

THE STATE OF SOUTH CAROLINA  
Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr.

**RECEIVED**  
OCT 14 2019  
SC Court of Appeals

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Common Pleas Number: 2018-CP-07-01449  
Appeal Court Number: 19-00941  
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Floyd Hargrove.....Appellant.  
v.  
Anthony E. Griffis, Sr.,.....Respondent.

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**MOTION TO HOLD THE APPEAL IN ABEYANCE OR  
ALTERNATIVELY FOR A SECOND EXTENSION OF TIME**  
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Undersigned counsel moves this Court for an order holding this appeal in abeyance or alternatively granting Appellant a second extension of time in which to file the initial brief and designation of matter in the above-captioned matter. The deadline for these filings was initially set for September 11, 2019. However, following Appellant’s request for an extension based in part upon undersigned’s briefing deadlines in the US Court of Appeals for the Fourth Circuit, the mandatory hurricane evacuation and associated power outage during the week of September 2, 2019 and a life threatening illness of a member of undersigned’s immediate family, the date was extended until October 10, 2019.

The request to hold the briefing in abeyance is based upon the imminent trial of a suit arising from the same real estate commission around which the suit, sub judice, revolves. See Hargrove v. Citadel Realty, et al, 2018-CP-07-00619 (Citadel Realty). In fact, a verdict in the

Appellant's favor at trial may moot issues involved in this appeal or reduce or offset any damages sought by the Appellant in the above-captioned action. Likewise, should the verdict in the Citadel Realty case engender an appeal, judicial economy would be served by having all of the issues in both cases presented to the appellate court at the same time.

As a brief context, the Appellant was a real estate agent with involvement in the sale of Four Million (4,000,000.00 ) Dollars of commercial real estate on Hilton Head Island. Appellant never received any payment for his services. He sued Citadel Realty for conversion, negligence/gross negligence for failing to collect the commission, and negligence/gross negligence for failing to consult with Appellant before abandonment of efforts to collect the commission.

After a limited amount of discovery, Citadel Realty and a co-defendant were granted summary judgment as to all three causes. However, the circuit court granted a motion to alter or amend and denied summary judgment as to the actions for negligence and gross negligence against both Citadel and the co-defendant in that case. That matter was mediated, dismissed on a 40j motion and later restored. This case is tentatively set for trial during the November 11, 2019 term of common pleas as priority case number six (6).

During the discovery process in the Citadel Realty case in July, 2017, a letter from the closing attorney was provided to Appellant which serves as the basis for the causes of action in the suit at issue in this appeal.

Appellant, referencing the July, 2017 letter in the complaint at issue in this appeal, averred that the closing attorney did not pay the commission following instructions from the Respondent, who was counsel for the seller of the property. This complaint alleged that Respondent was liable for breach of a fiduciary duty and conspiracy. However, the circuit court

granted a Motion to Dismiss based upon the pleadings before any discovery was had in this second suit.

Nonetheless, Appellant and the Citadel Realty defendants are set for trial in early November. It appears that the parties will stipulate to the admission of several items of discovery, including the July 17 letter so that the jury may decide if the Citadel Realty defendants are liable for damages, if so, what percentage of the damages, and what actions of what persons engender any damages.

While the issues in the Citadel Realty case and the case at bar do not exactly parallel each other, the underlying commission, its non-payment, and the reason for the non-payment are inextricably linked. Requiring briefings in this case before the resolution of certain issues in the Citadel Realty case raises the possibility of inconsistent findings of fact and conclusions of law. Requiring the briefing before the verdict in the Citadel Realty case almost certainly guarantees that two panels of the Court of Appeals may hear flip sides of the same underlying transactions; thus, thwarting judicial economy. Holding the briefing schedule in abeyance, on the other hand, would promote efficiency and economy.

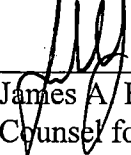
Should this Court decline to hold this matter in abeyance, the Appellant requests that a second extension of time be granted. This request is made primarily because of the heavy work schedule of undersigned counsel which includes the filing of a federal brief and a 26 page proposed order in a state court PCR within the last two weeks. Further, undersigned has another federal brief due to the Fourth Circuit on October 23, 2019. This latter federal appeal's briefing schedule was assigned prior to the scheduling of the appeal in the case at bar and was likewise continued because of the other appeals and the hurricane evacuation.

Finally, undersigned counsel has attempted to discuss this matter with Respondent's co-

counsel by leaving a phone message with the staff at his office on October 9, 2019.

In light of these circumstances, undersigned counsel requests that the Court hold the briefing schedule in abeyance. In the alternative, Appellant requests a second 30 day extension of time to file the brief and designation of matter.

Respectfully submitted,

  
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James A. Brown, Jr.  
Counsel for Appellant

October 9, 2019  
Beaufort, SC

Law Offices of Jim Brown, PA  
1600 Burnside Street, Suite 100  
PO Box 592  
Beaufort, SC 29901  
(843) 470-0003

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Court of Appeals

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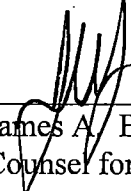
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**CERTIFICATE OF SERVICE**  
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I certify that I have served copies of this Motion to Hold the Appeal in Abeyance or Alternatively for a Second Extension of Time on the Respondent, by depositing copies of this Motion in the United States Mail, postage prepaid, on October 9, 2019, addressed to his attorneys of record, Anthony E Griffis, Sr., at Griffis Law Office, 355 Park Ave SW., Aiken, SC 29801, and Sean Michael Bolchoz, at Bolchoz Law Firm, PA PO Box 22650 Hilton Head Island, SC 29925-2560.

  
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James A. Brown, Jr.  
Counsel for the Appellant

October 9, 2019  
Beaufort, SC

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October 9, 2019

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

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OCT 14 2019  
SC Court of Appeals

Re: Hargrove v. Griffis;

Circuit Court Number: 18-CP-07-01449

Appellate Court umber: 19-00941

Ms. Kitchings:

Please see enclosed a Motion to Hold the Appeal in Abeyance or Alternatively for a Second Extension of Time, a Certificate of Service and a check for \$50 for the filing fee in the above mentioned case. Please contact our office should you have any questions or concerns.

Sincerely,

  
Jim Brown

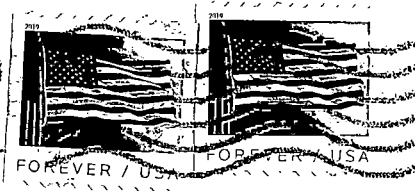
w/enclosures as indicated

cc: Sean Bolchoz, Counsel for Respondent, w/enclosures except the filing fee  
Anthony E. Griffis, Counsel for Respondent w/enclosures except the filing fee  
Christopher Stephen Truluck, w/enclosures except the filing fee  
Floyd Hargrove, w/ enclosures except the filing fee

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