

STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APPEAL FROM LEXINGTON COUNTY
R. Knox McMahon, Circuit Court Judge

Jun 18 2020

SC Court of Appeals

Appellate Case No. 2018-001387

Patricia LutzAppellant

v.

Eastpoint Properties, LLC and Scollon Family Partnership, LLC.....Respondents

**RESPONDENTS EASTPOINT PROPERTIES, LLC AND
SCOLLON FAMILY PARTNERSHIP, LLC'S REPLY TO
MOTION FOR EXTENSION TO FILE INITIAL BRIEF
DATED JUNE 11, 2020**

Respondents Eastpoint Properties, LLC and Scollon Family Partnership, LLC (collectively “Respondents”) reply to the Motion For Extension of Time to File Initial Brief (“Lutz Motion”) filed by Appellant Patricia B. Lutz (“Appellant”) on June 11, 2020 and submit that the Lutz Motion should be denied and the dismissal upheld.

In support of their position, Respondents would draw the Court’s attention to the fact that Appellant, for the third time, has requested an extension of the time to file her Initial Brief due to COVID-19 and her lack of access to a computer. However, as previously argued, Appellant ignores the fact that she began this appeal approximately one (1) year and eleven (11) months ago.¹ Aside from the past four (4) months, Appellant has had ample opportunity to visit public libraries, law libraries, the South Carolina Court of Appeals, consult other counsel, and take such other and

¹ Appellant filed her Notice of Appeal in this matter on July 24, 2018.

further actions she deemed necessary to prepare her Initial Brief and Designation of Matter to Be Included on Appeal. The past four (4) months do not excuse her failure act during the previous nineteen (19) months despite the numerous extensions already given.² Her failure to file an Initial Brief and Designation of Matter to be Included on Appeal is a clear violation of the applicable South Carolina Appellate Court Rules, and the dismissal of her appeal should be upheld.³

Also, the Lutz Motion makes it clear she has no intention of prosecuting or advancing her appeal as she, effectively, has put the Court and Respondents on notice of her grounds for appeal. Particularly, the Lutz Motion reveals the Appellant is poised to base her appeal on Judge McMahon's decision to exclude evidence related to her alleged medical condition and the mold testing she allegedly had performed on her personal items.⁴ Attached to the Lutz Motion is some of the excluded evidence. She also claims that she did not know this evidence was excluded.⁵ In other words, she argues that Judge McMahon's exclusion of the evidence referenced in the Lutz

² See Respondent East Point Properties, LLC and Respondent Scollon Family Partnership, LLC's Reply to Motion for Extension to File Initial Brief Dated May 13, 2020 and the various exhibits attached thereto.

³ Rule 208(a), SCACR provides, "Within thirty (30) days after receiving the transcript or if no transcript is ordered, within thirty (30) days after serving the notice of appeal, the appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service....Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260." Rule 260(a)(1), (4) (emphasis added). Also, Rule 209(a) SCACR provides, "At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal." Rule 209(a), SCACR. Additionally, Rule 260(a), SCACR provides, "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties." Rule 260(a), SCACR (emphasis added).

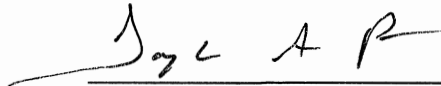
⁴ While Appellant has refused to file her Initial Brief or a Designation of Matter to Be Included on Appeal, Respondents would represent that Appellant did not present competent witness testimony, expert or otherwise, or other evidence at trial as to her medical condition, if any, the authentication of her medical records, the alleged mold testing, or the items she claims were tested.

⁵ This statement in the Lutz Motion is patently false as the transcript from the trial (which Appellant refuses to file with a Designation of Matter to Be Included on Appeal) will show that Appellant was in the courtroom during the entirety of the trial of the case two years ago which included various motions and arguments concerning the exclusion of the evidence.

Motion should be overturned.⁶ Based on these statements, Respondents are informed and believe that Appellant knows her grounds for appeal and how she needs to proceed, but she refuses to do so for the sole purpose of delaying and continuing this litigation with no end in sight.

For the forgoing reasons, the Court should deny the Lutz Motion, affirm the dismissal of the present appeal and finally and forever end this matter.

Respectfully submitted,



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*Attorneys for Respondents Eastpoint
Properties, LLC and Scollon Family
Partnership, LLC*

June 18, 2020
Chapin, South Carolina

⁶ If the appeal were reinstated and advanced, Respondents are informed and believe that this grounds for appeal will fail as Judge McMahon's exclusion of the evidence Appellant attempts to use to support her case was not an abuse of discretion. See Fowler v. Nationwide Mut. Fire Ins. Co., 410 S.C. 403, 764 S.E. 2d 24 (Ct. App. 2014)

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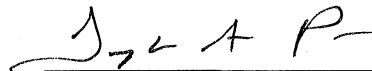
PROOF OF SERVICE

I hereby certify that I have served a copy of

**Respondents Eastpoint Properties, LLC and Scollon Family Partnership, LLC's
Reply to Motion for Extension to File Initial Brief Dated June 11, 2020**

in the above referenced case on June 18, 2020, on the following by causing a copy to be delivered via the U.S. Postal Service to the Appellant or her counsel, if any, to the addresses shown below:

Patricia Lutz
51 Bear Creek Road
Little Mountain, South Carolina 29075



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**Certified Mediator/Arbitrator

June 18, 2020

VIA ELECTRONIC MAIL (ctappfilings@sccourts.org)

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

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Jun 18 2020
SC Court of Appeals

Re: **Patricia Lutz v. Eastpoint Properties, LLC and Scollon Family Partnership, LLC**
Appellate Case No.: 2018-001387
Case No. 2013-CP-32-0871
Our File No.: 3347.28229/MAP

Dear Ms. Kitchings:

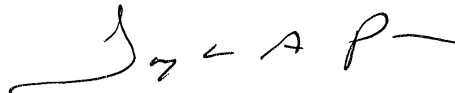
Our law firm represents the Respondents Eastpoint Properties, LLC and Scollon Family Partnership, LLC, in the above referenced matter. Pursuant to the Court's request that all filings be transmitted electronically, attached you will find a copy of Respondents Eastpoint Properties, LLC and Scollon Family Partnership, LLC's Reply to Motion for Extension to File Initial Brief Dated June 11, 2020. Please file the attached and return a clocked copy to me in via email at tpeace@hmp-law.com.

By copy of this letter, I am serving Appellant Patricia Lutz with the same.

Thank you for your assistance with this matter.

Sincerely,

HARRELL, MARTIN & PEACE, P.A.



Taylor A. Peace, Esquire

TAP/rd
Enclosures
cc: Patricia Lutz (via regular U.S. Mail)