

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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NOV 19 2018

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

S.C. SUPREME COURT

APPELLATE CASE NO. 2018-001874

Century Capital Group, LLC.....Petitioner,

v.

Midtown Development Group, LLC,
Richland Joint Venture Group, LLC,
Windsor Richland Mall, L.P., and BRC
Richland, LLC.....Respondents.

RETURN TO PETITIONER CENTURY CAPITAL GROUP, LLC'S
PETITION FOR REINSTATEMENT

On November 15, 2018, Petitioner Century Capital Group, LLC ("Century") filed a Petition for Reinstatement after its Petition for Writ of Certiorari was dismissed by order of the clerk of court on October 31, 2018 for failure to file the Appendix, as required by Rule 242, SCACR. Respondents Midtown Development Group, LLC, Richland Joint Venture Group, LLC and Windsor Richland Mall, L.P. (collectively "Respondents") request the Court deny the Petition for Reinstatement because Century has failed to show good cause for reinstatement,

misrepresented facts to the Court, did not act diligently in rectifying its oversight, and its actions have resulted in prejudice to Respondents.

Rule 260(a), SCACR, provides for dismissal of an appeal when a petitioner fails to comply with the requirements of the South Carolina Appellate Court Rules. A case so dismissed may only be reinstated by leave of the Court upon a showing of “good cause” by the petitioner. *Id.* While this Court has not addressed the meaning of “good cause” as found in Rule 260, SCACR, the standard can be analogized to that found in the South Carolina Rules of Civil Procedure. To satisfy “good cause” as found in Rule 55(c), SCRCP, a party must provide an explanation for the default and give reasons why vacation of the entry of default would serve the interests of justice. *Sundown Operating Co., Inc. v. Intedger Industries, Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). If the party puts forth a satisfactory explanation for the default, a court will then consider: (1) the timing of the motion for relief; (2) whether the party has a meritorious defense; and (3) the degree of prejudice to the opposing party if relief is granted. *Id.* at 607–08, 681 S.E.2d at 888.

Respondents would submit that, while Century’s Petition for Reinstatement is replete with misrepresentations in an attempt to show good cause, Century has not put forth a satisfactory explanation for its failure to timely file the Appendix as required. Century claims the failure was the result of an “inadvertent mistake” in

compiling the document, yet if Century was aware of this mistake, the prudent course of action would have been to file a motion for an extension of time or otherwise inform the clerk of court and Respondents the Appendix would be filed as soon as the mistake was corrected. *See Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this state. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.”). However, at no time did Century communicate with Respondents’ counsel concerning the mistake or the alleged need for additional time to properly comply with the applicable appellate court rules. Moreover, Century’s explanation of why it did not timely file the Appendix by the October 19, 2018 deadline loses credibility because Century did not take swift action to cure the error; instead, Century allowed nearly three weeks to pass before attempting to file the Appendix on November 6, 2018 — only then after receiving the order of dismissal on October 31, 2018.

Curiously, Century attempts to explain this delay on the grounds that once it discovered the mistake in the Appendix, it required additional time to organize, bind, and duplicate the Appendix for serving upon Respondents; however, as of the

time of filing this Return, Respondents have not been served with a copy of the Appendix.

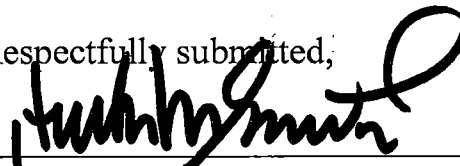
These delays have resulted in prejudice to Respondents. After the clerk of court's dismissal of Century's appeal on October 31st, Respondents' obligation to file a return to Century's Petition for Writ of Certiorari was ended, barring a motion for reinstatement. Rather than promptly filing a motion for reinstatement upon dismissal, or at least communicating to Respondents its plan to file such a motion, Century delayed filing this Petition for Reinstatement until the fifteenth day of its fifteen-day window under Rule 260(a), SCACR.

Further, in its Petition for Reinstatement, Century claims Respondents "have received notice" of the Petition, yet Respondents had received no such notice at the time Century filed the Petition. Instead, Respondents only learned of the Petition when counsel for Respondents checked the status of the case on C-track on November 15th. Century's handling of the Appendix and its actions following the dismissal of the appeal created uncertainty for Respondents as it was not known whether they would need to devote time and resources to drafting a response to the Petition for Writ of Certiorari, or whether Century would make an attempt to cure its error and move the Court to reinstate the appeal.

Based on the foregoing, Respondents respectfully ask the Court to deny Century's Petition for Reinstatement. Century has not shown good cause to

reinstate the appeal because it did not put forth a satisfactory explanation for the error, it failed to act diligently in communicating its error to the Court or Respondents, and it unnecessarily delayed its filing of the Appendix and Petition for Reinstatement.

Respectfully submitted,



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PROOF OF SERVICE FOR RESPONDENTS' RETURN TO APPELLANT CENTURY
CAPITAL GROUP, LLC'S PETITION FOR REINSTATEMENT

I certify that I have served the Respondents' Return to Appellant Century Capital Group, LLC's Petition for Reinstatement by depositing a copy of the same in the United States Mail, postage prepaid, on the 19 day of November, 2018 addressed to Appellant's attorney of record:

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McCabe Trotter and Beverly, PC
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Columbia, South Carolina 29221


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