

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 260 (29201)
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B. Michael Brackett
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

March 24, 2014

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Breakfield, as Personal Representative v. Woods
2011-CP-12-0291
Appellate Case No. 2012-212318
Our File No. 12085.3

Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of Respondent's Motion to Strike or Dismiss Appellant's Petition for Rehearing and for Stay of Appeal Deadlines.

By copy of this letter, a copy of the enclosed motion is being emailed to the Appellant, at his last known email address, and, hard copy is being served by mail.

My check in the amount of \$25.00 is enclosed for the motion fee. Please allow my courier to return with a clocked copy of page 1 of the motion.

Very truly yours,



B. Michael Brackett

cc. Robert H. Breakfield, Esquire
Mell Woods (via email 498@Safe-mail.net and U.S. Mail)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact Respondent,

v.

Mell Woods Appellant.

Respondent's Certificate of Service

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondent in the above-captioned matter, do hereby certify that I have served Appellant, pro se, with a copy of **Respondent's Motion to Strike or Dismiss Appellant's Petition for Rehearing and for Stay of Appeal Deadlines** by Email (498@Safe-mail.net) and United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 24th day of March, 2014 at the following address:

Mell Woods
P. O. Box 2603
Lancaster, SC 29721
Plaintiff, pro se


Linda T. Abernethy

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact Respondent,

v.

Mell Woods Appellant.

Respondent's Motion to Strike or Dismiss Appellant's
Petition for Rehearing and for Stay of Appeal Deadlines

Respondent moves the Court to strike or dismiss the Appellant's Petition for Rehearing, dated March 19, 2014, on the ground that, pursuant to Rule 221, SCACR, the Petition is untimely.

The Court's unpublished per curiam opinion, 2014-UP-076, was filed February 26, 2014. (Exhibit A.) It was served on the parties by the Court on February 26, 2014. (Exhibit B.)

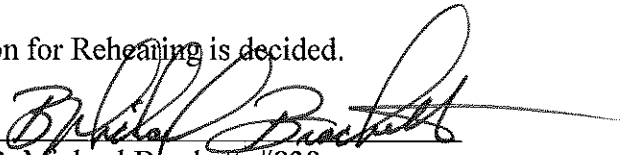
The fifteen (15) day deadline to file a Petition for Rehearing was March 13, 2014.

On March 16, 2014, Appellant emailed a letter/motion to the Clerk of this Court "to extend time for filing a petition for rehearing." The undersigned believes, but does not know for sure, that the Appellant's March 16 email transmitted a letter from the Appellant dated March 12, 2014. The Court's file should contain Appellant's communication. The Clerk of Court forwarded Appellant's March 16 email to the undersigned on March 17, 2014. (Exhibit C.) The undersigned emailed the Clerk of Court, with a copy to Appellant, on March 17, 2014 objecting to the untimely motion. (Exhibit D.) On March 18, 2014, Respondent filed and served a Return to Appellant's Motion for Extension of Time to File a Petition for Rehearing. (Ex. E.)

The undersigned received in the mail today, March 24, 2014, the Appellant's transmittal letter to the Court dated March 19, 2014 with a copy of Appellant's Petition for Rehearing, also dated March 19, 2014. The undersigned notified the Clerk of Court of the receipt of these documents. (Ex. F.) The undersigned has not received any communication from the Court since the Clerk's email on March 17, 2014. (Ex. C.)

Appellant's motion to extend time is untimely, and Appellant's March 19, 2014 Petition for Rehearing is untimely. Respondent moves that the March 19, 2014 Petition for Rehearing be stricken and/or dismissed.

Respondent also moves that appeal deadlines be stayed until the Motion herein stated to strike or dismiss the March 19, 2014 Petition for Rehearing is decided.


B. Michael Brackett, #838
Moses & Brackett, PC
P. O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent

March 24, 2014

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Robert H. Breakfield, as attorney-in-fact, Respondent,

v.

Mell Woods, Appellant.

Appellate Case No. 2012-212318

Appeal From Chester County
Brooks P. Goldsmith, Circuit Court Judge

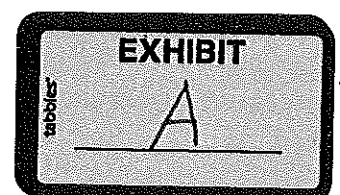
Unpublished Opinion No. 2014-UP-076
Submitted January 1, 2014 -- Filed February 26, 2014

AFFIRMED

Mell Woods, of Lancaster, pro se.

B. Michael Brackett, of Moses & Brackett, PC, of
Columbia, for Respondent.

PER CURIAM: Mell Woods appeals the circuit court's order, which affirmed the magistrate's court. Woods argues (1) the magistrate's court erred in proceeding with the summary ejection action when Woods pled the defense of questionable title; (2) the rule to show cause notice provisions of sections 27-37-20 and 27-37-40 of the South Carolina Code (2007) are unconstitutional because they do



not provide a tenant thirty days to file an answer; and (3) it is unconstitutional to have two classes of litigants in South Carolina—landlords and tenants. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the magistrate's court erred in proceeding with the ejectment action when Woods pled the defense of questionable title: *Metro. Life Ins. Co. v. Stuckey*, 194 S.C. 469, 475, 10 S.E.2d 3, 5-6 (1940) ("[A] tenant cannot oust the magistrate of jurisdiction in [summary ejectment proceedings] . . . by the assertion of a superior title in himself . . ."); *id.* at 475-76, 10 S.E.2d at 6 ("Otherwise any tenant, by merely denying the landlord's title or by asserting superior title in himself or in another, could oust the magistrate of jurisdiction and frustrate the plain and salutary object of the statute.").

2. As to whether the rule to show cause notice provisions of sections 27-37-20 and 27-37-40 are unconstitutional because they do not provide a tenant thirty days to file an answer: *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001) ("[An appellate c]ourt has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid."); *In re Justin B.*, 405 S.C. 391, 395, 747 S.E.2d 774, 776 (2013) ("A statute will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt."); *id.* ("The party challenging the statute's constitutionality bears the burden of proof.").

3. As to whether it is unconstitutional to have two classes of litigants in South Carolina—landlords and tenants: *A & I, Inc. v. Gore*, 366 S.C. 233, 242, 621 S.E.2d 383, 387 (Ct. App. 2005) ("Issues not raised to or ruled upon by the lower court are not preserved for appellate review.").

AFFIRMED.¹

HUFF, GEATHERS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 26, 2014

Mell Woods
PO Box 2603
Lancaster SC 29721

Re: Robert H. Breakfield, as attorney-in-fact v. Mell Woods
Appellate Case No. 2012-212318

Dear Counsel:

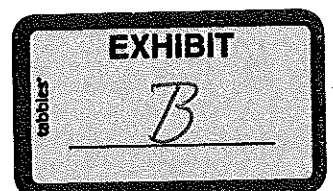
Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

A handwritten signature in black ink that reads "Jenny Abbott Kitchings". The signature is written in a cursive style and includes a flourish at the end.

CLERK

cc: B. Michael Brackett, Esquire
The Honorable Brooks P. Goldsmith



Mike Brackett

From: Kitchings, Jenny <jkitchings@sccourts.org>
Sent: Monday, March 17, 2014 9:15 AM
To: 498@Safe-mail.net
Cc: Mike Brackett
Subject: RE: Breakfield v. Mell Woods

Dear Mr. Woods:

We received your email containing a copy of the letter you sent to the Court. In the future, you must always copy opposing counsel on all correspondence with the Court. We will process your request and respond to you in the normal fashion via US mail.

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201
Ph: (803) 734-1891
Fax: (803) 734-1839
jkitchings@sccourts.org

-----Original Message-----

From: 498@Safe-mail.net [<mailto:498@Safe-mail.net>]
Sent: Sunday, March 16, 2014 9:32 PM
To: Kitchings, Jenny
Subject: Breakfield v. Mell Woods

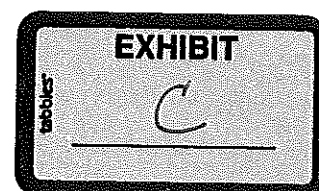
Breakfield v. Mell Woods

Re: Case Number 2012-212318

Dear Mrs. Kitchings:

Attached is a motion to extend time for filing a petition for rehearing in the above case. Attached motion (with signature) and \$25.00 motion fee should arrive in Monday's mail.

Thanks,
Mell Woods



Mike Brackett

From: Mike Brackett
Sent: Monday, March 17, 2014 9:51 AM
To: 'Kitchings, Jenny'; 498@Safe-mail.net
Subject: RE: Breakfield v. Mell Woods

Ms. Kitchens,

Thank you for forwarding Appellant's email sent March 16 transmitting a motion for extension to file a petition for rehearing. The email did not include a copy of the motion, so I have not seen it.

I submit that the motion for extension is untimely. Rule 221 requires that a petition for rehearing be actually received by the appellate court not later than 15 days after the filing of the opinion. The opinion in this case was filed on February 26. The 15th day after February 26 was March 13. Consequently a motion for extension transmitted by email on March 16 is untimely and must be denied.

I am copying Mr. Woods on this email. Please let me know if the Court wants a customary written Return to the Motion to be filed and served. If so, it will be hand delivered later today.

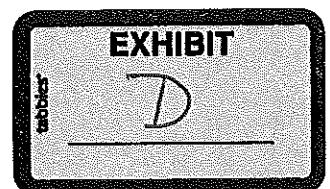
B. Michael "Mike" Brackett
Moses & Brackett, PC
Post Office Box 100261
1333 Main Street, Suite 650
Columbia, SC 29202-3261
803-461-2312 (direct dial)
803-461-2309 (fax)

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-----Original Message-----

From: Kitchings, Jenny [<mailto:jkitchings@sccourts.org>]
Sent: Monday, March 17, 2014 9:15 AM
To: 498@Safe-mail.net



Cc: Mike Brackett
Subject: RE: Breakfield v. Mell Woods

Dear Mr. Woods:

We received your email containing a copy of the letter you sent to the Court. In the future, you must always copy opposing counsel on all correspondence with the Court. We will process your request and respond to you in the normal fashion via US mail.

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201
Ph: (803) 734-1891
Fax: (803) 734-1839
jkitchings@sccourts.org

-----Original Message-----

From: 498@Safe-mail.net [<mailto:498@Safe-mail.net>]
Sent: Sunday, March 16, 2014 9:32 PM
To: Kitchings, Jenny
Subject: Breakfield v. Mell Woods

Breakfield v. Mell Woods

Re: Case Number 2012-212318

Dear Mrs. Kitchings:

Attached is a motion to extend time for filing a petition for rehearing in the above case. Attached motion (with signature) and \$25.00 motion fee should arrive in Monday's mail.

Thanks,
Mell Woods

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

COPY

1333 Main Street, Suite 260 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

B. Michael Brackett
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

March 18, 2014

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

Re: Breakfield, as Personal Representative v. Woods
2011-CP-12-0291
Appellate Case No. 2012-212318
Our File No. 12085.3

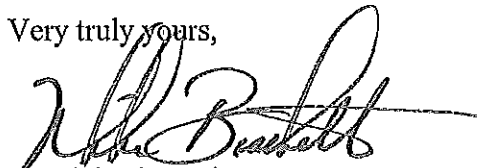
Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies Respondent's Return to Appellant's Motion for Extension of Time to File a Petition for Rehearing.

By copy of this letter, a copy of the enclosed Return is being served on the Appellant, personally, who has appeared pro se throughout these proceedings.

Please understand that I have not yet received Appellant's written motion, but because of the obvious time violation, I wanted to get this Return to the Court without delay. Please return a clocked copy of the Return using the envelope provided.

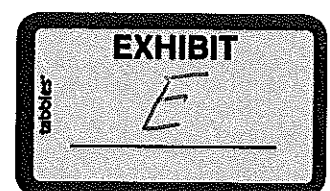
Very truly yours,



B. Michael Brackett

BMB/lta
Enclosures

cc. Robert H. Breakfield, Esquire
Mell Woods



THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact Respondent,

v.

Mell Woods Appellant.

Respondent's Return to Appellant's
Motion for Extension of Time
to File a Petition for Rehearing

The undersigned, as attorney of record for the Respondent, received an email from the Clerk of Court of this Court on March 17, 2014 forwarding an email sent to the Clerk of Court by the Appellant on March 16, 2014. Appellant's email apparently transmitted as an attachment Appellant's Motion to Extend Time for Filing a Petition for Rehearing. As of the time of the filing and service of this Return, the undersigned has not received Appellant's written Motion to Extend Time.

Because the Appellant's Motion is obviously untimely, the Respondent does not wish

to wait to file and serve this Return- objection.

Appellant has used, and is using, the process and procedures of the various courts to delay his eventual day of reckoning. Appellant has been the losing party in five circuit court proceedings, some involving the circuit court as an appellate court for probate court and magistrate court proceedings. He has filed appeals to this court in each of the five cases. Four of the appeals have been decided adversely to the Appellant in unpublished, per curiam opinions. The appellate case numbers of those appeals are 2011-201066, 2011-191876, 2012-212330 and 2012-212318 (the above-captioned case.) The only as yet undecided case is 2012-212429 which, on information and belief, was considered by the Court during the February 2014 term, without oral argument. The above-captioned proceeding is an eviction proceeding initiated by the Hinson family's agent. The other four actions were initiated by the Appellant. Appellant is a serial litigator who is using the courts to delay his having to vacate real property owned by the Hinson family by bringing actions and prosecuting appeals that are without merit.

The Court's unpublished, per curiam opinion in this case was filed on February 26, 2014. Pursuant to Rule 221(a), SCACR, a Petition for Rehearing must have been actually received by the court not later than fifteen (15) days after the filing of the opinion. The fifteenth day was March 13, 2014. An email and its motion attachment sent to the Court on Sunday, March 16, 2014, not having been filed and served before the expiration of the permitted time period, was untimely.

Conclusion

A Petition for Rehearing is now untimely, and a Motion to Extend the Time for Filing a Petition for Rehearing is likewise untimely and should be denied.

A handwritten signature in black ink, appearing to read "B. Michael Brackett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

B. Michael Brackett, #838
Moses & Brackett, PC
P. O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent

March 18, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact Respondent,

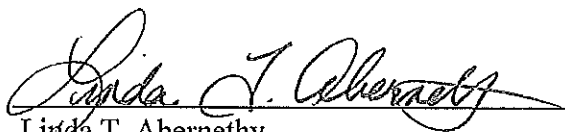
v.

Mell Woods Appellant.

Respondent's Certificate of Service

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondent in the above-captioned matter, do hereby certify that I have served Appellant, pro se, with a copy of **Respondent's Return to Appellant's Motion for Extension of Time to File a Petition for Rehearing** by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 18th day of March, 2014 at the following address:

Mell Woods
P. O. Box 2603
Lancaster, SC 29721
Plaintiff, pro se


Linda T. Abernethy

Mike Brackett

From: Mike Brackett
Sent: Monday, March 24, 2014 9:21 AM
To: jkitchings@sccourts.org; 498@Safe-mail.net
Subject: Breakfield v. Woods 2012-212318

I have received in this morning's mail a copies of Appellant's transmittal letter to the Court dated March 19 together with a Petition for Rehearing dated and served March 19. Once again, I receive these documents 5 days after they are allegedly mailed.

Please see my letter to you emailed on March 19. A Petition for Rehearing served on March 19 was and is untimely. I am unaware of an Order excusing Appellant's untimely Petition.

Has the Court accepted the March 19 Petition as a validly filed and served petition that requires a Return from me? Please advise.

This email is copied to the Appellant at the email address used by you last week.

Thank you.

B. Michael "Mike" Brackett
Moses & Brackett, PC
Post Office Box 100261
1333 Main Street, Suite 650
Columbia, SC 29202-3261
803-461-2312 (direct dial)
803-461-2309 (fax)

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