

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Jr., Circuit Court Judge

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Case No. 2011-CP-42-4538  
Appellate Case No. 2014-000902

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RECEIVED

JUN 30 2014

SC Court of Appeals

Tietex International Ltd, ..... Respondent,

v.

Gary G. Harris,..... Appellant,

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**APPELLANT'S RETURN TO MOTION TO DISMISS AND REPLY TO  
RETURN TO MOTION EXTEND TIME TO FILE INITIAL BRIEF AND  
DESIGNATION OF MATTER**

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Appellant Gary G. Harris initiated this appeal, acting pro se, by timely serving and filing his Notice of Appeal pursuant to Rule 203, SCACR. Although counsel represented Mr. Harris in the trial court below, he ultimately chose to proceed pro se, and counsel was relieved with consent of all parties by Order dated February 18, 2014. (Exhibit 1).

Thereafter, the trial court granted summary judgment in favor of Tietex International, Ltd. ("Respondent"). Mr. Harris timely filed his Notice of Appeal. He also ordered the transcript of record, and at some point later received the transcript.

Mr. Harris thereafter sought and retained Lazenby Law Firm, LLC, to handle this appeal. Counsel noted its appearance by letter on May 20, 2014. Counsel was unaware at that time whether and when Mr. Harris had ordered the transcript, and whether and when he had received it. Upon inquiry, Mr. Harris informed counsel that he had received the transcript on May 13, 2014.

In the interim between May 20, 2014 and June 13, 2014, counsel was dealing with several urgent and time consuming legal matters related to a client's murder. On June 13, 2014, realizing the deadline was at hand and that, without the normal 30 days to prepare and the exigent circumstances at hand, counsel needed and requested a standard 30 day extension of time to prepare the initial brief. Counsel did so because it owed a duty to Mr. Harris to fully and adequately prepare his appeal. Counsel also out of an abundance of caution requested that the Court hold all time limits in abeyance pending its ruling on this motion.

Rule 263(b), SCACR, allows the Court to extend any time period prescribed by the Rules of the Appellate Court other than the time to file the Notice of Appeal. There is no question that the Notice of Appeal was timely filed. Counsel has stated good cause for requesting the additional time to file the initial brief and designation of matter to be included in the record on appeal. Such extensions are routinely granted where they are not interposed solely for delay, and will not work prejudice to the opposing party. While Respondent is by the tone of its filings displeased with the fact that Mr. Harris appealed the dismissal of his case, it has pointed to no prejudice that would work against it if Mr. Harris is granted the 30 day extension. Counsel therefore respectfully requests that the Court grant the extension.

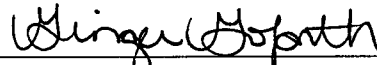
Respondent has also moved to dismiss the appeal on the grounds that Mr. Harris did not comply with the letter of Rule 207, SCACR, and Mr. Harris purportedly should have requested an extension of time four days earlier than he did. Apparently, while acting pro se, Mr. Harris did not write to opposing counsel or Court Administration notifying them when the transcript was received. Attached is the correspondence provided by Mr. Harris demonstrating his attempts to communicate with all relevant entities with regard to the transcript. (Exhibit 2). Clearly, Mr. Harris made a sincere effort to comply with the spirit of the rule. Further, there is no prejudice to Respondent stemming from either of these alleged noncompliances. Mr. Harris mailed his request for the transcript on April 24, 2014. Under Rule 207(a)(2), the court reporter had until June 24, 2014 to deliver the transcript. Mr. Harris's alleged failure to properly inform the Court of its receipt worked no prejudice.

Further, the Supreme Court has held that noncompliance with former Rule 207, SCACR, was not grounds for mandatory dismissal. Rather, the Court required the party to amend his pleadings to comply, where necessary. Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992); see also Martin v. Floyd, 282 S.C. 47, 317 S.E.2d 133 (1984) and Kunkle v. South Carolina Electric & Gas Co., 251 S.C. 138, 161 S.E.2d 163 (1968) (refusing to dismiss appeal for failure to comply with Supreme Court rules where respondent was not prejudiced by the noncompliance).

Any failure on the part of Mr. Harris to strictly comply with the Court Rules concerning correspondence about the transcript is excusable because Mr. Harris made a good faith effort to comply, and his alleged failure to copy the proper parties worked no prejudice to Respondent in adequately defending this appeal. Counsel submits that the Motion to Extend Time was timely filed, and that good cause exists, as stated above, for

granting it. Even assuming that the motion was filed 4 days outside of time, counsel submits that it filed the motion based on the good faith representation of the client as to receipt of the transcript, and, again, Respondent is not prejudiced by the Court's consideration of the motion. Finally, if the Court decides that the motion was not timely filed, then counsel requests the Court to allow its filing outside of time, nunc pro tunc, and consider Mr. Harris's request.

Respectfully submitted,



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D. Alan Lazenby  
Ginger D. Goforth

LAZENBY LAW FIRM  
PO Box 6099  
Spartanburg, SC 29304  
(864) 804-5050  
ATTORNEYS FOR APPELLANT

June 26, 2014

# **EXHIBIT 1**

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Case No. 2011-CP-42-4538  
Appellate Case No. 2014-000902

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Gary G HARRIS,

TIETEX International, Ltd ,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the Court	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- DECISION BY THE COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered  See Page 2 for additional information
- ACTION DISMISSED (CHECK REASON)**  Rule 12(b), SCRPC,  Rule 41(a), SCRPC (Vol Nonsuit),  Rule 43(k), SCRPC (Settled),  Other SCRPC 56
- ACTION STRICKEN (CHECK REASON)**  Rule 40(j), SCRPC,  Bankruptcy,  Binding arbitration, subject to right to restore to confirm, vacate or modify
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**  
 Affirmed,  Reversed,  Remanded,  Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

**IT IS ORDERED AND ADJUDGED:**  Formal order to follow)  Statement of Judgment by the Court

This matter is before this Court on motion of the defendant for summary judgment pursuant to SCRPC 56 After consideration of the record, argument of counsel, memoranda, and submissions made, this Court finds that the defendant's **motion for summary judgment** should be and is therefore **granted** This matter was also before the Court on motion of the plaintiff's counsel to be relieved With consent of the plaintiff and the defendant, counsel's **motion to be relieved is granted** Defendant's counsel is instructed to prepare a proposed formal order for the Court's consideration relating to the granting of summary judgment in favor of the defendant

**ORDER INFORMATION**

This order  ends  does not end the case  
 Additional Information for the Clerk \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

Circuit Court Judge

2053  
 Judge Code

2/18/14  
 Date



# EXHIBIT 2

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Case No. 2011-CP-42-4538  
Appellate Case No. 2014-000902

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220 St. Andrews Blvd  
Campobello, SC 29322  
April 23, 2014

Sent  
4/24/14

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

Dear Ms. Kitchings:

As required by South Carolina Appellate Court Rule 207, Transcript of Proceeding, please find enclosed a copy of a letter representative of the one sent to Court Reporter Linda Moffitt regarding the Appellant request for a transcript of record.

The request concerns the Appellant appeal of Case No: 2011-CP-42-4538.

If you have any questions or need other information, please contact me at the above address, or by phone at 864-316-8019 or by email: [ggharris@windstream.net](mailto:ggharris@windstream.net).

Sincerely yours,

Gary G. Harris  
Appellant

220 St Andrews Blvd  
Campobello, SC 29322  
April 17, 2014

Linda D. Moffitt  
800 Belcher Road  
Boiling Springs, SC 29316

Dear Ms. Moffitt:

I spoke with you by phone recently about getting a copy of transcript(s) (of record) from the Spartanburg County courthouse.

Here is the information regarding the transcript:

Case No: 2011-CP-42-4538  
(Gary G. Harris v. Tietex International, Ltd)

Subject matter (transcript needed): Hearing of "Tietex Renewed Motion For Summary Judgment"

Hearing Date: February 6, 2014

Judge over Hearing : Honorable Judge J. Derham Cole

Litigants: Alan Lazenby for Plaintiff and Fred Suggs for Defendant (main litigants)

If you need any other information let me know. Would like to get ASAP. My mobile phone number is 864-316-8019 and email address: [ggharris@windstream.net](mailto:ggharris@windstream.net).

I look forward to hearing from you.

Sincerely yours,



Gary G. Harris

220 St. Andrews Blvd  
Campobello, SC 29322  
April 23, 2014

Fred W. Suggs, Jr.  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
Post Office Box 2757  
Greenville, SC 29602

Sent  
4/24/14

Dear Mr. Suggs:

As required by South Carolina Appellate Court Rule 207, Transcript of Proceeding, please find enclosed a copy of a letter representative of the one sent to Court Reporter Linda Moffitt regarding the Appellant request for a transcript of record.

Sincerely yours,

Gary G. Harris

220 St. Andrews Blvd  
Campobello, SC 29322  
April 23, 2014

Sent 4/24/14

Office of Court Administration  
Calhoun Building  
1015 Sumter Street, Suite 200  
Columbia, SC 29201

To Whom It May Concern:

As required by South Carolina Appellate Court Rule 207, Transcript of Proceeding, please find enclosed a copy of a letter representative of the one sent to Court Reporter Linda Moffitt regarding the Appellant request for a transcript of record.

The request concerns the Appellant appeal of Case No: 2011-CP-42-4538.

If you have any questions or need other information, please contact me at the above address, or by phone at 864-316-8019 or by email: [gglharris@windstream.net](mailto:gglharris@windstream.net).

Sincerely yours,

Gary G. Harris  
Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
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SC Court of Appeals

Case No. 2011-CP-42-4538  
Appellate Case No. 2014-000902

Tietex International Ltd, ..... Respondent,

v.

Gary G. Harris, ..... Appellant,

**PROOF OF SERVICE**

I, the undersigned, hereby certify the Appellant's Return to Motion to Dismiss and Reply to Return to Motion to Extend Time to File Initial Brief and Designation of Matter in the above referenced matter was mailed, postage prepaid, to Respondent's Attorney, Fred Suggs, by sending to Ogletree Deakins Nash Smoak & Stewart PC, PO Box 2757, Greenville, SC 29602, on June 27, 2014.



D. Alan Lazenby  
Ginger D. Goforth  
Lazenby Law Firm, LLC  
PO Box 6099  
Spartanburg, SC 29304  
Phone: (864) 804-5050  
Fax: (864) 804-5051

**Attorneys for Appellant**

June 27, 2014

# LAZENBY LAW FIRM, LLC

ATTORNEYS AT LAW

D ALAN LAZENBY \*  
GINGER D GOFORTH

\*ALSO LICENSED IN GA

POST OFFICE BOX 6099 (29304)  
340 E MAIN ST, SUITE 240  
SPARTANBURG, SC 29302  
PHONE 864-804-5050  
FAX 864-804-5051

June 27, 2014

**RECEIVED**

JUN 30 2014

The Honorable Jenny Abbott Kitchings  
Clerk of Court for Court Of Appeals  
PO Box 11629  
Columbia SC 29211-1629

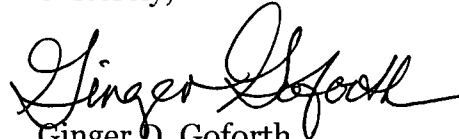
**SC Court of Appeals**

**Re: *Harris v. Tietex International Ltd.***  
**In the Court of Common Pleas for Spartanburg County**  
**C.A. No: 2011-CP-42-4538**  
**Appellate C.A. No: 2014-00902**

Dear Ms. Kitchings,

I enclose herewith an original and six (6) copies of Appellant's Return to Motion to Dismiss and Reply to Return to Motion to Extend Time to File Initial Brief and Designation of Matter, along with Proof of Service.

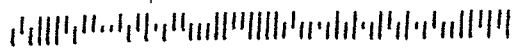
Sincerely,

  
Ginger D. Goforth  
[ginger@lazenbylawfirm.com](mailto:ginger@lazenbylawfirm.com)

GDG: jeh  
Enclosures

cc: Fred Suggs, Esq. (via US Mail)  
Mr. Gary Harris (via email only)  
Alan Lazenby, Esq. (via email only)

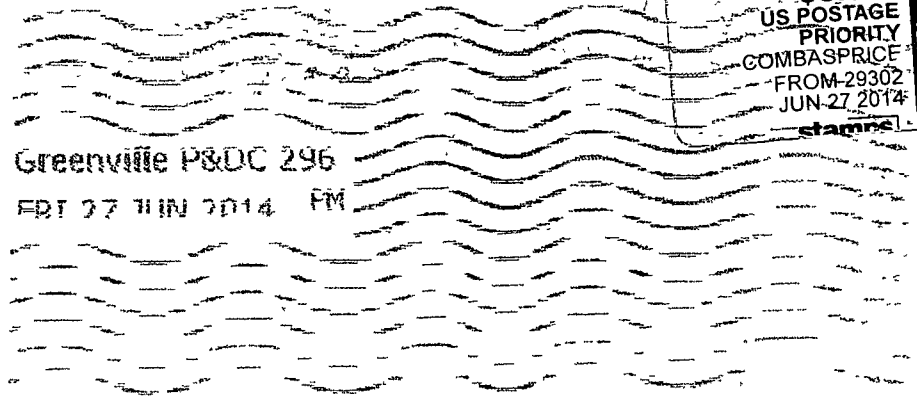
LAZENBY LAW  
PO Box 609  
SPARTANBURG SC 29304



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JUN-27 2014  
stamps

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Greenville P&DC 296  
FRI 27 JUN 2014 PM



THE HONORABLE JENNY ABBOTT KITCHINGS  
CLERK OF COURT FOR COURT OF APPEALS  
PO Box 11629  
COLUMBIA SC 29211-1629

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JUN 30 2014

SC Court of Appeals