

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Diane Schafer Goodstein, Circuit Court Judge

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Case No. 2015-000058

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William McFarland and Jennifer McFarland.....Appellants-Respondents,

v.

Mansour Rashtchian and Amy Rashtchian.....Respondents-Appellants

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RETURN TO MOTION TO DISMISS CROSS-APPEAL

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**RECEIVED**

OCT 22 2015

SC Court of Appeals

COME NOW Respondents/Appellants Mansour Rashtchian and Amy Rashtchian (Respondents/Appellants), by and through their undersigned counsel, to file the following response to Appellants/Respondents William McFarland and Jennifer McFarland (Appellants/Respondents)’s Motion to Dismiss.

### PROCEDURAL BACKGROUND

#### **The Appeal**

The underlying trial for this matter was tried December 8 through December 14 of 2014. Appellants/Respondents’ Notice of Appeal was timely filed. The initial deadline for filing the Initial Appellants’ Briefs was March 25, 2015. This deadline was extended until April 24, 2015 by consent motion. A second Motion was filed to extend the deadline until June 25, 2015 and this Court indicated in its order that “No further extensions will be granted absent extraordinary circumstances.” Appellants/Respondents filed two additional motions for an extension of time with the final deadline being July 7, 2015. Respondents/Appellants filed the Respondents’ Initial Brief of Respondents/Appellants on August 4, 2015, within a month of receiving the Appellants’ Initial Brief.

#### **The Cross-Appeal**

Respondents/Appellants filed their Notice of Cross-Appeal on January 16, 2015. The notice indicates the following:

Mansour Rashtchian and Amy Rashtchian appeal evidentiary rulings of the Honorable Diane Schaefer Goodstein, which excluded evidence proffered by Respondents-Appellants during trial. Respondents-Appellants received a notice of appeal from Appellants-Respondents on January 12, 2015. Respondents-Appellants’ cross-appeal is conditional and need not be addressed should the judgment of the trial court be affirmed

Respondents/Appellants filed their Initial Brief of the Respondents/Appellants on June 24, 2015 in accordance with this Court’s Order extending time for both parties to file their

respective Initial Appellants' Briefs. Appellants/Respondents filed two Motions for Extension pushing the deadline to file their Respondents' Initial Brief until October 8, 2015. On October 8, 2015, eleven months after trial and ten months after the Notice of Cross-Appeal, Appellants/Respondents filed the instant Motion to Dismiss requesting a stay of the proceeding and, thus, essentially requesting a further extension to respond.

### ARGUMENT

#### **Appellants/Respondents' Motion is Untimely and Causes Unreasonable Delay to Both Parties' Appeals**

Counsel for Respondents/Appellants was unable to find any case law or appellate court rule that proscribes the time limits for filing a Motion to Dismiss under Rule 204; however, as indicated above, Appellants/Respondents have had ample time to file a response brief and the instant motion should be dismissed as untimely. Appellants/Respondents are correct in that Respondents/Appellants conditionally appealed to address evidentiary issues and jury charges out of an abundance of caution should the case be remanded for a new trial. Appellants/Respondents have known that this was the basis for the cross-appeal since the Notice of Cross-Appeal was served on January 16, 2015, ten months prior to filing a Motion to Dismiss. Appellants/Respondents have had ample time to raise any issue as to the ability of Respondents/Appellants to present a cross-appeal and have failed to do so. Therefore, the instant motion is untimely and should be dismissed.

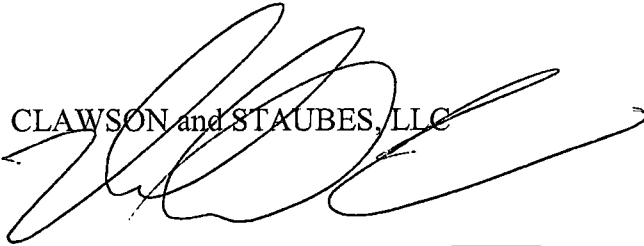
Respondents/Appellants would also assert that judicial economy would be best served by both denying the instant Motion to Dismiss and rendering an opinion on the issues raised within their brief should this Court remand the case for a new trial. Respondents/Appellants have presented specific rulings by the trial court which would serve as bases for appeal should this case be remanded and retried. Further, Respondents/Appellants wish to avoid waiving any

objections as to these rulings becoming the law of the case. Therefore, Appellants/Respondents' motion should be dismissed.

**CONCLUSION**

For the foregoing reasons, Respondents/Appellants respectfully request that Appellants/Respondents' motion be dismissed.

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October 19, 2015

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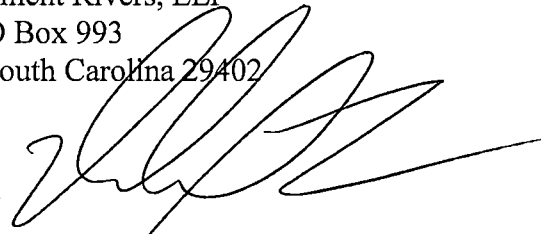
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**PROOF OF SERVICE**

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The undersigned hereby certifies that on the date indicated below he served all counsel of record with a copy of Respondents-Appellants Return to Motion to Dismiss by mailing a copy of the same by United States Mail with first class postage prepaid to the following:

Stephen Brown  
Russell G. Hines  
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October 19, 2015  
Charleston, South Carolina