

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No. 2013-CP-26-04551

71331

RECEIVED

FEB 20 2014

SC Court of Appeals

Atlantica Property Owners' Association, Inc.....Respondent,

Bellamy, Rutenberg, Copeland, Epps, Gravely & Powers P.A.,.....Appellant,

MOTION TO DISMISS APPEAL

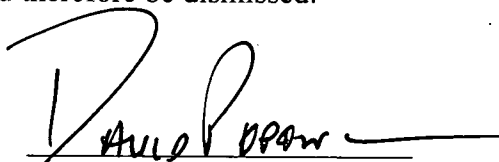
Now comes the Respondent Atlantica Property Owners' Association, Inc. (hereinafter, "Respondent"), by and through counsel and pursuant to Rules 201(a), 203(d)(3), and 240 of the South Carolina Appellate Court Rules, and hereby moves this Court to dismiss the appeal of Respondent Bellamy, Rutenberg, Copeland, Epps, Gravely & Powers P.A. In support of this Motion, Respondent presents the following.

This case was instituted on June 27, 2013, by Respondent against Appellant alleging that Appellant failed to prepare and record an easement for parking. Respondent is the property owners association for the high rise condominium project in Myrtle Beach, South Carolina known as "Atlantica" located on North Ocean Boulevard between 16th and 18th Avenues North (see Exhibit A). As set forth in detail in the Complaint, the property owners were utilizing approximately 42 parking spaces on what is known as Lots 1 and 2, Block 80-C, on Withers Street at 17th Avenue North under the assumption that it was encumbered by an easement. In August, 2009, following the institution of a foreclosure proceeding that included that property, the automobiles of certain members were towed and upon inquiry in the Horry County Real Estate records office, Respondent determined that there was no easement. Respondent has brought this legal malpractice suit against Appellant, the law firm performing the legal work for the "Atlantica" project.

Respondent's Complaint alleged two causes of action: (1) legal malpractice and (2) breach of fiduciary duty. Appellant filed a Motion to Dismiss pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure, **Defenses and Objections, etc.** alleging the Complaint failed to state facts sufficient to constitute a cause of action. Circuit Court Judge Lee S. Alford

issued an Order Denying Appellant's Motion to Dismiss that was filed November 20, 2013; and an Order Denying Appellant's Motion to Reconsider its Order that was filed January 2, 2014.

An order denying a Rule 12(b)(6) motion to dismiss is not immediately appealable. *Huntley v. Young*, 462 S.E.2d 860 (S.C. 1995); and compare *Burkey v. Noce*, 726 S.E.2d 229 (S.C.App. 2012). Appellant's appeal should therefore be dismissed.

A handwritten signature in black ink, appearing to read "David Popowski", written over a horizontal line.

David Popowski
Popowski Law Firm, LLC
171 Church Street, Suite 110
P. O. Box 1064 (29402)
Charleston, South Carolina 29401
Office: (843) 722-8301
Fax: (843) 722-8309
Email: david@popowskilaw.com

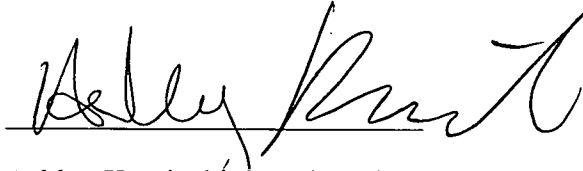
ATTORNEY FOR RESPONDENT

Charleston, South Carolina
February 19, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Motion to Dismiss Appeal** has been served upon the following by mailing a copy properly addressed and with sufficient postage properly affixed thereto this 19th day of February, 2014, as follows:

J. Calhoun Watson and Tina M. Cundari
Sowell Gray Stepp and Laffitte
1310 Gadsden Street
PO Box 11449
Columbia, SC 29211



Ashley Kaminski, Legal Assistant to
David Popowski

RECEIVED

FEB 20 2014

SC Court of Appeals

POPOWSKI LAW FIRM, LLC

171 CHURCH STREET, SUITE 110
CHARLESTON, SOUTH CAROLINA 29401
www.popowskilawfirm.com

Mailing Address:
P.O. Box 1064
Charleston, South Carolina 29402

TELEPHONE (843) 722-8301
FACSIMILE (843) 722-8309
EMAIL: david@popowskilaw.com

February 19, 2014

Via Overnight Mail

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Circuit Court Case No.: 2013-CP-26-04551, Atlantica Property Owners Association, Inc., *Respondent* vs. Bellamy, Rutenberg, Copeland, Epps, Gravely & Powers P.A., *Appellant*

Dear Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of Respondent's Motion to Dismiss Appeal. Also enclosed is my Office Check No. 25829 in the amount of \$25.00 representing the filing fee. Please return the one filed copy of the Motion to me in the self-addressed stamped envelope provided for your convenience. By copy of this letter I am serving the attorneys for the Appellant. Thank you for your assistance.

Sincerely yours,



David Popowski

Enclosures: Original Motion to Dismiss Appeal
Seven Copies of Motion to Dismiss Appeal
Office Check No. 25829
Self Addressed, Stamped Envelope

Cc: J. Calhoun Watson and Tina M. Cundari

RECEIVED

FEB 20 2014

SC Court of Appeals