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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SEP 04 2015

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2014-002242

Windswept Villas III Horizontal Property Regime..... Respondent,

v.

Elaine Devlin Peery a/k/a Elaine D. Peery.....Appellant.

RESPONDENT'S REPLY TO APPELLANT'S RETURN

Respondent Windswept Villas III Horizontal Property Regime, by and through their undersigned counsel, replies to Appellant's Return to its motion to dismiss Appellant's appeal for failing to comply with Rule 210(c) of the South Carolina Appellate Court Rules, which governs the form and content of the Record on Appeal.

Appellant's Return ignores the rule of law set forth in Rule 210, SCACR, and South Carolina case law, which places the burden of preparing a complete record on appeal on the Appellant. "The appellant must file with the clerk of the appellate court . . . the Record on Appeal" which "shall include all matter designated to be included by any party under Rule 209 [.] Rule 210(b) and (c), SCACR. See *Johnson v. S.C. Dep't of Prob.*, 372 S.C. 279, 282, 641 S.E.2d 895, 896 (2007) (affirming the lower court's decision where the appellant failed to present an adequate record on appeal where the record was incomplete and where the appellant failed to place documents in the record in the proper

order) (“Because court rules require the appealing party to prepare the record on appeal, see Rule 210(a), SCACR, South Carolina courts have traditionally held the appealing party accountable for failing to present the court with an adequate record on appeal for review.”).

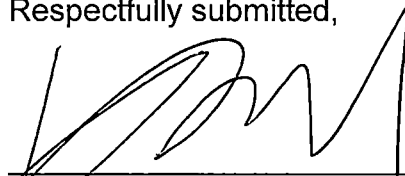
In Respondent’s initial correspondence to the Court, Respondent communicated “[t]here may be additional errors we have not yet caught.” Appellant was – and continues to be – on notice that the Record she is required to compile was incomplete. Nevertheless, Appellant has failed to review and correct the record in its totality submitted to the Court.¹ This was the case notwithstanding counsel’s July 17, 2015 certification that “the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.” Appellant’s statement in her Return that she is “concerned that Respondent does not properly review the record and will continue to complain that the Record on Appeal is not satisfactory in order to receive additional time to submit her final brief” ignores her responsibility to review the record in accordance with her certification to the Court. The Respondent should not be in this situation once – much less twice.

As previously stated in its Motion to Dismiss, Appellant’s persistent errors and omissions have caused undue costs and expenses and delay to Respondent and

¹ Respondent reviewed the limited record citations referenced in Appellant’s Return. Appellant is correct that she included Exhibit D elsewhere in the record (as opposed to with the Windswept’s Reply to Peery’s Submission in Support of her Motion to Vacate and exhibits filed June 17, 2014, as referenced by Respondent’s initial brief and designation of matter). As to Appellant’s assertion there is no handwriting on page 168, both the Court’s record available online as well as Respondent’s record demonstrate otherwise. See online record at p. 168 and attached for a copy of p. 168 received by Respondent.

continue to waste judicial resources. Because this is the second time that the Record on Appeal provided by Appellant's counsel has required numerous corrections, the undersigned respectfully requests that the Court dismiss the appeal for failure to comply with Rule 210(c) of the South Carolina Appellate Court Rules or, in the alternative, simply affirm the lower court's decision in accordance with *Johnson v. S.C. Dep't of Prob.*, 372 S.C. 279, 641 S.E.2d 895 (2007).

Respectfully submitted,



Katie Fowler Monoc (S.C. Bar No. 78131)

Pratt-Thomas Walker, P.A.

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Attorneys for Respondent Windswept Villas III
Horizontal Property Regime

September 1, 2015

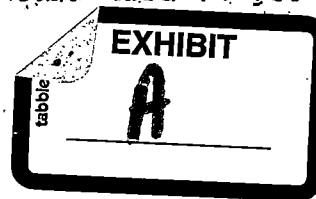
1 out here this afternoon and was just trying to
2 familiarize myself with it. I'll be glad to go into
3 the reasons but, frankly, when somebody asks to be
4 relieved as counsel it has more to do with you and them
5 than it has to do with the other side, although the
6 other side has some interest as whether or not or how
7 that's going to proceed.

8 I will tell you that it's my usual course of
9 business to allow the attorney to withdraw, if that's
10 what they want to do, so I'm glad to hear from you as
11 to why I should or should not do that. Typically what
12 I do is what -- Mr. Gwynno already prepared an order
13 that provides you with some time in which to seek new
14 counsel and to move forward in the relatively near
15 future.

16 I know Mr. Vaughan. I've known him since law
17 school, and I know he's had health issues in the last
18 year and that's part of what's motivating this. I'm
19 glad to hear from you. This is your chance to speak.

20 MS. PERRY: I only know he wants to be relieved
21 as counsel for health problems. I know of no other
22 reason. I'm not quite sure why we're here at this
23 motion today. ¶

24 THE COURT: It would severely impact you because
25 you wouldn't have counsel and you would need to get



1 THE COURT: I'm reading it from your filing in
 2 May. Invoice April 1 through May 5, 2014 was 5,380. And
 3 cost to May 2 were 553.12, the same figure you had here.
 4 I'm going to award that sum, 15,195.62. I'm going to award
 5 that as additional costs. Those are fees and costs.
 6 Interest is whatever interest is.

7 MS. MONOC: Does that include the costs?

8 THE COURT: Yes.

9 MS. MONOC: 15,195.62?

10 THE COURT: Yeah, that's costs. That was based on
 11 your filing of May 6th, which I did review in camera. If
 12 you'd like to submit this additional amount in camera for
 13 review we'll do that and take that up at another time. And
 14 clearly you're entitled to interest. The 4,818 figure is
 15 interest not through today but is that correct, yes?

16 MS. MONOC: Yes, that's correct. If we could
 17 recalculate it.

18 THE COURT: Yes, that's correct. That's for today,
 19 you can put that in your amended.

20 MS. MONOC: Yes.

21 THE COURT: So, 4,000 some
 22 odd dollars.

23 MS. MONOC: Yes, that's correct. I just to
 24 hand up my amended.

25 THE COURT: Sure. The Court has the authority to

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PROOF OF SERVICE

I certify that I have served the Respondent's Reply to Appellant's Return by depositing a copy of it in the United States Mail, postage prepaid, on September 1, 2015, addressed to his attorney of record for Appellant, Vernee C. Hancock, Post Office Box 2276, Summerville, SC 29484 and by Fax 843-851-0183.



Michaela L. Shepherd
Paralegal to Katie F. Monoc

September 1, 2015

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September 1, 2015

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
John C. Calhoun Building
1015 Sumter Street
Columbia, SC 29201

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RE: Windswept Villas III Horizontal Property Regime v. Elaine Devlin Peery
Appellate Case No. 2014-002242

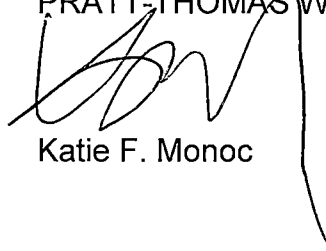
Dear Ms. Kitchings:

This firm represents Respondent Windswept Villas III Horizontal Property Regime in the above-referenced matter. Enclosed please find the original and six copies of Respondent's Reply to Appellant's Return for filing in regards to the above-referenced matter along with the Proof of Service. Once the documents have been filed, I would appreciate your sending us a clocked copy in the envelope provided for that purpose. By copy of this letter to the opposing counsel, I have served the Appellant the Respondent's Reply to the Appellant's Return and Proof of Service.

Thank you for your courtesies and please let me know if you have any questions.

Yours very truly,

PRATT-THOMAS WALKER, P.A.



Katie F. Monoc

KFM\mls
Enclosures (as stated)

cc: Vernee C. Hancock, Esquire
Hancock Law Firm
PO Box 2276
Summerville, SC 29484