

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MAY 06 2016

Roger L. Couch, Circuit Court Judge

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**SC Court of Appeals**

Appellate Case No. 2015-002085

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JACOB GREENSPAN,  
Plaintiff/Appellant,

v.

BROTHERS PROPERTY CORP.; BROTHERS  
PROPERTY MANAGEMENT CORP.; VICTOR  
FULLER, Individually and In His Official Capacity;  
ANA REINA, Individually and In Her Official Capacity;  
and OLIVER ROOSKENS, Individually and In His Official  
Capacity,  
Defendants,

Of Whom BROTHERS PROPERTY CORP. and  
BROTHERS PROPERTY MANAGEMENT CORP., are,  
Appellees.

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APPELLEES' RESPONSE IN OPPOSITION TO APPELLANT'S MOTION FOR  
REINSTATEMENT AND/OR MOTION FOR LEAVE TO SERVE AND FILE  
DOCUMENTS OUT OF TIME TO REMEDY DEFAULT

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Appellees Brothers Property Corp. and Brothers Property Management Corp. (collectively, “Brothers”), by and through their undersigned counsel, file this Response in Opposition to Appellant Jacob Greenspan’s (“Appellant”) Motion for Reinstatement and/or Motion for Leave to Serve and File Documents Out of Time to Remedy Default (“Appellant’s Motion”). As discussed more fully below, Appellant’s Motion should be denied because it is untimely. Furthermore, Appellant cannot meet the standard for reinstatement under Rule 260(a) because he failed to file his appellate brief by his **self-imposed deadline** of February 29, 2016. For these reasons, Appellant’s Motion should be denied.

### **I. PROCEDURAL BACKGROUND**

On September 29, 2015, Appellant filed his Notice of Appeal of the order entered by the Charleston County Court of Common Pleas on August 24, 2015 granting Brothers’ Motion to Dismiss Appellant’s Amended Complaint in its entirety with prejudice.<sup>1</sup> On October 21, 2015, Appellant received the transcript of the July 29, 2015 hearing regarding Brothers’ Motion to Dismiss. (Appellant’s Motion at 10.) Therefore, his initial brief was originally due November 20, 2015. *See* Rule 208(a)(1), SCACR (establishing that an appellant’s initial brief is due within 30 days of receipt of the transcript of the proceeding from which appeal is sought). Appellant failed to file his initial brief or request an extension of time to file his initial brief by this deadline. Rather, on December 9, 2015 (19 days after the deadline to file his initial brief), Appellant filed a Motion for Extension of Time to File Initial Brief in which he requested an extension of 30 days until

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<sup>1</sup> On October 22, 2015, Appellant filed an Amended Notice of Appeal stating he received notice of the Circuit Court’s order on August 31, 2015.

January 8, 2016 to file his initial appellate brief. Appellant's motion was granted on December 14, 2015.

On January 8, 2016, Appellant filed another motion for extension of time to file his appellate brief in which he requested a second 30-day extension until February 8, 2016. On January 15, 2016, the Court granted this motion and advised Appellant, "No further extensions will be granted absent extraordinary circumstances." (Jan. 15, 2016 Order.) In defiance of this express warning from the Court, Appellant filed a third motion for extension of time on February 8, 2016 in which he requested an additional 21 days until February 29, 2016 to file his appellate brief. The Court granted this motion on February 24, 2016.<sup>2</sup> Appellant failed to file his initial brief by this self-imposed February 29, 2016 deadline. On April 7, 2016, this Court dismissed Appellant's appeal for failure to file his initial brief and designation of matter. (Apr. 7, 2016 Order.) On April 25, 2016, Appellant filed a Motion for Reinstatement and/or Motion for Leave to Serve and File Documents Out of Time to Remedy Default.

## **II. ARGUMENT**

### **A. Appellant's Motion Is Untimely.**

Rule 260(a) of the South Carolina Appellate Court Rules establishes that a motion to reinstate an appeal must be "actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded)." The Court filed the Order dismissing Appellant's appeal on April 7, 2016. (Apr. 7, 2016 Order.) Accordingly, the Court must have received the instant Motion by April 22, 2016. However, Appellant's Motion was not filed until April 25, 2016. As such, his Motion is

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<sup>2</sup> Appellant claims he did not receive the Court's order. (Appellant's Motion at 2.)

untimely and should be denied. *See, e.g., Wise v. S.C. Dep't of Corrs.*, 372 S.C. 173, 642 S.E.2d 551 (2007) (denying motion to reinstate appeal because proof of service of motion to reinstate was not received by Court of Appeals within requisite 15 days).

**B. Appellant Is Not Entitled to Relief Under Rule 260(a).**

Rule 260(a) of the South Carolina Appellate Court Rules provides that, “A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Appellant has failed to demonstrate the requisite “good cause” to satisfy Rule 260(a), and therefore his Motion should be denied.

As a threshold matter, Appellant must articulate a satisfactory explanation for his failure to act and explain why reinstatement of the appeal would serve the interests of justice. *See Limehouse v. Hulsey*, 2011 S.C. App. LEXIS 124, \*24-25 (Ct. App. June 2, 2011) (interpreting the “good cause” standard set forth in Rule 55(c) of the South Carolina Rules of Civil Procedure). If Appellant meets this burden, the Court must evaluate factors such as the timing of Appellant’s Motion, whether Appellant has a meritorious appeal, and the degree to which Brothers would be prejudiced if Appellant’s Motion is granted. *Id.* at \*25 (interpreting Rule 55(c), SCRCP). Critically, a litigant’s negligent oversight that allegedly causes him to fail to timely act does not constitute “good cause.” *See Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E.2d 263 (2009) (denying motion pursuant to Rule 55(c)).

Here, Appellant concedes that he has failed to file his appellate brief in accordance with the Appellate Court Rules. (Appellant’s Motion at 2 (“Appellant does not dispute that he has failed to serve and file his appellant’s initial brief and designation of matter, as required by Rule 208(a) . . . .”)) Appellant also acknowledges that he

requested an extension until February 29, 2016 to file his appellate brief. (*Id.* at 3.) Based on Appellant's arguments to this Court, it appears that after filing his Motion specifically requesting an extension of time until February 29, 2016 to file his initial brief, Appellant simply sat back and waited to hear from the Court. Even though he allegedly did not receive a response to his Motion by February 29, 2016, Appellant continued to sit idly by and take no action. Had Appellant taken the initiative to contact the Court, he would have learned that his motion was granted. Furthermore, had Appellant actually filed his initial brief by February 29, 2016 or at any time in the subsequent five weeks, this appeal presumably would not have been dismissed on April 7, 2016. Based upon these facts, Appellant has failed to provide the Court with any valid reason, let alone good cause, for reinstating his appeal.

Moreover, Appellant's request for reinstatement of his appeal must be viewed in light of the history of this legal action. That history clearly reveals that Appellant views litigation as some sort of game. On May 6, 2015, Brothers filed its Motion to Dismiss in the Circuit Court and requested a hearing regarding this Motion. (*Id.* at 5.) On June 15, 2015, Appellant filed a motion for extension of time to respond to Brothers' Motion to Dismiss. (*Id.*) On June 23, 2015, Appellant received notice of the July 29, 2015 hearing regarding his motion for extension of time and Brothers' Motion to Dismiss. (*Id.*) Appellant never responded to Brothers' motion, and Appellant admits that he "chose to forgo the opportunity to appear" at the July 29, 2015 hearing. (*Id.* at 6.) Based in part upon Appellant's failure to respond to Brothers' Motion to Dismiss, the Circuit Court granted Brothers' motion.

Appellant's conduct in litigating his appeal is nothing more than a continuation of the same pattern of conduct that plagued this case in the Circuit Court. Specifically, Appellant filed his appeal, but has never made any effort to actually litigate his appeal. Appellant has now filed four motions in this Court requesting additional time to file his initial brief. Moreover, even though more than 180 days elapsed from the time Appellant filed his appeal until his appeal was dismissed, Appellant never made any effort to file his initial brief. Appellant's repeated failure to litigate this case should not be rewarded with reinstatement of his appeal and yet another extension of time for him to file an initial brief. The time has come to put an end to Appellant's game.

### **III. CONCLUSION**

For the foregoing reasons, Brothers respectfully requests that the Court deny Appellant's Motion.

Respectfully submitted this 5th day of May 2016.



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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

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FULLER, Individually and In His Official Capacity;  
ANA REINA, Individually and In Her Official Capacity;  
and OLIVER ROOSKENS, Individually and In His Official  
Capacity,

Defendants,

Of Whom BROTHERS PROPERTY CORP. and  
BROTHERS PROPERTY MANAGEMENT CORP., are,

Appellees.

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CERTIFICATE OF SERVICE

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I certify that I have served Appellees' Response in Opposition to Appellant's Motion for Reinstatement and/or Motion for Leave to Serve and File Documents Out of Time to Remedy Default this 5<sup>th</sup> day of May 2016, on Appellant Jacob Greenspan by depositing the same in the United States Mail, first class postage prepaid, as follows:

Jacob Greenspan  
550 Harbor Cove Lane  
Apt. 15H  
Charleston, SC 29412

[SIGNATURE BLOCK ON FOLLOWING PAGE]



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(864) 232-7000

*Attorneys for Appellees*

Dated this 5<sup>th</sup> day of May 2016.

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May 5, 2016

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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MAY 06 2016

SC Court of Appeals

Re: Greenspan v. Brothers Property Corp., et al.  
Appellate Case No. 2015-002085

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Appellee's Response in Opposition to Appellant's Motion for Reinstatement and/or Motion for Leave to Serve and File Documents Out of Time to Remedy Fault. Please file the original and six copies and return the seventh copy stamped with date of filing in the envelope provided.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance in this regard.

Very truly yours,

JACKSON LEWIS P.C.



John W. Sulau

JWS/amm  
Enclosures

cc: Mr. Jacob Greenspan

envelope shipping

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(803) 734-1890

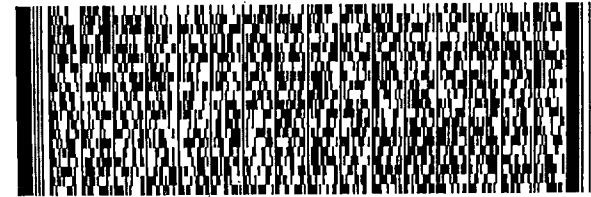
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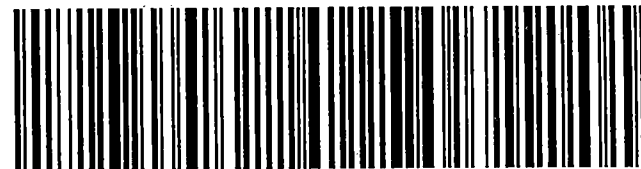
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SC Court of Appeals

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