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Apr 08 2025

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.

**APPELLANT’S MOTION TO DENY RESPONDENT’S MOTION FOR DISMISSAL
AND TO ALLOW APPELLANT TO CORRECT RECORD ON APPEAL TO INCLUDE
MATTERS LISTED IN RESPONDENT’S DESIGNATION OF MATTER**

Roberta Moore
3194 Pine Bluff Way
Fort Mill, SC 29707
(803) 524-1842

Now comes the Appellant, Roberta Moore, respectfully requesting that the Court deny the Respondent's Motion for Dismissal based on the Respondent's argument stating that the Appellant has continued to consistently and materially fail to comply with the South Carolina Appellate Court Rules. However, South Carolina Rules of Appellate Procedure, inclusive of Rule 203 and Rule 208 identify and determine the timelines of the appeal. The Appellant has met those timelines along with complying with the deadlines issued by the court to correct all deficiencies in paperwork submitted. All deficiencies identified by the Court have been corrected, reviewed, and motions ruled upon. These deficiencies include: The Notice of Appeal filed April 2, 2024 (April 19, 2024 Deficiency Letter) ; The Expiration for Ordering Circuit Court's Transcripts (April 29, 2024 Deficiency Letter); Failure to Include Designation of Matter (July 17, 2024 Deficiency Letter); Failure to submit Motion Filing Fees (August 20, 2024). All matters that were marked as deficient by the Court have been corrected by the Appellant and the Court has moved in favor of the Appellant to accept the amended Initial Brief, the late transcripts, the Designation of Matter, and all filing fees.

On July 19, 2024, the Respondent filed a Motion to Dismiss the appeal, On January 28, 2025, the Court denied the Respondent's Motion to Dismiss and allowed Appellant to file her amended Initial Brief and Designation of Matter which was filed on February 27, 2025 by the Court mandated deadline.

On March 10, 2025, the Appellant filed her Reply to Respondent's Brief and on March 31, 2025, the Appellant filed her Final Brief and Record on Appeal.

The Respondent argues that the Appellant's appeal should be dismissed because the Appellant failed to comply with the Rules of the Court. However, the Appellant has complied to the Rules of the Court and all deadlines given by the Court in correcting all documents and

meeting all timelines in accordance to the SC Appellate Court Rules. All deficiencies required by the Court were corrected within the specified deadlines and the Court was able to move and rule upon the motions submitted.

The Respondent claims that the Appellant has included correspondence that is irrelevant to the Appeal in the Record on Appeal. The Respondent identifies the correspondence in the Record of Appeal as pages 139-144 and page 164. Said correspondence with the exception of the notarized statement dated April 9, 2024 (page 144) and the letter on page 164 to the SC Court of Appeals was given to the Honorable Judge Brian Gibbons during the initial court proceedings and are relevant to the issue on appeal in regards to Breach of Contract Accompanied By A Fraudulent Act. Copies of text messages and all e-mails were given to the Honorable Judge Brian Gibbons in the lower court during initial court proceedings. The documents were handed to the Courtroom Deputy Clerk.

The Respondent notes that the correspondence dated April 8, 2024 (ROA, p. 144) is dated after the date of the order but fails to note the correspondence dated February 25, 2023 indicating all the mortgage payments were up to date (ROA, p. 141), as well as the correspondence dated April 10, 2023 (ROA, p. 143) which addresses the e-mail from the Respondent, dated March 5, 2023 confirming that all mortgage payments were up to date and there were no mortgage arrears.

Although the Appeal has experienced some delays in order to correct deficiencies, the Appellant has acted in a bona fide manner without any intention to deceive. The Appellant has responded to all of the Court's requests. The Respondent is not prejudiced by the delay in that the Respondent has no right to evict the Appellant from the home. The home is under a legal and binding mortgage contract with an Addendum (ROA, p. 145-162) that outlines the process of foreclosure. The home does not qualify for foreclosure proceedings because there are no arrears

in the mortgage payment and based on the Promissory Note (ROA, p. 150-153), the Appellant is currently in a 35-year mortgage agreement until the house is either refinanced or final closing. There are no mortgage payment arrears on the house and therefore no basis for foreclosure. Eviction is not a part of any of the binding contracts signed by the Respondent or the Appellant. Therefore, there is no unjust delay in the proceedings because all mortgage payments are up-to-date according to the signed contract.

The Appellant has complied to all of the court orders to correct deficiencies as identified by the court and has submitted all paperwork by the court mandated deadlines.

The Respondent's admittance in her Request For Dismissal of reaching out to the Clerk of the Lower Court, as well as, the judge, The Honorable Brian Gibbons without the presence and without notifying the Appellant are according to Rule 12(b)(3) considered misconduct by the Respondent and should therefore cause the prior judgment to be overturned in that it is believed that by the Counsel for the Respondent reaching out multiple times to the above parties without the knowledge of the Appellant, it is believed that she has compromised and swayed the outcome of the proceedings. At no point before or after was the Appellant advised of the ex parte communications that took place with the Respondent as she communicated with the Clerk of the Lower Court, as well as, The Honorable Judge Brian Gibbons. The Appellant did not find out until the Appeal proceedings based on documents filed in the court that the Respondent has participated in ex parte communications and at that point the Appellant immediately notified the Clerk of the Appellate court in writing regarding those communications (ROA, p. 164) to notify the court of these actions. Based on the Respondent's failure to not only file the required paperwork by the Court mandated deadline but also because the Respondent broke SC Code of Laws Section 58-3-260 by participating in ex parte communications as confirmed in writing in

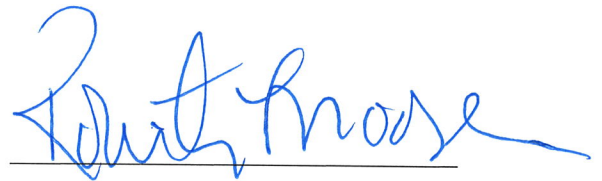
the Respondent's Motion For Dismissal submitted to the Court of Appeals on July 19th, 2024, the communications from the Appellate to the Court should be admitted to the Record on Appeal.

CONCLUSION

Based on SC Code of Laws Section 58-3-260, the Appellant hereby requests that the Respondent's Request for Dismissal be denied and respectfully requests that the Appellant be allowed to correct the Record on Appeal to include the Respondent's matter in her Designation of Matter.

April 8, 2025

Respectfully Submitted,



Roberta Moore
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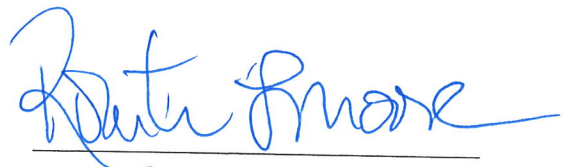
v.

Rebecca Giesler, Respondent.

PROOF OF SERVICE

I certify that I have served the MOTION TO DENY RESPONDENTS MOTION FOR DISMISSAL AND TO ALLOW APPELLANT TO CORRECT RECORD ON APPEAL TO INCLUDE MATTER LISTED IN RESPONDENT'S DESIGNATION OF MATTER on Rebecca Giesler by depositing a copy of it into United States Postal Service mail, postage prepaid on April 8th, 2025 addressed to her attorney of record, Jennifer M. Cloud, 1467 Ebenezer Road, Rock Hill, South Carolina 29732.

April 8, 2025



Roberta Moore
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Indian Land, South Carolina 29707
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