

92358

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

Marvin H. Dukes III, Master in Equity

Case NO 2019-CP-07-01326

RECEIVED
MAR 06 2020
SC Court of Appeals

South Beach Village Bluff Apartments
Horizontal Property Regime No. 56, Inc.,

Respondent,

v.

Zbigniew Marek Drzazgowski and Alicja
Anna Drzazgowski, Defendants,
of whom Zbigniew Marek Drzazgowski
is the

Appellant.

RESPONDENT'S (SECOND) MOTION TO DISMISS THE APPEAL

Due to Appellant's repeated failures to comply with the Rules of Appellate Procedure and the instructions of the Clerk of the Court of Appeals, the Appeal should be dismissed.

BACKGROUND

The appellate case began on August 19, 2019, with the filing of Appellant's "Notice of Appeal," which was not in fact a Notice of Appeal, causing the Clerk to send a deficiency letter on August 27.

Appellant then filed a second Notice of Appeal that was received by the Court on September 9.

The Clerk wrote to Appellant on November 8, 2019, informing him that his brief was overdue, and that he needed to file, by November 18, the brief and a motion to file out of time, or his brief will not be considered.

Appellant then filed what he called an "Initial Brief," dated November 24, which included a request to file out of time. The Brief did not comply with the Appellate Court Rules.

On December 31, 2019, the Clerk wrote to Appellant, instructing him that he must file a brief compliant with the Rules within 10 days or his appeal would be dismissed. The letter further instructed him to file and serve a designation of matter to be included in the record on appeal within the same ten days, or his appeal would be dismissed.

On January 7, 2020, Appellant filed his second attempt at an Initial Brief.

On January 17, the Clerk again wrote to Appellant, again instructing him that he must file a brief compliant with the Rules within 10 days or his appeal would be dismissed. This second letter further instructed him again to file and serve a designation of matter and a proof of service within the same ten days, or his appeal would be dismissed.

On January 24, Appellant mailed his third "Initial Brief."

On January 31, the Clerk again wrote to Appellant, again instructing him that he must file a brief compliant with the Rules within 10 days or his appeal

would be dismissed. This letter instructed him, for a third time, to file and serve a designation of matter, and a second time to file and serve a proper proof of service, or his appeal would be dismissed.

In the interim, Respondent's counsel had mailed a Motion to Dismiss the Appeal on Thursday, January 30. Respondent's motion and the Clerk's February 3 letter to Appellant essentially "crossed in the mails."¹ When Respondent's counsel discovered, on Monday February 3, that the Clerk had sent that letter instructing Appellant to file a proper brief or his appeal would be dismissed, counsel promptly filed a letter, via fax and US Mail, withdrawing Respondent's motion.

In February, Appellant mailed his fourth "Initial Brief." It was stamped "Received" by the Clerk on February 10.

ARGUMENT

This fourth "Brief," too, fails to comply with the Rules in many ways.

The "Statement of Issues" contains no issues. It thus violates Rule 208, SCACR. It cannot be intelligently responded to. Nor can Respondent provide a counter-statement of issues, as Respondent's counsel is not clear on what Appellant's arguments are.

¹ To avoid confusion, Respondent refers to the present motion as its "(Second) Motion to Dismiss."

The “Statement of the Case” contains no specific references to the Record. Rather, it contains disputed material in violation of Rule 208. E.g.,

4. **Within last 8 years of the possession of the apartment, the other Managements have never had problems with accessing my unit. They always had the keys. This time they destroyed the lock and destroyed all the codes in it and they did not inform me about that. The new key that I received 2 weeks later, after the Construction company finished the installation of the door panels, did not work (police statement). In addition to it, it looked as they used my unit during the installation of the panels. It took me 9 days to repair all the damages. This includes the repair of the lock by a specialist, buying new washer, replacing the lock box, two trips CT-SC to bring the new washer, leave for 9 days my Remodeling business. In addition, they did not have a permit to change the door in my apartment. These are the proofs that the door to mu unit was installed illegally.**

The section entitled “Standards of Review” contains no standards of review. It thus violates Rule 208.

The “Arguments” sections consists of a single sentence which violates Rule 208. The arguments are therefore abandoned. *See, e.g., State v. Garner*, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010) (citing *State v. Jones*, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) for the proposition that “an argument is deemed abandoned on appeal when conclusory and without supporting authority”).

There is no designation of matter to be included in the record, thus violating Rule 209.

The proof of service for the February “brief,” which is required under Rule 262 and by the Clerk’s letter, is not a valid proof of service. It states that he “served the Notice of Appeal”—not the brief [nor a designation-of matter]—on “January 24.” There is also a date of February 2 above Appellant’s signature on the proof of service. This date, too, is wrong. Like the envelope sending this “Brief” to the

Court, the envelope sending the "Brief" to Respondent's counsel (Ex. 1) shows the postage was paid on February 4.

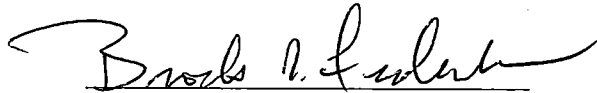
In sum, even with his fourth "Brief," Appellant is violating more rules than he is following.

Respondent is eager to end this litigation. Respondent has had to pay its attorney to read four "Briefs" of Appellant. Respondent should not have to pay its attorney to read a fifth.

For the foregoing reasons, and such other reasons as may be apparent to the Court, Respondent respectfully asks the Court to dismiss the appeal.

Respectfully Submitted,

LAW OFFICE OF BROOKS R. FUDENBERG LLC



Brooks R. Fudenberg SC Bar No. 0072019
171 Church Street, Suite 170, Charleston, SC 29401
843-416-2558

Attorney for Respondent

March 4, 2020

Exhibit 1

[Envelope serving Appellant's "Initial Brief" on Counsel for Respondent]

Zbigniew Drzazgowski
9 W District Rd
Unionville, CT 06085



7019 1640 0001 0268 3855



1029



29910

U.S. POSTAGE PAID
FC PKG RTL
UNIONVILLE, CT
06085
FEB 04 20
AMOUNT

\$7.50

R2305H127422-26

Jeanine M. Mutterer

21 Promenade St, Suite 205

Bluffton, SC 29910

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, Ill, Master in Equity

Case No. 2019-001420

South Beach Village Bluff
Apartments Horizontal
Property Regime No. 56, Inc.,

RECEIVED
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SC Court of Appeals

Respondent,

v.

Zbigniew Marek Drzazgowski
and Alicja Anna Drzazgowski,

Defendants,


Of whom Zbigniew Marek
Drzazgowski is the

Appellant

PROOF OF SERVICE

I certify that a copy of Appellant's Motion to Dismiss the Appeal, of today's date, was served upon the Appellant by mailing a copy, first class postage attached, to Zbigniew Marek Drzazgowski, 9 West District Rd., Unionville CT 06085.

3/4/2020



Brooks R. Fudenberg
LAW OFFICE OF BROOKS R. FUDENBERG, LLC
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March 4, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: South Beach Village v. Zigniew Drzazgowski
Appellate Case No. 2019-001420

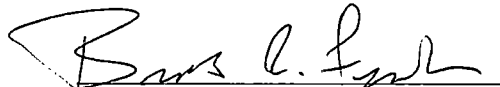
Dear Ms. Kitchings:

Please find enclosed:

- * an original of a motion to dismiss the appeal,
- * six (6) copies of the motion,
- * a proof of service of the motion, and
- * a check in the amount of \$50.00 as the filing fee.

Thank you

Sincerely,

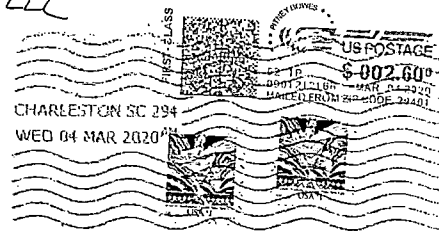


Brooks R. Fudenberg
Law Office of Brooks R. Fudenberg LLC
Attorney for Appellant

cc: Zigniew Drzazgowski

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MAR 06 2020
SC Court of Appeals

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171 CHURCH STREET, SUITE 160
CHARLESTON, SC 29401



The Hon. JENNY ABBOTT KITCHINGS
CLERK, SC COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

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