

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Case No. 2014-CP-07-02670
Carmen T. Mullen, Circuit Court Judge

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MAY 08 2017

Appellate Case No.: 2016-001113

SC Court of Appeals

Benjamin C. Gecy, River City Developers, LLC and
River City Real Estate, LLC.....Plaintiff/Appellant,

v.

Somerset Point at Lady's Island Homeowners Association, Inc.,
f/k/a Coosaw River Estates Homeowners Association, LLC, Hilton
C. Smith, Jr., Coosaw Investments, LLC, and Hilton C. Smith, Jr., Inc.
of South Carolina..... Defendants/Respondents.

**RESPONDENTS' REPLY TO APPELLANT BENJAMIN GECY'S
MOTION FOR REASONABLE TIME TO OBTAIN NEW COUNSEL;
REPLY TO COUNSEL FOR APPELLANTS MOTION TO BE RELIEVE;
AND COUNTER MOTION TO DISMISS**

Respondents submit this return and counter motion to dismiss requesting that the appeal be dismissed because: (1) *pro se* Appellant Gecy has already requested and been provided reasonable time to obtain new counsel; (2) Counsel for Appellants motion seeking to be relieved as counsel is a further delay of this appeal; and (3) the continue delays should be considered a failure to prosecute the appeal.

First, Appellant Gecy has had sufficient time to obtain new counsel. Appellant Gecy filed a *pro se* appearance on March 31, 2017, as well as specifically requesting "a reasonable time . . . to obtain new counsel if necessary."

on March 31, 2017. The South Carolina Supreme Court has held that where there is no constitutional or statutory right to counsel in a proceeding such as a civil action, there is no duty to determine whether a decision to proceed *pro se* is knowingly and voluntarily made. Washington v. Washington, 308 S.C. 549, 551, 419 S.E.2d 779, 780–81 (1992).

Appellant Gecy elected to proceed *pro se* in this appeal and a notice of appearance, as well as filing his motion seeking time to obtain new counsel, “if necessary.” Once Appellant Gecy appeared *pro se*, he notified the Court and all parties that he was proceeding *pro se*. This constitutes an appearance as *pro se*.

Pro se Appellant Gecy failed to file his initial brief pursuant to Court order and his appeal should be dismissed. The Court’s Order filed on April 7, 2017, stated that “failure to serve and file Appellants’ initial brief and designation of matter or to file a motion to be relieved as counsel by May 1, 2017, will result in the dismissal of this appeal.” *Pro se* Appellant failed to file his initial brief and designation of matter (did not file a motion to be relieved either, but that would not apply to Appellant Gecy because he is proceeding *pro se*). Accordingly, the Court should dismiss the appeal as to *pro se* Appellant Gecy. Goodson v. American Bankers Ins. Co. of Fla., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (S.C Ct. App. 1988) (“Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard that is applied to an attorney.”).

Appellants River City Developers, LLC and River City Real Estate, LLC may not represent themselves or be represented by *pro se* Appellant Gecy in the appeal, and their appeal should be dismissed. The South Carolina Supreme Court has held

a corporation may not appear *pro se*, and had to be represented by an attorney. Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 334 S.C. 649, 515 S.E.2d 257 (1999). These appellants may not represent themselves, and *pro se* Appellant Gecy may not represent them, as such the appeal of Appellant River City Developers, LLC and River City Real Estate, LLC should be dismissed.

Second, the Motion to be Relieved as Counsel is another delay in this appeal and a continued failure to prosecute. Fn 1. Counsel for Appellants filed several affidavits in support of several of the motions for extension which provide that Counsel had assistance in preparing the initial brief from a qualified person. Counsel's affidavits dated January 24, 2017, January 30, 2017, February 6, 2017, and February 13, 2017, each states that Counsel has "sought the assistance of a person qualified to help." Counsel for Appellants advised the Court that he had assistance from a qualified person over three months ago, but Counsel continued to request more time.

According to Counsel's own sworn statements, Counsel has had assistance in the appeal from a qualified person starting back as late as January 24, 2017. Counsel has had ample time due to the numerous extension for Counsel to file an initial brief or to find substitute counsel for Appellants.

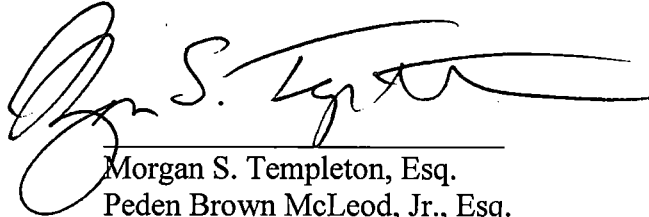
Third, despite numerous extensions of time, Appellants have failed to file their initial brief pursuant to the time permitted by the Court. Instead there is a continuous delay of the appeal of this matter which should be considered as a failure

¹ Respondents Hilton C. Smith, Jr., Coosaw Investments, LLC, and Hilton C. Smith Jr., Inc. of South Carolina do not oppose the motion to be relieved.

to prosecute the appeal. As such, the appeal should be dismissed for failure to prosecute.

According, the Respondents respectfully request that Appellant's appeal be dismissed.

May 4, 2017



Morgan S. Templeton, Esq.
Peden Brown McLeod, Jr., Esq.
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
Telephone: 843.329.9500
Attorneys for Respondent, Hilton C. Smith, Jr., Coosaw Investments, LLC, and Hilton C. Smith, Jr., Inc. of South Carolina

Other Counsel of Record:

Robert V. Mathison, Jr., Esq.
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938

Duke R. Highfield, Esq.
Jeffrey J. Wiseman, Esq.
Young Clement Rivers, LLP
Post Office Box 993
Charleston, SC 29402

E. Mitchell Griffith, Esq.
Kelly D. Dean, Esq.
Griffith Sharp & Liipfert, PA
Post Office Drawer 570
Beaufort, SC 29901

Benjamin C. Gecy
1857 Ribaut Rd.
Port Royal, SC 29935

APPEAL FROM BEAUFORT COUNTY
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Carmen T. Mullen, Circuit Court Judge

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SC Court of Appeals

Appellate Case No.: 2015-001238

Benjamin C. Gecy, River City Developers, LLC and
River City Real Estate, LLC..... Plaintiff/Appellant,

v.

Somerset Point at Lady's Island Homeowners Association, Inc.,
f/k/a Coosaw River Estates Homeowners Association, LLC, Hilton
C. Smith, Jr., Coosaw Investments, LLC, and Hilton C. Smith, Jr., Inc.
of South Carolina..... Defendants/Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on this 4th day of May, 2017 she mailed a copy of **Respondent's Reply to Appellant's Motion for Reasonable Time** by placing a copy in a postpaid envelope for collection and processing for mailing. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to the following, which is the last known address, in Charleston, South Carolina:

ADDRESSEE(S)

E. Mitchell Griffith, Esq.
Kelly D. Dean, Esq.
Griffith Sharp & Liipfert, PA
Post Office Drawer 570
Beaufort, SC 29901

Duke R. Highfield, Esq.
Jeffrey J. Wiseman, Esq.
Young Clement Rivers, LLP
Post Office Box 993
Charleston, SC 29401

Robert V. Mathison, Jr., Esq.
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938

Benjamin C. Gecy
1857 Ribaut Rd.
Port Royal, SC 29935


Sarah Jane Schrodetzki



Wall Templeton
ATTORNEYS

Morgan S. Templeton
Telephone: 843.329.9500 Ext. 209
Facsimile: 843.329.9501
Morgan.Templeton@WallTempleton.com

May 4, 2017

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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MAY 08 2017

SC Court of Appeals

Re: *Benjamin Gecy, Rover City Developers, LLC and River City Real Estate vs. Somerset Point at Lady's Island HOA, et al*
Appellate Case No. 2016-001113

Dear Ms. Kitchings:

Please find enclosed and original and seven copies of Respondents' Reply to Appellants' Motion for Reasonable Time to Obtain New Counsel in the above referenced matter. I am also enclosing the requisite \$25 filing fee. Please file the original and return a filed-stamped copy to me in the envelope provided for your convenience.

By copy of this letter to all counsel, I am serving them with the enclosed Reply.

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

Morgan S. Templeton

MST/sjs

Enclosures

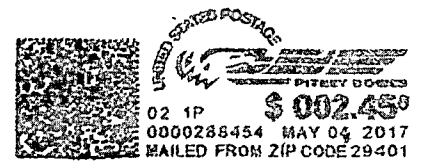
cc: Robert V. Mathison, Jr., Esquire (*w/ encl.*)
Duke R. Highfield, Esq. (*w/ encl.*)
E. Mitchell Griffith, Esq. (*w/ encl.*)
Benjamin C. Gecy, Esq. (*w/ encl.*)

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Wall Templeton
ATTORNEYS

145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, South Carolina 29402

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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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