

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2026-000690

Case No. 2024-CP-07-00156

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Queens Grant Regime, II, Inc.,  
Horizontal Property Regime, Respondent,

v.

Greenwood Resorts and Communities,  
Inc., d/b/a Palmetto Dunes Resort and  
Callaway Brands, Inc., d/b/a  
TopTracer Golf, Appellants.

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RESPONDENTS' MOTION TO DISMISS PETITION FOR FAILURE TO COMPLY WITH  
RULES 240 AND 241, SCACR

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Respondents, by and through undersigned counsel, respectfully move this Honorable Court for an Order dismissing Appellants' Amended Petition for Supersedeas pursuant to Rules 240 and 241, SCACR, and in support thereof would show the Court as follows:

**II. APPLICABLE RULES**

An Order granting an injunction or temporary restraining order is not subject to the automatic stay and the trial court retains jurisdiction over the enforcement, interpretation or modification, of the injunction. Rule 62(a)SCRPC. Subsection(c) "Injunction Pending Appeal" leaves the Trial Court vested with the jurisdiction to manage the Injunction while an appeal is pending.

Rule 240 of the SCACR provides the general procedural, form, content and filing requirements for all motions and petitions filed with the Court of Appeals. Rule 241(a) and (b) of the SCACR restate and reaffirm SCRCR Rule 62's general rules on types of judgments, enforcement, stays and the effects of an appeal thereon. Rule 241(c), SCACR provides a mechanism and the standards for granting relief, denying relief or conditioning any modification of the existing order. Finally, Rule 241(d) governs the procedure for obtaining a lift or stay or supersedeas.

Rule 62 of the SCRCR provides in pertinent parts:

### **STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT**

**(a) Automatic Stay; Exceptions--Injunctions, Receivership, and Accountings.** Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

**(c) Injunction Pending Appeal.** When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

The pertinent parts of Rule 240 are:

**(a) Applicability.** This Rule governs all motions or petitions filed in the appellate court, including but not limited to: motions for extension of time, motions to reinstate, petitions for rehearing, motions to be relieved as counsel or for substitution of counsel, petitions for supersedeas, motions to remand or dismiss and petitions for hearing *en banc*. Where Rules 241 through 246 provide different or additional requirements or procedures, those requirements or procedures shall apply.

**(g) Failure to Comply.** Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.

Appellants have filed an Amended Petition seeking extraordinary relief pursuant to Rule 241, SCACR to stay the Trial Court's Order granting temporary injunctive relief.

Rule 241(d)(3), SCACR, provides in pertinent part for purposes of this motion:

**“A person seeking an order lifting an automatic stay or granting a writ of supersedeas must file a written petition verified by the client.”**

This requirement is mandatory and Rule 241 contains no exceptions thereto. Respondent submits a verification is a condition precedent to the Court's consideration of the petition.<sup>1</sup>

### **III. ARGUMENT**

It is undisputed that Appellants' Petition and now Renewed Petition contain no verification by the client. This omission is not a minor or technical defect. Petitions for extraordinary relief are decided on an expedited basis and often without the benefit of a fully developed record. The verification requirement ensures that the contents of Petition are known and verified under oath so as to carry sufficient indicia of need and reliability. Accordingly, where a petition fails to meet the procedural requirements governing extraordinary relief, dismissal is appropriate.

Appellants attempt to circumvent this requirement by asserting that:

“The facts presented in this petition are supported by sworn affidavit and, therefore, this petition is verified in accordance with Rule 241(d)(3), SCACR.”

The requirements and purpose of a verification are different from the requirements and purpose of affidavits. The distinction is empirical and important. The South Carolina Courts provide practitioners with a verification at <https://www.sccourts.org/court-forms/?id=scca403cp>.

The language in Form SCCA 403CP reads:

**“ \_\_\_\_\_ and \_\_\_\_\_, being duly sworn say that they are the Petitioners herein and have read the foregoing Petition and know the contents thereof, and that the same is true of their knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.”**

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<sup>1</sup> Appellants original Petition was also unverified and was made directly to the Court of Appeals.

Appellants argument that an evidentiary affidavit meets the requirements and purpose of a verification is without merit. Rule 241(d)(3) requires that the petition itself be verified by the petitioner through a written verification. The submission of affidavits does not satisfy this requirement.

Appellants conflate the separate and distinct requirements of Rule 241(d)(3) and Rule 241(d)(4)(A). Rule 241(d)(3) requires “a written petition verified by the client.” Rule 241(d)(4)(A) mandates that if the facts are disputed, the petition shall be supported by affidavits or other sworn statements.

Affidavits submitted in support of any disputed factual allegations contained in the petition do not substitute for the required verification of the petition itself. Here, the affidavits submitted by Alex Franseen relate only to the underlying facts of the case and do not constitute a verification of the Petition as required by Rule 241(d)(3).

In *Searcy v. Dep't. of Educ., Transp. Div.* 303 S.C. 544, 402 S.E.2d 486 (Ct.App.1991), the Court of Appeals addressed this issue and held that a claim made pursuant to this chapter must be verified. Further, the court held if a verified claim is not filed, the two year statute of limitations applies. In addition, in a pre-Tort Claims Act case, this Court held that when a plaintiff seeks to sue a political subdivision he "must fully comply with the prescribed terms and conditions of the statute, and the filing of a claim as required ... is an essential prerequisite to a right of action." *Cochran v. City of Sumter*, 242 S.C. 382, 386, 131 S.E.2d 153, 155 (1963) (overruled to the extent that it holds an action may not be maintained against the State without its consent in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985)). Further, this Court in *Cochran* held that when a statute requires verification, failure to comply will invalidate the notice, even if no prejudice results to the other party, as a verification is a matter of substance and not form. *Id.* 131

S.E.2d at 156. Therefore, Rink's argument that his letter fulfilled the objective of a verified claim by putting the Hospital on notice is also without merit. *Rink v. Richland Memorial Hosp.*, 310 S.C. 193, 422 S.E.2d 747 (S.C. 1992).

Appellants cite *Rockland Industries v. Interior Designers, Inc., of South Carolina*, for the proposition that the affidavit replaces the required verification. Appellants misapprehend *Rockland's* holding.

In *Rockland Industries v. Interior Designers, Inc., of South Carolina*, the court held that an affidavit appended to a statement of account which was attached to a complaint could not serve to verify the complaint. The plaintiff had served his complaint without a verification, but with the affidavit and statement of account. The defendant answered with a general denial of the allegations of the complaint which was also unverified. The trial court granted the plaintiffs motion to strike the answer as "sham and frivolous" and the defendant appealed. The South Carolina Supreme Court recognized that the affidavit was appended to the statement of account in accordance with section 10-1531 of the South Carolina Code and was permitted solely for evidentiary purposes in default cases and forms no part of the pleadings.... The form of the verification of a complaint is set forth in Section 10-604, and there is nothing to indicate that the affidavit permitted by Section 10-1531, for purely evidentiary purposes, was intended to take the place of such verification. In order to verify a complaint, the allegations thereof must be verified in the manner required by Section 10-604. In no other way can the practitioner know with certainty whether to treat the prior pleading as verified." Since the plaintiffs affidavit was not intended as, nor did it meet the requirements of, a verification, the court reversed the lower court judgment and allowed the general denial to stand. *Rockland Industries v. Interior Designers, Inc.*, 263 S.C. 338, 341, 210, S.E.2d 468, 469 (1974).

These principles apply with equal force here. The form of a verification for Appellate motions and petitions is provided by the Courts for a specific purpose. A Rule 241 petition for supersedeas seeks extraordinary relief and is often considered on an expedited basis and limited record. The verification requirement in Rule 241 verifies for the Court and Opposing Counsel that the Petitioners have read “the foregoing Petition and know the contents thereof.” The verification requirement is directed at the contents of the pleading and the knowledge of the Petitioner thereof. Verifications become part of the pleadings. On the other hand, the affidavit requirement under Rule 241(d)(3)(A) is directed at the disputed factual allegations.

Appellants seek to overturn or suspend the Trial Courts carefully considered injunctive relief entered after the Trial Court afforded Appellants multiple opportunities to address the ongoing and dangerous conditions caused by errant golf balls entering the Queens Grant II community. In this context, strict compliance with the Appellate Court Rules is particularly important.

The Trial Court, in good faith and at the expense of the Respondents’ safety and security, afforded the Appellants more than ample time to remedy the dangerous conditions their new business model created. Appellants’ cavalier attitude towards the requirements of Rule 241 is consistent with, and an extension of, their cavalier attitude towards the property rights and safety of the Respondents. Equally, cavalier is the convoluted and inartful attempt by Appellants to conflate the Rule 241(d)(1) “delay” in the trial court’s injunction taking effect with the “unreasonable delay of a trial court in acting on their supersedeas petition” to try to create “extraordinary circumstances.” Arguments such as these fly in the face of and are disrespectful to the truth, the trial court, the Respondents, the judicial process and to this court. Respondent

respectfully submits that a review of paragraph 19 of Appellant's original Petition evinces the foregoing.

Allowing an unverified petition to proceed would undermine the safeguards built into the Rules. Because Appellants have failed to comply with Rule 241(d)(3), their Petition does not satisfy the threshold requirements for consideration under Rule 240. Pursuant to Rule 240(g), this Court should dismiss the Amended Petition.

#### **IV. CONCLUSION**

WHEREFORE, Respondents respectfully request that this Court dismiss Appellants' Amended Petition for failure to comply with Rules 240 and 241, SCACR, and grant such other and further relief as the Court deems just and proper.

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April 17, 2026.

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PROOF OF SERVICE

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I certify that I have served *RESPONDENTS' MOTION TO DISMISS PETITION FOR FAILURE TO COMPLY WITH RULES 240 AND 241, SCACR*, on April 17, 2026, by emailing a copy to its attorney of record, Christian Stegmaier, [cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com).

April 17, 2026.

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**RECEIVED**  
**Apr 17 2026**  
**SC Court of Appeals**