior to the contact, nor after the contact was made.

Also, it is noted that the rationale for the Summary Judgment that the Respondent used to request dismissal was based on the Appellant's failure to file the necessary paperwork in a within the framework of the law. The same holds true for the Respondent. The Respondent failed to meet the mandate of the court and therefore the Respondent's order for Summary Judgment is nullified and should not be granted.

The Respondent continues to say that the Appellant did not object to Respondent's request for discovery. Whereas objections were listed in writing in the document the court allowed the Appellant to give to the court and to the Respondent's Counsel. All objections were listed and notarized. (Notarized list of Objections included in the Designation of Matter.)

The Respondent requested Summary Judgment based on her memorandum in support of Summary Judgment which did not include all the contracts in question. They were not a part of her request for Summary Judgment which was the basis for the Judges ruling and based on the Court issuing Summary Judgment in light of a questionable criminal act of extortion, it is perceived that only the Respondent's motion for Summary Judgment was considered and because the contract addendum and the extortion issue were not a part of the request for Summary Judgment, it was not considered.

The Respondent argues that the fourth issue of the criminal act of extortion was baseless and highly improper because the Circuit Court would not have had jurisdiction to rule on whether a criminal act of extortion occurred. Based on the Respondent's response, it can be concluded and validated that the case should not have been ruled based on Summary Judgment because the Circuit Court did not have the authority to grant a Summary Judgment on all the causes involved. Therefore, a Summary Judgment should not have been granted. The Appellant requested a jury trial on her complaint and summons to the court.

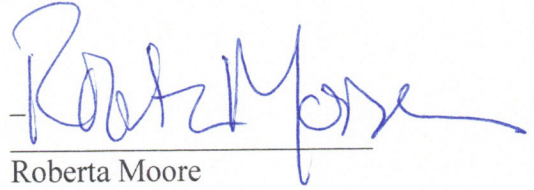
The Appellant has Amended her Initial Brief and presented relevant law and authority to support her arguments.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Motion For Dismissal be denied and the ruling of the Circuit Court be overturned based on the Respondent subverting and attempting to circumvent the judicial system. The Appellant is asking the courts to rule for the Respondent to -

1. Buy the Appellant out of the home. Based on legality, the house was illegally financed because the Respondent had a mortgage on it at the time of purchase (9 years ago) and set up a mortgage contract with the Appellant (as reflected in Real Estate Contract for Sale, Promissory Note For Sale, Agreement To Buy and Sale Real Estate, Promissory Note For Sale, and Addendum To Prior Contracts Noting Foreclosure Procedure – all of which are a part of the Designation of Matter), which was not lawful according to the Dodd-Frank Act and the Respondent refused to provide the necessary information for refinancing, therefore the Appellant is requesting that the Respondent refund all monies paid into the house along with the equity which has accumulated in the house over the last 9 years.
- 2) The Appellant is requesting that the decision of the Circuit Court be overturned.
- 3) The Appellant is requesting that the court proceed with the process of sending the case to the appropriate court for the charges of extortion to be heard and ruled upon.

Respectfully submitted this 29th Day of July, 2024.



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Appellant

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, #2168 Circuit Court Judge

Appellate Case No. 2024-000557

Amended Initial Brief Of Appellant, Letter Regarding
Ex Parte Communications, & Response To
Respondent's Motion To Dismiss

Roberta Moore,

Appellant,

v.

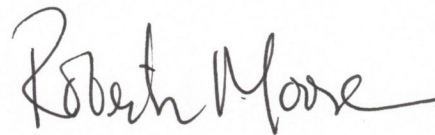
Rebecca Giesler,

Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief Of Appellant on Rebecca Giesler by depositing a copy of it in the United States Priority Mail, postage prepaid, on July 29th, 2024, addressed to her attorney of record, Jennifer M. Cloud, 1467 Ebenezer Road, Rock Hill, South Carolina 29732, as well as, copied her attorney of record on paperwork submitted electronically to Court of Appeals on July 29th, 2024.

July 4th, 2024



Roberta Moore
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(803) 524-1842
Appellant