

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

**RECEIVED**  
JAN 02 2020  
SC Court of Appeals

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Appellate Case No. 2018-001209

Common Pleas Case No. 2017-CP-23-6301

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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.

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**RESPONDENTS' RETURN TO APPELLANT'S MOTION  
TO VACATE / CORRECT ORDER BASED UPON NEW INFORMATION  
AND TO STAY WHILE THIS MOTION IS PENDING**

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*Attorney for Respondents*

The Respondents, Benjamin Acord, William Craigo, Denis Esteve, and Brian James, respectfully submit this Return to Appellant's Motion to Vacate / Correct Order Based on New Information and to Stay While This Motion is Pending ("Appellant's Motion").

The Court's Order addressing Respondents' Motion to Dismiss was filed on November 8, 2019. Thereafter, counsel for Appellant and counsel for Respondents had a joint call with the Honorable Ms. Kitchings in relation to the procedure for submitting amended initial briefs and for handling the Record on Appeal, since Final Briefs and the Record on Appeal had already been filed in this matter. Respondents then filed their Amended Initial Brief as well as Respondents' Additional Designation of Matter to be Included in the Record on Appeal in Connection with Respondents' Amended Initial Brief on December 6, 2019. On December 9, 2019, Appellant requested an extension of time to file a reply to the Amended Initial Brief of Respondents, which request Respondents did not oppose. On December 17, 2019, an Order was filed extending the time for serving and filing Appellant's Amended Initial Reply Brief until January 2, 2020. Appellant's Motion was then served on December 23, 2019. As set forth below and based on the totality of the circumstances, including the time and effort invested on behalf of Respondents in preparing and submitting Respondents' amended initial brief and Respondents' additional designation of matter to be included in the record on appeal in reliance upon and in accordance with the Court's November 8, 2019, Order, Respondents respectfully assert that Appellant's Motion should be denied.

First, Rule 240(i), SCACR, provides that "the court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." Here, Appellant's Motion essentially and in effect requests the Court to reconsider its Order that was filed on November 8, 2019.

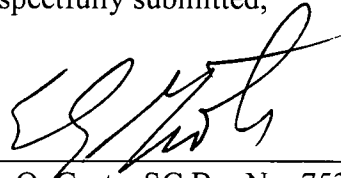
Because the Court's November 8, 2019, Order did not have the effect of dismissing or finally deciding a party's appeal, Respondents respectfully assert that Appellant's Motion is improper and should not be entertained.

Even if Appellant's Motion is deemed to be properly before the Court, Appellant's Motion seems to be premised upon Appellant's belief or presumption that the Court was not aware of the status of this appeal at the time it issued its November 8, 2019, Order. In response, Respondents would have to defer to the Court as to what it knew or did not know about the status of the case at the time of issuing its November 8, 2019, Order, and in particular whether the Final Briefs and Record on Appeal had been filed. However, Respondents would note that page two of Respondents' Motion to Dismiss and Supporting Memorandum (filed on August 8, 2019) specifically stated that "The parties have already filed their *Final Briefs*" and that "Respondents hereby incorporate their *Final Brief* herein by reference." (emphasis added). Further, Respondents' Motion to Dismiss and Supporting Memorandum contains citations to the Record on Appeal, which would not have been possible had the Record on Appeal not already been filed. As such, Respondents see no reason to presume that the Court was not aware of the status of the case at the time it issued its November 8, 2019, Order.

With respect to Appellant's request for a stay during the pendency of Appellant's Motion, Rule 240(b), SCACR, states, in relevant part, that "[u]nless 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." Thus, Appellant's Motion does not atomically stay the time limits imposed by the appellate court rules or by the Court. Further, based on the totality of the circumstances, Respondents respectfully assert that Appellant's request for a stay pending the Court's determination on Appellant's Motion should be denied.

In sum, based on the foregoing and the totality of the circumstances, including the time and effort invested on behalf of Respondents in preparing and submitting Respondents' amended initial brief as well as Respondents' additional designation of matter to be included in the record on appeal in reliance upon and in accordance with the Court's November 8, 2019, Order, Respondents respectfully assert the Appellant's Motion should be denied.

Respectfully submitted,



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**ATTORNEY FOR RESPONDENTS**

January 2, 2020  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
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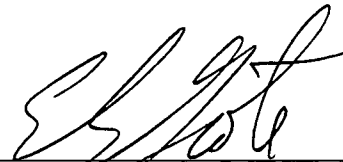
v.

Benjamin Acord, William Craigo, Denis  
Esteve, and Brian James in their capacity  
as the current Board of Directors of the  
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**PROOF OF SERVICE**

I, Ely O. Grote, certify that I have served, or caused to be served, Respondents' Return to Appellant's Motion to Vacate/Correct Order Based upon New Information and to Stay While this Motion is Pending, on counsel for Appellant, Grant H. Gibson, by depositing one copy of the same in the United States mail, postage prepaid, addressed as follows:

Grant H. Gibson, Esq.  
G. Gibson & Associates, LLC  
1200 Woodruff Road, Suite A-3  
Greenville, South Carolina 29607  
[atty@ggibsonassociates.com](mailto:atty@ggibsonassociates.com)



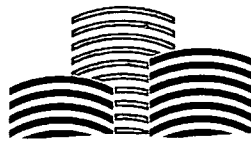
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January 2, 2020, Columbia, SC

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Licensed to practice in South Carolina

January 2, 2020

Via Hand Delivery

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
Post Office Box 11629 (29211)  
1220 Senate Street  
Columbia, South Carolina 29201

Re: Raymond A. Wedlake v. Benjamin Acord  
Appellate Case No. 2018-001209  
MTB File No.: 017402.00009

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Dear Ms. Kitchings:

Enclosed, you will find the original and seven copies of Respondents' Return to Appellant's Motion to Vacate/Correct Order Based upon New Information and to Stay While this Motion is Pending for filing in the above-captioned matter. Please have a member of your staff return one file-stamped copy to me.

Should you have questions or concerns, please do not hesitate to let me know.

Respectfully,

Ely O. Grote

EOG/vmb  
Enclosures

cc: Grant H. Gibson, Esq. (via U.S. Mail and email, w/ enclosures)