

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

R. Lawton McIntosh Circuit (10<sup>th</sup>) Court Judge

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Case No: 2012-207852

JERRY HOLTZCLAW, d/b/a  
GREEN THUMB LANDSCAPE &  
IRRIGATION

Respondent

V

DENNIS WALDREP

Appellant

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**APPELLANT'S RESPONSE TO  
RESPONDENT'S MOTION TO DISMISS**

**RECEIVED**

OCT 22 2013

**SC Court of Appeals**

Dennis Waldrep  
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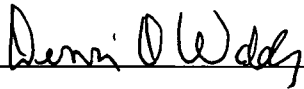
APPELLANT'S RESPONSE TO  
RESPONDENT'S MOTION TO DISMISS

Appellant hereby respectfully requests that this Court deny Respondent's Motion to Dismiss the within matter for failure to comply with the South Carolina Appellate Court Rules. Appellant submits that he has complied with the rules of Court in submitting the Record on Appeal as required and directed by the Court.

On February 8, 2012 the Appellant filed a Notice of Appeal with the Clerk of the appeals court. This filing is evidenced by the letter received from the Clerk of Court dated February 15, 2012. Subsequently, the case proceeded along the proscribed course and on July 8, 2013 the Appellant submitted a Record on Appeal in the within matter. This is important to note because the Respondent suggests that this case is nearing two years since the appeal was filed when in fact two years would be February of 2014. Admittedly, there have been notices from the court requiring corrections in several of the documents that have been filed by the Appellant. However, most of these items centered around on the "Proof of Service Form" that was submitted to the Court. While the Proof of service is an important and required document, it is administrative in nature and is not a substantive issues that resulted in any prejudice being suffered by the Respondent. The case continued and on September 13, 2013 the Appellant was notified that the Record on Appeal had certain procedural deficiencies and required revision to be accepted. Accordingly, the Appellant prepared a second Record on Appeal according to "Form 15" and submitted that revised Record

on Appeal to the court on September 13, 2013. Shortly, thereafter the Motions from the Respondent were received requesting dismissal of the Appellant's appeal. Accordingly, the Appellant submits this response to that motion and requests that this Court deny the Respondent's motion to dismiss and allows the appeal to move forward.

Respectfully submitted,

  
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Dennis Waldrep  
Proceeding Pro Se

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MEMORANDUM UN SUPPORT OF  
APPELLANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS

Respondent has filed a Motion to dismiss based on Rule 260(a)  
requesting an Order of dismissal of the within matter alleging that the

Appellant has failed to comply with the court rules to such a degree that the matter should be dismissed. The Clerk's record will reveal that several of the items filed by the appellant did in fact require revision or modification for deficiencies. While regrettable, a more detailed analysis of these deficiencies shows that they primarily relate to the "Proof of Service" documents that accompanied certain filings that were made with the court. In most cases several words were incorrect to identify what had actually been served and a correction of this was required. While the argument can be made that these were in fact deficiencies in the record, the error in a proof of service (when the service had been made) is at best an administrative deficiency and one that does not impart any prejudice to the Respondent.

The Respondent also cites the failure to cover and bind the document. This again is a procedural or administrative error and not one that was cited by the Court. The objections in the Respondent's Memorandum #'s 3 through 5 surround numbers and indexing. It is curious to note that if the Respondent is in a position to read and comprehend the information that was presented it would appear that the objections are relatively moot.

The comments contained in numbers 6 through 8 surround portions of the transcripts and comments that are included. Any documents or comments included by the Appellant are the result of annotations that were made by various or unknown persons and impossible for the Appellant to excise for the purpose of creating a record on appeal. Additionally, the initial Record on Appeal included the entire transcript of the trial with the second record on appeal designating specific sections. Clearly, all of the sections

referenced by the Respondent are included by the Appellant. Additionally, if the Respondent has a point or argument to make that will refute the position of the Appellant that Argument is appropriately made in the Reply Brief in which the Respondent is free to include any materials that support his position. As a result the Appellant suggests that the arguments made in the Motion to Dismiss are more appropriately made in a Reply Brief by the Respondent. The exaggeration that the appeal is nearing two years when the two year mark is approximately four months away perhaps suggests that the Respondent is reticent to continue with the appeal and is seeking a way to subvert the rights of the Appellant.

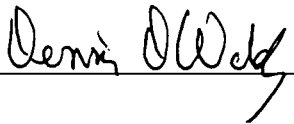
The objections made by the Respondent in the motion are administrative in nature and none of which result in any prejudice to the Respondent. The Respondent is free to make any and all relevant arguments to support their position in their Reply Brief when that filing is appropriate. The position of the Appellant is clear and rests primarily on the error of the trial court to consider the contract between the parties, the complete performance of the Appellant and the failure of the Respondent to augment the contract pursuant to its terms and after the fact request additional funds. This oversight resulted in a judgment against the Appellant when it was the Respondent who breached the contract between the Parties.

If this appeal has been protracted by a matter of days or at the maximum months and has not resulted in any prejudice to the Respondent is it proper for the Court to dismiss the appeal and abridge the rights of the Appellant? The Appellant has complied with every instruction of the Clerk of

Court and even contacted the court to be certain he understood the instructions properly and responded appropriately.

Accordingly, based on the fact that this that the Appellant has responded to every directive by the Court to correct any deficiencies and that none of these delays or efforts has resulted in any prejudice to the Respondent the Appellant respectfully requests that this Court deny the Respondent's Motion to Dismiss.

Respectfully submitted,



A handwritten signature in cursive script, reading "Dennis Waldrep", is written over a horizontal line. The signature is positioned to the left of the typed name.

Dennis Waldrep  
Proceeding Pro Se