

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas

Hon. Perry M. Buckner, III,  
Presiding Circuit Court Judge

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Case No. 2018-CP-25-0357

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Gary L. Mole, as the Personal Representative  
of the Estate of Eddie Mole, Deceased. . . . . Appellant,

v.

Kramer Apartments, LLC . . . . . Respondent.

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RESPONDENT KRAMER APARTMENTS, LLC'S MOTION TO DISMISS AND  
MEMORANDUM IN SUPPORT OF SAME

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WALL TEMPLETON & HALDRUP, P.A.

**RECEIVED**

DEC 12 2019

**SC Court of Appeals**

Morgan S. Templeton  
Ford H. Thrift  
145 King Street, Suite 300  
Post Office Box 1200  
Charleston, South Carolina 29402  
Telephone: 843.329.9500  
Facsimile: 843.329.9501  
Attorneys for Respondent Kramer  
Apartments, LLC

Respondent, Kramer Apartments, LLC (“Kramer”), respectfully moves pursuant to South Carolina Appellate Court Rules 203, 240, and 260 for an order dismissing Appellant Gary L. Mole’s (“Mole”) Notice of Appeal dated November 11, 2019. Kramer respectfully requests that the Clerk of Court dismiss this appeal pursuant to SCACR 260(a) and/or that the Court issue an order dismissing Mole’s Notice of Appeal for failure to comply with the South Carolina Appellate Court Rules, specifically 203(d)(1)(B).

### **Law & Argument**

Mole’s Notice of Appeal should be dismissed because he failed to properly file it with the Clerk of Court for Hampton County as required by Rule 203(d)(1)(B), SCACR. An appeal “is a matter of grace and is not an inherent or vested right.” *McCullough v. McCullough*, 242 S.C. 108, 110, 130 S.E.2d 77, 78 (1963). Thus, “the rules of court and statute must be followed in perfecting an appeal.” *Id.* A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules.” Rule 203(a), SCACR. A party intending to appeal a judgment from the Circuit Court shall file the notice of appeal with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. Rule 203(d)(1)(B), SCACR (emphasis added). If a party fails to timely file the notice of appeal, the appeal shall be dismissed. Rule 203(d)(3), SCACR.

In this case, Mole served the Notice of Appeal on Kramer on or about November 12, 2019.<sup>1</sup> (*See* Exhibit A – Mole’s Correspondence and Notice of Appeal.) Mole was then required to file the Notice of Appeal with both the Clerk of the Court of Appeals and the Clerk of Court for Hampton County within 10 days. Mole enclosed a proof of service with the November 12 letter

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<sup>1</sup> Mole’s letter and proof of service both indicate the notice of appeal was mailed to the Kramer on November 11, 2019; however, November 11 was a holiday and the postage on Mole’s letter indicates that it was mailed on November 12, 2019. In any event, Kramer is not asserting that Mole failed to timely serve Kramer.

to Kramer that indicates Mole mailed a copy of the Notice of Appeal to the Clerk of Court for Hampton County on November 12, 2019. (Ex. A, p. 12.) The proof of service makes no mention of filing in the Circuit Court nor has Kramer received any other correspondence requesting that such filing be made.<sup>2</sup> This does not meet the standards of filing the Notice of Appeal. See Rule 5, SCRCF.

Second, even if this would have been sufficient in the past, filing in the Circuit Court can no longer be done by the historical method. See Section 2(b), SCEF; see also *In Re Expansion of Electronic Filing Pilot Program – Court of Common Pleas*, 418 S.C. 532, 795 S.E.2d 161 (2016) (Expanding e-filing to Hampton County). Mole failed to file the notice of appeal with the Clerk of Court for Hampton County as required by Rule 203(d)(1) and the Notice of Appeal must be dismissed.

### Conclusion

Wherefore, Kramer respectfully requests that the Clerk of Court issue an order dismissing Mole's Notice of Appeal dated November 11, 2019 and/or that the Court issue an order dismissing same.

**[Signature on next page]**

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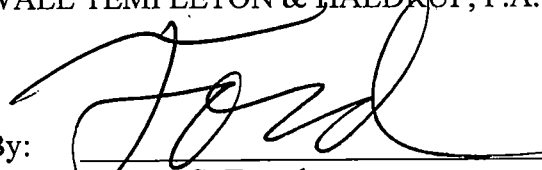
<sup>2</sup> Additionally, as of the date of this motion, there is no record on the public index that a notice of appeal has been filed with the lower court, i.e., the Hampton County Court of Common Pleas.

Dated this 10<sup>th</sup> day of December, 2019.

Respectfully,

WALL TEMPLETON & HALDRUP, P.A.

By:



Morgan S. Templeton

Ford H. Thrift

145 King Street

Post Office Box 1200

Charleston, South Carolina 29402

Telephone: 843.329.9500

Facsimile: 843.329.9501

Attorneys for Respondent Kramer  
Apartments, LLC

# EXHIBIT “A”

*Clarissa Warren Joyner*

*Attorney at Law*

1259 Amelia Street, Suite A ~ Post Office Box 1724 ~ Orangeburg, South Carolina 29116-1724

Phone (803) 534-8393 ~ Facsimile (803) 534-7885 ~ Email [joynerlawfirm@aol.com](mailto:joynerlawfirm@aol.com)

November 11, 2019

**Via email [ford.thrift@walltempleton.com](mailto:ford.thrift@walltempleton.com)**

**& U.S. First Class Mail**

Ford H. Thrift

Wall Templeton & Haldrup, P.A.

145 King Street, Suite 300

Charleston, SC 29401

Re: **Gary L. Mole v. Kramer Apartments, LLC**

Docket No.: 2018-CP-25-0357

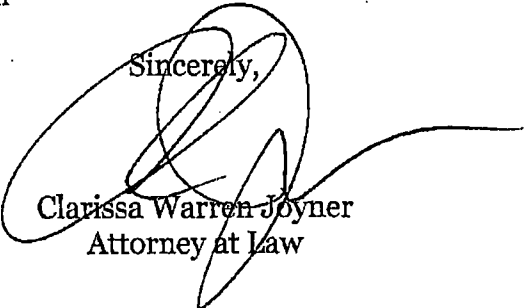
Dear Mr. Thrift:

Please find enclosed Notice of Appeal in the above-referenced case, which I hereby serve upon you. Also enclosed is a Proof of Service.

Should you have any questions or need any additional information, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

  
Clarissa Warren Joyner  
Attorney at Law

CWJ/mdc  
Enclosures

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas

Perry M. Buckner III, Circuit Court Judge

---

Case No. 2018-CP-25-00357

---

Gary L. Mole, as Personal Representative  
of the Estate of Eddie Mole, Deceased ..... Appellant,

v.

Kramer Apartments, LLC ..... Respondent.

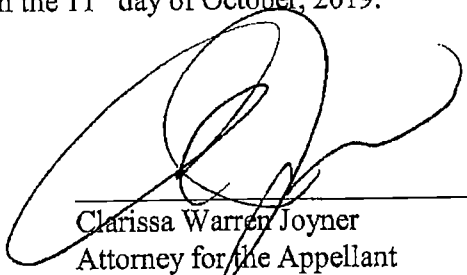
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**NOTICE OF APPEAL**

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Gary L. Mole, as Personal Representative of the Estate of Eddie Mole, Deceased, appeals the judgment of the Honorable Perry M. Buckner III granting summary judgment to the Respondent, Kramer Apartments, LLC, on the 10<sup>th</sup> day of October, 2019 and served on counsel on the 11<sup>th</sup> day of October, 2019.

Dated: November 11, 2019



---

Clarissa Warren Joyner  
Attorney for the Appellant  
1259 Amelia Street, Suite A  
Orangeburg, SC 29115  
(803) 534-8393 Telephone  
(803) 534-7885 Facsimile

Other Counsel of Record:  
H. Ford Thrift, Esquire  
Attorney for the Respondent  
145 King Street, Suite 300  
Charleston, SC 29401

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON	)	Case No.: 2018-CP-25-00357
Gary L. Mole, as the Personal	)	
Representative of the Estate of Eddie Mole,	)	
Deceased,	)	
	)	<b>ORDER GRANTING</b>
	)	<b>SUMMARY JUDGMENT</b>
Plaintiff,	)	<b>(case ending)</b>
	)	
-versus-	)	
	)	
Kramer Apartments, LLC,	)	
	)	
Defendant.	)	
	)	

THIS MATTER came before the Court upon Defendant’s motion for summary judgment. A hearing was held and oral argument presented at the Hampton County Courthouse on October 1, 2019, with Clarissa W. Joyner present for Plaintiff and Ford H. Thrift present for Defendant. After careful consideration of the pleadings, the submitted memoranda and materials, and the arguments of counsel, the Court GRANTS Defendant’s motion.

**BACKGROUND**

This action arises out of the death of Eddie Mole (the “Decedent”), who was attacked on October 28, 2015, at the apartment complex known as the Holly Street East Apartments (the “Apartments”). It is undisputed that Defendant Kramer Apartments, LLC (“Defendant”) owns and operates the Apartments and that both the Decedent and his Assailant resided at the Apartments.<sup>1</sup> Plaintiff Gary Mole, as the personal representative of the Decedent’s estate, brought this action against Defendant alleging that it was negligent in failing to maintain the Apartments in a state safe from criminal activity and in failing to evict the Assailant.

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<sup>1</sup> Although not a tenant, the Assailant was listed as a “designated occupant” on the lease agreement of another tenant.

## LAW & ANALYSIS

### I. Summary Judgment Standard

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. “Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citations omitted). The moving party may satisfy this initial burden by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. *See Id.*

“Once [the] moving party carries its initial burden, [the] opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*.” *Id.* (internal quotations and citation omitted; italicized emphasis in original). “Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings.” *Id.* (citations omitted). The rule “requires the response to set forth *specific facts* showing that there is a genuine issue for trial.” *Thompkins v. Festival Centre Group I*, 306 S.C. 193, 196, 410 S.E.2d 593, 594-595 (Ct. App. 1991 (italicized emphasis in original)). Mere “bald allegations” are insufficient to create a genuine issue of fact. *See Baughman*, at 117, 410 S.E.2d at 546.

### II. Defendant does not owe a general duty to its tenants to protect them from criminal activity and no evidence exists to support the existence of an exception to the no-duty rule.

Plaintiff alleges that Defendant failed to remedy a defect in the Decedent's apartment door that facilitated multiple break-ins, including the events that resulted in his death. (Pl.'s memo. in

opp., pp. 1-3.) Specifically, Plaintiff alleges that the Decedent's apartment was burglarized twice in 2014 – each more than a year before the events at issue here – and that each time the burglars gained access to the Decedent's apartment by breaking a glass window next to the Decedent's door and unlocking the door from within. (Pl.'s memo in opp., pp. 1-2.) Plaintiff simultaneously argues that Defendant negligently repaired the defect and failed to repair the defect.<sup>2</sup> (Pl.'s memo. in opp., p. 2.)

A landlord does not owe his or her tenants a duty to protect against criminal activity merely because of the landlord/tenant relationship. *Cramer v. Balcor Property Mgmt., Inc.*, 312 S.C. 440, 441 S.E.2d 317 (1994). An exception to the general “no-duty” rule exists where a landlord assumes a duty through his or her affirmative acts or undertakings. *See Wright v. PRG Real Estate Mgmt, Inc.*, 426 S.C. 202, 826 S.E.2d 285 (2019). The affirmative acts exception is limited to situations where the landlord's direct action increases a tenant's risk of harm from criminal activities. *Id.* at 261, 826 S.E.2d at 292. The undertakings exception applies to more attenuated actions that increase a tenant's risk of harm through the landlord's failure to exercise due care or if harm is suffered because of the tenant's reliance upon the landlord's undertaking. *Id.*, (citing restatement (Second) of Torts § 323 (1965)). A plaintiff alleging that an exception applies must present specific evidence which would give rise to the alleged duty. *See Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 494 S.E.2d 827 (Ct. App. 1997).

Plaintiff alleges that Defendant undertook to perform repairs at the Apartments and therefore owed the Decedent a duty to protect him from criminal activity. Defendant's negligent repairs of doors, locks, and windows contributed to the Decedent's death. (Pl.'s memo. in opp., p.

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<sup>2</sup> To the extent Plaintiff argues that this constitutes a defect in the common areas of the Apartments, the Court notes that the common areas exception “has never been applied to anything except physical injuries resulting directly from the *condition* of the premises themselves.” *Cooke v. Allstate Mgmt Corp.*, 741 F.Supp. 1205, 1211 (D.S.C. 1990) (emphasis in original).

2.) Plaintiff's arguments in this matter mirror those which the Court of Appeals rejected in *Goode*. In *Goode*, the Court of Appeals held that no basis for liability existed because the plaintiff did not present evidence that any of the undertaken security measures were performed with less than due care or that reliance upon these measures caused the plaintiff's attack. 329 S.C. at 444-45, 494 S.E.2d at 833. Here, there is no evidence in the record to support that assertion either.

Plaintiff also argues that Defendant had knowledge of the defect because Defendant filed a police report in 2012 for a burglary occurring at another unit at the Apartments. (Pl.'s memo in opp., p. 2.) Whether Defendant was aware of prior crimes occurring at other units at the Apartments has no bearing on whether Defendant failed to remedy any alleged defect at the Decedent's unit. *See Goode*, at 443-44, 494 S.E.2d at 832. Plaintiff has not presented any evidence that would show the Decedent reported an ongoing issue at his unit or requested additional safety measures. Plaintiff has also not presented any evidence that Defendant failed to perform a required repair or that repairs were performed with anything less than due care. Most importantly, nothing in the record shows that the Assailant exploited the alleged defect to access the Decedent's unit. Plaintiff has therefore not presented any evidence that the Decedent relied upon Defendant's repairs and suffered harm as a result. The Court respectfully declines to find that Defendant owed the Decedent a duty on this basis.

### **III. Defendant does not owe a duty to its tenants based on contract.**

Plaintiff argues that Defendant assumed a duty to protect the Decedent by entering into a lease agreement that prohibited the Decedent from performing repairs to his apartment. (Pl.'s memo. in opp., p. 5.) For the reasons noted above, even if the terms of the agreement could be construed as a duty to protect the Decedent from criminal activity, there is no evidence in the record to show that Defendant failed to perform required repairs or performed any repairs with

less than due care. Plaintiff also argues that Defendant had a duty to protect the Decedent from harm by evicting the Assailant based a provision within the lease prohibiting tenants from engaging in criminal activity. (Pl.'s memo. in opp., pp. 3-4.) Plaintiff argues that this provision creates an affirmative duty on Defendant's part to evict those who do engage in criminal activity. (*Id.*, at p. 4.) This argument has previously been considered by the Court of Appeals and rejected. *See Goode*, at 446, 494 S.E.2d at 833. This Court will not deviate from that holding. The Court respectfully declines to find that Defendant had a contractual obligation to evict criminal tenants merely because it had the contractual right to do so.

Further, even if the lease agreement created this duty, there is no evidence to indicate Defendant was aware of the Assailant's criminal activity or record. Plaintiff alleges that the Assailant had an extensive criminal record that disqualified him from residing at the Apartments and that Defendant failed to evict him. (Pl.'s memo in opp., pp. 3-4.) There is no evidence to show that Defendant was aware of the Assailant's record. Without evidence that Defendant was aware of this, there is no evidence to show that Defendant had a duty to evict the Assailant.

**IV. The Decedent's attack was unforeseeable and severs the causal chain.**

Assuming a duty to act arose under any circumstances, the circumstances surrounding the Decedent's death were unforeseeable and sever the causal chain of any breach of a duty owed by Defendant. Negligence is not actionable unless it is a proximate cause of the injuries, and it may be deemed a proximate cause only when without such negligence the injury would not have occurred or could have been avoided. *Goode*, at 447, 494 S.E.2d at 834. There is no evidence in the record to connect the events of the Decedent's death with prior break-ins more than a year prior or with any other criminal activity occurring at the Apartments. There is no evidence in the record to suggest that Defendant was aware of any impending attack upon the Decedent, that a defect

existed at the Apartments, or that any breach of the duties Plaintiff seeks to impose upon it would have had the natural and probable consequence of resulting in the Assailant's intentional attack upon the Decedent.

**V. Plaintiff's Affidavit is invalid and shall not be considered by the Court.**

In opposition to Defendant's motion, Plaintiff offered an affidavit purporting to be made by Plaintiff. Affidavits in opposition to summary judgment "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." *Englert v. Netherlands Ins. Co.*, 31 S.C. 300, 302, 433 S.E.2d 871, 873 (Ct. App. 1993) (citing Rule 56(e), SCRPC). After reviewing the affidavit and its exhibits, the Court finds that it does not meet the requirements of Rule 56(e) and should not be considered.

The affidavit does not demonstrate how Plaintiff has personal knowledge of the facts *set forth within it*. See *Englert*, at 304, 433 S.E.2d at 874. Of the eight numbered paragraphs, six are conclusory statements about the knowledge of others, agreements made by others, and the actions and omissions of others. (See Pl.'s Aff. ¶¶3-8.) Each relies on an exhibit made by someone other than Plaintiff for support. "The basic [hearsay] rule precludes testimony of a witness when sourced, not upon personal knowledge, but in the verbal or written word of another." *Ellison v. Pope*, 290 S.C. 100, 103, 348 S.E.2d 367, 369 (Ct. App. 1986) (internal citation omitted).<sup>3</sup>

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<sup>3</sup> The Court notes that not all the attached exhibits constitute hearsay. For example, Exhibit L is Defendant's Answers to Plaintiff's Interrogatories. This alone does establish the validity of the affidavit. A plain reading of the affidavit together with Exhibit L shows that Plaintiff relies upon one particular answer to support the assertion that Defendant "cheaply and negligently" performed certain repairs and failed to perform others. (Pl.'s Aff. ¶ 7.) The interrogatory answer Plaintiff cites only states, in relevant part, that Defendant re-keys each apartment in between tenants and has provided replacement door locks to its tenants as needed. (Pl.'s Aff., Ex. L at 13.) To conclude from this lone statement that Defendant has negligently performed repairs and failed to perform others is too great a leap. See *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003) (an affidavit that contains ultimate or conclusory facts and conclusions of law cannot be utilized on a summary judgment motion). Further, this Court is not required to single out some one morsel of evidence to create an issue of fact that is not genuine. *Englert*, 315 S.C. at 302, 433 S.E.2d at 873.

Assuming the affidavit demonstrated Plaintiff's personal knowledge of the matters set forth within it, the affidavit must also set forth facts and evidence that would be admissible in evidence. *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002). This affidavit, and nearly all its exhibits, instead set forth inadmissible testimony. Because the affidavit does not demonstrate Plaintiff's personal knowledge of the facts set forth within it, and because it relies upon inadmissible evidence as its basis, it does not meet the requirements of Rule 56(e), SCRCP, and the Court respectfully declines to consider the affidavit and its exhibits.

**CONCLUSION**

Based on a review of the record before the Court, I find that Plaintiff has failed to present any evidence establishing a genuine issue as to any material fact. For the reasons set forth herein, Defendant's motion for summary judgment is hereby GRANTED.

AND IT IS SO ORDERED!

\_\_\_\_\_  
The Honorable Perry M. Buckner, III  
Circuit Court Judge

October \_\_\_\_, 2019.  
Hampton, South Carolina



Hampton Common Pleas

**Case Caption:** Gary L Mole Sr. VS Kramer Apartments, Llc , defendant, et al  
**Case Number:** 2018CP2500357  
**Type:** Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2019-10-09 17:46:10 page 8 of 8

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IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HAMPTON COUNTY  
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Perry M. Buckner III, Circuit Court Judge

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Case No. 2018-CP-25-00357

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Gary L. Mole, as Personal Representative  
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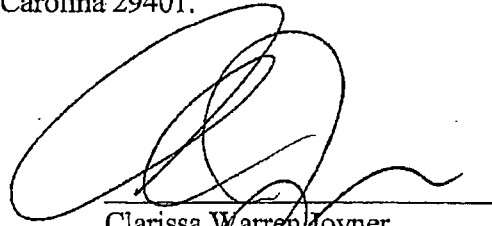
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the attorney for the Respondent, H. Ford Thrift, by depositing a copy of it in the United States Mail, postage prepaid, on November 11, 2019, addressed to H. Ford Thrift, 145 King Street, Suite 300, Charleston, South Carolina 29401.

Dated: November 11, 2019



---

Clarissa Warren Joyner  
Attorney for the Appellant  
1259 Amelia Street, Suite A  
Orangeburg, SC 29115  
(803) 534-8393 Telephone  
(803) 534-7885 Facsimile

Other Counsel of Record:  
H. Ford Thrift, Esquire  
Attorney for the Respondent  
145 King Street, Suite 300  
Charleston, SC 29401

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HAMPTON COUNTY  
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Perry M. Buckner III, Circuit Court Judge

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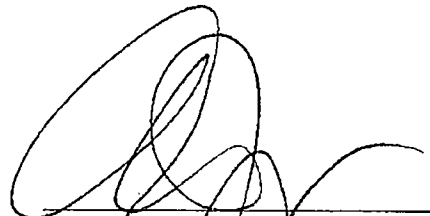
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the Honorable Mylinda Nettles, Hampton County Clerk of Court, by depositing a copy of it in the United States Mail, postage prepaid, on November 12, 2019, addressed to the Honorable Mylinda Nettles, Hampton County Courthouse, 1 Courthouse Square Elm Street, Hampton, South Carolina 29924.

Dated: November 12, 2019



Clarissa Warren Joyner  
Attorney for the Appellant  
1259 Amelia Street, Suite A  
Orangeburg, SC 29115  
(803) 534-8393 Telephone  
(803) 534-7885 Facsimile

Other Counsel of Record:  
H. Ford Thrift, Esquire  
Attorney for the Respondent  
145 King Street, Suite 300  
Charleston, SC 29401

**CERTIFICATE OF SERVICE**

The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this \_\_\_\_ day of December, 2019, she served a copy of **RESPONDENT KRAMER APARTMENTS MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF SAME** by placing a copy in a postpaid envelope for collection and processing for mailing, following this business's ordinary practice, with which she is readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to the persons hereinafter named, at the places and addresses stated below, which are the last known address, in Charleston, South Carolina:

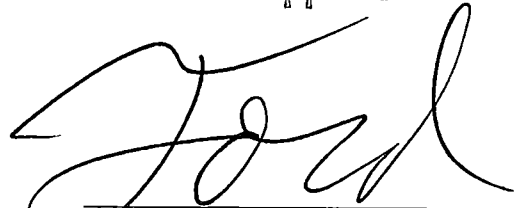
**ADDRESSEE(S)**

Clarissa Warren Joyner  
Law Offices of Clarissa W. Joyner  
Post Office Box 1724  
Orangeburg, South Carolina 29116-1724  
[joynerlawfirm@aol.com](mailto:joynerlawfirm@aol.com)  
**ATTORNEYS FOR PLAINTIFF/  
APPELLANT**

**RECEIVED**

**DEC 12 2019**

**SC Court of Appeals**



Ford H. Thrift



**Wall Templeton**  
ATTORNEYS

Ford H. Thrift  
Ford.Thrift@Walltempleton.com  
Telephone: 843.329.9500 Ext. 201  
Facsimile: 843.329.9501

December 10, 2019

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29201

**RECEIVED**

**DEC 12 2019**

**SC Court of Appeals**

Re: *Gary L. Mole as PR for EO of Eddie Mole v. Kramer Apartments, LLC, et al*  
Civil Action No.: 2018-CP-25-00357  
Appellate Case No.: 2019-001884  
Insured: Kramer Apartments, LLC  
Claim No.: 300-0376157-2018

Dear Ms. Kitchings:

Please find enclosed an original and six copies of Respondent's Motion to Dismiss and Memorandum in Support of Same relative to the above-referenced matter. I am also enclosing the requisite \$25 filing fee.

Please file the original with the Court and return a filed-stamped copy to me in the envelope provided for your convenience.

Thank you for your assistance with this matter and should you have any questions, please feel free to give me a call.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

Ford H. Thrift

FHT/sjs  
enclosures  
cc: Clarissa Warren Joyner, Esquire (w/ encl)



**Wall Templeton**  
ATTORNEYS

145 King Street, Suite 300 (29401)  
Post Office Box 1200  
Charleston, South Carolina 29402

**RECEIVED**

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The Honorable Jenny Abbott Kitchings  
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Post Office Box 11629  
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