

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2014-CP-26-8367  
(Formerly 2013-CP-26-2816)

Appellate Case No. 2016-001328

**RECEIVED**

JUN 30 2017

**SC Court of Appeals**

Gabriel Barnhill & GSB Enterprises LLC..... Respondents

v.

J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, QC Financing, LLC, Heath Causey, and Sage Financial Group, LLC, J. Floyd Swilley SMG Partners, LLC, Alicia A. Piner, Heath Causey, Sage Advisory Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, LLC, and Sage Funding, L.P., Christopher Pitcock, Defendants,

Of Whom J. Floyd Swilley and Laurel K. Swilley and Heath Wendell Causey are the ..... Appellants

RESPONDENTS' MOTION TO EXTEND FINAL BRIEF FILING DEADLINE BY  
THIRTY (30) DAYS TO FILE FINAL BRIEF

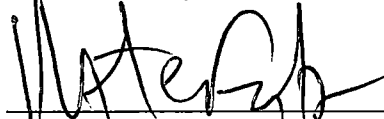
Respondents Gabriel Barnhill & GSB Enterprises, LLC move this Honorable Court for a thirty day extension in which to file Final Briefs because the Record on Appeal is still incomplete and will be amended or supplemented by Swilley Appellants' counsel. Various items were omitted from the Amended Record on Appeal as indicated

in counsel's correspondence to Appellants' counsel, attached hereto as Exhibit "A", including letters dated May 31, 2017, June 16, 2017, June 22, 2017, three (3) letters dated June 26, 2017, and June 27, 2017. Appellants' Counsel stated in a June 23, 2017 email that he intends to supplement the Amended Record on Appeal. See Exhibit "B". Respondents' Final Brief cannot be filed until the Record on Appeal is complete.

Respondents hereby request an extension of thirty (30) days from the date of the filing of the supplemental Record on Appeal or amended Record on Appeal to file their Final Briefs.

Respondents appreciate the Court's consideration.

NATE FATA, P.A.



---

Nate Fata, Esq. (SC No. 009866)  
Post Office Box 16620  
Surfside Beach, SC 29587  
843-238-2676

June 28, 2017

Attorney for Respondents

# **EXHIBIT**

**“A”**

**NATE FATA, P.A.**  
**ATTORNEY AT LAW**

P.O. Box 16620  
THE COURTYARD, SUITE 215  
SURFSIDE BEACH, SOUTH CAROLINA 29587  
TELEPHONE (843) 238-2676  
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**VIA EMAIL**

May 31, 2017

F. Miles Adler, Esq.  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island, SC 29585  
miles@adlerlaw.partners

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Appellate Case No. 2016-001328

Dear Miles:

I received the Record on Appeal last Wednesday. The following pages were not numbered or the numbering appears to have been cut off in the duplication process on the copy I received:

1. Pages 1 – 4;
2. Page 30;
3. Page 36;
4. Page 38;
5. Page 40;
6. Page 42;
7. Page 48;
8. Page 50;
9. Pages 54 & 55;
10. Page 58;
11. Pages 60 – 68;
12. Page 70;
13. Pages 72 – 76;
14. Pages 80 – 90;
15. Page 94;
16. Pages 96 – 99;
17. Pages 108 – 112;
18. Page 120;

F. Miles Adler, Esq.  
May 31, 2017  
Page 2

19. Pages 143 & 144;
20. Page 261;
21. Pages 263 – 265;
22. Page 268;
23. Pages 272 -298;
24. Page 339;
25. Pages 368 – 403; and
26. Page 407.

Please provide another Record on Appeal with complete page numbering.

In addition, the following documents designated by Respondents were not properly included in the Record. I have used Respondents' Designation Numbers:

**I. Pleadings**

2. Plaintiff's Notice of Motion and Motion to Compel Discovery filed July 3, 2013;  
**Incomplete, no Exhibit A or B included.**
16. Plaintiff's Notice of Motion and Motion to Compel Discovery, filed September 5, 2014;  
**There are two distinct Motions for September 5, 2014 but only one was included.**
18. Order Granting Sanctions Against Defendants, dated October 9, 2014 filed October 15, 2014;  
**No file stamp / not signed and no Certificate of Service.**
31. Form 4 Order, January 4, 2016, filed January 4, 2016.  
**Wrong Order.**

**II. Transcripts**

- a. Transcript of Hearing, January 4, 2016  
**Missing.**

F. Miles Adler, Esq.  
May 31, 2017  
Page 3

In addition the items below should also be addressed.

There are two Page 22's;

Your Number 17 page numbered 86 is redacted in part. Please provide an un-redacted version.

Your Number 33 – Notice of Hearing filed February 9, 2016 (page 332) – Certificate of Service omitted;

Your Number 35 – Notice of Hearing filed April 19, 2016 (page 339) – Certificate of Service omitted;

Your Number 47 – Affidavit of Sally J. Huffman omitted second page to Certificate of Service;

Your Number 49 – is not complete Neill correspondence (Amended Notice of 30(b)(6) Deposition omitted);

Your Number 50 – Correspondence from Nate Fata to Judge McIntosh dated May 13, 2016 including attachments 472 to 475 is a letter to the Clerk of Court filing Affidavit of Sally J. Huffman (incorrect correspondence and incomplete Certificate of Service)

In addition, in many of the items omitted the Certificate of Service which accompanied the pleadings and the Orders. Those items should be properly included/completed.

Please revise the Record on Appeal and provide it to me by June 5, 2017.

Very truly yours,  
NATE FATA, P.A.



Nate Fata  
NF/sh

**NATE FATA, P.A.**  
ATTORNEY AT LAW

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**VIA EMAIL**

June 16, 2017

F. Miles Adler, Esq.  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island, SC 29585  
miles@adlerlaw.partners

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Appellate Case No. 2016-001328

Dear Miles:

Please provide the page numbers in the revised Record on Appeal in which the missing Certificates of Service have been included. I cannot seem to find them. I am attaching a copy of my letter dated May 31, 2017 in which I referenced and requested the missing Certificates of Service be included.

Very truly yours,  
NATE FATA, P.A.



Nate Fata

NF/sh

Attachment

**NATE FATA, P.A.**  
ATTORNEY AT LAW

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**VIA EMAIL**

June 22, 2017

F. Miles Adler, Esq.  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island, SC 29585  
[miles@adlerlaw.partners](mailto:miles@adlerlaw.partners)

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Appellate Case No. 2016-001328

Dear Miles:

This letter is in response to your email today.

First, I previously asked that the Certificates of Service be included in my May 31, 2017 letter to you. When you provided the revised record on Appeal, you did not indicate that certain requested items were omitted.

Second, the service or verification of service of pleadings has been made an issue by the Appellants and, therefore, the Certificates of Service are especially relevant in this case. I have always included Certificates of Service in my appeals as they are typically part of the routine filing associated with that pleading/discovery. In this case, there are many references to certificates of service in my Brief. The certificates of service should not be omitted. They usually are just a page or two long and so they are not voluminous. Failure to include the Certificates of Service will prejudice the Respondent. Therefore, they should be included in the Record on Appeal.

Finally, SCACR Rule 210 refers to verification of service relevant to the appeal and is directly on point with respect to the issues raised in this appeal.

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F. Miles Adler, Esq.  
June 22, 2017  
Page 2

If you will not be filing the revised Record on Appeal with the Certificates of Service, please advise by tomorrow at the close of business. I will then need to file the appropriate motion with the Court.

Very truly yours,  
NATE FATA, P.A.



Nate Fata

NF/sh

**NATE FATA, P.A.**  
ATTORNEY AT LAW

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**VIA EMAIL**

June 26, 2017

F. Miles Adler, Esq.  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island, SC 29585  
miles@adlerlaw.partners

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Appellate Case No. 2016-001328

Dear Miles:

In our review of the revised Record on Appeal we are sending you some of the omitted Certificates of Service ("COS") as follows:

1. COS serving Order signed by Judge William H. Seals, Jr. 9/8/15;
2. COS Notice of Motion and Motion to Compel Discovery 7/2/13;
3. COS Plaintiffs' Answer to Counterclaim 8/2/13;
4. COS by Miles Adler dated 10/28/13
5. COS Plaintiff's Notice of Motion and Motion to Compel J. Floyd Swilley Investment Advisors, SMG Partners, LLC, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, and Sage Financial Group, LLC 1/9/14;
6. COS Plaintiff's Notice of Motion and Motion to Consolidate 2/17/15;
7. COS Plaintiffs' Notice of Motion and Motion for Summary Judgment and For Judgment on the Pleadings 12/16/15;
8. COS Plaintiff's Notice of Hearing upon counsel and Pro Se Defendants 2/3/16; and
9. COS Affidavit of Sally J. Huffman 5/13/16.

F. Miles Adler, Esq.

June 26, 2017

Page 2

We have not completed our review of the Record on Appeal. Please ensure all items requested by Respondents in their Designation of Matter and in my follow up letters to you are included in the Amended Record on Appeal. If any requested items are being omitted, please identify each omitted item in writing.

Very truly yours,  
NATE FATA, P.A.



Nate Fata

NF/sh

Attachments

**NATE FATA, P.A.**  
ATTORNEY AT LAW

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**VIA EMAIL**

June 26, 2017

F. Miles Adler, Esq.  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island, SC 29585  
miles@adlerlaw.partners

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Appellate Case No. 2016-001328

Dear Miles:

The Record on Appeal, page ii, No. 17, references Plaintiffs' Motion for Sanctions filed November 4, 2013 at page 99. At page 99 is the February 2014 Motion for Sanctions. I am attaching the November 2013 Motion for Sanctions to be included in the Amended Record on Appeal.

Reference to Item 21, June 27, 2014 Motion for Sanctions, is incomplete and only includes pages 1 and 2. I am attaching the entire June 27, 2014 Motion, including filing sheet and Certificate of Service (6 pages total). The entire Motion should be included in an Amended Record on Appeal.

Very truly yours,  
NATE FATA, P.A.



Nate Fata  
NF/sh  
Attachments

**NATE FATA, P.A.**  
ATTORNEY AT LAW

P.O. Box 16620  
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**VIA EMAIL**

June 26, 2017

F. Miles Adler, Esq.  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island, SC 29585  
miles@adlerlaw.partners

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Appellate Case No. 2016-001328

Dear Miles:

In response to your email today, I cannot confirm that you have properly completed the Amended Record on Appeal as it is 550 pages long and I am still finding mistakes. To go through the first Record on Appeal and find omissions/deficiencies and to receive a revised Record on Appeal with omissions and deficiencies, as noted, and then to have to go through another round of reviewing 550 pages is an incredible task that is not my obligation. Appellant counsel's obligation is to properly compile the Record on Appeal. That has not been done so far. I cannot be expected to double check your work over and over again. What I have found so far, I have noted and identified to you. However, I specifically reserve the right to continue to move through the Amended Record on Appeal and the Seconded Amended Record on Appeal and if there are deficiencies or omissions, then I will notify you of the same.

Very truly yours,  
NATE FATA, P.A.



Nate Fata

NF/sh

**NATE FATA, P.A.**  
ATTORNEY AT LAW

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**VIA EMAIL**

June 27, 2017

F. Miles Adler, Esq.  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island, SC 29585  
miles@adlerlaw.partners

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Appellate Case No. 2016-001328

Dear Miles:

I did not find the Form 4 Order entered on January 4, 2016 in the revised Record on Appeal. Respondents' designated this Order (No. 31 in Respondents' Designation of Matter). I am attaching the January 4, 2016 Form 4 Order.

Very truly yours,  
NATE FATA, P.A.



Nate Fata  
NF/sh  
Attachment

**EXHIBIT**  
**“B”**

Sally Huffman

---

**From:** F. Miles Adler <miles@adlerlaw.partners>  
**Sent:** Friday, June 23, 2017 1:56 PM  
**To:** Sally Huffman  
**Cc:** Nate Fata  
**Subject:** Re: Swilley Appeal

Nate: I am going to file a motion to amend and supplement the record on appeal. I am going to ask the SCCA to permit me to file the Amended Record on Appeal, a copy of which is in your hands, and then supplement it with the Certificates of Service you are asking to have included.

If you have any objections, please let me know. If I don't hear from you I will go ahead and file the motion Monday.

F. Miles Adler  
ADLER LAW  
T: 843.314.3204  
F: 843.314.3205  
M: 843.685.3311  
[miles@adlerlaw.partners](mailto:miles@adlerlaw.partners)  
[www.adlerlaw.partners](http://www.adlerlaw.partners)

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On Jun 22, 2017, at 5:04 PM, Sally Huffman <[shuffman@fatalaw.com](mailto:shuffman@fatalaw.com)> wrote:

Good afternoon Miles:

Please see the attached.

Thank you.

Sally

Sally J. Huffman  
Legal Assistant  
Nate Fata, P.A.  
P.O. Box 16620  
Surfside Beach, SC 29587  
843-238-2676

843- 238-0240 (fax)

<Adler letter 6 22 17.pdf>

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM Horry COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2014-CP-26-8367  
(Formerly 2013-CP-26-2816)

Appellate Case No. 2016-001328

**RECEIVED**

JUN 30 2017

**SC Court of Appeals**

Gabriel Barnhill & GSB Enterprises LLC..... Respondents

v.


J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, QC Financing, LLC, Heath Causey, and Sage Financial Group, LLC, J. Floyd Swilley SMG Partners, LLC, Alicia A. Piner, Heath Causey, Sage Advisory Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, LLC, and Sage Funding, L.P., Christopher Pitcock, Defendants,

Of Whom J. Floyd Swilley and Laurel K. Swilley and Heath Wendell Causey  
are the ..... Appellants

PROOF OF SERVICE

I certify that I have served the Notice of Motion and Motion For Extension of Time To File Final Brief on F. Miles Adler, Esquire and Heath Wendell Causey, Pro Se by depositing a copy of same in the United States Mail, postage prepaid, on June 29, 2017, addressed to F. Miles Adler, Esquire, Adler Law Firm, LLC, P.O. Box 4743, Pawleys Island, SC 29585 and Heath Wendell Causey, 1705 N. Oak Street, Suite 2, Myrtle Beach, SC 29577.

June 29 2017



---

Nate Fata (S.C. No. 009866)

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Attorney for Respondents

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VIA U.S. MAIL

June 28, 2017

**RECEIVED**  
JUN 30 2017  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Appellate Case No. 2016-001328

Dear Ms. Kitchings:

Enclosed for filing are an original and six copies of Respondents' Notice of Motion and Motion to Extend Final Brief Filing Deadline by Thirty (30) days to File Final Brief and Proof of Service. I respectfully request a thirty (30) day extension to file Respondents' Final Brief after the filing of the Appellants' supplemental or amended Record on Appeal is filed.

I enclose a check in the amount of \$25 for the filing fee.

The Honorable Jenny Abbott Kitchings  
June 28, 2017  
Page 2

We appreciate the Court's consideration.

Sincerely,



---

Nate Fata (009866)

Nate Fata, P.A.

Post Office Box 16620

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Attorney for Respondents

cc:

F. Miles Adler, Esquire  
Adler Law Firm, LLC  
P.O. Box 4743  
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Attorney for Appellants

Heath Wendell Causey  
1705 N. Oak Street, Suite 2  
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Appellant, Pro Se

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JUN 30 2017  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

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