

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**  
**Nov 13 2020**  
**SC Court of Appeals**

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MIKELL R. SCARBOROUGH, Master in Equity

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Appellate Case No. 2019-001289

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Raven's Run Homeowners Association, Inc., ..... Appellant/Respondent,  
v.

Crown Pointe Association, Inc.; Lois K. Novak as Trustee of the Lois K. Novak Living Trust dated 10/14/2013; Laurie T. Herron and Mark D. Herron; James B. Kubu and Melissa F. Kubu; Leila June Johnson; Danny Ta and Anita McCauley; Robert E. Luby, Jr., and Barbara Luby; Joshua D. Coonce; Lucius Roy Junevicius; Katherine Kinlaw; Thomas K. Kuyk and Melissa Ward; Roland Franklin Wooten, III, and Teresa Key Wooten; Michael P. Horvath; Timothy E. Moylan and Karen G. Moylan; Carl A. Counasse and Maureen Counasse; David A. Frielinghaus and Holly C. Frielinghaus; Christopher S. Finley and Holly M. Finley; Shirley D. Spigner a/k/a Shirley Deanna Spigner; Deirdre C. Knight; Robert Shane Johnson; Eric R. Sigman; Lamar R. Graves, Jr., and Terry W. Graves; Mary Elizabeth Gladden; Philip Wallace and Naomi Grad; Thomas Edwin Davis and Luis Miguel Gonzalez Melchor; John R. Funkhouser and Jennifer L. Funkhouser; Gregory S. Cooper and Jane B. Cooper; Frank C. Jones, Jr., and Elise Ubele Jones; William P. Topping and Kris B. Topping; LaRhonda S. Ptichko; Kenneth L. Tully and Anna J. Tully; Defendants,

Of Whom James B. and Melissa F. Kubu, and  
Leila June Johnson are the ..... Respondents

And Katherine Kinlaw is the ..... Respondent/Appellant.

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**APPELLANT/RESPONDENT'S MOTION FOR AN EXTENSION AND  
FOR LEAVE TO FILE OUT OF TIME**

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Appellant/Respondent Raven's Run Homeowners Association, Inc. ("Raven's Run"), pursuant to Rule 240, SCACR, respectfully moves for an extension of time in which to file its reply brief in response to the brief filed by Respondents James B. and Melissa F. Kubu ("the Kubus"). Additionally, Raven's Run requests leave to file its reply brief out of time because the U.S. Postal Service took *sixteen days* to deliver the Kubus' brief to counsel for Raven's Run. Therefore, Raven's Run respectfully requests entry of an order allowing it to file its reply brief on or before November 25, 2020.

In support of this motion, Raven's Run would state as follows:

1. In this appeal, Raven's Run is the Appellant/Respondent, Katherine Kinlaw is the Respondent/Appellant, and the Kubus are Respondents.<sup>1</sup> Raven's Run filed its notice of appeal on August 1, 2019. The Kubus took no action regarding the appeal until June 2020, when they filed a *pro se* request for an extension of time to retain appellate counsel. Appellate counsel made his appearance in early September 2020.

2. By August 27, 2020, briefing was complete as between Raven's Run and Kinlaw.

a. Briefing on Raven's Run Appeal. Raven's Run filed its Initial Appellant's Brief of Appellant/Respondent and its Designation of Matter to the Record on Appeal on January 23, 2020; Kinlaw filed her

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<sup>1</sup> Leila Johnson is also a Respondent, but she has not filed a brief or otherwise participated in this appeal.

Initial Respondent's brief of Respondent/Appellant and Designation of Matter on May 14, 2020; and Raven's Run filed its Initial Reply Brief of Appellant/Respondent on June 9, 2020.

- b. Briefing on Kinlaw's Cross-Appeal. Kinlaw filed her Initial Appellant's Brief of Respondent/Appellant and Designation of Matter on March 19, 2020; Raven's Run filed its Initial Respondent's Brief of Appellant/Respondent on May 12, 2020; and Kinlaw filed her Initial Reply Brief of Respondent/Appellant on June 15, 2020.
  - c. Record on Appeal and Final Briefs. Raven's Run served and filed the Record on Appeal on July 13, 2020; Raven's Run filed its final briefs on August 3, 2020; and Kinlaw filed her final briefs on August 27, 2020.
3. Appellate counsel for the Kubus entered his appearance on September 9, 2020.
  4. Through counsel, the Kubus filed and served their Final Respondent's Brief on October 21, 2020. (Exhibit A, at 2.) The Court received the Kubus' brief on October 23. (Exhibit A, at 1.) However, counsel for Raven's Run did not receive the brief until Friday, November 6. (Exhibit B.)
  5. A reply brief is due "within ten (10) days after *service* of respondent's brief." Rule 208(a)(3), SCACR (emphasis added). Since the Kubus' brief was served on October 21, Raven's Run's reply brief was due on Monday, November 2, 2020. As noted,

however, the U.S. Postal Service did not deliver the Kubus' brief until November 6, *four days after the reply was due.*

6. Per the Court's Order of October 15, 2020, the deadline for the Kubus' brief was November 4, 2020. Because the arrival of the brief in counsel's office on November 6 seemed consistent with it having been filed and served on November 4, counsel for Raven's Run did not immediately recognize that the Kubus' brief had been served on October 21, *16 days before its arrival in counsel's office.*

7. If the Kubus' brief had, in fact, been filed and served on November 4, Raven's Run's reply brief would be due on Monday, November 16, 2020. It was not until today (November 13, 2020), while drafting a routine motion for extension of the (presumed) November 16 deadline, that counsel recognized that the Kubus' brief had been filed and served on October 21.

8. Additional time is needed for Raven's Run to file its reply brief due to the press of deadlines and obligations in other cases. Additionally, counsel received the Kubus' brief during the afternoon of Friday, November 6 meaning that counsel has had only five business days between receipt of the Kubus' brief and November 16 (the deadline for the reply brief if the Kubus' brief had been filed and served on November 4, the date specified in the Court's October 15, 2020 Order).

9. In light of the foregoing circumstances, Raven's Run respectfully asks the Court to enter an order (a) granting leave to file the reply brief out of time; and (b) setting

a deadline of November 25, 2020, for the filing of Raven's Run's final reply brief.

10. Undersigned counsel certifies that this extension is sought in good faith and not for purposes of delay.

Respectfully submitted,

*s/William W. Wilkins*

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Kirsten E. Small (S.C. Bar No. 75681)

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*Attorneys for Appellant/Respondent*

*Raven's Run Homeowners Association, Inc.*

November 13, 2020

Greenville, South Carolina

# EXHIBIT A

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

OCT 23 2020

SC Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY  
COURT OF COMMON PLEAS

MIKELL R. SCARBOROUGH, Master in Equity

Appellate Case No. 2019-001289

Raven's Run Homeowners Association, Inc., ..... Appellant/Respondent

v.

Crown Pointe Association, Inc., Lois K. Novak as Trustee of the Lois K. Novak Living Trust dated 10/14/2013; Laurie T. Herron and Mark D. Herron; James B. Kubu and Melissa F. Kubu; Leila June Johnson; Danny Ta and Anita McCauley; Robert E. Luby, Jr., and Barbara Luby; Joshua D. Coonce; Lucius Roy Junevicius; Katherine Kinlaw; Thomas K. Kuyk and Melissa Ward; Roland Franklin Wooten, III, and Teresa Key Wooten; Michael P. Horvath; Timothy E. Moylan and Karen G. Moylan; Carl A. Counasse and Maureen Counasse; David A. Frielinghaus and Holly C. Frielinghaus; Christopher S. Finley and Holly M. Finley; Shirley D. Spigner a/k/a Shirley Deanna Spigner; Deirdre C. Knight; Robert Shane Johnson; Eric R. Sigman; Lamar R. Graves, Jr. and Terry W. Graves; Mary Elizabeth Gladden; Philip Wallace and Naomi Grad; Thomas Edwin Davis and Luis Miguel Gonzalez Melchor; John R. Funkhouser and Jennifer L. Funkhouser; Gregory S. Cooper and Jane B. Cooper; Frank C. Jones, Jr. and Elise Ubele Jones; William P. Topping and Kris B. Topping; LaRhonda S. Ptichko; Kenneth L. Tully and Anna J. Tully; Defendants,

Of Whom James B. Kubu and Melissa F. Kubu, and Leila June Johnson are the  
..... Respondents

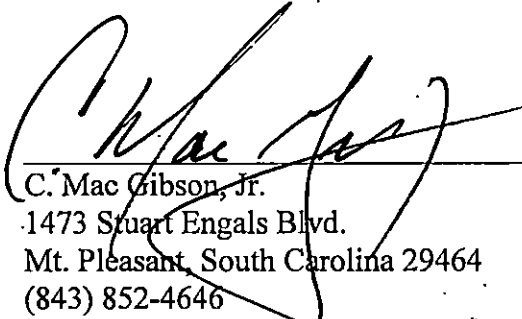
And Katherine Kinlaw is the ..... Respondent/Appellant

**PROOF OF SERVICE**

# EXHIBIT A

I certify that I have served Respondent James B. Kubu and Melissa F. Kubu's Final Brief by depositing a copy of it in the United States Mail, postage prepaid, on October 21, 2020, addressed to the Appellant-Respondent's attorneys of record, William W. Wilkins and Kirsten Elena Small, Nexsen Pruet, LLC, 55 E. Camperdown Way, Greenville, South Carolina, 29601 and George Hamlin O'Kelley, III, Buist, Byars, & Taylor, LLC, 652 Coleman Blvd., Ste. 200, Mount Pleasant, South Carolina, 29464; and Respondent-Appellant Katherine Kinlaw's attorney of record, Harold A. Oberman, Oberman & Oberman, LLC, 60 Markfield Drive, Suite 2, Charleston, South Carolina, 29407; and Respondent Lelia June Johnson's attorney of record, Jeffrey T. Spell, 1721 Ashley River Road, Charleston, South Carolina, 29407.

October 21, 2020



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C. Mac Gibson, Jr.  
1473 Stuart Engals Blvd.  
Mt. Pleasant, South Carolina 29464  
(843) 852-4646  
Attorney for Respondents  
James B. Kubu and Melissa F. Kubu

# EXHIBIT B

**Small, Kirsten E.**

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**From:** McDowell, Kathy L.  
**Sent:** Friday, November 6, 2020 4:13 PM  
**To:** Small, Kirsten E.; Wilkins, William W.  
**Cc:** Golisch, Cathy A.; Haygood, Belinda C.  
**Subject:** Raven's Run HOA v Crown Pointe  
**Attachments:** 2020.10.16 Respondents' Kubu Final Brief.PDF; 2020.10.20 Service Ltr to Judge from Gibson.pdf; 2020.10.21 POS for Resp Kubu's Final Brief.PDF

Please see attached which was received by regular mail today and has been saved into file site.

Thanks.

**Kathy L. McDowell**  
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**NEXSEN | PRUET**

**CERTIFICATE OF SERVICE**

I certify that on November 13, 2020, I served the foregoing **Appellant/Respondent's Motion for an Extension and for Leave to File Out of Time** on Respondents and on Respondent/Appellant by transmitting a copy to the AIS email addresses for their counsel of record, as set forth below, in accordance with Supreme Court Order 2020-05-29-02.

Jeffrey T. Spell  
JEFFREY T. SPELL, ATTORNEY AT LAW  
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Leila June Johnson*

C. Mac Gibson, Jr.  
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*Counsel of record for James B. Kubu and  
Melissa F. Kubu*

Harold Alan Oberman  
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*Counsel of record for  
Respondent/Appellant  
Katherine Kinlaw*

**RECEIVED**  
**Nov 13 2020**  
**SC Court of Appeals**

*s/Kirsten E. Small*  
\_\_\_\_\_  
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