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**Feb 16 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

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Case No.: 2017-CP-10-5426  
App. Case No. 2020-001132

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Family Services, Inc., as Conservator for Muriel W. Clarkin.....Appellant,  
v.

Bridget D. Inman, Muriel C. Kennedy, and Patricia Clarkin Smith.....Respondents.

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INITIAL BRIEF OF RESPONDENT BRUCE A. BERLINSKY

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s/Bruce A. Berlinsky  
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February 16, 2021

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### STATEMENT OF RELEVANT FACTS

In the matter before the Court, Bruce A. Berlinsky had been under the impression that all discovery materials had been provided to Plaintiff's counsel. The record indicates that even if Bruce A. Berlinsky did not provide certain written materials to counsel, he certainly did provide the relevant information to counsel via telephone calls. The whereabouts of the net proceeds and any HELOC payments made by Inman were certainly not kept secret from counsel and there was no prejudice to Plaintiff's case.

### STANDARD OF REVIEW

Appellant has mischaracterized the argument as he has argued the factors for Courts to consider when determining appropriate sanctions. However, to get to that point, one must convince the Court that sanctions are appropriate.

The South Carolina Supreme Court has held that the imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court. Therefore, an appellate court will not interfere with a trial courts exercise of its discretionary powers with respect to sanctions imposed in discovery matters unless the Court abuses its discretion (emphasis added). An abuse of discretion may be found by this Court where the appellant shows that the conclusion reached by a lower court was without factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law. The appealing party bears the burden of demonstrating that the lower court abused its discretion. Patel v. Patel, 359 S.C. 515, 599 S.E.2d 114 (SC 2004); Downey v. Dixon, 294 S.C. 42, 362 S.E.2d 317 (Ct. App. 1987); Karppi v. Greenville Terrazo Co., Inc., 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997); Dunn v. Dunn, 298 S.C. 499, 381 S.E.2d 734 (1989).

## ARGUMENTS

In the case at bar, Appellant may not have had the information sought in discovery provided in the proper manner, but Appellant did receive all of the information through other means from Bruce A. Berlinsky even if it was not provided through “technical” compliance of discovery rules thereby not prejudicing the Plaintiff in any way.

Further, as stated above, the Court has to first rule that sanctions are appropriate before Appellants arguments of the factors to consider in assessing sanctions can even be addressed. Therefore, Appellants arguments are without relevancy to the issue before the Court.

Finally, the Appellant has presented no evidence that the trial judge abused his discretion.

## CONCLUSION

Based on the foregoing, Appellant’s appeal on this issue before the Court should be denied and the ruling of the trial court should be upheld.

Respectfully submitted,

s/Bruce A. Berlinsky

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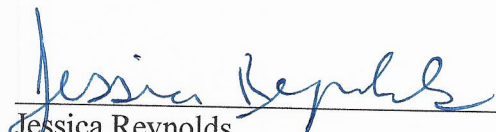
The undersigned hereby certifies that on this 16<sup>th</sup> day of February, 2021, she served counsel for the Appellant and counsel of record with a copy of Initial Brief of Respondent Bruce A. Berlinsky in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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