

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Kristi Lee Harrington, Circuit Court Judge

Lower Court Case No. 2015-CP-10-6819  
Court of Appeals Case No. 2016-001379

TRACY SMITH,

**RECEIVED**

Appellant,

v.

DEC 13 2017

SARAH GAINEY AND SAVE, INC.,

**SC Court of Appeals**

Respondents.

**RESPONDENTS' MOTION TO DISMISS APPELLANT'S APPEAL**

Pursuant to Rule 211 and Rule 240 of the South Carolina Appellate Court Rules (hereinafter referred to as "SCACR"), Respondents respectfully move this Honorable Court for an Order dismissing Appellant's Appeal.

The basis for this motion is Appellant's failure to serve his final brief, pursuant to Rule 211, SCACR<sup>1</sup>. Under this rule, each party must serve a copy of their final brief within twenty (20) days after service of the Record on Appeal. The Record on Appeal was served on April 10, 2017. Accordingly, under Rule 211, SCACR, the deadline to file the Final Brief was April 30, 2017. Appellant has failed to serve a final brief, although a "Motion for Leave to File Motion in Lower Court" was submitted on April 19, 2017,

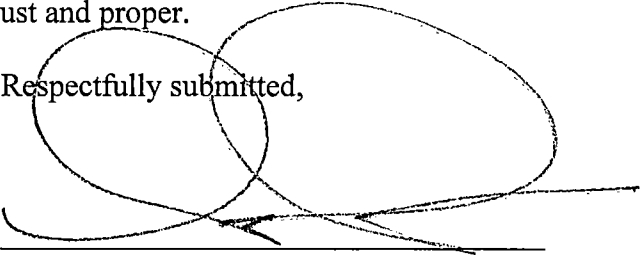
<sup>1</sup> Likewise, Appellant has also failed to serve and file a Certificate of Compliance, pursuant to Rule 211(a), SCACR.

denied by the Court on June 15, 2017. To date, Appellant has served no additional filings or correspondence on Respondents, and the deadline to serve his final brief expired over seven (7) months ago.

Rule 260(a), SCACR states that "whenever it appears that an appellant or a petitioner has failed to comply with the requirements of [the SCACR], the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. As set forth above, more than seven (7) months have elapsed since Appellant was required to serve his Final Brief. Accordingly, Respondents respectfully request a dismissal of the Appeal.

Wherefore, for the reasons set forth herein, Respondents respectfully request the Court grant their motion to dismiss Appellant's appeal with prejudice, and for such other and further relief as the court deems just and proper.

Respectfully submitted,



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Jack G. Gresh, SC Bar No. 75188  
Lauren V. Spears, SC Bar No. 100994  
111 Coleman Boulevard, Suite 301  
Mount Pleasant, South Carolina 29401  
Telephone: (843) 720-3460  
*Attorneys for Respondents Sarah Gainey and Save, Inc.*

Dated: December 12<sup>th</sup>, 2017

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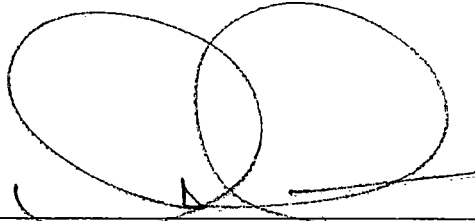
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**PROOF OF SERVICE**

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I certify that I have served the **Respondents' Motion to Dismiss Appellant's Appeal** upon the Appellant by depositing a copy of same in the United States Mail, First Class postage prepaid, on December 12, 2017, addressed to Appellant, *pro se*, addressed as follows:

Tracy Smith, *pro se* Appellant  
4351 Park Island Road  
Hollywood, SC 29449



Jack G. Gresh, SC Bar No. 75188

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Dated: December 12<sup>th</sup>, 2017

**Jack G. Gresh** | 111 Coleman Boulevard, Suite 301  
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December 12, 2017

**VIA FEDEX OVERNIGHT DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

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SC Court of Appeals

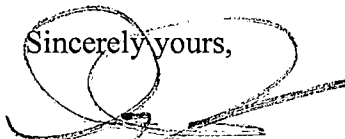
Re: *Tracy Smith v. Sarah Gainey and SAVE, Inc.*  
Court of Appeals Case No.: 2016-001379  
Lower Court Case No.: 2015-CP-10-6819

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Respondents' Motion to Dismiss Appellant's Appeal with the Proof of Service for filing in the above-referenced matter. Also enclosed is our firm check in the amount of \$25.00 for the filing fee.

We have enclosed an additional copy of the Respondents' Motion to Dismiss, and would appreciate your returning the filed copy to our office in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter. If you have any questions or concerns, please do not hesitate to contact our office.

Sincerely yours,  
  
Jack G. Gresh

Enclosures

cc: Tracy Smith, Pro Se Appellant (w/enc.)

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JACK GRESH  
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MOUNT PLEASANT, SC 29464  
UNITED STATES US

SHIP DATE: 12DEC17  
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TO THE HONORABLE JENNY ABBOTT KITCHING  
THE SOUTH CAROLINA COURT OF APPEALS  
1220 SENATE STREET

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COLUMBIA SC 29201

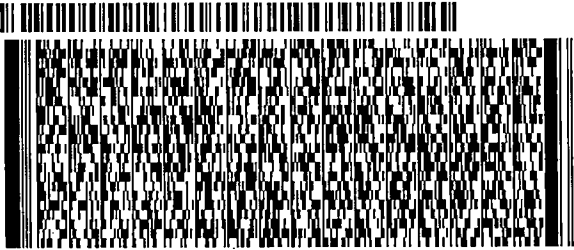
(803) 734-1890

REF: SMITH (8838-0393)

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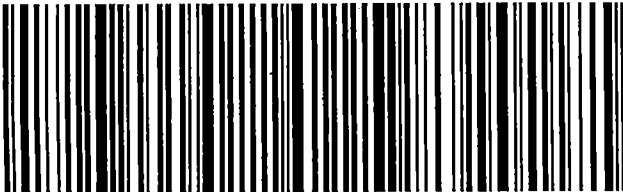
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