

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE FIFTH JUDICIAL CIRCUIT
Honorable Alison Renee Lee, Presiding

RECEIVED
NOV 17 2016
SC Court of Appeals

Case No. 2016-000491

Crystal Faye ClarkAppellant,

v.

Housing Authority of the City of ColumbiaRespondent

RESPONDENT'S SECOND AMENDED MOTION TO DISMISS


Respondent, Housing Authority of the City of Columbia, respectfully requests the clerk to issue an order of dismissal pursuant to Rule 260(a), SCACR, for Appellant's (1) failure to timely serve a copy of the Record on Appeal on Respondent within thirty (30) days after service of Appellant's Initial Reply Brief pursuant to Rule 210(a), SCACR, and (2) failure to serve a Record of Appeal in conformity with Rule 210(c), SCACR. Appellant served her Initial Reply Brief on September 26, 2016, without requesting an extension, and the Court did not grant any such extension to the deadline set forth under Rule 210(a), SCACR. On November 9, 2016, Appellant served the Record on Appeal upon Respondent. Because it appears that Appellant has failed to comply with the requirements of Rule 210, SCACR, Appellant's case should be dismissed with prejudice.

[Signature on Next Page]

Respectfully Submitted,

BOYKIN & DAVIS, LLC

By:



Kenneth A. Davis, Esq.
Shawn D. Eubanks, Esq.
Adam J. Mandell, Esq.

P.O. Box 11844
Columbia, SC 29211
Telephone: (803) 254-0707
Facsimile: (803) 254-5609

Attorneys for Housing Authority of the City
of Columbia

November 17, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Chief Judge

Case No.: 2016-000491

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NOV 17 2016

SC Court of Appeals

Crystal Faye Clark, Appellant,

v.

Housing Authority of The City of Columbia Respondent.

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S
SECOND AMENDED MOTION TO DISMISS**

Kenneth A. Davis
Shawn D. Eubanks
Adam J. Mandell

BOYKIN & DAVIS, LLC
P.O. Box 11844
Columbia, SC 29211
Telephone: (803) 254-0707
Facsimile: (803) 254-5609

Attorneys for Respondent

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STATEMENT OF THE FACTS

This matter is on appeal from the Court of Common Pleas of the Fifth Judicial Circuit. On March 8, 2016, Appellant filed her Notice of Appeal. Appellant subsequently filed her Initial Brief on July 14, 2016, with Respondent filing its Initial Brief on September 14, 2016, thereafter. On September 26, 2016, Appellant served upon Respondent her Reply Brief. (Exhibit 1: Initial Reply Brief of Appellant). On November 9, 2016, Appellant served the Record on Appeal on Respondent. Respondent filed this Motion to Dismiss on November 2, 2016, its Amended Motion to Dismiss on November 10, 2016, and this Second Amended Motion to Dismiss on November 17, 2016.

ARGUMENT

Pursuant to Rule 260(a) of the South Carolina Appellate Court Rules, “[w]henver it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.” SCACR 260. An appellant is required to “serve a copy of the Record on Appeal on each party who has served a brief” within thirty (30) days of service of her last brief, with proof of service being filed immediately with the clerk. SCACR 210(a). The Appellant must include in the Record on Appeal “all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267,” with each page being numbered consecutively. SCACR 210(c). Additionally, “[w]hen a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record.” Id.

“The South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.”

Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (finding that the Court would be justified in dismissing the appeal due to appellant's violations of the South Carolina Appellate Court Rules).

In the present case, Appellant served her last brief upon Respondent on September 26, 2016, making service of the Record on Appeal due on October 26, 2016. At no such time prior to October 26, 2016, did Appellant request an extension of the thirty-day deadline set forth under Rule 210(a) nor did this Court grant such an extension. On November 9, 2016, two (2) weeks following the expiration of the deadline imposed by Rule 210(a), Appellant served the Record on Appeal upon Respondent. However, the Record on Appeal as served fails to comply with the content requirements of Rule 210(c) in that it (1) lacks matter designated to be included by Respondent under Rule 209; (2) is not paginated consecutively; and (3) fails to include the entire copy of an order, judgment, decision, or pleading when required to do so. Because the Appellant has failed to comply with Rule 210, this Court should dismiss this appeal under Rule 260(a).

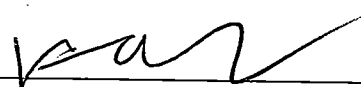
CONCLUSION

For the aforementioned reasons, this appeal should be dismissed with prejudice.

[Signature on Next Page]

Respectfully Submitted,

BOYKIN & DAVIS, LLC

By: 
Kenneth A. Davis, Esq.
Shawn D. Eubanks, Esq.
Adam J. Mandell, Esq.

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Columbia, South Carolina 29211
Telephone: (803) 254-0707
Facsimile: (803) 254-5609

Attorneys for Housing Authority of the City of
Columbia

November 17, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE FIFTH JUDICIAL CIRCUIT
Honorable Alison Renee Lee, Presiding

Case No. 2014-CP-40-07011

RECEIVED

NOV 17 2016

SC Court of Appeals

Crystal Faye Clark.....Appellant,

V.

Housing Authority of the City of Columbia.....Respondent

PROOF OF SERVICE

I certify that I have served the **MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S SECOND AMENDED MOTION TO DISMISS** in the above-referenced matter on all opposing counsel of record, by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 17th day of November:

Johnny Elliot Watson, Sr., Esq.
P.O. Box 2305
Columbia, South Carolina 29202



Kiara L. Lewis, Paralegal

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE FIFTH JUDICIAL CIRCUIT
Honorable Alison Renee Lee, Presiding

Case No. 2014-CP-40-07011

Crystal Faye Clark.....Appellant,

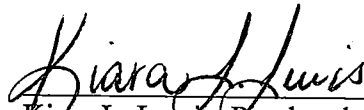
V.

Housing Authority of the City of Columbia.....Respondent

PROOF OF SERVICE

I certify that I have served the **RESPONDENT'S SECOND AMENDED MOTION TO DISMISS** in the above-referenced matter on all opposing counsel of record, by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 17th day of November:

Johnny Elliot Watson, Sr., Esq.
P.O. Box 2305
Columbia, South Carolina 29202



Kiara L. Lewis, Paralegal

BOYKIN & DAVIS, LLC

Attorneys and Counselors at Law

220 STONERIDGE DRIVE, SUITE 100
COLUMBIA, SOUTH CAROLINA 29210

TELEPHONE: 803-254-0707
FACSIMILE: 803-254-5609

POST OFFICE BOX 11844
COLUMBIA, SOUTH CAROLINA 29211

Kenneth A. Davis
kdavis@boykinlawsc.com

November 17, 2016

VIA HAND-DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
1220 Senate Street
Columbia, South Carolina 29211

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NOV 17 2016

SC Court of Appeals

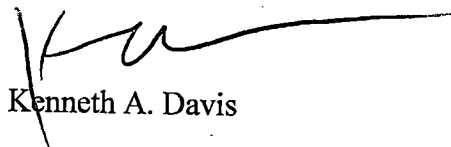
Re: Crystal Faye Clark vs. Housing Authority of The City of Columbia
Lower Case Number: 2014-CP-40-07011
Appellate Case Number: 2016-000491

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of the Respondent's Second Amended Motion to Dismiss and Memorandum of Law in Support of Respondent's Second Amended Motion to Dismiss in the above-referenced matter. Please return a time-stamped copy to our courier.

Thank you for your assistance in this matter.

Sincerely,



Kenneth A. Davis

/kll

Enclosures

cc: Johnny E. Watson, Esq. (w/ encls.)
Shawn D. Eubanks, Esq. (w/o encls.)
Adam J. Mandell, Esq. (w/o encls.)

BOYKIN & DAVIS, LLC
Attorneys and Counselors at Law

POST OFFICE BOX 11844
COLUMBIA, SOUTH CAROLINA 29211

VIA HAND-DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
1220 Senate Street
Columbia, South Carolina 29211