

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr. and George M. McFaddin, Jr., Circuit Court Judges

Trial Court Case No. 2023-CP-10-01512
Appellate Case Nos. 2023-001494 & 2024-000723

Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC, and Michael Flanagan, Receiver.....Respondents,

v.

Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Capital Management, LLC, SC Two OP Holdings, LLC, and Samuel Goldner.....Appellants.

JOINT RETURN TO MOTION TO BE RELIEVED AS COUNSEL

Respondent Michael Flanagan, Receiver (the “Receiver”) and Respondent Charleston SC Property Holdings, LLC and Respondent Hanahan SC Property Holdings, LLC (who, together with Respondent Charleston SC Property Holdings, LLC shall be referred to as “Landlord Respondents”) hereby submits their Joint Return (the “Return”) to Appellants’ Counsel’s Motion to be Relieved as Counsel (the “Motion”) which was filed with the Court of Appeals (the “Court”) on September 23, 2024 in connection with Appellate Case No. 2023-001494 (the “2023 Appeal”) and Appellate Case No. 2024-000723 (the “2024 Appeal”).

I. BACKGROUND

A. The 2023 Appeal

The 2023 Appeal was commenced in September 2023 and has been pending for over a year. Initially, the Appellants sought to appeal, among other orders, the trial court’s entry of the Order Appointing Receiver. However, Landlord Respondents filed a Motion to Dismiss Part of

Appeal on November 17, 2023 which sought to have Appellants' appeal of the Order Appointing Receiver dismissed as untimely. On January 23, 2024, the Court entered its order dismissing Appellants' appeal of the Order Appointing Receiver (the "Partial Dismissal Order") because timely service of a notice of appeal is a jurisdictional requirement and Appellants' notice of appeal of the Order Appointing Receiver was not served timely. In addition, the Court dismissed the remaining portion of the 2023 Appeal on March 18, 2024 because Appellants failed to advise the Court of the status of the transcript as required by Rule 207, SCACR. However, Appellants filed a motion to reinstate the remaining portion of the 2023 Appeal which the Court granted on June 7, 2024. Appellants' Initial Brief was subsequently filed on June 27, 2024.

On September 12, 2024, the Receiver filed his Initial Brief and Designation of Matter to be Included in the Record on Appeal (the "Receiver's Initial Brief"). Landlord Respondents filed a statement joining and adopting in whole the Receiver's Initial Brief. Pursuant to Rule 208(a)(3), SCACR, the Appellants were required to file a reply to the Receiver's Initial Brief, if any, by September 23, 2024.

B. The 2024 Appeal

On April 29, 2024, the Appellants filed an additional notice of appeal commencing the 2024 Appeal. Pursuant to the notice of appeal and Appellants' Initial Brief filed with the Court on May 29, 2024, the only issues on appeal involve the Order Appointing Receiver.

As noted above, the Court previously entered the Partial Dismissal Order in connection with the 2023 Appeal and dismissed Appellants' prior efforts to appeal the Order Appointing Receiver because service of the notice of appeal was untimely and the Court lacked jurisdiction to hear it.

In light of the Partial Dismissal Order and Appellants' renewed efforts to appeal the Order Appointing Receiver by and through the 2024 Appeal, the Landlord Respondents filed a Motion to Dismiss the 2024 Appeal on September 12, 2024. Pursuant to Rule 240(e), SCACR, Appellants' return to the Motion to Dismiss the 2024 Appeal, if any, was due by September 23, 2024.

C. The Motion

The Motion, which was filed on September 23, 2024, indicates that Appellants' counsel wishes to be relieved as counsel because Appellants have failed to pay their counsel's invoices timely and respond to communications. Furthermore, Appellants' counsel indicates he is leaving his law firm and private practice. In light of these developments, Appellants' counsel requests "that the Appellants be granted a reasonable period of no less than thirty (30) days to obtain new counsel." *Motion*, at 3.

The Motion does not contain any substantive response to or mention the deadlines Appellants had to file a reply to the Receiver's Initial Brief in the 2023 Appeal or return to the Motion to Dismiss in the 2024 Appeal. However, Rule 240(b), SCACR, provides that a motion to relieve counsel shall stay the time for perfecting an appeal.

II. Receiver's and Landlord Respondents' Position with Respect to the Relief Requested in the Motion

According to the SCACR, "An attorney of record in a matter pending before an appellate court may not withdraw from representation of his client without justifiable cause, or the consent of his client; and then only after proper written notice to his client...." Rule 264, SCACR. The Receiver and Landlord Respondents do not take any position with respect to the Appellants' counsel's request to be relieved as counsel for the Appellants. However, if the Court is inclined to grant the Motion, the Receiver and Landlord Respondents request that the Court require that (i) any successor counsel be retained within thirty (30) days of the entry of any order approving the

Motion, and (ii) Appellants' applicable deadlines to file a reply brief, if any, to the Receiver's Initial Brief in the 2023 Appeal and to file a return to the Landlord Respondents' Motion to Dismiss the 2024 Appeal be thirty (30) days from the entry of any order approving the Motion.

Respectfully submitted,

Dated: October 2, 2024

/s/ Michael H. Weaver
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- AND -

/s/ Thomas P. Gressette, Jr.
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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The Honorable Roger M. Young, Sr. and George M. McFaddin, Jr., Circuit Court Judges

Case No. 2023-CP-10-01512
Appellate Case No. 2023-001494 & 2024-000723

Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC, and Michael Flanagan, Receiver Respondents,

v.

Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Capital Management, LLC, SC Two OP Holdings, LLC, and Samuel Goldner..... Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the Joint Return to Motion to be Relieved as Counsel has been served upon counsel listed below by emailing a copy of the same addressed as shown below on October 2, 2024.

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Dated: October 2, 2024

Respectfully submitted,

/s/ Michael H. Weaver
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Attorneys for Respondent
Michael Flanagan, Receiver

Michael H. Weaver

From: Michael H. Weaver
Sent: Wednesday, October 2, 2024 10:39 AM
To: 'Chris Brumback'; 'Thomas P. Gressette, Jr.'; 'James W. Clement'; 'Noah Siegel'; 'Aharon Kaye'; 'Ross Durant'
Subject: Charleston SC Property Holdings, LLC et al. v. Rittenberg OP, LLC et al.; Appellate Case Nos. 2023-001494 & 2024-000723
Attachments: Rittenberg _ Hanahan - Joint Return to Appellants_ Counsel_s Motion to Be Relieved As Counsel.PDF

Good morning,

Attached please find a copy of a Joint Return to Motion to be Relieved as Counsel to be filed in the above-referenced appellate cases. I will send the attached along with the proof of service to the Court of Appeals for filing momentarily and copy each of you on that correspondence.

Best regards,

Michael

P.S. – Chris, I wish you every success in your new role.



Michael H. Weaver
Member

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October 2, 2024

RECEIVED
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SC Court of Appeals

VIA ELECTRONIC SUBMISSION

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

**Re: Charleston SC Property Holdings, LLC, et al., Respondents v. Rittenberg OP,
LLC, et al., Appellants**

Appellate Case Nos. 2023-001494 & 2024-000723

Dear Ms. Kitchings,

Enclosed for filing with the Court of Appeals in both of the above-referenced Appellate Cases, please find (1) the Joint Return to Motion to be Relieved as Counsel and (2) Proof of Service.

Sincerely,

A handwritten signature in blue ink that reads "Michael H. Weaver".

Michael H. Weaver

Enclosure

cc: Christopher Todd Brumback, Esq. (via e-mail) (chris@brumbacklangley.com)
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