

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court Of Common Pleas

The Honorable Eugene C. Griffith, Jr.

Trial Court Case No. 2018-CP-07-01449
Appellate Case No. 2019-000941

RECEIVED
OCT 21 2019
SC Court of Appeals

Floyd Hargrove

.....Appellant,

v.

Anthony E. Griffis, Sr.Respondent.

**RESPONDENT'S RETURN TO
APPELLANT'S MOTION TO HOLD THE APPEAL IN ABEYANCE OR
ALTERNATIVELY FOR A SECOND EXTENSION OF TIME**

Respondent, Anthony E. Griffis, Sr., hereby responds to Appellant's "Motion to Hold the Appeal in Abeyance or Alternatively for a Second Extension of Time".

BACKGROUND

This is an appeal of an "Order Granting Motion to Dismiss" filed on March 15, 2019, dismissing the Complaint of Appellant/Plaintiff Floyd Hargrove pursuant to SCRCP 12(b)(6). The lower Court found that "(1) an expert affidavit is required by S.C. Code Ann. §15-36-100 and was not filed with the Complaint; (2) the applicable statute of limitations for the Complaint expired; (3) Plaintiff's claims are void as against public policy, the laws and regulations of South Carolina, and the underlying contract;

(4) Plaintiff lacks standing to bring this action, and (5) additionally, the “Conspiracy” claim fails by not pleading separate and distinct “special damages”. Based on these findings the Court dismissed the entire Complaint, with prejudice.

The lower Court, in the “Order Granting Motion to Dismiss”, relied solely on the admissions, allegations, and legal defects of Appellant’s Complaint. The Court never considered any facts outside the four corners of the Complaint, and the Respondent herein never requested that his Motion to Dismiss be expanded to a Motion for Summary Judgment.

A motion to dismiss for failure to state a cause of action must be based solely on the allegations in the complaint, *Gessette v. SCE&G*, 635 S.E.2d 538 (S.C. 2006). On appeal, the standard for review is whether the Complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief, *Brazell v. Windsor*, 682 S.E.2d 824, 384 S.C. 512 (S.C. 2009). Effectively, then, the only relevant “facts” in any such appeal are to be found in the dismissed complaint. The instant appeal is no different.

ARGUMENT

In his Motion, Appellant attempts to link the issues in Hargrove’s case against Citadel Realty (the “Citadel action”) with the instant appeal; however, the instant appeal involves the dismissal of a complaint for failure to state a claim against the Respondent *in a totally separate and independent lawsuit*, unrelated to the Citadel action. Appellant could have impleaded Respondent as a defendant in the Citadel action but elected instead to bring a separate lawsuit from which this appeal arises. There is no linkage between the two matters; for any such linkage to exist, this Court would first have to reverse the lower Court’s Order Granting Motion to Dismiss, and then Appellant would have to prevail in the

lower court. Even though Appellant implies in his Motion that Respondent may have some liability for the real estate commission in the Citadel action, there is absolutely no liability against Respondent at this litigation stage, because all claims of Appellant have been dismissed. Therefore, because the issues in the instant appeal are not linked to the Citadel action, and because this appeal arises from a totally independent lawsuit (brought separately from the Citadel action by the Appellant), there is simply no reason to hold this appeal in abeyance pending the outcome of the Citadel action.

Appellant's argument that holding the briefing in abeyance would "promote efficiency and economy" is also without merit. Appellant's Citadel lawsuit was originally filed on November 12, 2013; nearly six (6) years later, that lawsuit is still unresolved. Appellant, as Plaintiff in the Citadel lawsuit, is the only party to blame for this excessive delay. It would be grossly unfair to Respondent for this Court to hold this appeal in abeyance pending the outcome of the Citadel lawsuit (to which the Respondent is not a party), which will likely be indefinitely delayed by appeals and other procedural delay tactics.

The Order of Dismissal being appealed was filed on March 15, 2019. Now, six (6) months later, Appellant is still asserting that he does not have time to submit his initial brief because of his work schedule. However, during the interim six months, instead of working on his appeal brief, Appellant has been misusing the court system for unnecessary delays and excuses. Extensions for filing initial briefs in an appeal (particularly after the first thirty-day extension)¹ must be based on circumstances clearly beyond the control of the

¹ Appellant has already been granted a thirty day extension to file his Appellant's Initial Brief; *see* this Court's Order, dated September 26, 2019.

attorney, and such exceptional circumstances do not include an attorney's workload or hectic schedule. Comment 2 to Rule 1.3 of our Code of Professional Conduct states that: "A lawyer's workload must be controlled so that each matter can be handled competently."

Respondent submits that the true basis for the Appellant's ongoing attempts to delay resolution of this appeal is in fact the Respondent's pending Motion for Sanctions against Appellant which was filed on March 21, 2019, in the lower court and stayed by this appeal.

The time and effort that Appellant has invested in delaying a final disposition of his appeal (and then, in turn, a hearing on the motion for sanctions) surely has exceeded the time and effort needed to file Appellant's Initial Brief. This is because, as suggested above, the briefs in this appeal should be relatively simple, to wit: Respondent's brief will mirror the Order Granting the Motion to Dismiss, and the Appellant's brief should echo his Plaintiff's Objections to Proposed Order of Dismissal (filed in the lower court). The only objections or issues on appeal which Appellant raised to the lower court and preserved for this appeal are contained in his Objections to Proposed Order of Dismissal, and the legal arguments in support of same are already researched and briefed in this document². The issues in the instant appeal are relatively simple and totally unrelated to the Citadel lawsuit.


Lastly, Rule 240(b) of our Appellate Rules states that the time limits imposed by these Rules shall not be stayed by the filing of a motion. Here, the thirty (30) day extension for Appellant's initial brief has expired, and Appellant's appeal should be dismissed.

² Appellant did order a transcript of the hearing on the Motion to Dismiss which took over sixty days; however the "facts" of this appeal are limited to the allegations of the Complaint; Respondent submits that obtaining this unnecessary transcript was another delay tactic of Appellant.

CONCLUSION

Appellant's Motion should be denied and the appeal dismissed. There is no legal basis to hold this appeal "in abeyance" pending resolution of another separate and independent lawsuit which the Respondent is not a party of, and the issues of the instant appeal are not related or dependent upon that other lawsuit. Further, Appellant counsel's "heavy workload" is no valid reason to grant another thirty (30) day extension.

October 19, 2019



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October 19, 2019

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

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Re: Floyd Hargrove v. Anthony E. Griffis, Sr.
Appellate Case No. 2019-000941

Dear Ms. Kitchings:

Enclosed are the original and six (6) copies of Respondent's Return to Appellant's Motion to Hold the Appeal in Abeyance or Alternatively for a Second Extension of Time, with Affidavit of Service.

Sincerely,



Anthony E. Griffis

cc: James Arthur Brown, Jr., Esq.
Sean Bolchoz, Esq.

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PROOF OF SERVICE

I certify that I have served the **RESPONDENT'S RETURN TO APPELLANT'S MOTION TO HOLD THE APPEAL IN ABEYANCE OR ALTERNATIVELY FOR A SECOND EXTENSION OF TIME** on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on October 19, 2019, addressed to Appellants' attorney of record, James A. Brown, Esq., PO Box 592, Beaufort, SC 29901.

October 19, 2019



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