

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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MAR 20 2014

Case No. 2012-CP-26-8652
Appellate Case No. 2013-CP-26-08652

SC Court of Appeals

TriStar Investors, Inc., Minerva Realty, LLC, and
Angeline Johnson, Appellants,

v.

The Horry County Council and American Towers,
LLC, Respondents.

Return to Motion to Dismiss Appeal

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Appellants file this Return to Respondent Horry County Council's Motion to Dismiss the Appeal. Horry County seeks dismissal because "Appellants failed to serve Respondent Horry County with the Record on Appeal" See Motion p. 2. While accurate, this was an inadvertent oversight. Dismissal is not warranted.

On February 19, 2014, counsel for American Towers sent a letter requesting Appellants consent to the relief of several counsel of record. See Letter dated 2.19.14, attached hereto as Exhibit A. As part of that request, American Towers requested to remove Thomas C. **Brittain** and Andrew Preston **Brittain** of The **Brittain** Law Firm, P.A., as counsel of record. Id. (emphasis added). At that time, undersigned counsel

orally requested that his staff note the request and prepare to remove “the Brittain’s” as counsel of record upon order of this Court. See Affidavit of Michael Anzelmo, attached hereto as Exhibit B. Counsel further stated that service of the Record on Appeal would likely not be needed on the Brittain’s. Id. When I made that statement, I failed to clarify that Emma Ruth Brittain represented a different Respondent and was not impacted by the motion for relief. Id.


In so communication that information, it appears counsel for Horry County, Emma Ruth **Brittain** of Thomas & **Brittain**, P.A., was inadvertently omitted from the certificate of service from the Record on Appeal. Id. As shown by the emphasized names herein, this omission was accidental and due to the fact that various Brittain’s and Brittain law firms represented different Respondents in the appeal. Id. In removing Thomas C. Brittain and Andrew Preston Brittain of The Brittain Law Firm, P.A., from the certificate of service for service of the Record on Appeal, counsel of Appellants mistakenly omitted Emma Ruth Brittain of Thomas & Brittain, P.A.

Appellants timely served the Record on Appeal on February 26, 2014, and filed the proof of service with this Court that same day. The failure to serve Horry County via Emma Ruth Brittain, as counsel, was a mistake caused by the motion to relieve Thomas C. Brittain and Andrew Preston Brittain of The Brittain Law Firm, P.A. It was not intentional. See Affidavit of Michael Anzelmo, attached hereto as Exhibit B. This motion was the first time undersigned counsel was aware of the oversight.¹ Id.

¹ In the motion to dismiss, Horry County seeks an award of fees and costs for having to file the motion. See Motion p. 3. Fees are not proper in this instance for two reasons. First, at no time from the service of the Record on Appeal on counsel for Respondent American Towers or the service deadline of February 27, 2014, did Ms. Brittain

Moreover, the error was merely technical and does not impact the merits or substance of this appeal or prejudice any party to this appeal. The issue has been remedied. Appellants have now served the Record on Appeal on Horry County. See Certificate of Service attached as Exhibit C. Appellants consent to any extension of time needed for Horry County to complete its Final Brief in this matter. Undersigned counsel apologizes for this inadvertent, technical mistake.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Michael J. Anzelmo
SC Bar No. 72933
E-Mail: michael.anzelmo@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.2000

Susan P. MacDonald
SC Bar No. 007943
E-Mail: susan.macdonald@nelsonmullins.com
3751 Robert M. Grissom Parkway / Suite 300
Post Office Box 3939 (29578-3939)
Myrtle Beach, South Carolina 29577-3165
843.448.3500

L. Morgan Martin
S.C. Bar No. 3667
mmartin@lmorganmartin.com

attempt to contact undersigned counsel regarding the service of the Record on Appeal. Had Ms. Brittain simply contacted undersigned counsel, counsel would have explained the inadvertent mistake, served the Record on Appeal on Ms. Brittain, and consented to any extension needed to file Horry County's Final Brief. See Affidavit of Michael Anzelmo, attached hereto as Exhibit B. Had she done so, Ms. Brittain would have eliminated the need and costs associated with filing this motion. Id. Second, costs on appeal are limited to those provided in Rule 222(b), SCACR. That rule does not allow recovery of the costs sought by Horry County. Thus, Horry County's request for costs should be rejected.

L. Morgan Martin, P.A.
1121 Third Avenue
Conway, SC 29526
843.248.3177

Attorneys for Appellants TriStar Investors, Inc.,
Minerva Realty, LLC, and Angeline Johnson

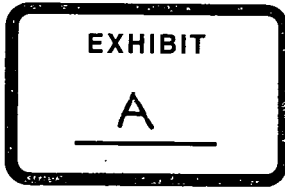
Columbia, South Carolina

March 20, 2014

39776/0501

HELLMAN YATES & TISDALE

ATTORNEYS AND COUNSELORS AT LAW



THOMAS S. TISDALE
DIRECT VOICE 843 414-9757
TST@HELLMANYATES.COM

HELLMAN YATES & TISDALE, PA
145 KING STREET, SUITE 102
CHARLESTON, SOUTH CAROLINA 29401
V 843 266-9099
F 843 266-9188

February 19, 2014

Via U.S. Mail

All Counsel of Record

RE: *TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson v. The Horry County Council and American Towers, LLC*
Appellate Case No: 2013-001178
Our File No.: 01417

Dear Counsel:

Enclosed herein please find Respondent American Towers, LLC's Consent Motion to Relieve Counsel in regards to the above-referenced matter.

Upon your review, please sign and return the consent page to our office in the enclosed, self-addressed stamped envelope.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me at your convenience.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas S. Tisdale".

Thomas S. Tisdale

TST:asb
Encs.

cc: Michael J. Anzelmo, Esq. ✓
A. Preston Brittain, Esq.
Emma Ruth Brittain, Esq.
Thomas C. Brittain, Esq.
James Christopher Clark, Esq.
Elbert Stockman Dorn, Sr., Esq.
Tanya Amber Gee, Esq.

February 19, 2014

Page 2

Susan P. MacDonald, Esq.
L. Morgan Martin, Esq.
David C. Slough, Esq.
J. Jackson Thomas, Esq.

THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
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Benjamin H. Culbertson
Circuit Court Judge

Case No.: 2012-CP-26-8652
Appellate Case No.: 2013-001178

TriStar Investors, Inc., Minerva Realty, LLC, and
Angeline JohnsonAppellants

v.

The Horry County Council and American Towers, LLCRespondents

RESPONDENT AMERICAN TOWERS, LLC'S
CONSENT MOTION TO RELIEVE COUNSEL

David C. Slough, Esq.
NEXSEN PRUET, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
Telephone: (843) 213-5400
Facsimile: (843) 213-5407

Thomas S. Tisdale, Jr., Esq.
Jonathan L. Yates, Esq.
Jason S. Smith, Esq.
HELLMAN YATES & TISDALE, PA
King & Queen Building
145 King Street, Suite 102
Charleston, SC 29401
Telephone: (843) 414-9754
Facsimile: (843) 266-9188

Attorneys for Respondent American Towers, LLC

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Counsel for the Respondent, American Towers, LLC (“Respondent”), hereby respectfully moves the Court, pursuant to Rule 264(b), SCACR, to relieve Thomas C. Brittain, Andrew Preston Brittain, Elbert Stockman Dorn, Sr., and Tanya Amber Gee, as counsel for Respondent.

Respondent therefore respectfully prays the Court for an order granting this Respondent’s Consent Motion to Relieve Counsel.

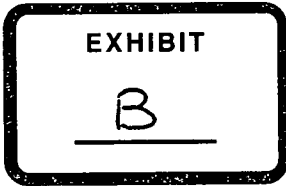
Respectfully submitted:

By:

Thomas S. Tisdale, Jr., Esquire
Jonathan L. Yates, Esquire
Jason S. Smith, Esquire
HELLMAN YATES & TISDALE, PA
King & Queen Building
145 King Street, Suite 102
Charleston, SC 29401
Telephone: (843) 266-9099
Facsimile: (843) 266-9188
ts@hellmanyates.com
jly@hellmanyates.com
js@hellmanyates.com

Charleston, South Carolina
February __, 2014

ATTORNEYS FOR RESPONDENT
AMERICAN TOWERS, LLC



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-26-8652
Appellate Case No. 2013-CP-26-08652

TriStar Investors, Inc., Minerva Realty, LLC, and
Angeline Johnson, Appellants,
v.
The Horry County Council and American Towers,
LLC, Respondents.

Affidavit of Michael J. Anzelmo, Esquire

I, Michael J. Anzelmo, Esquire, of the law firm of Nelson Mullins Riley & Scarborough LLP, after being duly sworn, depose and say:

1. I am a citizen of the State of South Carolina, and I am of sound mind and over the age of twenty-one years.
2. I am competent to testify as to the matter stated herein and do so on my own free will.
3. The statements in the affidavit are true and based on my own personal knowledge.

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4. I am licensed to practice law in the State of South Carolina, bar number 72933, and am an attorney at the law firm of Nelson Mullins Riley & Scarborough LLP.

5. I represent Appellants in the above-captioned appeal.

6. On February 19, 2014, counsel for American Towers sent a letter requesting Appellants consent to the relief of several counsel of record.

7. As part of that request, American Towers requested to remove Thomas C. Brittain and Andrew Preston Brittain of The Brittain Law Firm, P.A., as counsel of record.

8. As a result of that motion, I orally requested that my staff note the request and prepare to remove the Brittains as counsel of record upon order of this Court.

9. I specifically stated to prepare to remove the "Brittains" in making the request.

10. I further stated that service of the Record on Appeal would likely not be needed on the Brittains.

11. When I made that statement, I failed to clarify that Emma Ruth Brittain represented a different Respondent and was not impacted by the motion for relief.

12. In so communication that information, it appears counsel for Horry County, Emma Ruth Brittain of Thomas & Brittain, P.A., was inadvertently omitted from the certificate of service from the Record on Appeal.

13. This omission was accidental and due to the fact that various Brittains and Brittain law firms represented different Respondents in the appeal.

14. The failure to serve Horry County via Emma Ruth Brittain, as counsel, was a mistake caused by the motion to relieve Thomas C. Brittain and Andrew Preston Brittain of The Brittain Law Firm, P.A. It was not intentional.

15. The issue has been remedied. Appellants have now served the Record on Appeal on Horry County.

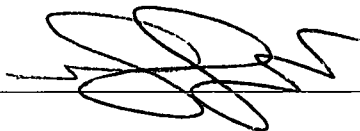
16. Horry County's motion to dismiss was the first time this issue was brought to my attention.

16. At no time from the service of the Record on Appeal on counsel for Respondent American Tower or the service deadline of February 27, 2014, did Ms. Brittain attempt to contact undersigned counsel regarding the service of the Record on Appeal.

17. Had Ms. Brittain simply contacted undersigned counsel, counsel would have explained the inadvertent mistake, served the Record on Appeal on Ms. Brittain, and consented to any extension needed to file Horry County's Final Brief.

18. Had she done so, Ms. Brittain would have eliminated the need and costs associated with filing this motion.

Further affiant sayeth not.

A handwritten signature in black ink, appearing to read "Michael J. Anzelmo", is written over a horizontal line.

Michael J. Anzelmo, Esquire

March 20, 2014

SWORN to and subscribed before me

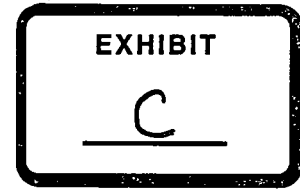
this 20th day of March, 2014

Lisa P. Wickham (L.S.)
Notary Public for South Carolina

My Commission Expires: 10/11/2021

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9024
www.nelsonmullins.com



Michael J. Anzelmo
Tel: 803.255.9312
Fax: 803.255.9024
michael.anzelmo@nelsonmullins.com

March 20, 2014

Emma Ruth Brittain, Esquire
Thomas & Brittan, P.A.
Post Office Box 1290
Myrtle Beach, SC 29578

RE: TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson v. The Horry
County Council, and American Tower Corporation
Civil Action No. 2012-CP-26-08652
Our File No. 39776/01501

Dear Emma Ruth:

We enclose and serve upon you a copy of the Record on Appeal in the above referenced matter. In the future, please refrain from communicating with the Administrative Assistant Tereasa Nelson, in our Myrtle Beach office, and direct your request to me, as appellate counsel of record, in Columbia. Thank you for your consideration of this request.

By copy of this letter to South Carolina Court of Appeals we are providing a filing the original and one copy of our proof of service and asking that they clock and return a copy to me via our courier.

Very truly yours,

A handwritten signature in black ink, appearing to be "Michael J. Anzelmo".

Michael J. Anzelmo

MJA:mws
Enclosures

cc: Honorable Jenny Kitchings, South Carolina Court of Appeals
David C. Slough, Esquire
Thomas S. Tisdale, Jr., Esquire
Jonathan L. Yates, Esquire
Jason S. Smith, Esquire

THE STATE OF SOUTH CAROLINA
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I, the undersigned Paralegal of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants Tristar Investors, Inc., Minerva Realty, LLC and Angeline Johnson, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

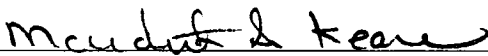
Pleadings: Return to Motion to Dismiss Appeal

Counsel Served:

Emma Ruth Brittain, Esquire
Thomas & Brittan, P.A.
Post Office Box 1290
Myrtle Beach, SC 29578
Attorney for Respondent Horry County Council

David C. Slough, Esquire
Nexsen Pruet, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
Attorneys for Defendant American Tower, LLC

Jonathan L. Yates, Esquire
Hellman Yates & Tisdale, PA
145 King Street, Suite 102
Charleston, SC 29401
Attorneys for Defendant American Tower, LLC



Meredith S. Keane
Paralegal

March 20, 2014

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9024
www.nelsonmullins.com

Michael J. Anzelmo
Tel: 803.255.9312
Fax: 803.255.9024
michael.anzelmo@nelsonmullins.com

March 20, 2014

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201


RE: TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson v. The
Horry County Council, and American Tower Corporation
Civil Action No. 2012-CP-26-08652
Our File No. 39776/01501

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Appellants' Return to Motion to Dismiss Appeal in regard to the above-referenced matter. Please file the original and return clocked-in copies to me via our courier.

By copy of this letter, we are hereby serving opposing parties.

Very truly yours,



Michael J. Anzelmo

MJA:lpw

Enclosures

cc: Emma Ruth Brittain, Esquire
David C. Slough, Esquire
Jonathan L. Yates, Esquire

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