

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 1, 2012

Joshua L. Howard, Esquire
Haynsworth Sinkler Boyd, P.A.
P. O. Box 2048
Greenville, SC 29602

Wallace K. Lightsey, Esquire
Hannah Rogers Metcalf, Esquire
Wyche Burgess Freeman & Parham, PA
P O Box 728
Greenville, SC 29602

Re: Ballard, Andrew v. Roberson, Tim

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellants	10 minutes
Respondent	10 minutes
Appellants in Reply	5 minutes

This case is scheduled for hearing on Tuesday, February 7, 2012 at 9:30 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By Debbie M. Hopkins
Administrative Assistant

DES/dmh

W Y C H E

Attorneys at Law

January 30, 2012

Hon. Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

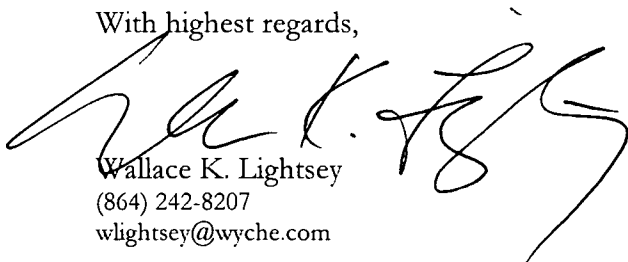
Re: *Andrew Ballard v. Tim Roberson*

Dear Mr. Shearouse:

I would like to withdraw the request for continuance made in my January 27 letter to you. We have been able to work something out so that the continuance is no longer needed.

I'm sorry for any inconvenience this may have created.

With highest regards,



Wallace K. Lightsey
(864) 242-8207
wlightsey@wyche.com

cc: Joshua L. Howard, Esquire
Andy Ballard

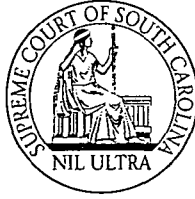
RECEIVED

JAN 31 2012

S.C. SUPREME COURT

W Y C H E
PROFESSIONAL ASSOCIATION

44 East Camperdown Way, Greenville, SC 29601-3512
p: 864.242.8200 | f: 864.235.8900
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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

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January 30, 2012

Wallace K. Lightsey, Esquire
Hannah Rogers Metcalf, Esquire
Wyche Burgess Freeman & Parham, PA
P. O. Box 728
Greenville, SC 29602

Re: Ballard, Andrew v. Roberson, Tim

Dear Counsel:

This is in response to your letter dated January 27, 2012 requesting a continuance of the oral arguments scheduled in the above entitled matter. Pursuant to a telephone conversation with a member of your staff on today's date, it is our understanding you have elected to withdraw this request.

Please be advised no action will be taken on this request and the oral arguments will be held on Tuesday, February 7, 2012 at 9:30 a.m. as originally scheduled.

Enclosed we are returning your check no. 118651 in the amount of \$25.00.

Very truly yours,

CHIEF DEPUTY CLERK

BFS/dmh

Enclosure

Ballard, Andrew v. Roberson, Tim
Page Two
January 30, 2012

cc: Joshua L. Howard, Esquire

W Y C H E

Attorneys at Law

January 27, 2012

Hon. Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

JAN 30 2012

S.C. SUPREME COURT

Re: *Andrew Ballard v. Tim Roberson*

Dear Mr. Shearouse:

I am writing to request a continuance of the oral argument in the above case, which is presently scheduled for February 7 at 9:30.

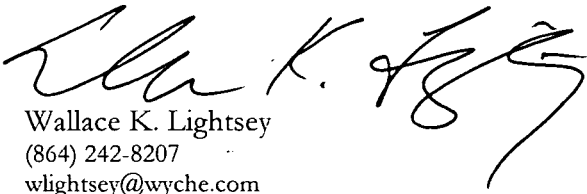
I have been in trial in federal district court in Nashville for the past two weeks. I expected the trial to be finished by this week, but unfortunately it has dragged out and now appears that it will continue through all of next week. Since this will leave me very little time to prepare for the oral argument on the 7th of February, I would be extremely grateful if the Court could reschedule the argument, even if only for a week.

My situation is exacerbated because I was not involved in the trial or appellate brief-writing for this case. I took over for Frank Holleman when he left to join the Southern Environmental Law Center. Since I did not participate in the trial or in the writing of our appellate brief, I do not have the familiarity with the case that I would otherwise have, and therefore need more than the usual amount of time to prepare for argument.

I have communicated with opposing counsel concerning this, and they do not oppose my request for continuance.

Thank you for considering this request.

With highest regards,



Wallace K. Lightsey
(864) 242-8207
wlightsey@wyche.com

cc: Joshua L. Howard, Esquire
Andy Ballard

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PROFESSIONAL ASSOCIATION

44 East Camperdown Way, Greenville, SC 29601-3512
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W Y C H E

Attorneys at Law

December 12, 2011

Hon. Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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DEC 18 2011

S.C. SUPREME COURT

Re: *Andrew Ballard v. Tim Roberson*

Dear Mr. Shearouse:

Thank you for the letter concerning scheduling of argument in this case in February.

I am writing to request that the argument not be set for February 23, if possible, as I have a meeting of the Board of the S.C. Bar Foundation that day. Of course, if the argument is scheduled on that day, I can miss the Foundation meeting, but would prefer not to miss it if I can.

Thank you for considering this request.

With highest regards,



Wallace K. Lightsey
(864) 242-8207
wlightsey@wyche.com

cc: Joshua L. Howard, Esquire

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PROFESSIONAL ASSOCIATION

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The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Wallace K. Lightsey, Esquire
Hannah Rogers Metcalf, Esquire
From: Daniel E. Shearouse
Date: December 12, 2011
RE: February Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the February 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of February 7, 8, 9, 22 and 23. Please notify this office in writing prior to December 20, 2011 as to any scheduling conflicts for the February term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Ballard, Andrew v. Roberson, Tim



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

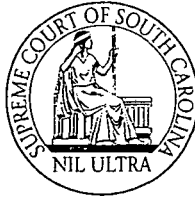
P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Joshua L. Howard, Esquire
From: Daniel E. Shearouse
Date: December 12, 2011
RE: February Preliminary List

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Ballard, Andrew v. Roberson, Tim



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 7, 2011

Joshua L. Howard, Esquire
Haynsworth Sinkler Boyd, P.A.
P. O. Box 2048
Greenville, SC 29602

Wallace K. Lightsey, Esquire
Hannah Rogers Metcalf, Esquire
Wyche Burgess Freeman & Parham, PA
P O Box 728
Greenville, SC 29602

Re: Ballard, Andrew v. Roberson, Tim

Dear Counsel:

When the roster for the January 2012 term of Court was prepared, the above referenced case was not scheduled. Our records indicate that you are counsel of record in this case.

This case will be placed on the February 2012 Preliminary List of Cases. Court will meet the days of February 7, 8, 9, 22 and 23.

Very truly yours,

CLERK

DES/dmh

W Y C H E

Attorneys at Law

November 15, 2011

Hon. Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Andrew Ballard v. Tim Roberson*

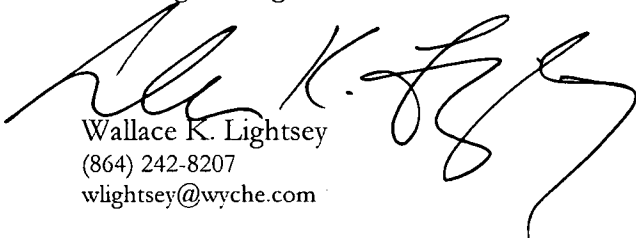
Dear Mr. Shearouse:

This is in response to your memorandum concerning the potential scheduling of the above case for argument on January 10, 11, 24, 25, or 26.

I have an appeal pending before the South Carolina Court of Appeals that has been tentatively set for argument during its term of January 9-12. Of course, I recognize that the Supreme Court would take priority over the Court of Appeals, and therefore simply wanted to bring this to your attention. We have not yet received a specific date of argument from the Court of Appeals.

As to the latter dates in January, I have a trial scheduled in federal District Court in Nashville, Tennessee, for January 17-26, and therefore respectfully request that the *Ballard v. Roberson* argument not be scheduled during that time frame.

With highest regards,



Wallace K. Lightsey
(864) 242-8207
wlightsey@wyche.com

RECEIVED

NOV 17 2011

S.C. SUPREME COURT

W Y C H E
PROFESSIONAL ASSOCIATION

44 East Camperdown Way, Greenville, SC 29601-3512
p: 864.242.8200 | f: 864.235.8900
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The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Wallace K. Lightsey, Esquire
Hannah Rogers Metcalf, Esquire
From: Daniel E. Shearouse
Date: November 10, 2011
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 10, 11, 24, 25 and 26. Please notify this office in writing prior to November 18, 2011 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Ballard, Andrew v. Roberson, Tim



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Joshua L. Howard, Esquire
From: Daniel E. Shearouse
Date: November 10, 2011
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 10, 11, 24, 25 and 26. Please notify this office in writing prior to November 18, 2011 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Ballard, Andrew v. Roberson, Tim

The Supreme Court of South Carolina

Andrew P. (Andy) Ballard, Respondent,

v.

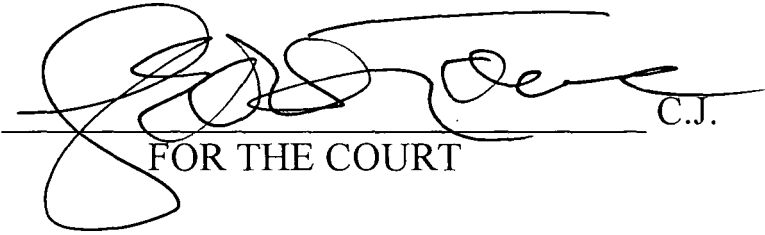
Tim Roberson, Rick Thoennes,
Rick Thoennes III, and
Warpath Development, Inc., Appellants.

The Honorable Edward W. Miller
Greenville County
Trial Court Case No. 2008-CP-23-05739

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court. Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

October 4, 2011

cc: Joshua L. Howard, Esquire
Wallace K. Lightsey, Esquire
Hannah Rogers Metcalf, Esquire
The Honorable Tanya Gee

W Y C H E

Attorneys at Law

April 21, 2011

The Honorable Tanya Gee
Clerk of Court
SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

APR 22 2011

SC Court of Appeals

Re: *Andrew (Andy) P. Ballard vs. Tim Roberson, et al.*
Case No.: 2008-CP-23-5739
Case Tracking No.: 2010164266

Dear Ms. Gee:

Enclosed please find for filing with the Court the original and 15 copies of the Final Brief of Respondent, the Certificate of Counsel, and our Proof of Service in connection with the above-referenced matter. Please return a file stamped copy to us in the enclosed self-addressed, stamped envelope.

By copy of this letter we are serving a copy of the Final Brief of Respondent on counsel for the appellants.

Thank you for your assistance.

Very truly yours,



Hannah Rogers Metcalfe
864-242-8212
hmetcalfe@wyche.com

Enclosures

cc: Joshua L. Howard, Esq., with enclosure
Wallace K. Lightsey, Esq.

W Y C H E
PROFESSIONAL ASSOCIATION

44 East Camperdown Way, Greenville, SC 29601-3512
p: 864.242.8200 | f: 864.235.8900
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Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

JOSHUAL L. HOWARD, ESQ.
DIRECT DIAL NUMBER 864.240.3202
EMAIL jhoward@hsblawfirm.com

April 20, 2011

VIA FEDERAL EXPRESS

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

APR 21 2011

SC Court of Appeals

Re: Andrew P. (Andy) Ballard v. Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc.; Case Tracking No.: 2010164266

Dear Ms. Gee:

Please find enclosed for filing in the above-referenced case the following:

1. Final Brief of Appellants – Original and 15 copies with original being unbound;
2. Final Reply Brief of Appellants – Original and 15 copies with original being unbound;
3. Certificate of Counsel certifying compliance with Rule 211(b) for the Final Brief and Final Reply Brief.
4. Proof of Service.

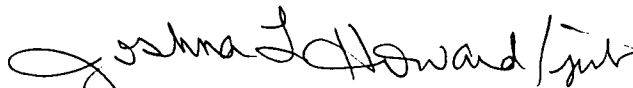
Please return a filed-stamped copy of this correspondence and documents to me in the enclosed self-addressed stamped envelope. By copy of this letter, I am serving the Appellants' Final Brief and Final Reply Brief on counsel for Respondent.

Thank you for your assistance and please do not hesitate to contact me should you have any questions.

With kind personal regards, I am

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.



Joshua L. Howard

JLH:mlw
Enclosures

cc: Frank Holleman III, Esquire
Hannah Rogers Metcalf, Esquire

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
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WEBSITE www.hsblawfirm.com

JOSHUAL L. HOWARD, ESQ.
DIRECT DIAL NUMBER 864.240.3202
EMAIL jhoward@hsblawfirm.com

April 1, 2011

VIA FEDERAL EXPRESS

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Andrew P. (Andy) Ballard v. Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc.; Case Tracking No.: 2010164266

Dear Ms. Gee:

Please find enclosed for filing in the above-referenced case the following:

1. Record on Appeal, Volumes I, II and III with Certificate of Counsel - original unbound;
2. Record on Appeal, Volumes I, II and III - 14 bound copies; and
3. Certificate of Service.

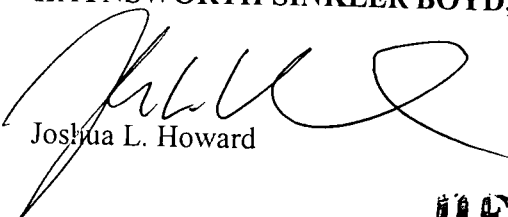
Please return a filed-stamped copy of this correspondence and Certificate of Service to me in the enclosed self-addressed stamped envelope. By copy of this letter, I am serving the Record on Appeal upon counsel for Respondent.

Thank you for your assistance and please do not hesitate to contact me should you have any questions.

With kind personal regards, I am

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.


Joshua L. Howard

JLH:mlw
Enclosures

cc: Frank Holleman III, Esquire
Hannah Rogers Metcalf, Esquire

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APR 04 2011

SC Court of Appeals



1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

[illegible]

W Y C H E

WYCHE BURGESS FREEMAN & PARHAM, P.A.

Attorneys at Law

March 21, 2011

The Honorable Tonya A. Gee
Clerk, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: *Andrew P. (Andy) Ballard v. Tim Roberson, et al.*
Case No.: 2008-CP-23-5739
Case Tracking No. 2010164266

RECEIVED

MAR 23 2011

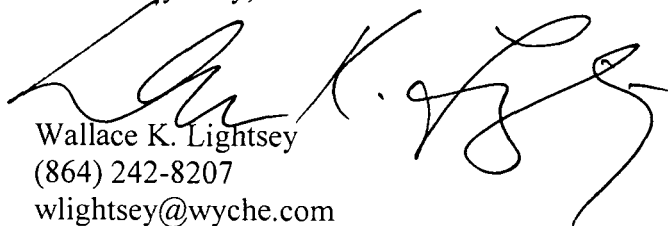
SC Court of Appeals

Dear Ms. Gee:

I am writing to notify the Court that Frank S. Holleman III will no longer be counsel of record for respondent Andrew Ballard in the above-referenced case. Mr. Holleman is joining the Southern Environmental Law Center as a Senior Attorney. Wyche, Burgess, Freeman & Parham, P.A., including the undersigned, will continue to represent the respondent.

By copy of this letter we are notifying counsel for appellants of Mr. Holleman's departure. If you have any questions or need anything further, please do not hesitate to contact us.

Yours very truly,


Wallace K. Lightsey
(864) 242-8207
wlightsey@wyche.com

cc: Joshua L. Howard, Esq., counsel for appellants
Hannah Rogers Metcalfe, Esq., counsel for respondent



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 8, 2011

Joshua L. Howard, Esquire
Haynsworth Sinkler Boyd, P.A.
P O Box 2048
Greenville, SC 29602

Re: Ballard, Andrew v. Roberson, Tim
Case #2010164266

Dear Counsel:

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/jt

cc: Frank Holleman, III, Esquire
Hannah Metcalf, Esquire

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-05739

RECEIVED

MAR 07 2011

SC Court of Appeals

Andrew P. (Andy) Ballard, ... Respondent,

v.

Tim Roberson, Rick Thoennes, Rick Thoennes III,
and Warpath Development, Inc. Appellants.

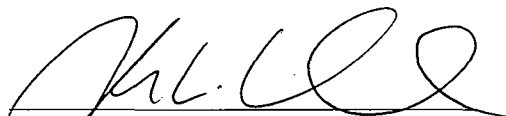
**APPELLANTS' DESIGNATION OF ADDITIONAL MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellants propose that the following additional documents be included in the
Record on Appeal:

1. Order of December 10, 2009;
2. Plaintiff's Motion for Summary Judgment dated October 27, 2009;
3. Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary
Judgment and in Support of Plaintiff's Motion for Summary Judgment dated
November 12, 2009;
4. Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary
Judgment dated November 13, 2009;
5. Defendant's Supplemental Memorandum in Support of Defendants' Motion to
Dismiss or for Summary Judgment and in Opposition to Plaintiff's Motion for
Summary Judgment dated November 19, 2009.

I certify that this designation contains no matter which is irrelevant to this appeal.

March 4, 2011

A handwritten signature in black ink, appearing to read "J.L. Howard", written over a horizontal line.

Joshua L. Howard, S.C. Bar # 70260
HAYNSWORTH SINKLER BOYD, P.A.
75 Beattie Place
Two Liberty Square, Eleventh Floor
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200
Attorneys for Appellants

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-05739

RECEIVED
MAR 07 2011
SC Court of Appeals

Andrew P. (Andy) Ballard, ... Respondent,

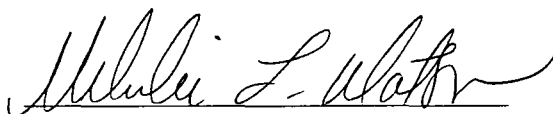
v.

Tim Roberson, Rick Thoennes, Rick Thoennes III,
and Warpath Development, Inc. Appellants.

PROOF OF SERVICE

I HEREBY CERTIFY that true and correct copies of APPELLANTS' INITIAL
REPLY BRIEF and APPELLANTS' DESIGNATION OF ADDITIONAL MATTER TO
BE INCLUDED IN THE RECORD ON APPEAL were served upon all counsel of record
on this the 4th day of March, 2011, by placing a copy of the same in the U.S. Mail,
postage prepaid to the following address:

Frank S. Holleman III
Hannah Rogers Metcalf
WYCHE BURGESS FREEMAN & PARHAM
P.O. Box 728
Greenville, South Carolina 29602



Melodie L. Watson, CP
Paralegal to Joshua L. Howard
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, Eleventh Floor (29601)
P.O. Box 2048
Greenville, SC 29602
Phone: (864) 240-3223/Fax: (864) 240-3300

GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

JOSHUAL L. HOWARD, ESQ.
DIRECT DIAL NUMBER 864.240.3202
EMAIL jhoward@hsblawfirm.com

March 4, 2011

VIA FEDERAL EXPRESS

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

MAR 07 2011

SC Court of Appeals

Re: Andrew P. (Andy) Ballard v. Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc.; Case Tracking No.: 2010164266

Dear Ms. Gee:

Please find enclosed for filing in the above-referenced case, an original and one copy of the following documents:

1. Appellants' Initial Reply Brief;
2. Appellants' Designation of Additional Matter to be Included in the Record on Appeal; and
3. Certificate of Service of documents.

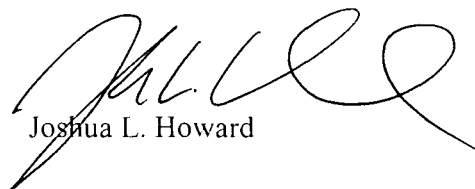
Please return a filed-stamped copy of each document to me in the enclosed self-addressed stamped envelope. By copy of this letter, I am serving a copy of these documents upon counsel for Respondent.

Thank you for your assistance and please do not hesitate to contact me should you have any questions.

With kind personal regards, I am

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.



Joshua L. Howard

JLH:mlw
Enclosures

cc: Frank Holleman III, Esquire
Hannah Rogers Metcalf, Esquire

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

RECEIVED
FEB 07 2011

SC Court of Appeals

Case No. 2008-CP-23-05739

Andrew P. (Andy) Ballard,.....Respondent,

v.

Tim Robertson, Rick Thoennes, Rick Thoennes III,
And Warpath Development, Inc.....Appellants.

**RESPONDENT'S DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Frank S. Holleman III (No. 2564)
Hannah Rogers Metcalfe (No. 73046)
WYCHE BURGESS FREEMAN &
PARHAM
Post Office Box 728
Greenville, SC 29602
(864) 242-8200

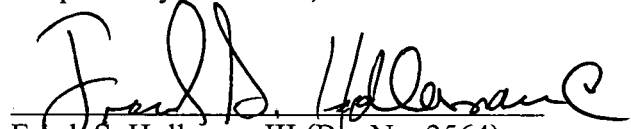
Attorneys for Respondent

The respondent proposes that the following be included in the Record on Appeal:

1. Order Filed May 4, 2010;
2. Order Filed January 11, 2010;
3. Order Filed May 21, 2010;
4. Complaint Filed July 30, 2008;
5. Answer and Counterclaim Dated August 28, 2008;
6. Reply to Counterclaims Filed September 17, 2008;
7. Motion to Amend Complaint Filed August 3, 2009;
8. First Amended Complaint Filed August 25, 2009;
9. Answer and Counterclaims Dated September 9, 2009;
10. Amended Answer and Counterclaims Dated September 17, 2009;
11. Reply to Counterclaims Filed September 18, 2009;
12. Plaintiff's Post Trial Memorandum Filed April 6, 2010;
13. Plaintiff's Letter to the Court Replying to Motion for Reconsideration, Dated May 17, 2010;
14. Transcript of proceedings pp. 12-13; 18-19; 66;73; 75-179; 218-265; 267-332; 340-376; 378-416; 439-581; 588;
15. Plaintiff's Trial Exhibits 1-27.

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank S. Holleman III", written over a horizontal line.

Frank S. Holleman III (Bar No. 2564)

Hannah Rogers Metcalfe (Bar No. 73046)

Wyche, Burgess, Freeman & Parham, P.A.

44 E. Camperdown Way

Post Office Box 728

Greenville, SC 29602-0728

Telephone: 864-242-2800

Facsimile: 864-235-8900

E-Mail: fholleman@wyche.com

hmetcalfe@wyche.com

Attorneys for Respondent

Date: February 4, 2011
Greenville, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

RECEIVED

FEB 07 2011

Case No. 2008-CP-23-05739

SC Court of Appeals

Andrew P. (Andy) Ballard,.....Respondent,

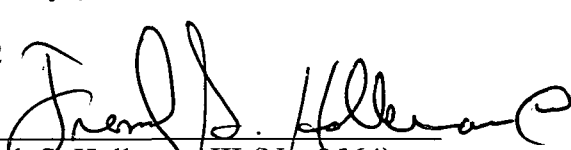
v.

Tim Robertson, Rick Thoennes, Rick Thoennes III,
And Warpath Development, Inc.....Appellants.

PROOF OF SERVICE

This is to certify that I have this 4th day of February, 2011, caused to be served a true and correct copy of the within and foregoing Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal on opposing counsel in this action by causing the same to be deposited in the United States mail, first class postage affixed, addressed as follows:

Joshua L. Howard, Esq.
Haynsworth Sinkler & Boyd, P.A.
P. O. Box 2048
Greenville, SC 29602


Frank S. Holleman III (No. 2564)
Hannah Rogers Metcalfe (No. 73046)
WYCHE BURGESS FREEMAN & PARHAM
Post Office Box 728
Greenville, SC 29602
(864) 242-8200

Attorneys for Respondent

W Y C H E

WYCHE BURGESS FREEMAN & PARHAM, P.A.

Attorneys at Law

February 4, 2011

The Honorable Tanya Gee
Clerk of Court
SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED
FEB 07 2011

SC Court of Appeals

Re: *Andrew (Andy) P. Ballard vs. Tim Roberson, et al.*
Case No.: 2008-CP-23-5739
Case Tracking No.: 2010164266

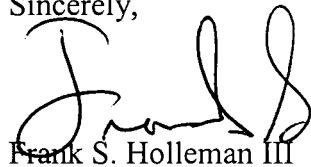
Dear Ms. Gee:

Enclosed please find for filing with the Court the originals and a copy of each of the Initial Brief of Respondent, Respondent's Designation of Matter to be Included in the Record on Appeal, and Proof of Service in connection with the above-referenced matter. Please return a file stamped copy of each in the enclosed self-addressed, stamped envelope.

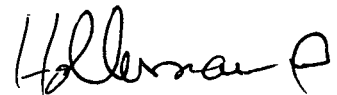
By copy of this letter we are serving copies of these documents on counsel for Appellants.

Thank you for your assistance.

Sincerely,



Frank S. Holleman III
864-242-8340
fholleman@wyche.com



Enclosures

cc: Joshua L. Howard, Esq., with enclosures

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-05739

RECEIVED
DEC 17 2010
SC Court of Appeals

Andrew P. (Andy) Ballard, ... Respondent,

v.

Tim Roberson, Rick Thoennes, Rick Thoennes III,
and Warpath Development, Inc. Appellants.

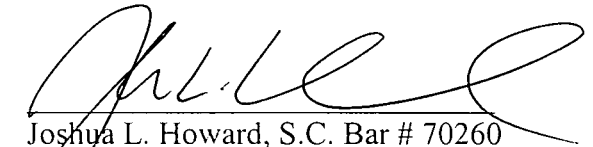
**APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

Appellants propose that the following be included in the Record on Appeal:

1. Order of May 20, 2010;
2. Order of May 3, 2010;
3. Defendants' Motion for Reconsideration and/or For a New Trial dated May 14, 2010;
4. Reply to Plaintiff's Responsive Post-Trial Brief dated April 9, 2010;
5. Transcript of Proceedings pp. 119-174, 218-265, 267-332, 340-376, 379-416, 439-470, 518-531, 542-561, 575-579;
6. Plaintiff's Trial Exhibits 1-5, 10-11 and 13;
7. Defendants' Trial Exhibits 1-7.

I certify that this designation contains no matter which is irrelevant to this appeal.

December 16, 2010



Joshua L. Howard, S.C. Bar # 70260
HAYNSWORTH SINKLER BOYD, P.A.
75 Beattie Place
Two Liberty Square, Eleventh Floor
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200

Attorneys for Appellants

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-05739

Andrew P. (Andy) Ballard, ... Respondent,

v.

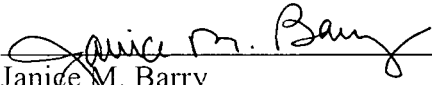
Tim Roberson, Rick Thoennes, Rick Thoennes III,
and Warpath Development, Inc. Appellants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of APPELLANTS' INITIAL BRIEF and APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL were served upon all counsel of record on this the 16th day of December, 2010, by placing a copy of the same in the U.S. Mail, postage prepaid to the following address:

Frank S. Holleman III
Hannah Rogers Metcalf
WYCHE BURGESS FREEMAN & PARHAM
P.O. Box 728
Greenville, South Carolina 29602

RECEIVED
DEC 17 2010
SC Court of Appeals


Janice M. Barry
Legal Assistant to Joshua L. Howard
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, Eleventh Floor (29601)
P.O. Box 2048
Greenville, SC 29602
Phone: (864) 240-3223/Fax: (864) 240-3300

GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
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GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

JOSHUAL L. HOWARD, ESQ.
DIRECT DIAL NUMBER 864.240.3202
EMAIL jhoward@hsblawfirm.com

December 16, 2010

VIA FEDERAL EXPRESS

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED
DEC 17 2010
SC Court of Appeals

Re: Andrew P. (Andy) Ballard v. Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc.; Case Tracking No.: 2010164266

Dear Ms. Gee:

Please find enclosed for filing in the above-referenced case, an original and one copy of the following documents:

1. Appellants' Initial Brief;
2. Appellants' Designation of Matter to be Included in the Record on Appeal; and
3. Certificate of Service of documents.

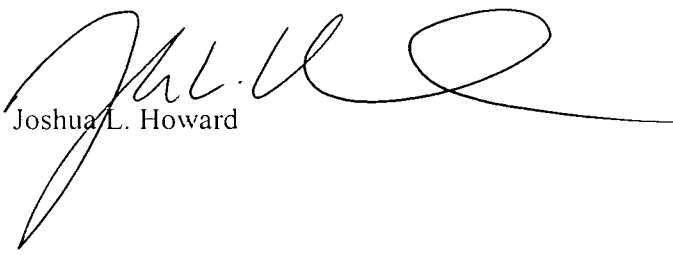
Please return a filed-stamped copy of each document to me in the enclosed self-addressed stamped envelope. By copy of this letter, I am serving a copy of these documents upon counsel for Respondent.

Thank you for your assistance and please do not hesitate to contact me should you have any questions.

With kind personal regards, I am

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.


Joshua L. Howard

JLH:jmb
Enclosures

cc: Frank Holleman III, Esquire
Hannah Rogers Metcalf, Esquire

The South Carolina Court of Appeals

Andrew P. (Andy) Ballard,

Respondent,

v.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath
Development, Inc.,

Appellants.

The Honorable Edward W. Miller
Greenville County
Trial Court Case No. 2008-CP-23-05739

ORDER

Pursuant to a telephone conference with the parties, the due date for the Appellants' Initial Brief and Designation of Matter has been extended until December 17, 2010. The Respondent's Initial Brief and Designation of Matter shall be filed and served sixty days after the Appellants' Initial Brief has been served. The Appellants' Initial Reply Brief shall be filed and served thirty days thereafter.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE

BY

Janya A. Gen
Clerk

Columbia, South Carolina

cc: Joshua L. Howard, Esquire
Frank Holleman, III, Esquire
Hannah Metcalf, Esquire

FILED
11/29/10



The South Carolina Court of Appeals

JOHN CANNON FEW
CHIEF JUDGE

JOHN C. CALHOUN BUILDING
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1890
FAX: (803) 734-2373
E-MAIL: jfew@sccourts.org

November 1, 2010

Joshua L. Howard, Esquire
Haynsworth Sinkler Boyd, P.A.
P O Box 2048
Greenville, SC 29602

Frank Holleman, III, Esquire
Hannah Metcalf, Esquire
Wyche Burgess Freeman
& Parham, PA
P O Box 728
Greenville, SC 29602

Re: Ballard, Andrew v. Roberson, Tim
Case Tracking #: 2010164266

Dear Counsel:

This letter serves as an Order granting Appellant's request for an extension of time in which to file the Appellant's Initial Brief and Designation of Matter. I have extended the due date until December 3, 2010. I realize that this extension may not give you all the time you need to complete the Appellant's Initial Brief and Designation of Matter. I have set a conference call for 10:45a.m. on Tuesday, November 23, 2010, to discuss an overall approach to setting due dates for all filings in this appeal.

The Appellant's Counsel is responsible for initiating the conference call by getting all parties on the phone at the allotted time. The call should last less than ten minutes. The participants in the call will include counsel for all parties and me. In preparation for the call, please consider the other time commitments you have in the near future so we can discuss a suitable timeframe for all parties to complete their briefs. If the time scheduled for the conference call creates a conflict, please contact the Clerk's Office at 734-1890 with all counsel on the phone. We will reschedule the call to suit you.

I look forward to talking to you on Tuesday.

Sincerely yours,

John Cannon Few
John Cannon Few
Tanya L. Gee
Clerk

FILED

11/1/10

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-05739

RECEIVED
OCT 12 2010
SC Court of Appeals
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Andrew P. (Andy) Ballard, ... Respondent,

v.

Tim Roberson, Rick Thoennes, Rick Thoennes III,
and Warpath Development, Inc. Appellants.

**MOTION FOR EXTENSION OF TIME TO FILE
APPELLANTS' INITIAL BRIEF AND DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

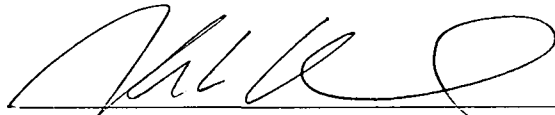
Pursuant to Rules 224 and 234 of the South Carolina Appellate Court Rules, the Appellants, Tim Roberson, Rick Thoennes, Rick Thoennes, III and Warpath Development, Inc. hereby moves the Court for an order extending the time in which to submit its Initial Brief and Designation of Matter to be Included in the Record on Appeal in accordance with Rule 208(a)(1) of the South Carolina Appellate Court Rules. On October 4, 2010, Appellants received the trial transcript; thus, making the Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal due on November 3, 2010. Due to scheduling conflicts and time needed to review the transcript, Appellants request that the Court extend the time for filing of the

11-3-10 /S/

Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal for thirty days. If Appellants seek no further extensions, the Appellants' Initial Brief and Designation of Matter to be Included on Appeal will be due on December 3, 2010.

In light of the foregoing, Appellants request that the Court issue an order granting an extension of time to file its Initial Brief and Designation of Matter to be Included on Appeal presently due on November 3, 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joshua L. Howard', is written over a horizontal line.

Joshua L. Howard, S.C. Bar # 70260
HAYNSWORTH SINKLER BOYD, P.A.
75 Beattie Place
Two Liberty Square, Eleventh Floor
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200

October 8, 2010

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-05739

RECEIVED
OCT 12 2010
SC Court of Appeals

Andrew P. (Andy) Ballard, ... Respondent,

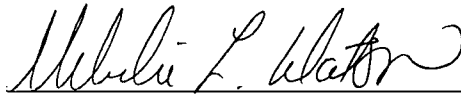
v.

Tim Roberson, Rick Thoennes, Rick Thoennes III,
and Warpath Development, Inc. Appellants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL was served upon all counsel of record on this the 8th day of October, 2010, by placing a copy of the same in the U.S. Mail, postage prepaid to the following address:

Frank S. Holleman III
Hannah Rogers Metcalf
WYCHE BURGESS FREEMAN & PARHAM
P.O. Box 728
Greenville, South Carolina 29602



Legal Assistant to Joshua L. Howard

Haynsworth Sinkler Boyd, P.A.

75 Beattie Place, Eleventh Floor (29601)

P.O. Box 2048

Greenville, SC 29602

Phone: (864) 240-3223/Fax: (864) 240-3300

GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

JOSHUAL L. HOWARD, ESQ.
DIRECT DIAL NUMBER 864.240.3202
EMAIL jhoward@hsblawfirm.com

October 8, 2010

The Honorable V. Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED

OCT 12 2010

SC Court of Appeals

Re: Andrew P. (Andy) Ballard v. Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc.;
Case Tracking No.: 2010164266

Dear Ms. Allen:

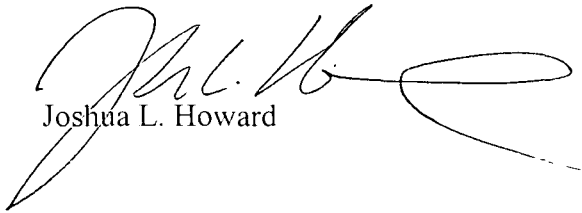
Please find enclosed for filing an original and six copies of the Motion for Extension of Time to File Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal and Proof of Service in connection with the above-referenced matter. Also enclosed is our filing fee check in the amount of \$25.00, along with an additional copy of the Motion and Proof of Service which I would request that you date stamp and return to me in the enclosed, self-addressed stamped envelope.

By copy of this letter, I am serving a copy of these documents upon counsel for Respondent.

With kind personal regards, I am

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.


Joshua L. Howard

JLH:mlw

cc: Frank Holleman, III, Esq.
Hannah Metcalf, Esq.

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

JOSHUAL L. HOWARD, ESQ.
DIRECT DIAL NUMBER 864.240.3202
EMAIL jhoward@hsblawfirm.com

October 4, 2010

The Honorable V. Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Andrew P. (Andy) Ballard v. Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc.;
Case Tracking No.: 2010164266

Dear Ms. Allen:

In response to your letter of October 1, 2010, please be advised that the transcript was received this date from the reporter. Further, by Notice of the Supreme Court on September 19, 2010, the reporter was given an extension up to and through October 21, 2010 to deliver the transcript. The Notice is enclosed for your records.

Please do not hesitate to contact me with any questions or concerns.

With kind personal regards, I am

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.

Joshua L. Howard

JLH:mlw

cc: Frank S. Holleman, Esq.
Frank Holleman, III, Esq.
Hannah Metcalf, Esq.

RECEIVED
OCT 05 2010
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 1, 2010

Joshua L. Howard, Esquire
Haynsworth Sinkler Boyd, P.A.
P O Box 2048
Greenville, SC 29602

Re: Ballard, Andrew v. Roberson, Tim
Case Tracking #: 2010164266

Dear Counsel:

Please provide a written update regarding the status of the transcript in this matter within ten days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: Frank Holleman, III, Esquire
Hannah Metcalf, Esquire

GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
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WEBSITE www.hsblawfirm.com

JOSHUAL L. HOWARD, ESQ.
DIRECT DIAL NUMBER 864.240.3202
EMAIL jhoward@hsblawfirm.com

July 19, 2010

Ms. Susan W. Hudgins
Circuit Court Reporter
PO Box 273
Moore, SC 29369

Re: Andrew P. (Andy) Ballard v. Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc.; C.A. No.: 2008-CP-23-5739

Dear Ms. Hudgins:

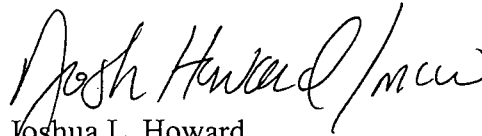
In furtherance to your letter of June 27, 2010, enclosed please find the down payment in the amount of \$2,000 for the trial transcript in the above matter. The transcript has been requested for the March 15, 2010 through March 17, 2010 trial before the Honorable Edward W. Miller, Circuit Court Judge, in Greenville County.

Please do not hesitate to contact me with any questions or concerns.

With kind personal regards, I am

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.


Joshua L. Howard

JLH(mlw)

cc: Frank S. Holleman, Esq.
Ms. Tracy Garrett, S.C. Court Administration
The Honorable Tanya Gee; Clerk, Court of Appeals

RECEIVED

JUL 20 2010

SC Court of Appeals

Haynsworth Sinkler Boyd, P.A.

1041043

WACHOVIA BANK, N.A.
GREENVILLE, SC

Operating Account
P.O. Box 2048
Greenville, South Carolina 29602

Date
July 19, 2010

Amount

PAY EXACTLY Two thousand and 00/100

\$ 2,000.00

TO THE
ORDER OF

Susan W. Huggins, Circuit Court Reporter
P.O. Box 273
Moore, SC 29369



[Signature]

⑈01041043⑈ ⑆053207766⑆ 2003207517799⑈

Date Jul 19/10

Check Number 1041043

VENDOR #

Client Code	Matter Code	Client Name	Matter Name	Amount
33955	0001	Warpath Development, Inc.	Ballard, Andrew P. vs. Tim Roberson, Ric	2,000.00
Down payment for trial transcript Joshua Howard				

Credit Total \$2,000.00

Nelodie

GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

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JOSHUAL L. HOWARD, ESQ.
DIRECT DIAL NUMBER 864.240.3202
EMAIL jhoward@hsblawfirm.com

June 22, 2010

RECEIVED

JUN 23 2010

SC Court of Appeals

Ms. Susan W. Hudgins
Circuit Court Reporter
PO Box 273
Moore, SC 29369

Re: Andrew P. (Andy) Ballard v. Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc.; C.A. No.: 2008-CP-23-5739

Dear Ms. Hudgins:

The above matter was tried during March 15, 2010 through March 17, 2010 before the
Honorable Edward W. Miller, Circuit Court Judge, in Greenville County. My records indicate that
you were the court reporter during the trial proceedings.

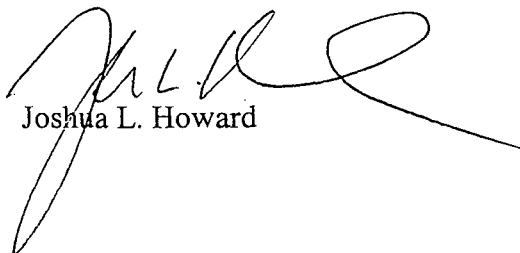
I request that you provide me with a transcript of the proceedings. Please transcribe the
entire record.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

With kind personal regards, I am

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.



Joshua L. Howard

JLH:mlw

cc: Frank S. Holleman, Esq.
Ms. Tracy Garrett, S.C. Court Administration
✓ The Honorable Tanya Gee; Clerk, Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 24, 2010

Joshua L. Howard, Esquire
Haynsworth Sinkler Boyd, P.A.
P O Box 2048
Greenville, SC 29602

Re: Ballard, Andrew v. Roberson, Tim
Case Tracking #: 2010164266

Dear Counsel:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: Frank Holleman, III, Esquire
Hannah Metcalf, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 24, 2010

Joshua L. Howard, Esquire
Haynsworth Sinkler Boyd, P.A.
P O Box 2048
Greenville, SC 29602

Re: Ballard, Andrew v. Roberson, Tim
Case Tracking #: 2010164266

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,
Tanya A. Gee
CLERK

VCA
TAG/ec

cc: Frank Holleman, III, Esquire
Hannah Metcalf, Esquire

POS 6/18/10
PM 6/18/10

RECEIVED
JUN 21 2010
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-05739

Andrew P. (Andy) Ballard, ... Respondent,

v.

Tim Roberson, Rick Thoennes, Rick Thoennes III,
and Warpath Development, Inc. Appellants

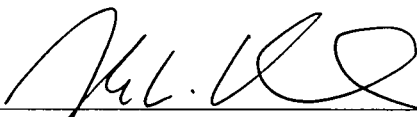
NOTICE OF APPEAL

Appellants Tim Roberson, Rick Thoennes, Rick Thoennes, III, and Warpath Development, Inc. hereby appeal the following orders and judgment of the Honorable Edward W. Miller:

1. Oral Order denying Appellants' Motion for directed verdict pursuant to Rule 50(a), SCRCF, made at the close of Plaintiff's case.
2. Oral Order denying Appellants' Motion for directed verdict pursuant to Rule 50(a), SCRCF, made at the close of all evidence in the trial of the above captioned matter.

3. The Court's Judgment and Order signed by the Court on May 3, 2010 and entered on May 4, 2010. See Ex. A attached hereto.
4. May 21, 2010, Order denying Appellants' Motions for Reconsideration and/or for New Trial made pursuant to Rule 59, SCRCP. See Ex. B attached hereto.
5. Appellants' received written notice of the court's May 21, 2010 denial of its Rule 59 Motion for Reconsideration and/or New Trial on May 25, 2010. Appellant's notice of appeal is therefore timely.

June 18, 2010



Joshua L. Howard, S.C. Bar # 70260
HAYNSWORTH SINKLER BOYD, P.A.
75 Beattie Place
Two Liberty Square, Eleventh Floor
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200

Other Counsel of Record:

Frank Holleman, III
Hannah Metcalf
WYCHE BURGESS FREEMAN & PARHAM
PO Box 728
Greenville, South Carolina 29602
(864) 242-8200

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 21 2010

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-05739

Andrew P. (Andy) Ballard, ... Respondent,

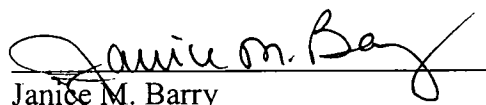
v.

Tim Roberson, Rick Thoennes, Rick Thoennes III,
and Warpath Development, Inc. Appellants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of APPELLANTS NOTICE OF
APPEAL was served upon all counsel of record on this the 18th day of June, 2010, by placing a
copy of the same in the U.S. Mail, postage prepaid to the following address:

Frank S. Holleman III
Hannah Rogers Metcalf
WYCHE BURGESS FREEMAN & PARHAM
P.O. Box 728
Greenville, South Carolina 29602



Janice M. Barry
Legal Assistant to Joshua L. Howard
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, Eleventh Floor (29601)
P.O. Box 2048
Greenville, SC 29602
Phone: (864) 240-3223/Fax: (864) 240-3300



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GREENVILLE

CHARLESTON

COLUMBIA

FLORENCE

Haynsworth
Sinkler Boyd, PA

ATTORNEYS AND COUNSELORS AT LAW

JOSHUA L. HOWARD
DIRECT DIAL NUMBER 864.240.3202
EMAIL JHOWARD@HSBLAWFIRM.COM

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
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GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

June 18, 2010

RECEIVED

JUN 21 2010

SC Court of Appeals

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Andrew P. (Andy) Ballard v. Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc..
C.A. No.: 2008-CP-23-5739

Dear Ms. Gee:

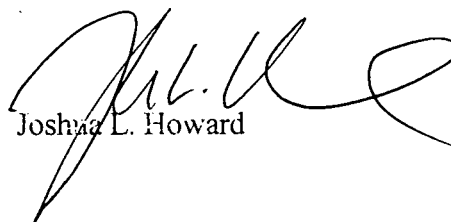
Please find enclosed for filing in the above-referenced case, a Notice of Appeal, Certificate of Service showing service of the Notice of Appeal on the Respondent, and a filing fee of \$100. In accordance with Rule 203(d)(1)(A), SCACR, we have also filed the Notice of Appeal with the Greenville County Clerk of Court. We have enclosed an additional copy of the Notice of Appeal to be filed-stamped and returned to us in the enclosed self-addressed stamped envelope.

Please contact me if you have any questions. Thank you for your assistance in this matter.

With kind personal regards, I am

Very truly yours,

HAYNSWORTH SINKLER BOYD, P.A.



Joshua L. Howard

JLH:jmb
Enclosures

cc: The Honorable Paul B. Wickensimer
Frank S. Holleman, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP2305739

APR 11 - 4 11 9: 22
CLERK OF COURT
BY: [Signature]
FILED

Andrew P Andy Ballard vs. ~~Tim Roberson~~

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a),
SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 4th day of April, 2010, and a copy mailed first class this 4th day of April, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Frank S. Holleman III Wyche Burgess
Freeman & Parham, P.A. P.O. Box 728
Greenville, SC 296020728
Hannah Rogers Metcalfe Wyche, Burgess,
Freeman & Parham, P.A. P.O. Box 728
Greenville, SC 296020728

Joshua Howard Haynsworth, Sinkler, Boyd, Pa
Po Box 2048 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Andrew P. (Andy) Ballard,
Plaintiff,

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

2008 MAY -4 AT 9:22
CLERK OF COURT
JUDICIAL CIRCUIT
CLERK OF COURT

Case Number: 2008-CP-23-5739

ORDER

Civil

Business Law

This case was tried on March 15, 16, and 17, 2010. This suit involves a corporation, the defendant Warpath Development, Inc. ("Warpath"). The plaintiff Andrew P. Ballard ("Ballard") is a minority shareholder in Warpath; the individual defendants are the controlling shareholders. Ballard's amended complaint alleges breach and anticipatory breach of a Stock Purchase Agreement, breach of the covenant of good faith and fair dealing, breach of Warpath's Articles of Incorporation, breaches of the individual defendants' fiduciary duties, and oppression of the minority shareholder by the defendants. The defendants brought counterclaims against Ballard alleging breach of contract, breach of contract accompanied by a fraudulent act, fraud, negligent misrepresentation, and violation of S.C. Code § 35-1-501 in connection with the sale of securities.

The case was tried to a jury. As set out below, after the presentation of the plaintiff's case and the cross examination of the defendants' first witness, the defendant Tim Roberson ("Roberson"), the defendants dismissed their counterclaims with prejudice. The Court then

dismissed the jury, the trial was completed, and the Court took the plaintiff's equitable claims under advisement.

FINDINGS OF FACT

1. Ballard is the organizer of the corporate defendant, Warpath.
2. Ballard worked several years to obtain a lease from Duke Power for property on Lake Keowee owned by Duke Energy Carolinas, LLC ("Duke") in Pickens County in order to develop a marina and associated facilities. In this connection, Ballard worked with Pickens County to approve his proposal for developing a marina on the property.
3. On January 3, 2007, Duke signed a lease with Warpath (the "Lease"), leasing the property to Warpath for use as a public park and/or public recreational area as shown on a Conceptual Plan attached to the Lease, which provided for a marina on the property.
4. After Warpath entered into the Lease with Duke, Ballard and the individual defendants entered into discussions concerning potential participation in Warpath.
5. The plaintiff and all the defendants are parties to a Stock Purchase Agreement dated May 29, 2007 (the "Agreement").
6. The Articles of Incorporation of defendant Warpath, dated September 8, 2004, authorize the issuance of 100,000 shares. Those articles have never been amended.
7. At the time the Agreement was entered into, Warpath had issued 40,000 shares, and Ballard owned all the shares.
8. Under the Agreement, the individual defendants received 80,000 shares of Warpath. They received 20,000 shares from Ballard, and they were issued an additional 60,000 shares from the corporation itself.
9. In paragraph 1, the Agreement provides that the individual defendants "will pay to Ballard upon closing the sum of \$1,000,000 in exchange for 20,000 shares of Ballard's 40,000

shares.” Ballard received the \$1,000,000 personally; the corporation received no payment in connection with the closing. Roberson provided the \$1,000,000.

10. The Agreement further provides in paragraph 1 that the individual defendants “will receive from the corporation additional shares so that Ballard will hold 20% of the stock and the other 80% will be held” by the individual defendants “when all shares are finally issued.”

11. The Agreement contains commitments by the individual defendants to provide funding and services to the corporation. In paragraph 6, “Roberson agrees to provide the necessary capital to obtain long term financing on the project.” In paragraph 5, the defendant Rick Thoennes (“Thoennes”) and Rick Thoeonnes III (“Thoennes III”) agree to provide “development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate.”

12. In paragraph 1, the Agreement also sets out the “final holdings” of the individual shareholders. Ballard’s “final holding” is 20%. The Agreement further provides in paragraph 7 that Ballard will not be required to sign any personal guarantees. The Agreement provides for no obligation for Ballard to provide any additional contribution of capital or any additional funds to Warpath.

13. The corporation issued 60,000 additional shares to the individual defendants.

14. The individual defendants argue that they paid \$1,000,000 for the entire 80,000 shares. However, the Agreement and the method of payment make clear that the individual defendants paid Ballard \$1,000,000 for 20,000 of his shares. In addition, they committed to provide funding and services to the corporation and received 60,000 shares from the corporation.

15. Consistent with the plain language of the Agreement, Thoennes testified that the individual defendants earned their shares by performing their obligations to the corporation set out in the Agreement.

16. The individual defendants received 60,000 shares from the corporation in exchange for their promises to provide the funding and services to the corporation as set out in the Agreement.

17. Upon the closing, the individual defendants controlled Warpath and owned 80% of its stock.

18. The individual defendants' attorney drafted the Agreement and handled the closing.

19. Warpath did not place in escrow the 60,000 shares received by the individual defendants from the corporation.

20. Those 60,000 shares have never been placed in escrow.

21. After the individual defendants acquired their shares, they became unhappy about the development of Warpath, because Duke would approve a plan for the marina that would accommodate 102 wet boat slips, whereas the individual defendants had planned for up to 200 wet boat slips and had made financial projections based on 200 wet slips. Further, it took longer to obtain approval for permits from the South Carolina Department of Health and Environmental Control ("SC DHEC") than the individual defendants had hoped for.

22. The individual defendants decided that they wanted Ballard out of the corporation. The individual defendants admitted at trial that at one point they wanted Ballard out of the corporation. In an email dated October 28, 2007, Thoennes III wrote Thoennes and

Roberson: "Don't we want to get [Ballard] out of the deal?" Roberson replied: "I think he will take his 1M and run . . . after a little threatening, posturing and whining."

23. The individual defendants came up with a plan to issue additional stock.

Roberson wrote Thoennes on December 28, 2007:

"When an investor realizes that an expected ROI [return on investment] is not forthcoming, his only viable option is acquire more equity at a reduced rate. In order to properly refinance the project, I would suggest that we increase the number of outstanding shares to 500,000 with a mixture of both preferred and common stock. As long as the outstanding shares remain in the treasury, there is no dilution of current shareholders. However, those outstanding shares could be used as tender (same as cash) to accomplish the needs of the corporation."

24. At the time this message was written, Roberson was the only investor who had made a cash investment, by providing the \$1,000,000 for the purchase of Ballard's 20,000 shares.

25. Under the Agreement, Roberson personally has the obligation to "provide the necessary capital to obtain long term financing for the project."

26. The individual defendants approached Ballard to ask him to take action to reduce his percentage ownership in Warpath or to repay funds he had received for his 20,000 shares, in order to improve the relative financial and/or ownership positions of the individual defendants. Ballard refused to agree to a change in the ownership of the corporation or the terms of the arrangement as set out in the Agreement.

27. On May 1, 2008, a meeting was held of the shareholders of Warpath. At the meeting, the individual defendants elected themselves directors and did not elect Ballard a director. Prior to this meeting, Ballard had been a director and officer of Warpath. Ballard asked to be elected a director, but none of the defendants seconded his nomination, and his nomination failed for lack of a second.

28. After they elected themselves directors, the individual defendants passed a Board resolution proposing that Warpath issue an additional 900,000 shares beyond the 100,000 shares outstanding and authorized by the Articles of Incorporation, "in order to raise capital, pay expenses and offer employee incentives." The Board then presented a resolution to the shareholders authorizing the issuance of the 900,000 shares "for the purpose of raising additional capital, paying expenses and offering employee incentives." That resolution was passed by the votes of the individual defendants, with Ballard dissenting.

29. The minutes of the shareholder meeting contain no authorization for amendment of the Articles of Incorporation.

30. At the meeting, Roberson was elected President of Warpath, Thoennes III was elected Vice President, and Thoennes was elected Secretary-Treasurer. They remain in those offices today.

31. After this meeting, Ballard was excluded from the management and planning for Warpath and was not kept informed concerning any plans for financing the development of the project.

32. After this meeting, on July 30, 2008, Ballard filed suit seeking an injunction against the issuance of stock beyond the 100,000 shares already issued. In response, the defendants filed an answer and counterclaims, accusing Ballard of breach of contract and breach of contract with a fraudulent act and alleging promissory estoppel, based on Ballard's allegedly purposeful false statements regarding approvals from Duke and Pickens County.

33. During discovery, Roberson testified that he planned to employ the husband of his niece, his niece, two of his sisters, and a friend at the marina once it was operating.

34. After discovery, on August 25, 2009, Ballard amended his complaint to add claims of breach of fiduciary duty and oppression of the minority shareholder, among other things.

35. Thereafter, on August 27, 2009, after Ballard amended his complaint and while the litigation was pending, the defendants issued a notice of shareholder meeting where they proposed to elect a slate of directors that would include Ballard as a director.

36. On September 29, 2009, the shareholder meeting was held, and Ballard was elected one of four directors at the motion of the individual defendants, as were the individual defendants.

37. Subsequent to that election, there has been no meeting of the board of directors of Warpath. The individual defendants have not shared with Ballard any plans or proposals for the financing of the Warpath development, and Ballard has not received updates on the status of the development or the finances or financial plans of Warpath. The election of Ballard as a director was a litigation tactic and did not provide him any meaningful role in the governance of Warpath.

38. In response to the amended complaint, the defendants filed counterclaims that accused Ballard of breach of contract, breach of contract accompanied by a fraudulent act, fraud, negligent misrepresentation, and violation of S.C. Code § 35-1-501 in connection with the sale of securities. The defendants alleged that Ballard made intentionally false representations regarding the marina in connection with the sale of the Warpath stock.

39. At trial, after the cross examination of Roberson by Ballard's counsel, it became clear that the evidence did not support the defendants' counterclaims and that, in particular, there was no evidence that Ballard had defrauded the defendants.

40. At trial, after the cross examination of Roberson by Ballard's counsel, the defendants dismissed their counterclaims with prejudice.

41. After dismissal of the counterclaims with prejudice, the Court dismissed the jury, heard the remaining evidence, and took Ballard's equitable claims under advisement.

42. Prior to trial, the Court had entered an order enjoining the defendants from issuing any additional stock until the entry of final judgment in this case.

CONCLUSIONS OF LAW

1. S.C. Code § 33-6-210 (e) (emphasis added) provides that "[e]xcept as otherwise provided in subsection (f) [not relevant here], *the corporation must place in escrow* shares issued for a contract for future services or benefits or for a promissory note."

2. By its plain language, this statute is mandatory and requires the corporation to place in escrow shares issued for a contract for future services or benefits.

3. In connection with the Agreement, the individual defendants obtained 80,000 shares of Warpath. The individual defendants were issued 60,000 shares by Warpath. Ballard owned 40,000 shares, and the individual defendants bought 20,000 of his shares. Ballard personally received \$1 million from the individual defendants for his 20,000 shares. The Agreement provides that Ballard received "\$1,000,000 for 20,000 shares of Ballard's 40,000 shares" and that the defendants "will receive from the corporation additional shares." The corporation received no payment from the defendants for the additional 60,000 shares.

4. Instead, in the Agreement, the individual defendants agreed to perform services for, provide capital to, and arrange for long term financing for the corporation. The \$1 million

was paid to Ballard personally. The remaining 60,000 shares obtained by the defendants were issued by the corporation, which received none of the \$1 million.

5. These 60,000 shares were issued for a contract or contracts for future services or benefits, as set out in S.C. Code § 33-6-210 (e). Under the plain language of the statute, they must be placed in escrow.

6. In his amended complaint, Ballard did not state a claim under S.C. Code § 33-6-210 (e). However, at trial, both parties argued this issue extensively and the Court received post-trial briefing on the issue. At trial, Ballard moved to amend his amended complaint to add this claim. The Court grants this motion. See SCRCF 15 (a) & (b).

7. The defendants are ordered to place in escrow the 60,000 Warpath shares that were issued to the individual defendants by Warpath.

8. Ballard's Twelfth Cause of Action seeks relief under S.C. Code §§ 33-14-300 and 310. Under those statutes, a Court may "provid[e] for the purchase at their fair value of shares of any shareholder, either by the corporation or by other shareholders" and may "direct[] or prohibit[] any act of the corporation or of shareholders, directors, [or] officers" upon a finding that "the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder." S.C. Code §§ 33-14-300 (2)(ii) and 310 (d)(3) and (d)(4).

9. Under Kiriakides v. Atlas Food Systems & Services, Inc., 343 S.C. 587, 603-06, 541 S.E.2d 257, 266-68 (2001), the Court must evaluate whether the conduct and actions of the defendants toward Ballard are "oppressive" or "unfairly prejudicial"; the Court does not evaluate the "reasonable expectations" of the minority shareholder.

10. The Court examines and weighs the “totality of the circumstances” in determining whether a buyout or other relief is appropriate. Kiriakides, 343 S.C. at 606, 541 S.E.2d at 268.

11. In this case, the totality of circumstances demonstrates that the individual defendants acted oppressively towards Ballard as the minority shareholder and acted in a way that was unfairly prejudicial to him.

12. The evidence demonstrates that:

(a) After obtaining control of the corporation, the individual defendants determined they wanted Ballard out of the corporation;

(b) The individual defendants decided to have the corporation issue additional stock to increase their return on investment;

(c) The individual defendants removed Ballard as a director by refusing to elect him as one of four directors at the first stockholders meeting after they obtained control of the corporation, even though Ballard was the founder and organizer of the company and one of four shareholders;

(d) Even though Roberson had the contractual obligation to provide the necessary capital for the corporation to obtain long term financing, the individual defendants passed a corporate resolution to issue additional stock to raise capital;

(e) Upon the issuance of the additional 900,000 shares, Ballard’s ownership in Warpath would have been reduced to 2%, a tenth of his “final holdings” as provided in the Stock Purchase Agreement;

(f) After Ballard was no longer a director, he was excluded from the management of Warpath and was not provided information concerning the status of any efforts to finance the development or any periodic updates on the status of the development;

(g) While the litigation was pending and after Ballard filed additional claims alleging violations of fiduciary duty and corporate oppression, the individual defendants called a shareholder meeting and elected Ballard a director. Thereafter, they never held a meeting of the board of directors and did not provide Ballard with substantive information regarding the finances, financial plans, and development plans for the marina. The election of Ballard was a litigation tactic and did not provide Ballard any meaningful role in the governance of Warpath;

(h) Roberson, who is the President of Warpath, testified that he plans to employ his niece's husband, his niece, his two sisters, and a friend at Warpath. Ballard is not an employee of Warpath, and there was no testimony of any plans to make him an employee. The corporate resolution passed by the individual defendants also allows for stock to be issued to offer "employee incentives." Thus, Roberson intends to have Warpath employ members of his family and a personal friend, and the corporate resolution passed by the defendants provides that his family and friend may receive stock in the company. Ballard will not receive a salary from the company and will not receive stock as an employee incentive, since he is not an employee of Warpath and there are no plans for him to be an employee of Warpath;

(i) The Articles of Incorporation of Warpath provide for the issuance of 100,000 shares of stock; they have never been amended; and the stockholders of Warpath have never authorized an amendment of the Articles of Incorporation increasing the amount of authorized shares beyond 100,000. Thus, the resolution adopted by the shareholders authorizing the issuance of 900,000 additional shares is contrary to the Articles of Incorporation of Warpath, and any issuance of stock by Warpath beyond the 100,000 shares already issued would be in violation of the Articles of Incorporation;

(j) The defendants filed and pursued counterclaims against Ballard making serious allegations against him of intentional false statements in connection with the sale of securities. At trial, there was no evidence to support these claims of fraud, and the evidence presented at trial did not support the counterclaims asserted by the defendants. After Roberson's cross examination, it was apparent that there was no basis for the counterclaims. Roberson's testimony included admissions that Ballard had told the defendants exactly what Duke had told them regarding wet slips, that Ballard was not responsible for the period of time taken by SC DHEC to issue permits, and that the defendants knew that the issuance of the permits was uncertain. Thus, the individual defendants, who are officers, directors, and majority shareholders of Warpath, made baseless counterclaims against Ballard, the minority shareholder.

13. The defendants have argued that Ballard has preemptory rights to purchase stock when stock is issued pursuant to the resolution adopted by the individual defendants. However, that argument disregards the provisions of the Agreement. The Agreement provides that Roberson has the obligation to provide the necessary capital to obtain long term financing and specifically provides that Ballard will not even be required to sign any personal guarantees. The Agreement likewise provides that Ballard's "final holding" will be 20% of the company. The authorization to issue stock to raise capital was thus contrary to the terms of the Agreement, which places that obligation on Roberson, and Ballard specifically has no obligation under the Agreement to provide additional capital to the corporation in order to maintain his final holding of 20%.

14. Therefore, the Court finds the defendants acted in a manner that is illegal, oppressive, and unfairly prejudicial to Ballard, within the meaning of S.C. Code § 33-14-300 (2)(ii).

15. The Court has observed the parties during pretrial proceedings and during the trial and has reviewed materials regarding their business relationships during pretrial motions and at trial. From the evidence and the Court's observation of the trial proceedings and based on the findings set out above, the Court concludes that the proper equitable remedy is to provide for the purchase of Ballard's shares at their fair value by the defendants, jointly and severally, as set out in S.C. Code § 33-14-310 (d)(4). This remedy is the appropriate one given the conduct of the defendants as found above. It also is apparent that the plaintiff and the individual defendants are no longer compatible as co-owners of Warpath.

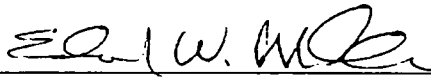
16. In order to provide for the purchase of Ballard's shares, the Court must determine the fair value. The Court directs the parties to communicate and attempt to agree on an appraiser or valuation expert for the valuation of Ballard's shares, taking into account the Agreement. If the parties are unable to agree on an appraiser or valuation expert by May 10, 2010, the parties are instructed to separately provide to the Court by May 17, 2010, the names of three proposed appraisers or valuation experts, without either party disclosing its list to the other. The Court will then select an appraiser or valuation expert to value Ballard's shares, taking into account the Agreement. Thereafter, the Court will consult with the parties to set a date for a valuation proceeding.

17. The Court has previously entered an injunction against the issuance of further shares of Warpath until the entry of final judgment. That injunction remains in place, according to its terms, and is also reaffirmed in order to preserve the status quo pending the purchase of Ballard's shares.

18. Ballard's remaining causes of action seek an injunction against the issuance of additional shares and the return by the individual defendants to Warpath of the 60,000 shares

they received from the corporation. Since the Court orders the defendants to buy Ballard's shares and since the existing injunction will stay in place until that purchase is complete, the Court need not and will not address Ballard's other claims at this time.

IT IS SO ORDERED.



The Hon. Edward W. Miller
Circuit Judge

Greenville, South Carolina

5-3, 2010

EXHIBIT B

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO. : 2008CP2305739

IN THE COURT OF COMMON PLEAS

Andrew P Andy Ballard vs. Tim Roberson

010 MAY 21 P 3: 06

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered. FILED CLERK OF COURT
GREENVILLE CO. S.C.
MAY 21 2010
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a),
SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED:

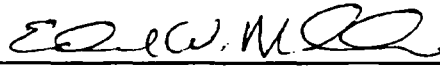
☐ See attached order;

☒ Statement of Judgment by the Court:

Defendants' Motion for Reconsideration and/or for a New Trial is hereby DENIED.

Dated at Greenville, South Carolina, this _____ day of 5/20, 2010.

Court Reporter: _____



PRESIDING JUDGE -- EDWARD W. MILLER

This judgment was entered on the 21 day of May, 2010, and a copy mailed first class this 21 day of May, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

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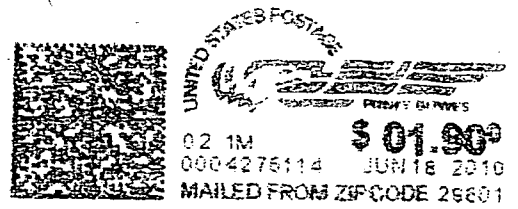
ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4 (Rev. 6/02)

Paul B. Wickensimer - Clerk of Court



**Haynsworth
kler Boyd, PA** ATTORNEYS AND COUNSELORS AT LAW

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re Honorable Tanya Gee
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