

91771

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209

Common Pleas Case No. 2017-CP-23-06301

RECEIVED

DEC 27 2019

SC Court of Appeals

Raymond A. Wedlake, individually and
derivatively, on behalf of all Members of
Woodington Homeowners' Association, Inc.Appellant,

v.

Benjamin Acord, William Craigo, Denis
Esteve, and Brian James in their capacity
as the current Board of Directors of the
Woodington Homeowners' Association, Inc. Respondents.

MOTION TO VACATE/CORRECT ORDER BASED UPON NEW INFORMATION
AND TO STAY WHILE THIS MOTION IS PENDING

Grant H. Gibson, Esq.-0009269
G. Gibson & Associates, LLC
1200 Woodruff Road A-3
Greenville, SC 29607
Phone: (864) 630-7471
Email: atty@ggibsonassociates.com
Attorney for Appellant

Comes Now, Plaintiff, Appellant, Raymond A. Wedlake, individually and, derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc, and respectfully moves this Honorable Court to Vacate/Correct the Order of the Court, entered 11/08/2019 (Order), with regard to the Court's proviso permitting Respondent to start anew the process of this Appeal by filing an Amended Initial Brief and Amended Record on Appeal, long after the filing of the Final Brief and of the Final Record on Appeal.

Having just received a letter from the Court on December 21, 2019 (Saturday) laying out the process for filing brief, etc. it has now become clear that such Order granting Respondent the right to Amend his Initial Brief was based upon a misconception that the case was not Final and that the Final Record on Appeal had been filed.

BRIEF ADMINISTRATIVE BACKGROUND

As evidenced by the record (<http://ctrack.scsourts.org/public/caseView.do?csllD67783>), Plaintiff, Appellant, filed his Notice of Appeal approximately 1 ½ years ago, on 06/28/2018. Appellant's Initial Brief filing occurred on October 15. Final Briefs were filed 05/02/2019. Approximately three months after the Final Briefs and Final Record on Appeal were filed, Respondent filed a Motion to Dismiss (08/05/2019). On 11/08/19 a non-dispositional Order was entered denying such Motion but granting Respondent 30 days to AMEND HIS INITIAL BRIEF. Confused, Counsel for Plaintiff sought guidance from the clerk on the case, who suggested he contact Ms. Kitchens. Appellant's counsel then reached out to counsel for Respondent, who suggested a joint call to the Honorable Ms. Kitchens. Such three-way call finally took place to my recollection in late November. After some discussion, with both counsels asking for guidance, Ms. Kitchens suggested the parties proceed all over, starting over with Respondent filing an Amended Initial Brief, and Amended Record on Appeal, which he

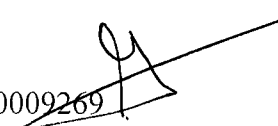
now has done. Appellant was in the process of writing for clarification when he received the aforementioned letter, basically the same letter he had received a year ago, spelling out the procedures to follow on an Appeal. Appellant has until January 2 to file a Response to Respondents new Amended Initial Brief and his new Amended Record on Appeal.

MOTION TO VACATE/CORRECT & STAY WHILE MOTION IS PENDING

Based upon the foregoing, and this Honorable Court's official record of this Appeal, it appears clear that the status of this case was not known to the Court when reviewing Respondent's Motion to Dismiss, and certainly not when the Order was filed. Had the Court known that the Final Briefs had been entered as well as the Final Record on Appeal, it is submitted that the Court would not have entered an Order giving Respondent 30-days to file an Amended Initial Brief. This became even more clear to Counsel for Appellant following receipt of the Letter over the weekend, on December 21, 2019, which was the catalyst for this Motion to Vacate, replacing his contemplated Motion for Clarification.

Movant would also respectfully request and move for this Court to Stay the proceeding until it has completed its consideration of this Motion to Vacate and has entered its Order regarding same. At the same time, we are, like the Court, sensitive to the need for judicial economy and are eager for this Honorable Court to proceed to its final decision on the Pleadings.

Respectfully Submitted this 23rd day of December 2019.


Grant H. Gibson, Esq.-0009269
G. Gibson & Associates, LLC
1200 Woodruff Road A-3
Greenville, SC 29607
Phone: (864) 630-7471
Email: atty@ggibsonassociates.com
Attorney for Appellant

G. Gibson & Associates, LLC

Grant H. Gibson, Esq.
661 W. Johns Creek Pkwy.
St. Augustine, Florida 32092
Cell: 864-630-7471
Fax: 866-667-2509
atty@ggibsonassociates.com

December 23, 2019

BY: PRIORITY MAIL

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

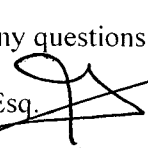
Re: Raymond A. Wedlake v. Benjamin Acord, et al
Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301
Motion to Vacate/Correct Order and for Stay While Motion is Pending

Dear Ms. Kitchings:

Please find enclosed our Motion to Vacate/Correct the Court's recent Non-dispositional Order of 11/08 with regard to the Court granting Respondent 30 days to file an Amended Initial Brief, despite Final Briefs and the Final Record on Appeal having been filed. We also seek a Stay Pending the Court's consideration of our Motion.

My Response to Mr. Grote's filing is now due January 2.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you!

Grant H. Gibson, Esq. 

Enc. Motion to Vacate/Correct and For Stay While Motion is Pending

(+ CK #1215 \$50
Motion Fee)

cc. Ely Grote (via U.S. Mail, with Enclosures)

RECEIVED

DEC 27 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209

Common Pleas Case No. 2017-CP-23-06301

Raymond A. Wedlake, individually and
derivatively, on behalf of all Members of
Woodington Homeowners' Association, Inc.Appellant,

v.

Benjamin Acord, William Craigo, Denis
Esteve, and Brian James in their capacity
as the current Board of Directors of the
Woodington Homeowners' Association, Inc. Respondents.

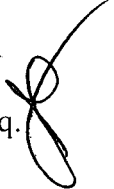
CERTIFICATE OF SERVICE

The undersigned, Grant H. Gibson, Esq., caused to be mailed the Motion to Vacate/Correct and to Stay While Motion is pending, dated this 23rd day of December, to Counsel for Respondent, Ely Grote, Esq., together with attachments, also dated this 23rd day of December by placing them in first class mail, USPS to his address c/o:

McCabe Trotter & Beverly, PC,
P.O. Box 212069
Columbia, SC 29221

Grant H. Gibson, Esq.

cc. Ely Grote, Esq.



RECEIVED

DEC 27 2019

SC Court of Appeals

GRANT GIBSON, Esq
661 W. Johns Creek Pkwy
St. Augustine, FL
32092

The Honorable Jenny Abbott Kitchings
Clerk of Court - SC, COURT of Appeals
1220 Senate Street
Columbia, SC
29201

RECEIVED

DEC 27 2019

SC Court of Ap.

PRIORITY®
★ MAIL ★

FLAT RATE ENVELOPE
ONE RATE ★ ANY WEIGHT*
APPLY PRIORITY MAIL POSTAGE

CPU



U.S. POSTAGE
\$7.35

R2305K137436
PRWE 0004
Orig: 32259
12/23/19
11082676

06 2S

EXPECTED DELIVERY DAY: 12/27/19

USPS TRACKING® NUMBER



9505 5265 2141 9357 4892 71

EP14H July 2013 Outer Dimension: 10 x 5

PRIORITY®
★ MAIL ★

FLAT RATE ENVELOPE
ONE RATE ★ ANY WEIGHT*



* Domestic only.

PRESS FIRMLY TO SEAL

PRESS FIRMLY TO SEAL

PRIORITY®
★ MAIL ★

RECEIVED
DEC 27 2019
SC Court of Appeals



DATE OF DELIVERY SPECIFIED*



USPS TRACKING™ INCLUDED*



INSURANCE INCLUDED*



PICKUP AVAILABLE

* Domestic only

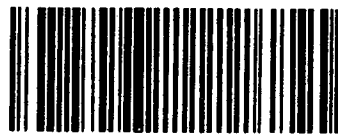
VISIT US AT USPS.COM®
ORDER FREE SUPPLIES ONLINE



UNITED STATES
POSTAL SERVICE®

EP14H July 2013

OD: 10 x 5



PS00001000064

EP14H © U.S. Postal Service; July 2013; All rights reserved.

This packaging is the property of the U.S. Postal Service® and is provided solely for use in sending Priority Mail® shipments. Misuse may be a violation of federal law. This packaging is not for resale.