

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Ashford Subdivision Homeowners' Association, Inc., ..... Respondent,

v.

Larry W. Richardson, Gayle P. Richardson, and Conway Hospital, Inc.  
d/b/a Conway Medical Center, ..... Defendants

Of Whom Larry W. Richardson is the Appellant.

Appellate Case No.: 2019-001630

**RECEIVED**  
JAN 10 2020  
SC Court of Appeals

**MEMORANDUM OF LAW IN SUPPORT OF  
RESPONDENT'S MOTION TO DISMISS**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

Respondent, Ashford Subdivision Homeowners' Association, Inc. by and through its undersigned attorney, respectfully submits this Memorandum of Law in Support of Respondent's Motion to Dismiss.

**BACKGROUND**

Appellant and his wife purchased a home described as Lot 97 in the Ashford Subdivision, a deed for which was recorded in the Horry County Register of Deeds Office on September 16, 2009, in Deed Book 3420 at Page 2014. The Ashford Subdivision is governed by the "Protective Covenants and Restrictions Ashford - Phase I," and associated bylaws, which were filed on September 25, 2000, in the Horry County Register of Deeds Office in Deed Book 2302 at Page 0127 (hereinafter referred to as "Governing Documents"). The Governing Documents allow for the creation of the Ashford Subdivision Homeowners' Association, Inc. (hereinafter referred to as "HOA") and collection of dues and assessments by the HOA as well as the filing of and

foreclosure of a lien on the property of any defaulting owner. Appellant and his wife failed to pay dues and assessments assessed against Lot 97, which they owned. As a result, a Notice of Lien was filed against Appellant's property and a foreclosure action commenced.

This matter is before this Court based upon Appellant's Notice of Appeal received by this Court on September 25, 2019, and Amended Notices of Appeal forwarded to this Court on October 4, 2019 and October 15, 2019. An Initial Brief of Appellant was filed and served on Respondent on December 10, 2019.

The Appeal concerns the Special Referee's Report Order for Judgment and Judgment of Foreclosure and Sale, issued on August 27, 2019, by Special Referee, Douglas M. Zayichuk, and filed with the Court of Common Pleas on that same day. The Special Referee's Report Order directed the sale of Appellant's property for failure to pay dues and assessments as required by the HOA's Governing Documents together with attorney's fees as allowed by the Governing Documents. On September 23, 2019, prior to Appellant filing this appeal, he made full payment of the judgment amount to the Respondent, without any reservation of rights associated therewith. Thereafter, Respondent filed a Satisfaction of Judgment and Release of Lien in regards to this matter, a copy of which is attached as Exhibit A to this Memorandum of Law.

### ARGUMENT

#### **I. THE APPEAL SHOULD BE DISMISSED DUE TO APPELLANT'S FAILURE TO TIMELY SERVE NOTICE OF APPEAL ON THE RESPONDENT.**

South Carolina Appellate Court Rule 203(b)(1) requires that Notice of Appeal be served on all respondents within thirty (30) days after Appellant's receipt of written notice of entry of the order or judgment. Appellant received written notice of entry of the order or judgment on August 31, 2019, (Notice of Appeal filed by Respondent on September 23, 2019; however, Notice of Appeal was not served on Respondent until October 4, 2019, which is 34 days after Appellant's receipt of the judgment.

Rule 263(b) of the Appellate Court Rules states that “[t]he time prescribed by these Rules for performing any act **except the time for serving the notice of appeal under Rule[] 203** . . . may be extended or shortened by the appellate court . . . .”

South Carolina Courts have consistently held that the time limit for serving the Notice of Appeal is a jurisdictional issue, going to the Court’s appellate jurisdiction, and that the appellate court has no authority to consider the appeal if the Notice of Appeal is not timely served. See Ex Parte Sadisco v. Greenville County Bd. of Zoning, 340 S.C. 57, 530 S.E.2d 383 (2000); Elam v. S.C. Dep’t of Transport., 361 S.C. 9, 602 S.E.2d 772 (2004); and Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Respectfully, the law in this State is clear that this Court does not have the appellate jurisdiction to consider this Appeal due to Appellant’s failure to comply with the requirement for timely service of the Notice of Appeal on Respondent, and, therefore, this Court must dismiss the appeal.

**II. THE APPEAL SHOULD BE DISMISSED AS MOOT, THEREBY LEAVING NO JUSTICIABLE CONTROVERSY BETWEEN THE PARTIES.**

In order for the Court to rule on the appeal, there must exist a justiciable case or controversy. See James v. Anne’s Inc., 390 S.C. 188, 701 S.E.2d 730 (2010) and Byrd v. Irmo High Sch., 321 S.C. 426, 468 S.E.2d 861 (1996). In each case, appellate courts are “obligated to inquire . . . whether a justiciable controversy exists.” Kiawah Prop’y Owners Grp. v. The Pub. Serv. Comm’n of S.C., 357 S.C. 232, 593 S.E.2d 148 (2004). The concept of justiciability encompasses several doctrines, including . . . mootness. Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013). Moot appeals result when intervening events prevent a decision on appeal from having an immediate impact on the parties.

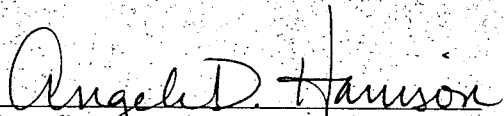
In the instant case, Appellant submitted payment of the full amount due, without reservation of rights, and of his own volition to Respondent prior to filing this appeal. Upon

receipt of such payment, Respondent filed a Satisfaction of Judgment and Release of Lien (a copy of which is attached as Exhibit B hereto); therefore, no justiciable controversy remains between these parties, and the appeal should be dismissed as moot.

Further, Appellant's wife, who was the co-owner of the property which was the subject of the foreclosure action did not file an answer or otherwise respond to the Summons and Complaint in the foreclosure action and was found to be in default; therefore, even if the Court determines a controversy remains between the Respondent and Appellant, any relief this Honorable Court can provide to the Appellant would have no practical legal effect upon an existing controversy, as the judgment was based not only on Appellant's failure to pay dues and assessments to the HOA, but also on Gayle Richardson's default in the action.

#### CONCLUSION

This Appeal should be dismissed as the Notice of Appeal was not timely served upon Respondent and there exists no justiciable controversy between the parties due to Appellant's payment of all funds due and Respondent's Satisfaction of Judgment and Release of Lien together with the default of Appellant's co-owner, Gayle Richardson; therefore, Respondent would respectfully request that this Honorable Court dismiss Appellant's Appeal.

  
Angela D. Harrison (SC Bar #78403)  
Moore, Johnson & Saraniti Law Firm, P.A.  
Post Office Box 14737  
Surfside Beach, SC 29587  
(843) 650-9757  
(843) 650-9747 facsimile  
harrison@grandstrandlawyers.com  
**ATTORNEYS FOR RESPONDENT**

January 9, 2020

Surfside Beach, South Carolina

# EXHIBIT A



Real Estate 4 U, LLC, a North Carolina Limited Liability Company, binds itself and its successors and assigns to warrant and forever defend the premises to Larry W. Richardson and Gayle P. Richardson, against it and its successors and assigns and against every person lawfully claiming or to claim the premises or any part of them.

WITNESS ITS HAND AND SEAL this the 16th day of September, 2009, in Wilmington, North Carolina.

WITNESSES

Kim McCaskey Real Estate 4 U, LLC (L.S.)  
First Witness  
Rebecca W. Flynn BY: [Signature]  
Second Witness (Notary) Randy Long  
Its: Manager

STATE OF NORTH CAROLINA )  
COUNTY OF NEW HANOVER ) ACKNOWLEDGMENT

I, REBECCA W. FLYNN, do hereby certify that Randy Long, on behalf of Real Estate 4 U, LLC, a North Carolina Limited Liability Company appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this the 16th day of September, 2009.



Rebecca W. Flynn  
Notary Public for North Carolina  
My Commission Expires: 11/24/10

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY ) AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in Horry County, South Carolina, bearing Horry County Tax Map Number 162-33-01-082 was transferred by Real Estate 4 U, LLC, a North Carolina Limited Liability Company to Larry W. Richardson and Gayle P. Richardson, on September 16, 2009.
3. Check one of the following: the deed is
  - (a)  subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
  - (b)  subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or as a transfer to a trust or as a distribution to a trust beneficiary.
  - (c)  exempt from the deed recording fee because it is a quitclaim deed.

If exempt, please skip items 4-7, and go to item 8 of this affidavit.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
  - (a)  the fee is computed on the consideration paid or to be paid in money or money's worth in the amount of 60,000.00
  - (b)  the fee is computed on the fair market value of the realty, which is \$ \_\_\_\_\_
  - (c)  the fee is computed on the fair market value of the realty as established for property tax purposes, which is \_\_\_\_\_

5. Check Yes  or No  to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is \_\_\_\_\_

6. the deed recording fee is computed as follows:
  - (a) Place the amount listed in item 4 above here: 60,000.00
  - (b) Place the amount listed in item 5 above here: -0-  
(If no amount is listed, place zero here.)
  - (c) Subtract Line 6(b) from Line 6(a) and place result here: 60,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: 222.00.

8. As required by Code § 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Real Estate 4 U, LLC  
By: Randy Long

SWORN TO before me this  
16th day of September, 2009.

*Lekecia W. [Signature]*  
Notary Public for North Carolina  
My Commission Expires 11/2/2010



# EXHIBIT B

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Civil Action Numbers: 2019-CP-26-03015

Ashford Subdivision Homeowners' Association, Inc.;  
Plaintiff,  
vs.  
Larry W. Richardson; Gayle P. Richardson and Conway Hospital, Inc. d/b/a Conway Medical Center;  
Defendants.

**SATISFACTION OF JUDGMENT AND RELEASE OF LIS PENDENS**


C7492ES

**IT APPEARING** that the said judgment dated August 27, 2019, having been satisfied; the lien of the said judgment is hereby declared forever discharged and satisfied; and the cancellation of the said judgment upon the record thereof by the Clerk of the Court is hereby authorized and directed.

**FURTHER**, that the Lis Pendens in the above-captioned matter dated May 8, 2019 and filed May 16, 2019 has been released by the Plaintiff.

Witness the due execution hereby by the owner and holder of said judgment on this, the 16th day of September, 2019.

Signed, Sealed and Delivered in the presence of:  
Rachelle Phifer  
Audrea F. Taylor

  
Elizabeth J. Saraniti (SC Bar #16150)  
Attorney for Plaintiff

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

**PERSONALLY**, appeared the undersigned witness and made oath that (s)he saw the within named sign, seal, and as his/her act and deed deliver the within Satisfaction of Judgment and Release of Lis Pendens; and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 16th day of September, 2019.  
Audrea F. Taylor  
Notary Public for South Carolina  
Audrea F. Taylor  
My Commission Expires: July 29, 2026

Rachelle Phifer

Please return to:  
Moore, Johnson & Saraniti Law Firm, P.A.  
P.O. Box 14737  
Surfside Beach, SC 29587-4737

STATE OF SOUTH CAROLINA ) ) SATISFACTION OF LIEN  
 ) )  
COUNTY OF HORRY ) )

Lien Book 255 / Page 870 Recorded: November 1, 2017 Amount: \$1,996.11

TMS#: 162-33-01-082 PIN#: 39915010004

IN FAVOR OF: Ashford Subdivision Homeowners' Association, Inc.

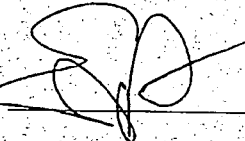
OWNER(S): Larry W. Richardson and Gayle P. Richardson

The Lien above described, having been paid; the Lien is hereby declared clear, discharged and satisfied; and the cancellation of the Lien upon the record by the ROD is hereby authorized and directed.

Witness the due execution by the owner and holder of the Lien on this, the 16th day of September, 2019.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Rachelle Phifer  
Audrea F. Taylor

BY:   
ITS: Attorney

STATE OF SOUTH CAROLINA ) )  
 ) ) PROBATE FOR CORPORATION  
COUNTY OF HORRY ) )

PERSONALLY appeared before me Rachelle Phifer the undersigned witness and made oath that s/he was present and saw Elizabeth J. Saraniti, the within Grantor(s) sign, seal and as his/her/their act and deed, deliver the within foregoing instrument; that deponent with the other witness whose names is subscribed above, witnessed the execution thereof, and that the subscribing witness is not a party to or beneficiary of the transaction.

Rachelle Phifer

SWORN to before me this  
16th day of September, 2019.

Audrea F. Taylor  
Notary Public for South Carolina  
Audrea F. Taylor  
My Commission Expires: 7-29-2026

**HORRY COUNTY REGISTER OF DEEDS  
TRANSMITTAL SHEET**

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.  
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY ,  
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Condo Lien Satisfaction

DATE OF INSTRUMENT: .

DOCUMENT SHALL BE RETURNED TO:

NAME: Moore, Johnson & Saraniti Law Firm, P.A.

ADDRESS:

PO Box 14737  
Surfside Beach, SC 29587

TELEPHONE: (843) 650-9757

FAX: (843) 650-9757

E-MAIL ADDRESS: saraniti@grandstrandlawyers.com

Related Document(s): book **255** , page **870**

**PURCHASE PRICE / MORTGAGE AMOUNT: \$.**

**BRIEF PROPERTY DESCRIPTION: ASHFORD SUBDIVISION LOT 97**

**TAX MAP NUMBER (TMS #) 162-33-01-082 / PIN NUMBER:**

**GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):**

FULL BUSINESS NAME

- ASHFORD SUBDIVISION HOMEOWNERS ASSOCIATION INC**

**GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):**

LAST NAME

FIRST NAME

MIDDLE NAME

1. **RICHARDSON**

**LARRY**

**W**

2. **RICHARDSON**

**GAYLE**

**P**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Ashford Subdivision Homeowners' Association, Inc., ..... Respondent,

v.

Larry W. Richardson, Gayle P. Richardson, and Conway Hospital, Inc.  
d/b/a Conway Medical Center, ..... Defendants

Of Whom Larry W. Richardson is the Appellant.

**RECEIVED**  
JAN 10 2020  
SC Court of Appeals

Appellate Case No.: 2019-001630

**PROOF OF SERVICE**

I hereby certify that I have served the Respondent's Motion to Dismiss Appeal and Memorandum of Law in Support of Respondent's Motion to Dismiss by depositing a copy of it in the United States Mail, postage prepaid, on January 9, 2020, addressed to Appellant at 303 Tapscott Street, Myrtle Beach, South Carolina 29579.

Respectfully Submitted,

By: Angela D. Harrison  
Angela D. Harrison (Bar No. 78403)  
Post Office Box 14737  
Surfside Beach, SC 29587-4737  
(843) 650-9757  
(843) 650-9747 (facsimile)  
Email: harrison@grandstrandlawyers.com  
**ATTORNEY FOR RESPONDENT**

January 9, 2020

Surfside Beach, South Carolina



# MOORE, JOHNSON & SARANITI Law Firm, P.A.

**Virginia Lee Moore**

*Certified Family Court Mediator*

**Sarah A. Johnson**

*Also member of North Carolina Bar*

**Elizabeth J. Saraniti**

*Also member of Ohio Bar*

**Angela D. Harrison**

**Nancy M. Zovnic**

*Physical Address:*

*(overnight deliveries only)*

*1271 Glens Bay Road  
Surfside Beach, SC 29575*

*Mailing Address:*

*P.O. Box 14737  
Surfside Beach, SC 29587-4737*

*Phone: 843-650-9757*

*Fax: 843-650-9747*

January 9, 2020

**Sent Via Fed Ex: 7774 4101 6695**

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

**RECEIVED**  
JAN 10 2020  
SC Court of Appeals

Re: Ashford Subdivision v. Larry Richardson  
Appellate Case No: 2019-001630  
File No.: P279AH

Dear Madame Clerk:

Enclosed please find the original and 7 copies of the Respondent's Motion to Dismiss Appeal and Memorandum in Support as well as the Respondent's Motion for Extension to Respond in the above referenced matter and Proofs of Delivery for same. Please file the original and returned clocked copies in the stamped, self-addressed envelope provided. By copy of this letter, we are serving same upon Appellant.

With kindest personal regards, I am

Sincerely,

*Angela D. Harrison*  
Angela D. Harrison

ADH/ch

Enclosures as stated.

cc: Ashford Subdivision HOA  
Larry Richardson

ORIGIN ID:GGEA (843) 650-9757  
ELIZABETH SARANITI  
MOORE, JOHNSON & SARANITI  
1271 GLENN'S BAY ROAD

SHIP DATE: 09JAN20  
ACTWGT: 1.00 LB  
CAD: 8216342/INET4160

SURFSIDE BEACH, SC 29575  
UNITED STATES US

BILL SENDER

TO JENNY ABBOTT KITCHINGS, CLERK  
SOUTH CAROLINA COURT OF APPEALS  
1220 SENATE STREET

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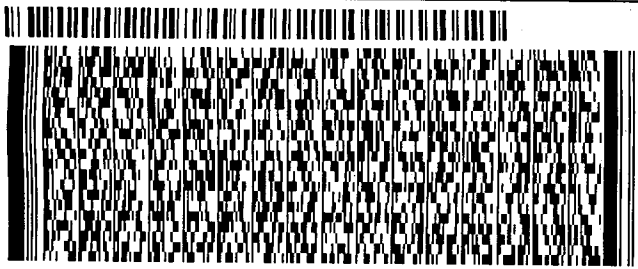
COLUMBIA SC 29201

(843) 650-9757

REF: P279AH

INV:  
PO:

DEPT:



FedEx  
Express



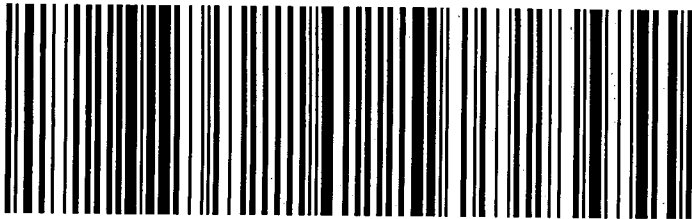
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FRI - 10 JAN 10:30A  
PRIORITY OVERNIGHT

TRK# 7774 4101 6695  
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28 USCA

29201  
SC-US CAE



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JAN 10 2020

SC Court of Appeals

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