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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM Horry COUNTY

Court of Common Pleas

The Honorable Clifton B. Newman, Presiding Judge

Case No.: 2010-CP-26-10848  
Appellate Court Case No.: 2015-001398

**RECEIVED**  
FEB 19 2016  
SC Court of Appeals

PAUL CURRY,

Appellant,

v.

TOWN OF ATLANTIC BEACH,

Respondent.

AMENDED RETURN TO RESPONDENT'S MOTION FOR AN EXTENSION  
TO FILE INITIAL BRIEF OUT OF TIME AND MOTION TO STRIKE RESPONDENT'S  
INITIAL BRIEF

Appellant, by and through the undersigned, by way of Return to Respondent's Motion for an Extension and to File Initial Brief Out of Time, objects to Respondent's request and respectfully requests that this Court deny Respondent's Motion. Additionally, Appellant requests that due to Respondent's failure to abide by the Court imposed deadlines, Respondent's proposed Initial Brief should be stricken.

Appellant, filed his Notice of Intent to Appeal in this matter on June 23, 2015. Appellant filed and served Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal on October 15, 2015, making Respondent's Initial Brief due on or before November 14, 2015. On November 11, 2015, Respondent's counsel requested a Thirty (30) day extension to file Respondent's Initial Brief which was received by this Court on November 16, 2015. On December 14, 2015, correspondence was sent from Deputy Clerk V. Claire Allen indicating that Respondent's First Motion for Extension was deficient in that Respondent's counsel failed to

include the filing fee and directed Respondent's counsel to correct the deficiency within Ten (10) days of the date of the Deficiency Letter, making Respondent's correction due on or before December 24, 2015. Respondent's counsel sent correspondence dated December 23, 2015 enclosing Respondent's Motion for an Extension and to File Initial Brief Out of Time, which was received by Appellant's counsel on December 28, 2015. Respondent's counsel attempted to contact Appellant's counsel concerning whether Appellant's counsel would object to Respondent's Motion on December 23, 2015. Prior to Appellant's counsel's office closing for the Christmas holiday, Appellant's counsel contacted Appellant to determine whether he was inclined to consent to Respondent's counsel's request. He was not so inclined. Due to the lateness of the request; Appellant's counsel's office closing and conference calls concerning other pending cases, Appellant's counsel was unable to return Respondent's counsel's telephone call prior to closing for the Christmas holiday. On December 29, 2015, Respondent's counsel filed a Motion for an Extension to File Initial Brief Out of Time wherein she requested an Order allowing her to file Respondent's Initial Brief by December 14, 2015. On December 31, 2015, Appellant's Counsel filed a Return to Motion to File Respondent's Initial Brief Out of Time. On February 11, 2016, Respondent's Counsel filed the Initial Brief of Respondent, Designation of Matter to be Included in Record on Appeal and a Third [Motion] to File Initial Brief Out of Time, wherein Respondent's Counsel requested a Thirty (30) day extension to File Respondent's Initial Brief. Respondent's Counsel has not been granted an Order allowing her to file out of time and has filed a proposed Respondent's Initial Brief Eighty-Nine (89) days after the deadline of November 14, 2015.

Due to Respondent's Counsel's overt disregard of the South Carolina Appellate Court Rules and the guidelines of this Court, Appellate moves to strike Respondent's Initial Brief.

Rule 208 (a) (4), South Carolina Appellate Court Rules states, in pertinent part: "upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper." Appellant would argue that Respondent's failure to abide by the South Carolina Appellate Court Rules represents a continuation of a pattern of dilatory behavior in this matter. During the pendency of this matter in the trial court, Appellant served discovery requests on Respondent which went completely unanswered, until the call of the case for trial, at which time Respondent's counsel attempted to verbally answer the discovery requests at the beginning of the Trial. (See Trial Transcript, page 15, line 14– page 20, line 19). Incidentally, prior to the trial of the matter below, Appellant filed a Motion to Compel Discovery Responses on April 7, 2011, which resulted

in an Order Compelling Discovery Responses from Respondent within Thirty (30) days of the date of the Order, September 1, 2011, and filed on September 16, 2011. The Order Compelling Discovery Responses also awarded Appellant Eight Hundred Seventy One and 52/100ths Dollars (\$871.52) in attorney's fees for Respondent's non-compliance.<sup>1</sup> (See Plaintiff's Exhibit 9; Trial Transcript, page 35, line 24- page 37, line 15). Part of Respondent's failure to answer discovery requests propounded in this case included the failure by Respondent to identify any witnesses it intended to produce at the Trial of this matter, which resulted in a fair amount of discussion at the onset of the Trial, and which is one of the issues on Appeal.<sup>2</sup> (See Trial Transcript page 4, line 6- page 5, line 1; page 6, line 23- page 8, line 1; page 10, lines 1-25).

At the conclusion of the Trial, the Trial Judge, from the bench, ordered both parties to submit written orders for consideration to him within Fifteen (15) days of the Trial, which concluded on January 13, 2014, thus making the proposed Orders due by January 28, 2014. Due to the intervention of an ice storm affecting South Carolina, Appellant's counsel was unable to finish drafting the proposed order and did not forward the same to the Trial Court until February 12, 2014. While Appellant's counsel was unable to meet the imposed deadline, all efforts were made to forward the proposed order for consideration in a timely manner. Respondent's counsel, however, did not forward the proposed order until April 30, 2014.

Due to the pattern of dilatory behavior as shown above, Appellant believes that further extensions and continuances in this matter would serve only to further delay the resolution of this matter and reflects a failure to abide by the Rules of this Court. As such, Appellant respectfully requests that this Court deny Respondent's Motions, strike Respondent's Initial Brief and, pursuant to Rule 208 (a)(4), SCACR, proceed with the Appeal based upon the Briefs timely submitted.

Respectfully submitted,

**[SIGNATURE BLOCK FOLLOWS ON PAGE 4]**

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<sup>1</sup> Respondent did not pay the outstanding award of attorney's fees until after the conclusion of the trial, on January 21, 2014.

<sup>2</sup> Respondent likewise failed to file a pre-trial brief in this matter below.

MULLINS LAW FIRM, P.A.

~~RANDALL K. MULLINS~~ SC Bar No.: 06466

~~JARROD E. OWNBEY~~ SC Bar No.: 75417

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Dated: February 18, 2016  
North Myrtle Beach, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

APPEAL FROM Horry COUNTY  
Court of Common Pleas

Clifton B. Newman, Common Pleas Court Judge

2010-CP-26-10848  
Appellate Case No.: 2015-001398

**RECEIVED**

FEB 19 2016

SC Court of Appeals

PAUL CURRY,

Appellant,

v.

TOWN OF ATLANTIC BEACH,

Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Amended Return to Respondent's Motion for an Extension and to File Initial Brief Out of Time and Motion to Strike Respondent's Initial Brief and Appellant's Motion for Extension to File Reply Brief and for Stay of Deadlines and Requirements via regular U.S. Mail addressed to the following:

Leah B. Moody, Esquire  
PO Box 1015  
Rock Hill SC 29731

JARROD E. OWNBEY SC Bar No.: 75417

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ATTORNEY FOR APPELLANT

Dated: February 18, 2016  
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February 18, 2016

VIA FEDERAL EXPRESS

Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

**RECEIVED**  
FEB 19 2016  
SC Court of Appeals

Re: Paul Curry v. Town of Atlantic Beach  
Civil Action No.: 2010-CP-26-10848  
Appellate Case No.: 2015-001398  
MLF File No.: 2010-312

Dear Clerk Kitchings:


Enclosed please find the original and one (1) copy of the Amended Return to Respondent's Motion for an Extension and to File Initial Brief Out of Time and Motion to Strike Respondent's Initial Brief and the original and one (1) copy of Appellant's Motion for Extension to File Reply Brief and for Stay of Deadlines and Requirements in the above-referenced matter, together with a Proof of Service.

Thank you for your assistance with this matter.

With warmest regards, I remain

Very truly yours,

MULLINS LAW FIRM, PA

  
Jarrod E. Ownbey

JEO/klc

Encls.

cc: Mr. Paul Curry  
Leah B. Moody, Esquire

**fedex**  
Express



FedEx carbon-neutral  
envelope shipping

ORIGIN ID: MYRA (843) 272-8902  
KIMBERLY CRONOS  
MULLINS LAW FIRM  
1312 MADISON DRIVE

SHIP DATE: 18FEB16  
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CAD: 105531417/INET3730

NORTH MYRTLE BEACH, SC 29597  
UNITED STATES US

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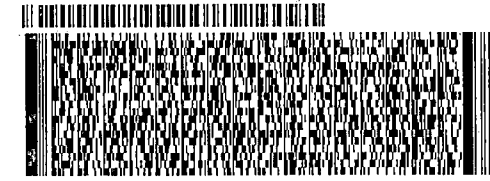
TO THE HONORABLE JENNY ABBOT KITCHINGS  
SOUTH CAROLINA COURT OF APPEALS  
1015 SUMTER ST

COLUMBIA SC 29201

(803) 734-1890  
INV:  
PO:

REF: CURRY 2010312

DEPT:



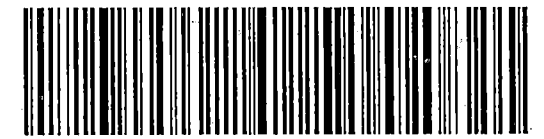
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SC Court of Appeals

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