

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

Appellate Case No. 2015-002157
Case No. 2015-CP-46-02223

Reginald Evans,

Appellant,

v.

Paces River Apartments,

Respondent.

**RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR
REINSTATE OF APPELLANT APPEAL**

Respondent, Paces River Apartments, hereby submits this Respondent's Return to Appellant's Petition for Reinstatement of Appellant Appeal and request that said Petition be denied.

Appellant has failed to timely meet the deadlines regarding this appeal. On November 21, 2016, the Clerk for the Court of Appeals notified the Appellant that ". . . the record on appeal must be served and proof of service filed with this Court no more than fifteen days from the date of this letter. Failure of the appellant to serve the record on appeal within fifteen days will result in the dismissal of the appeal."

On December 6, 2016, the Appellant served the Respondent with the Appellants' Designation of Matter to Be Included in the Record on Appeal (the Proof of Service states December 5, 2016, however, the post date on the envelope is December 6, 2016). The Appellant failed to file the

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Record on Appeal as directed by the Court.

The Respondent notified the Court on December 13, 2016, that they did not receive the Record on Appeal but instead was served with the Appellant's Designation of Matter to Be Included in the Record on Appeal and requested that the court dismiss this appeal.

On December 16, 2016, the Appellant notified the Court that he was objecting to the Respondent's request because he alleges he filed his Record on Appeal. The Clerk determined on January 9, 2017, that based on the Respondent's correspondence and the documents filed with the Court that they presume the proper record on appeal had not been served or filed. The Court further instructs that the Appellant must serve and file the Record on Appeal, along with a motion asking the Court to accept his Record on Appeal late, within ten days of the date of the letter. The Court further stated that "Failure to serve and file your motion, one unbound record on appeal, all bound copies of the record on appeal, and proof of service of the record on appeal within ten days will result in the dismissal of your appeal."

The Appellant submitted his Motion to Proceed on January 18, 2017 and served the Respondent on January 19, 2017 (the Proof of Service states January 18, 2017, however the post date on the envelope is January 19, 2017). In his motion, the Appellant once again alleges that he mailed the Record on Appeal to the Respondent and that it was in the same format as their Record on Appeal. As the Respondent has not filed a Record on Appeal in this matter, it is not possible that he filed his Record in the same format. As of this date, the Record on Appeal does not appear to have been filed.

On January 19, 2017, the Clerk notified the Appellant that since he did not include the filing fee with his motion, no further action will be taken with regard to his request. The court also issued

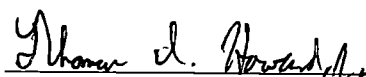
an Order on January 19, 2017, dismissing because of his failure to timely serve and file the record on appeal.

The Appellant filed his Petition for Reinstatement of Appellant Appeal on January 27, 2017 and served the Respondent on the same day. The Appellant alleges that his appeal was dismissed because of his failure to include the motion filing fee. Appellant further alleges that he was not informed of the filing fee requirement and since the filing fee was waived when he filed the initial appeal, he thought all fees were waived. This case was previously dismissed on May 9, 2016, for failure of the Appellant to serve and file his Initial Brief and Designation of Matter. The Court allowed the case to be reinstated because the Order was sent to the incorrect address. The Court notified the Appellant that they would consider reinstatement of his appeal if Appellant served and filed a motion to reinstate among other documents. The appellant failed to pay the motion filing fee and the court notified the Appellant on July 7, 2016, that the required filing fee had not been submitted and that all motions filed with Court must be in compliance with Rule 240 of the SCACR. The Respondent can only presume that the Appellant paid the fee as the appeal was reinstated.

Respondent believes that Appellant's appeal was properly dismissed because, Rule 260 of the South Carolina Appellate Court Rules provides that "(a) [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." The Order issued by the Court on January 19, 2017, specifically states that the appeal is dismissed because of the Appellant's failure to timely serve and file the record on appeal. In Henning v. Kaye, the South Carolina Supreme Court stated that the SCACR "are not mere technicalities, but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is

incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” 307 S.C. 436, 437 415 S.E.2d 794(1992). While The Court in Henning was examining and ruling on a motion to dismiss for failure to comply with the rules for the initial brief and decided to allow revisions, the Court did opine that it “would be completely justified in dismissing this appeal based on appellant’s numerous violations of the Rules....” Id. at 438. As mentioned previously, this is not the first dismissal nor the first deficiencies for non-compliance with the South Carolina Appellate Court Rules that have been brought to Appellant’s attention by the Court.

In light of the foregoing, Respondent objects to Appellant’s Petition and requests that the court’s Order of January 19, 2017 dismissing the appeal be upheld and the remittitur be sent as provided by Rule 221(b), SCACR.


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February 7, 2017
North Charleston, SC

Other Counsel of Record:
Reginald D. Evans, Pro Se

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v.

BH Management,

Respondent.

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CERTIFICATE OF SERVICE

I certify that I have served the **Respondent's Return to Appellant's Petition for Reinstatement of Appellant Appeal** on Reginald Evans by depositing a copy of it in the United States Mail, Postage Prepaid, on **February 7, 2017** addressed to him at:

Reginald Evans
1200 Broad Street, #123
Sumter, SC 29150

Thomas I. Howard, Jr.

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February 7, 2017

Via Facsimile and U.S. Mail

Ms. Jenny Abbott Kitchings
The SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: **Reginald Evans v. Paces River Apartments**
Appellate Case No: 2015-002157
Our File No.: 30113-00006

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Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of Respondent's Return to Appellant's Petition for Reinstatement of Appellant Appeal and Certificate of Service in this matter. Please file the same and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, we are hereby serving the same upon the appellant, Reginald Evans.

Thank you for your assistance in this matter. Please do not hesitate to contact me should you have any questions or need additional information.

With kindest regards, I am,

Sincerely yours,

BROWNLEE WHITLOW PRAET & FILE, PLLC

Thomas I. Howard, Jr.
Thomas I. Howard, Jr.

TIH, JR./jlw

cc: Reginald Evans (via U.S. Mail)

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The SC Court of Appeals

Ms. Jenny Abbott Kitchings

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