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**Mar 19 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BERKELEY COUNTY

Roger M. Young, Sr., Circuit Court Judge

Bethany Aloha Rich, .....  
Appellant,

v.

New Heights Property Management, .....  
Respondent.

APPELLATE CASE NO. 2020-001684

RETURN TO APPELLANT’S MOTION FOR EXTENSION OF TIME TO FILE  
INITIAL BRIEF

Scott Riddell, Esquire

SC Bar No. 102809

P.O. Box 1547

Summerville, SC 29484

(843) 735-9702

Attorney for Respondent

## INTRODUCTION and FACTS

In this eviction matter, the parties had a residential lease that ran from December of 2018 to December of 2019. The parties then executed a lease renewal through the end of January, and, at the same time, the owners were listing their home for sale, and Appellant was one such prospective buyer. The deal between the owners and Appellant fizzled in January of 2020. The owners refused further rent payment from Appellant and filed the eviction in early February. On March 11, 2020, the Goose Creek magistrate upheld the eviction after a hearing. On November 16, 2020 the Court of Common Pleas affirmed the decision on appeal. During this litigation, one of the owners (a couple) has become terminally ill; the owners have accordingly changed their intentions with the home and await this litigation's completion to return to the home as a final residence together.

Appellant received the transcript on February 12. Ex. A at 1 (email from court reporter to Appellant's counsel, attaching transcript, dated February 12, 2021). Respondent did not know of this receipt, or itself receive the transcript, until March 5, 2021, as Respondent had not been copied on any communications between Appellant and the court reporter, contrary to Rule 207(a)(1), SCACR ("Appellant shall contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter."). Ex. A at 1-2. Respondent's counsel

attempted to clarify the grounds for the instant Motion in order to respond meaningfully to it, but Appellant’s counsel did not provide any. Ex. B at 1 (emails between Appellant’s counsel and Respondent’s counsel dated March 18, 2021, Appellant’s counsel stating, “Respectfully, I don’t think I’m required to, and I don’t think I should.”).

### LAW

“Within thirty (30) days after receiving the transcript . . . 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.” Rule 208(a)(1), SCACR. “Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.” Rule 240(b), SCACR. “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 208(a)(4), SCACR.

“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. The Court has enforced this rule where appellants have failed to serve and file initial briefs within Rule 208’s deadline. See, e.g., Turner v. Santee Cement Carriers, Inc., 277 S.C. 91, 96, 282 S.E.2d 858, 860 (S.C. 1981) (“Respondent . . . did not file a brief with this Court. Her failure to do so allows this Court to take such action upon the appeal as it deems proper. This failure alone would justify reversal; however, we simply consider it as an additional ground.”); State v. Serrette, 375 S.C. 650, 651, 654 S.E.2d 554, 555 (Ct. App. 2007) (“Though South Carolina affords criminal defendants the opportunity to appeal, the right to an appeal may be lost through a variety of actions by an appellant, such as: (1) . . . ; (2) failure to serve and file an initial brief and designation of matter under Rule 208(a)(4), SCACR; . . . .”).

The Supreme Court’s order 2020-05-29-02, “Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020),” forgave procedural defaults in two contexts, neither of which applies here, since the first ended on June 8, 2020, and the second ended on April 9, 2020. Order 2020-05-29-02 at (1)(2)-(3). The sparing nature of any residual forgiveness of procedural defaults allowed under said order is demonstrated by the Supreme Court’s footnote to the first context just described: “As explained by the order of March 20, 2020, this automatic extension was intended to give ‘lawyers and

self-represented litigants appearing before the Appellate Courts ... time to take actions to protect themselves and their families.’ Since sufficient time has been provided for this to occur, and most lawyers and litigants have been able to adjust to working remotely, this automatic extension is no longer warranted.” Order 2020-05-29-02 at (1)(2) n.4.

### ARGUMENT

Appellant’s deadline to serve and file her initial brief was March 15, 2021. Here, Appellant has not shown good cause for granting her Motion; rather, she has asked this Court to believe in the merits of her Motion at face value, and has refused to elaborate on them; at the least, a hearing on the merits of this Motion should be had so that Respondent has a meaningful opportunity to respond. Appellant has consistently omitted Respondent, and perhaps this Court as well, from communications with the court reporter regarding obtaining the transcript. Appellant’s Motion did not stay the deadline to serve and file the initial brief, per Rule 240, SCACR. The language of Rules 208, 240, and 260, SCACR, is mandatory regarding a clerk’s entry of an order of dismissal and a motion’s effect on deadlines. Such would conform with the precedents of Turner v. Santee Cement Carriers, Inc. and State v. Serrette.

Respondent had not been copied on any communications between Appellant and the court reporter, contrary to Rule 207(a)(1), SCACR (“Appellant shall

contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.”). Respondent is unable to determine if Appellant had been complying with Supreme Court Order 2018-05-01-04 (Re: Electronic Means Pursuant to Rules 207 and 607, South Carolina Appellate Court Rules, Appellate Case No. 2017-002059), but if Appellant has not, Respondent would request that such be considered in deciding the instant Motion.

### CONCLUSION

Appellant’s Motion should be denied, her appeal dismissed, and Respondent’s costs and fees should be awarded to Appellant (Respondent intends, should dismissal occur, to file a Rule 222(d) motion upon this Court’s remittitur). At the least, a hearing on the Motion should be had so that Respondent could have a meaningful opportunity to hear, then address, its merits.

Respectfully submitted,

s/Scott Riddell

Scott Riddell, Esquire

SC Bar No. 102809

P.O. Box 1547

Summerville, SC 29484

(843) 735-9702

Attorney for Respondent

## RESPONDENT'S EXHIBIT A

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**Fwd: Rich v New Heights Property Mngmt**

2 messages

**Jeffrey Kuykendall** <JWKuykendall@jwklegal.com>

Thu, Mar 4, 2021 at 4:07 PM

To: Scott Riddell &lt;scott.riddell.law@gmail.com&gt;

Scott,

I apologize, I thought I had provided you with a copy of this email when it was received. The transcript was ordered and was received in the below email on February 12th,

Sincerely,  
Jeff

----- Forwarded message -----

From: **Lauder, Denise** <dlauder@sccourts.org>

Date: Fri, Feb 12, 2021 at 2:19 PM

Subject: Rich v New Heights Property Mngmt

To: Jeffrey Kuykendall &lt;JWKuykendall@jwklegal.com&gt;

Mr. Kuykendall:

Attached please find the electronic copy of the requested transcript in the above referenced proceeding.

Thank you,

Denise J. Lauder, RPR

Official Court Reporter

Ninth Judicial Circuit/Berkeley County

Moncks Corner, SC

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**Jeffrey W. Kuykendall****Attorney at Law**

127 King St., Ste. 208

Charleston, SC 29401


843.790.5182 (direct)

866.733.1909 (facsimile)

[Jwkuykendall@jwklegal.com](mailto:Jwkuykendall@jwklegal.com)

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**Scott Riddell** <scott.riddell.law@gmail.com>  
To: Jeffrey Kuykendall <JWKuykendall@jwklegal.com>

Fri, Mar 5, 2021 at 10:59 AM

Hi Jeffrey,

I double-checked my email and no, you hadn't, but thanks for this. Have a good weekend.

Yours,

Scott Riddell, Esq.  
Scott Riddell Law, LLC  
P.O. Box 1547  
Summerville, SC 29484  
843-735-9702 (cell)  
[scott.riddell.law@gmail.com](mailto:scott.riddell.law@gmail.com)

[Quoted text hidden]

## RESPONDENT'S EXHIBIT B

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**Rich v New Heights--your recent motion**

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Scott Riddell <scott.riddell.law@gmail.com>  
To: Jeffrey Kuykendall <JWKuykendall@jwklegal.com>

Thu, Mar 18, 2021 at 5:07 PM  
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Sure Jeffrey, I understand. I was just trying to find a way to respond meaningfully to the motion. **Mar 19 2021**

On Thu, Mar 18, 2021 at 4:25 PM Jeffrey Kuykendall <JWKuykendall@jwklegal.com> wrote:  
Scott, **SC Court of Appeals**

Respectfully, I don't think I am required to and I don't think I should. I don't believe it was intended in this way, but even asking the question appears to question my veracity and credibility. I hope and expect that you understand my position.

Sincerely,  
**Jeffrey W. Kuykendall**  
*Attorney at Law*  
127 King St., Ste. 208  
Charleston, SC 29401  
843.790.5182 (direct)  
866.733.1909 (facsimile)  
[Jwkuykendall@jwklegal.com](mailto:Jwkuykendall@jwklegal.com)

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On Thu, Mar 18, 2021 at 12:52 PM Scott Riddell <scott.riddell.law@gmail.com> wrote:

Hey Jeffrey,

So that I could meaningfully respond to your motion, could you please elaborate on what you mean by "unexpected personal and professional obligations"?

Yours,

Scott Riddell, Esq.  
Scott Riddell Law, LLC  
P.O. Box 1547  
Summerville, SC 29484  
843-735-9702 (cell)  
[scott.riddell.law@gmail.com](mailto:scott.riddell.law@gmail.com)

On Wed, Mar 17, 2021 at 2:41 PM Jeffrey Kuykendall <JWKuykendall@jwklegal.com> wrote:  
Scott,

My apologies. I don't know how that mistake was made. Please find attached a copy of the Motion for Extension of Time to File Brief that was filed with the Court of Appeals on 3/12/21.

Sincerely,

**Jeffrey W. Kuykendall**

**Attorney at Law**

127 King St., Ste. 208

Charleston, SC 29401

843.790.5182 (direct)

866.733.1909 (facsimile)

[Jwkuykendall@jwklegal.com](mailto:Jwkuykendall@jwklegal.com)

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On Wed, Mar 17, 2021 at 9:05 AM Scott Riddell <[scott.riddell.law@gmail.com](mailto:scott.riddell.law@gmail.com)> wrote:

Good morning Jeffrey,

Sorry I should've made clear in that last email that I do not consider myself served with your motion yet. You may serve me by email or mail to the address I mentioned. Thank you.

On Tue, Mar 16, 2021 at 4:56 PM Scott Riddell <[scott.riddell.law@gmail.com](mailto:scott.riddell.law@gmail.com)> wrote:

Hi Jeffrey,

My old law firm got your recent motion. Please don't send things to that law firm; instead, send things either via email or to my PO Box below.

Yours,

Scott Riddell, Esq.

Scott Riddell Law, LLC

P.O. Box 1547

Summerville, SC 29484

843-735-9702 (cell)

[scott.riddell.law@gmail.com](mailto:scott.riddell.law@gmail.com)

--

Yours,

Scott Riddell, Esq.

Scott Riddell Law, LLC

P.O. Box 1547

Summerville, SC 29484

843-735-9702 (cell)

[scott.riddell.law@gmail.com](mailto:scott.riddell.law@gmail.com)

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Yours,

Scott Riddell, Esq.

Scott Riddell Law, LLC  
P.O. Box 1547  
Summerville, SC 29484  
843-735-9702 (cell)  
[scott.riddell.law@gmail.com](mailto:scott.riddell.law@gmail.com)