

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

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**APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas**

**DeAndrea Gist Benjamin, Circuit Court Judge**

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**Case No. 2013-CP-400-1643  
Appellate Case No. 2014-000583**

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**RECEIVED**

JUN 18 2014

**SC Court of Appeals**

**Samuel T. Brick**

**Appellant**

**v.**

**Richland County Planning Commission**

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**Respondent**

**APPELLANT'S OPPOSITION TO INTERVENOR/RESPONDENT'S  
MOTION TO DISMISS APPEAL**

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Appellant, Samuel T. Brick, *Pro Se*, states he has not intentionally or through lack of diligence failed to comply with any applicable South Carolina Appellate Court Rules (SCACR). Intervenor/Respondent's allegations that Appellant did not follow such rules by failing to notify the Clerk of Court or Intervenor/Respondent of his receipt of the transcript of the lower court proceedings in accordance with Rule 207, SCACR, is without merit. Appellant complied with Rule 207(a)(1) after being advised by the Clerk of Court on March 25, 2014 of his responsibility to send the Office of Court Administration a copy of his Notice of Appeal and advice regarding payment arrangements with the court reporter. He otherwise had complied with such Rule 207 by letter to all the parties, the clerk, and the court reporter on March 19. No other provision of such Rule 207 requires notifications of receipt of the ordered transcript. Appellant

responded on March 26, 2014, to the Clerk of Court's notice of his failure to copy the Administrator and transmitted to the Administrator of Court Administration by First Class United States Postal mail a copy of the letter ordering a transcript with arrangements for payment. He previously followed Form 11 of the SCACR with the exception of a copy of the letter to the S.C. Court Administrator. With the March 26 correspondence was a full description of the agreement reached with the court reporter as to Appellant's payment for the transcript. A copy of this correspondence to the Administrator was provided all counsel of record and the Clerk of the Court and should be in the Appellate Case file. There was no further written correspondence regarding ordering the transcript between the Appellant and the Court Reporter. Upon informal query as to when the transcript would be completed, the court reporter responded to Appellant an approximate time and stated she would advise of the cost when ready and provide a written transcript. Upon such notice, Appellant sent a check and the Court reporter mailed a copy of the transcript to Appellant. Appellant can find no further requirements in Rule 207 or Rule 208, SCACR, that state Appellant must notify the Clerk of this Court or parties of record of the receipt of the transcript. Rule 207(a)(2), SCACR, relating to delivery of the transcript does not address any such notifications. The language in the middle of Rule 207(a)(1) SCACR, regarding correspondence, relates specifically to ordering the transcript. If it is common practice in this Honorable Court for such notifications, Appellant apologizes for not following the practice. Appellant pleads that any violation in this regard should not be a cause for dismissal of a protracted and important case. Appellant met the limiting period within which to file his initial brief as

required by Rule 208, SCACR. He filed his Designation of Matter to be Included in the Record on Appeal as required by Rule 209, SCACR (referencing such Rule 208).

Appellant received the court reporter's transcript of the lower court record on May 2, 2014. The letter of transmittal is dated April 28, 2014, with the mailing envelope dated May 01, 2014 (as indicated on the electronic postage stamp). The Designation of Matter to be Included in the Record and the Initial Brief were filed with the Clerk of Court on May 23, 2014, and on the same date a copy of the foregoing was mailed to each respondent. Respondents to the appeal have had the court reporter's address, email, and phone number since March 26, 2014, and could have ordered copies of the transcript or inquired of its completion. Furthermore, had respondent's counsel inquired as to the time Appellant received the transcript, or expected to receive it or of contact information, Appellant would have provided it. He has provided similar information in the past to the opposing counsels' requests for information.

Intervenor/Respondent further moves the appeal be dismissed because the title of the action as described in Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal do not name Intervenor/Respondent. Rule 10(a), SCRCPC, relating to form for pleadings provides guidance as to the name of parties in a title of the action in civil pleadings. It specifies for the lower court a requirement for naming parties in the summons and complaint but states further pleadings need only state the first party with an appropriate indication of other parties. Appellant followed the title of the case and caption adopted by the Circuit Court Judge who granted Intervenor/Respondent's Motion for Dismissal (and previously its Motion to Intervene) which forms the crux of this appeal. The lower court's caption, as found in the Orders enclosed with

the Notice of Appeal to this Honorable Court do not name the Intervenor/Respondent in the caption. Section 18-1-120, S.C. Leg. Web, S.C. Code of Laws, (2013) states:

“The party appealing shall be known as the appellant and the adverse party as the respondent. But the title of the action shall not be changed as a consequence of the appeal.”

Appellant followed the title of the action the lower court used and following such Section 18-1-120 did not change the title in this appeal other than the notations of appellant and respondent as required by Rule 202, SCACR. Intervenor/Respondent did not provide in its motion any rule within the South Carolina Appellate Court Rules that requires the title of an appeal to vary from that of the lower court or which otherwise applies. Rule 202, SCACR, designates the manner of referring to the party appealing and the adverse party. Rule 267, SCACR, addresses captions but does not address third parties. It references title of the case as does the inset in Rule 267, SCACR. Form 13, SCACR, provides some help in designating a manner of stating the title of the case but none of the forms provide guidance as how to treat third parties. After receipt of this motion Appellant searched for titles of cases with intervening parties to use as a form to follow.

*Be Mi, Inc. d/b/a St. Clements Beach Bar & Grill, Respondent, v. South Carolina Department of Revenue, and St. Clements Homeowners Association, Intervenor, Of whom St. Clements Homeowners Association is the Appellant, and South Carolina Department of Revenue is the Respondent* is an example of a title of an appeal before this Court earlier this year (Opinion No. 5233, Heard April 9, 2014 – Filed May 28, 2014). It includes the intervenor first and the respondent second with a conjunction. This was an appeal from the administrative law court so the provisions of title 18, South Carolina

Code, may not apply as it relates to appeals in civil and criminal actions (Section 18-1-10, S.C. Leg. Web, S.C. Code of Laws, 2013). The Supreme Court in the original jurisdiction case of *Representative Harold Mitchell, Petitioner, v. Spartanburg County Legislative Delegation, Respondent*, 385 S.C. 621, 685 S.E.2d 812 (2009), a case that involved an amicus curiae and intervenor, adopted its original filing as the title of its action on the matter. In another case, the Supreme Court combined in the title to the case the respondent with a party that intervened when the case was before the Supreme Court. See *Rocky Disabato, d/b/a Rocky D., Appellant, v. South Carolina Association of School Administrators, Respondent. State ex rel. Alan Wilson, Attorney General, Intervenor.*, Opinion No. 27286; Heard October 3, 2012 – Filed July 17, 2013. There does not appear to be a specific manner or rule to follow in this regard and Intervenor/Respondent did not cite any.

Appellant does not object to the title of the instant matter including the Intervenor/Respondent. Should this Honorable Court deem that appropriate, Appellant will revise the Final Brief and Record, accordingly. Appellant pleads that the above two matters do not reach the level of necessitating the dismissal of the appeal. Intervenor/Respondent provided no authority in his motion for such a drastic measure and cited no specific rules that Appellant failed to follow or which necessitate such a dismissal. Appellant pleads if such rules or common practice mandate a change in the title, Appellant be allowed to amend the title of the case to include the name of the Intervenor/Respondent in the caption under the authority of Section 18-1-100, S.C. Leg. Web, S.C. Code of Laws, (2013). If an amendment is not necessary but this Court

suggests the Intervenor/Respondent be included, Appellant will accommodate any such suggestion.

WHEREFORE Appellant prays that the Intervenor/Respondent's Motion to Dismiss be denied and for such other and further relief as this Honorable Court deems necessary and proper.

Respectfully submitted:



Samuel T. Brick, Appellant, *Pro Se*  
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**SC Court of Appeals**

**CERTIFICATE OF SERVICE**

I, Samuel T. Brick, Appellant, Pro Se, hereby certify that on this day of June 18, 2014, I served a copy of the foregoing Appellant's Opposition to Intervenor/Respondent's Motion to Dismiss Appeal on all parties by depositing the same in the United States Mail, first class postage prepaid, addressed as below, and that I delivered on the same date the original and six copies of such Opposition to the Clerk of Court at the Clerk's temporary offices at 1205 Pennington Street, Columbia, South Carolina.

Michael B. Wren, Esq.  
William H. Davidson, II, Esq.  
Davidson & Lindemann, P.A.  
Post Office Box 8568  
Columbia, SC 29202-8568

Tobias G. Ward, Jr., Esq.  
J. Derrick Jackson, Esq.  
P.O. Box 6138  
Columbia, SC 29260



Samuel T. Brick, Appellant  
124 Runnymede Drive  
Blythewood, SC 29016  
803 546 4895

June 18, 2014

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JUN 18 2014

**SC Court of Appeals**

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

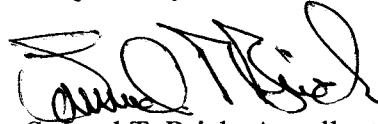
RE: Samuel T. Brick v. Richland County Planning Commission, Case No. 2013-CP-400-1643;  
Appellate Case No. 2014-000583

Dear Madam Clerk:

Enclosed herewith is Appellant's Opposition to Intervenor/Respondent's Motion to Dismiss Appeal in the referenced matter. An original and six copies are enclosed.

As indicated in the Opposition, a copy of the document provided herewith is being served on the other parties to this case by mailing it to them this date. As below a copy of this letter also is being provided.

Respectfully submitted,



Samuel T. Brick, Appellant, Pro Se  
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Enclosures:  
As Stated  
cc:

William H. Davidson, II, Esq.  
Michael B. Wren, Esq.  
Davidson & Lindemann, P.A., Attorneys for Appellee

Tobias G. Ward, Jr., Attorney for Intervener/Appellee  
J. Derrick Jackson, Esq.