

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS

Deadra Jefferson, Circuit Court Judge

Appellate Case No. 2019-001951

Alan G. Nix, Norma J. Nix
and the Estate of Norma J.
Nix.....Appellants

v.

Churchill Park, Churchill Park HOA, Churchill Park Homeowners' Association, Inc., Churchill at Park West Association, Inc., Churchill Property Owners Association, Churchill Park Property Owners Association, Churchill Park at Parkwest, Inc., Churchill Park at Park West Association, Inc., Churchill Park @ Park West Association, Inc., Southern Community Services, LLC, Park West Development Corp., LPPM, Inc., **McCabe, Trotter & Beverly, PC**, Dobson Builders, **Stephanie Trotter, Ryan McCabe, Jaime McSweeney**, Larry Riddlehoover, Mike Hurd, Sheri Cothran, David Brown, Catherine Brown, Stephen Sumner, Richard Riccoboni, Rick Cumberland, Park West Master Association, Inc., Park West Amenity Association, Inc., C. Richard Dobson, Builders, Inc., DR Horton, Inc., Brian Gardner, Venture Management of South Carolina, Inc., Dodds & Hennessey, LLP, Kim Atkeson, Jennifer Williamson, Jessica Turner, Kevin Steelman, Landtech Development, LLC, Landtech Incorporated of South Carolina, Land Tech Charleston, LLC, Rogers, Townsend & Thomas, PC, Henry Munn, Charleston County (Christine Smith), Judge Mikell Scarborough, Sandlapper Reporting, LLC, William H. Sloan, Sloan Law Firm, Individual Agents, Assigns, Attorneys, Accountants, Employees, Officers, Directors, Independent Contractors, Investors, Successors, Predecessors, Insurers, Representatives, Parents, Sister

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and Affiliated Entities, Partners, Members of all Persons
Who Might be Liable..... Respondents.

**Respondents McCabe, Trotter & Beverly, PC, Stephanie Trotter, Ryan McCabe, and
Jaime McSweeney's: (a) RETURN TO APPELLANTS' "MOTION TO REMAND AND
CLARIFY COURT ORDER DATED JUNE 4, 2020" and (b) MOTION TO DISMISS/FOR
SANCTIONS**

Respondents McCabe, Trotter & Beverly, PC, Stephanie Trotter, Ryan McCabe, and Jaime McSweeney ("these Respondents") submit this Return to Appellants' Motion to Remand and Clarify Court Order Dated June 4, 2020, and Motion to Dismiss this Appeal. These Respondents make this Motion pursuant to Rules 240, 260, 269 and 108, SCACR, as well as other applicable authority.

Alan Nix, *pro se*, filed a Complaint in the Charleston County Court of Common Pleas on January 9, 2019. It names no less than 40 Defendants, including these Defendants. The Complaint literally contains not a single factual allegation other than "Plaintiff is a resident of Charleston County, South Carolina." It proceeds to list titles of 17 causes of action without a single actual allegation.

The Plaintiffs, complaining of Defendants, would respectfully show unto this honorable Court the following:

PARTIES AND JURISDICTION

1. Plaintiff is a resident of Charleston County, South Carolina.

FACTUAL ALLEGATIONS

FOR A FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty)

(As to Defendants:)

1. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

FOR A SECOND CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty)

(As to Defendants:),

2. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

The pleading includes a conclusory statement referencing the “ongoing pattern of mismanagement of cases 2014-CP-10-05407 and 2017-CP-10-04031,” the statute of limitations, a bizarre request for consolidation, and a prayer for damages. The underlying matter(s) Nix references is a case in which McCabe, Trotter & Beverly, PC represented Nix’ HOA in an action to foreclose on a lien against Nix’ home. He failed to pay HOA dues and other amounts owed to the HOA. The parties litigated the matter, Nix lost¹ and is now the subject of a Judgment exceeding \$20,000 which he refuses to pay.

Instead of paying the Judgment, Nix has pursued litigation against McCabe, Trotter & Beverly, PC (“MTB”) and others including: Nix v. MTB; 2018-CP-10-2302 and Nix v. MTB; 2018-CP-10-2356. Those cases were removed to federal court and dismissed, with the Court awarding costs against Nix. Since then, he has continued to file appeals, pursue claims (including this case), make threats and otherwise harass MTB and many of the Defendants named in this matter.

These Respondents filed a Motion to Dismiss Nix’ facially frivolous and empty Complaint on January 14, 2019. Nix filed no substantive response at all to the Motion. Ever. Nor did he move to amend the Complaint or otherwise properly address the grounds for dismissal of the underlying matter. Judge Jefferson heard the Motion on September 26, 2019, and issued an Order granting it on October 17, 2019. Nix filed this Appeal on November 6, 2019.

Nix received the transcript of the hearing of the underlying Motion to Dismiss (with Judge Jefferson) no later than February 29, 2020. These Respondents filed a Motion to Dismiss this Appeal on May 4, 2020, on the grounds Nix failed to timely file a designation of matter and initial brief.

¹ Nix also appealed that matter and lost the appeal.

Certain other Respondents filed a similar Motion to Dismiss on May 21, 2020. This Court entered an Order on June 4, 2020, denying both Motions to Dismiss and giving Appellants thirty additional days to file their Designation of Matter and Initial Brief.

Nix received the transcript of the hearing 132 days ago and has still not filed an initial brief or designation of matter. Instead, he ignored the Court's gracious extension of time and continues his pattern of abuse of the judicial system and harassment of these Respondents. Nix' most recent filing makes it clear Nix has no intention of ever filing an initial brief or designation of matter. He filed the underlying case and this Appeal with no basis or intention other than causing problems for the Respondents.

Rule 208(a)(4), SCACR says that, "[U]pon 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. . ." (emphasis added). The Clerk should *sua sponte* dismiss this Appeal under that Rule. The Appeal is also subject to dismissal under Rule 260(a), SCACR (where appellant has failed to comply with the Rules). The Rules obligate dismissal of this Appeal regardless of Nix' *pro se* status.

Being a *pro se* litigant does not provide free range to clog the court system with countless filings because one does not like the result of a particular matter. The South Carolina Frivolous Proceedings Act specifically applies to both *pro se* and represented litigants. It also allows for sanctions against a litigant/lawyer for (a) filing a frivolous pleading, motion or document; (b) making frivolous arguments not reasonably supported by facts; and/or (c) making frivolous arguments incongruent with existing law. See S.C. Code § 15-36-10(A)(4); see also Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 760 S.E. 2d 399 (2014) (holding that sanctions were proper against the *pro se* appellant for frivolous and dilatory litigation tactics).

Rule 269, SCACR also allows for the imposition of sanctions where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay or is not in compliance with the Rules. Nix' most recent "Motion" is a clearly frivolous and dilatory tactic designed to create more delay and keep these Respondents entangled in litigation in retaliation for being on the losing side of the HOA lien matter. The nine-page pleading does not even address or acknowledge Appellants' failure to submit an initial brief or designation of matter. It just makes clear Nix has no intention of ever filing the required material and only seeks to continue to entrench the Respondents in continued baseless litigation.

Instead of preparing and filing an initial brief or designation of matter, Nix spends time crafting and sending menacing emails to counsel for these Respondents and many others alluding to bringing "the Corona" and threatening to show up at the undersigned's office. Here is just one example of many:

From: Alan Nix [mailto:agnix1@hotmail.com]
Sent: Thursday, June 18, 2020 4:35 PM
To: 'Ryan McCabe' <Ryan.McCabe@mccaberotter.com>; 'Stephanie Trotter' <Stephanie.Trotter@mccaberotter.com>; 'Deason, Joel' <JDeason@lcsd.sc.gov>; james.cherry@southstatebank.com; greg.lapointe@southstatebank.com; 'Donna Lehmer' <Donna.Lehmer@southstatebank.com>; 'Sheri Coltran' <scoltran@trustsca.com>; khurd@trustsca.com; cmunn@trustsca.com; 'Larry Riddlehoover' <lriddlehoover@trustsca.com>; 'Mikell Scarborough' <master@charlestoncounty.org>; rch@charlestonlegalaccess.org; 'Sarah Schreiber' <sarah@charlestonlegalaccess.org>; lvecondon@charlestoncounty.org; awilson@scag.gov; 'Cole, J. Darham' <JColeJ@scourts.org>; 'Cole, J. Darham Law Clerk (David Barfield)' <JColeJ@scourts.org>; thames@mlaw.net; 'Julie Armstrong' <JArmstrong@charlestoncounty.org>; 'Ryan Earhart' <ryan.earhart@earhartoverstreet.com>; 'Josh Umberger' <josh.umbarger@earhartoverstreet.com>; 'Kevin Mims' <kmims@mlawlp.com>; 'Andrew Countryman' <awc@countrymanlawfirm.com>; 'Robert P. Wood' <robert.wood@rt-law.com>; crenair@mlawlp.com; rogers@rt-law.com; bthomas@rt-law.com; 'David Overstreet' <david.overstreet@earhartoverstreet.com>; mkmiller@charlestoncounty.org; zane.perry@blackbaud.com; 'Kevin Steelman' <ksteelman@landchase.com>; 'Nici Comer' <Nici.Comer@southstatebank.com>; 'Ritchie, Carl' <critchie@tompsc.com>
Subject: RE: REMINDER: file Verification of Debt with Condon and "Assignment of Foreclosure Rights" with Michael
Importance: High

Mr. Robert and Andy,

1. Doesn't look like y'all got y'all's clients to Michael's place of work last week.....now the count is 1008 days which equals a nice round 144 weeks.... (good thing we all haven't been holding our breath huh?)
2. Haven't seen y'all's clients, client's clients, client's associates, etc. etc. etc. Verification of Debt thingies. Are y'all having to come up with a new form to hold all of the zeros?

Any excuses that are even barely plausible for all of the continuing failures? For instance, I've been sick again the last five days with complications related to this apparently incurable IIOED Syndrome. (and example of at least barely plausible).

If not, how bout we just go ahead and schedule next Wednesday afternoon to set up the Command Center in the parking lot at your place of work. (maybe closer to Wingo Way than your office). I'll bring the Corona for sure and you just get y'all's clients, client's clients, client's associates, etc. etc etc. to show up and then Chief Ritchie can set up an escort from the Command Center down to 100 Broad St. and Mike's office right across the way on Meeting St. and get all of this stuff knocked out once and for all. Sound like a plan?

Maybe we can even get Cpt. Arnold to escort at least a couple of your clients, client's clients, client's associates etc. etc. etc. to the Command Center? I'll even put a few comfortable clothes in my shopping cart so I can spend some time with those frienemies next week to start getting in the spirit for spending this Christmas in Sheriff Cannon's humble abode with other of your clients, client's clients, client's associates etc. etc. etc. (the same apparent friends of mine Mag Lynn so badly wanted me to spend last Christmas with in Sheriff Cannon's humble abode?).

I've got to come by 321 Wingo Way sometime soon anyway. If I haven't heard from y'all by then, I'll cautiously poke my head in to see where y'all are with the planning.

Or...you could just make sure you get your clients, client's clients, client's associates etc. etc. etc. to file the original of the attached before 144 becomes 145 and get those Verification of Debt thingies with all of the zeros on them mailed before close of business tomorrow.....uneteenth.... (even if you do, I firmly believe Cpt. Arnold and Chief Ritchie finally escorting at least a few of your clients, client's clients, client's associates etc. etc. etc. somewhere would be very very very appropriate and just.....)

Best regards,
Alan Nix

[remainder of page intentionally blank]

This Court should not allow this flagrant and intentional disregard for it, the judicial process and its lawful litigants to continue. Therefore, these Respondents respectfully request this Court:

- (a) Deny Appellants' Motion dated July 2, 2020;
- (b) Dismiss this Appeal with prejudice and
- (c) Award sanctions as it deems appropriate against Alan Nix.

July 10, 2020

Respectfully submitted,



COUNTRYMAN LAW FIRM

Andrew W. Countryman

State Bar No. 72700

321 Wingo Way, Ste. 102

Mt. Pleasant, SC 29464

**Counsel for Respondents McCabe,
Trotter & Beverly, PC, Stephanie
Trotter, Ryan McCabe and Jaime
McSweeney**

Other counsel of record for these Respondents:

ROGERS, TOWNSEND & THOMAS, P.C.

Robert P. Wood

1221 Main St., 14th Floor

P.O. Box 100200

Columbia, SC 29202-3200

803-771-7900

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and Affiliated Entities, Partners, Members of all Persons
Who Might be Liable.....Respondents.

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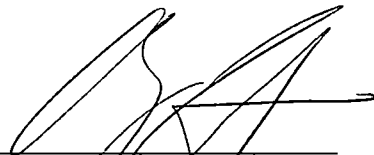
I certify I have served the foregoing pleading on all parties/their counsel in this case by depositing a copy in the United States Mail, postage prepaid addressed as follows:

Alan G. Nix
1401 Densmore Circle
Mt. Pleasant, SC 29466
Pro Se Appellant(s)

G. Troy Thames
Wilson, Jones, Carter & Baxley
421 Wando Park Blvd.
Mt. Pleasant, SC 29464
**Counsel for David Brown and Catherine
Brown**

Kevin W. Mims
Luzuriaga Mims, LLP
50 Immigration St., Ste. 200
Charleston, SC 29403
**Counsel for Churchill Park, Churchill
Park at Park West, Inc., Churchill Park
at Park West Association, Inc., and
Stephen Sumner**

This 10th day of July, 2020



COUNTRYMAN LAW FIRM
Andrew W. Countryman
321 Wingo Way, Ste. 102
Mt. Pleasant, SC 29464
**Counsel for Respondents McCabe,
Trotter & Beverly, PC, Stephanie
Trotter, Ryan McCabe and Jaime
McSweeney**

COUNTRYMAN LAW FIRM

Litigation ♦ Mediation

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, South Carolina 29464
*Certified S.C. Circuit Court Mediator

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843-253-4477 office
844-644-3165 fax

July 10, 2020

Via Fax (803-734-1839) and U.S. Mail

South Carolina Court of Appeals
Attn.: Clerk, Jenny Abbott Kitchings
P.O. Box 11629
Columbia, SC 29211

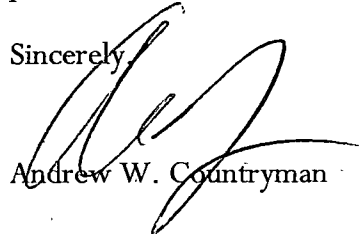
Re: Nix v. Churchill Park, *et al.*
Appellate Case No.: 2019-001951
CLF: 000006 – 000050

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Dear Jenny:

I represent Respondents McCabe, Trotter & Beverly, P.C., Stephanie Trotter, Ryan McCabe and Jaime McSweeney in this case. I enclose for filing, one pleading titled "Return to Appellants' Motion to Remand and Clarify order Dated June 4, 2020; and Motion to Dismiss/for Sanctions" on behalf of my clients (with Proof of Service), as well as a check for the \$50 filing fee. I am not including copies of the Motion pursuant to the Supreme Court's Order of March 20, 2020. Please let me know if you need copies, and I will send them immediately. By copy of this, I serve the Return/Motion on the Appellant(s) and counsel for the other Respondents.

Sincerely,


Andrew W. Countryman

AWC/sgc
Enclosures

Cc w/enclosures: Alan Nix, Robert Wood, G. Troy Thames, Kevin W. Mims

Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant SC 29464



South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
P.O. Box 11629
Columbia SC 29211-1629

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