

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Deadra L. Jefferson, Circuit Court Judge
Edgar W. Dickson, Circuit Court Judge
Maite Murphy, Circuit Court Judge

RECEIVED
JUL 01 2019
SC Court of Appeals

Case No.: 2016-CP-18-01706
Appellate Case No.: 2018-002185

Molly M. Morphew, Appellant

v.

Stephen Dudek, Doreen Cross, David Collins,
Allison Williams, First Federal, Michael Scarafile,
Susan Nicholson, Carolina One Real Estate,
Carrie Boyer, and Woody Law Firm, Respondents

RESPONDENTS' MOTION TO DISMISS AND STAY TIME LIMITS

Respondents Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, and Woody Law Firm (herein collectively the "Respondents") respectfully move the South Carolina Court of Appeals to dismiss this appeal because Appellant has failed to comply with the requirements of the South Carolina Appellate Court Rules, specifically Rule 208 thereof, and Orders of this Court dated May 30, 2019, and March 22, 2019. Additionally, Respondents seek an Order of this Court staying further briefing deadlines until Appellant's Second Motion to Exceed Page Limitations (Appellant's "Second Motion") and this Motion to Dismiss are

decided, as provided for in Rule 240, SCACR. The grounds for this motion are more fully set forth herein.

PROCEDURAL HISTORY

In 2012, Stephen Dudek and Doreen Cross entered into a real estate sales contract with the seller, a non-party to this lawsuit. Subsequent to that contract, Appellant entered into a back-up sales contract regarding the same property with the same seller. Dudek's and Cross's contract was ultimately fulfilled and Appellant initiated litigation to enforce her contract over the primary contract. Appellant lost that litigation by decision of the Honorable James E. Chellis, Master-in-Equity, Dorchester County. Appellant appealed that decision in appellate case number 2014-002633 and this Court ultimately affirmed the decision of the Master-in-Equity.

The case underlying this appeal, arises out of Appellant's allegations that both before and during trial of the above matter, all of the Respondents here perpetrated a fraud on both her and the court by making fraudulent misrepresentations and failing to disclose material facts. On November 14 and 15, 2018, the Honorable Judge Maite Murphy entered orders granting summary judgment in favor of all Respondents and dismissing the underlying case in full. On December 12, 2018, Appellant filed a notice of appeal in this Court, identifying seven orders subject to the appeal.¹

On February 21, 2019, in this appeal, Appellant filed a Motion for extension of time to file her initial brief. On March 15, 2019, Appellant filed her first Motion to exceed the 50 page limit on initial briefs and sought, instead, 525 pages. On March 22, 2019, this Court granted Appellant an extension of time to file the initial brief and designation of matter until April 12, 2019 stating that "[n]o further extensions will be granted absent extraordinary circumstances."

¹ However, Appellant's first Motion to Exceed Page Limitations references fifteen orders.

Ignoring this Court's directive, Appellant did not file her initial brief or designation of matter at that time but instead filed a letter dated April 11, 2019 stating that she is "unable to serve the initial brief until said motion [to exceed the page limits] is decided." On May 30, 2019, this Court entered an Order stating, "Appellant's motion to exceed the page limitations for her initial brief set forth in Rule 208 of the South Carolina Appellate Court Rules is denied. **Appellant shall serve and file her initial brief and designation of matter within twenty days of this order or this appeal may be dismissed. ...**"² (emphasis added). However and ignoring this Court's directive again, Appellant did not file a compliant initial brief but instead filed her Second Motion and attached a 229 page initial brief thereto.

ARGUMENT

South Carolina Appellate Court Rule 260 states, "[w]henver it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Rule 260, SCACR. In addition, South Carolina Appellate Court Rule 208 states, "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, and the appeal shall not be reinstated except as provided by Rule 260." Rule 208, SCACR (emphasis added). Rule 208 also imposes the fifty page limitation on initial briefs Appellant seeks to avoid. Rule 208(b)(5), SCACR.

Appellant has repeatedly failed to comply with the requirements of the South Carolina Appellate Court Rules and this Court's explicit and unambiguous Orders. Appellant failed to comply with Rule 208 initially by failing to file her initial brief within thirty days of receiving

² Shortly after Appellant's April 11 Motion, Respondents Allison Williams and First Federal, properly identified as South State Bank, formerly known as South Carolina Bank and Trust sent a letter to the Honorable Jenny Abbott Kitchings respectfully requesting the dismissal of the Appeal. This Court's May 30 Order also denied this request.

the transcript. Rather, Appellant filed a Motion to Exceed Page Limits and a Motion for Extension of time approximately one month apart. Appellant failed to comply with this Court's March 22 Order by failing to file an initial brief and designation of matter by April 12. Instead, Appellant filed a letter seeking clarification on her Motion to Exceed Page Limits. Appellant failed to comply with this Court's May 30 Order by failing to file a compliant initial brief³ and designation of matter on or before June 19. Instead, Appellant filed her Second Motion and attached thereto a 229 page initial brief. The filing of Appellant's Second Motion does not affect the deadline to file a compliant initial brief. South Carolina Appellate Court Rule 240 states, "Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition." Rule 240, SCACR.

Respondents respectfully request that this Court dismiss Appellant's appeal because of her repeated failure to comply with the time and page limitations imposed by the South Carolina Appellate Court Rules and this Court's orders as detailed above. Additionally, the Respondents are and will continue to be burdened and prejudiced by Appellant's failure to prosecute this appeal.

Despite appearing *pro se*, Appellant should not be permitted to abuse the leniency granted such petitioners. Appellant is or has been involved in four other appeals; all regarding the subject property and all involving Respondents Stephen Dudek and Doreen Cross. It is clear from her routine application to this Court that Appellant has significant experience in appellate court procedure. In addition, "a *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the

³ It is unclear to Respondents whether Appellant has filed the 229 page initial brief as such or merely as an attachment to her second motion to exceed the page limitations.

law.” *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 n.5 (2003). Appellant’s status as a *pro se* litigant should not be considered a mitigating factor in this instance.

This appeal should be dismissed based on the Appellant’s failure to comply with the requirements of the South Carolina Appellate Court Rules and this Court’s Orders.

MOTION TO STAY

Respondents respectfully request an Order of this Court staying briefing deadlines until Appellant’s Second Motion and Respondents’ Motion to Dismiss are decided. “Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal ...however, automatically stay[s] the time limits for perfecting the appeal until the motion is decided.” Rule 240, SCACR. As noted above, Appellant has not complied with the Rules and Orders of this Court. Further, it is unclear whether Appellant has filed her (noncompliant) initial brief and designation of the matter in that capacity or merely as an exhibit to her Second Motion. The burden and cost of merely reading, let alone responding to, a noncompliant 229 page brief would be exorbitant.⁴ Therefore, to the extent such responsive briefing deadlines have been initiated by Appellant’s filings, Respondents respectfully request an Order of this Court staying such pleading deadlines until this and Appellant’s motions are decided.


CONCLUSION

For all of these reasons, the Respondents respectfully request that the Court stay briefing deadlines and dismiss this appeal.

(Signatures on next page)

⁴ For these same reasons, Respondents hereby formally and vigorously oppose Appellant’s second motion to exceed the page limitations in any respect, let alone in the magnitude requested by Appellant.

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Murrells Inlet, South Carolina
July 1, 2019

GALLIVAN, WHITE & BOYD, P.A.

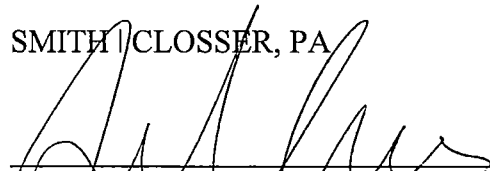


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July 1, 2019

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July 1, 2019

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PROOF OF SERVICE

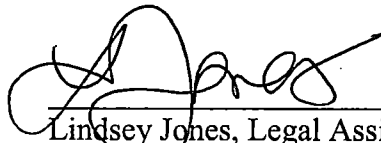
I certify that on July 1, 2019, I served copies of Respondents' Motion to Dismiss
and Stay Time Limits by United States mail, postage prepaid, addressed to:

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Lindsey Jones, Legal Assistant
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July 1, 2019

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

RECEIVED
JUL 01 2019
SC Court of Appeals

Re: *Molly Morpew v. Stephen Dudek, et al.*
Appellate Case No.: 2018-002185

Dear Ms. Kitchings:

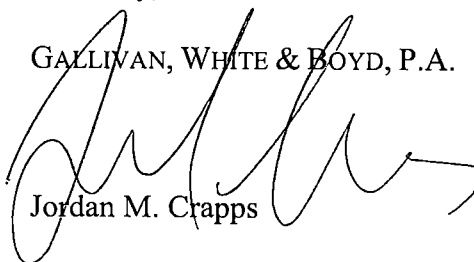
Enclosed herewith for filing, please find the original and six (6) copies of Respondents' Motion to Dismiss and Stay Time Limits in the above matter, along with our firm's check in the amount of \$50.00 to cover the filing fee. Please file the original and return a clocked copy to our courier.

By copy of this letter and attached Proof of Service, we are hereby serving all counsel of record with a copy of same.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



Jordan M. Crapps

JMC/ljj

cc: Molly M. Morpew
Steven L. Smith, Esquire
Amy L. Neuschafer, Esquire
David Collins, Esquire