

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Mark J. Hayes, II, Circuit Court Judge

Circuit Court Case No. 2015-CP-07-02047

Appellate Case No. 2019-000200

**RECEIVED**

JUN 28 2019

SC Court of Appeals

James R. Brady,

Respondent,

v.

Hilton Head Homes at Allenwood, LLC; Village  
Square Development Company, LLC; Lancaster  
Redevelopment Corp.; and Gary L. Grossman,

Appellants.

RESPONDENT'S RETURN OPPOSING APPELLANT'S MOTION FOR  
EXTENSION AND OPPOSING REINSTATEMENT OF APPEAL

Respondent, by and through his undersigned counsel, hereby submits this Return to Appellants' Motion for an Extension of Time to File Initial Brief and Designation of Matter. As set forth below, this appeal already should have been dismissed prior to when Appellants sent their Motion for Extension to be filed. Respondent recognizes that even if the clerk dismisses this appeal, Appellants could move for it to be reinstated under Rule 260, SCACR. Therefore, this Return also opposes such a reinstatement, in case this Motion is converted to a Rule 260 motion.

**I. Appellants' request for extension should be denied.**

Appellants' Motion for Extension was not timely filed. An appellant must serve and file his initial brief within thirty days after receiving the

transcript from the lower court proceedings. Rule 208(a)(1), SCACR. “Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court **shall** sign an order dismissing the appeal.” Rule 208(a)(4), SCACR (emphasis added). In the present appeal, on May 21, 2019, counsel for Appellant sent the clerk a letter stating that he received the hearing transcript on May 15. Appellants therefore were obligated to have served and filed their initial brief no later than June 14. They failed to both serve and file the initial brief by that time. The clerk therefore must dismiss this appeal. The Appellate Court Rules are clear and unambiguous in this regard and leave no room for interpretation.

Appellants did not send the present Motion for Extension out to be served or filed until June 18. They delivered the Motion to the clerk and to Respondent’s counsel via overnight carrier. Respondent’s counsel received the motion on June 19. A motion for extension to file a brief cannot revive an appeal that already has been or should have been dismissed. Thus, Appellants’ request for relief must be denied.

**II. The Court of Appeals should not reinstate this appeal because Appellants cannot show the requisite good cause.**

This Motion for Extension would have been more properly labeled as motion for reinstatement. If the Court elects to treat this motion as such, the legal standard for a motion for reinstatement would be for “good cause shown” at the discretion of the Court. Rule 260, SCACR. The Court should deny reinstatement of this appeal because Appellants cannot show good cause for missing their initial brief deadline.

The underlying litigation is a simple payment claim. The Respondent filed the underlying litigation on June 5, 2009—more than ten years ago. No further extensions in this matter would be proper absent extraordinary

circumstances. No such circumstances exist here. The Appellants have requested continuances for every deadline, hearing date, and trial date scheduled for this matter. Over the past decade, Respondent has been overly gracious to Appellants on these continuance requests. That sea of good faith has now fully eroded.

In this appeal so far, Appellants let more than six weeks lapse between ordering a transcript on February 8 and issuing payment for the transcript on March 26. They did not issue payment until after the clerk warned the Appellants of their tardiness in the clerk's correspondence dated March 5, 2019. Appellants filed a Motion to File Letter Ordering Transcript out of Time on March 11, 2019. Respondent did not challenge that particular motion because Respondent recognized that the Appellants ordered the transcript back in February. Then, after the Court granted that particular request for extension, Respondent learned that Appellants had not yet paid for the transcript order. The undersigned counsel rarely will ever oppose a colleague's requests for extension. In this matter, though, the repeated requests have become a disgrace.

The standard for reinstatement of this appeal is "good cause" shown. No good cause exists for the continuing attempts to delay a simple payment claim that is more than ten years old. The Appellants filed the Notice of Appeal for this matter more than four months ago. They received the lower court hearing transcript more than one month ago. If good cause existed for this extension, counsel for Appellants presumably would have contacted counsel for Respondent about that good cause. No such communication occurred.

### CONCLUSION

Based on the foregoing, Respondent respectfully request this Court issues an order (i) dismissing this appeal based on Appellants' failure to

timely file and serve their initial brief, (ii) denying Appellants' Motion for an Extension of Time to File Initial Brief and Designation of Matter, and (iii) denying reinstatement of this appeal for lack of good cause shown.

Respectfully submitted,

**CAPELL THOMSON, LLC**



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(843) 501-0423

**Attorneys for Respondent**

**James R. Brady**

June 27, 2019  
Charleston, South Carolina

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<sup>1</sup> Although the merits of this appeal are outside the scope of this motion, the above-signed counsel certifies that he cannot conceive a meritorious basis for this appeal.

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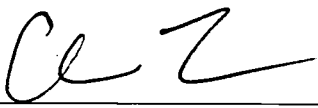
Hilton Head Homes at Allenwood, LLC; Village  
Square Development Company, LLC; Lancaster  
Redevelopment Corp.; and Gary L. Grossman,

Appellants.

PROOF OF SERVICE

I certify that I have served the **Respondent's Return to Appellants' Motion for Extension and Opposing Reinstatement of Appeal** on the above-named Appellants by depositing a copy of it in the United States Mail, postage prepaid, on June 27, 2019, addressed to their attorney of record, G. Hamlin O'Kelley, III, 652 Coleman Blvd., Suite 200, Mt. Pleasant, SC 29464.

June 27, 2019

  
Charles W. Thomson, Esq.  
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(843) 501-0423  
**Attorneys for Respondent  
James R. Brady**

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June 27, 2019

**Via FedEx Overnight**

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

Re: **Brady v. Hilton Head Homes at Allenwood, LLC, et al.**  
Appellate Case No. 2019-000200

Dear Ms. Kitchings:

Enclosed for filing in the above case are as follows:

- 1) An original and seven copies of the Respondent's Return to Appellants' Motion for Extension and Opposing Reinstatement of Appeal; and
- 2) An original and seven copies of the Proof of Service of both of the above.

Please return one clocked copy of each to me in the self-addressed, stamped return envelope also enclosed. Thank you for your attention to this matter.

Sincerely yours,

**Capell Thomson, LLC**



Charles W. Thomson

Enclosures

CWT/cgb

cc: G. Hamlin O'Kelley, Counsel for Appellants

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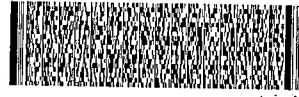
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SC COURT OF APPEALS  
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COLUMBIA SC 29201

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