

RECEIVED

AUG 20 2021

SC Court of Appeals

**UNITED STATE DISTRICT COURT FOR APPEALS
DISTRICT OF COLUMBIA CIRCUIT
File Number _____**

**Appeal from South Carolina Court of Appeals
Case No. 2019-001420**

Original Case No. 2019-CP-07-01326
Beaufort County, Court of Common Pleas
Judge, Marvin H. Dukes III

South Beach Village Bluff Apartments Horizontal Property Regime No 56 Inc.
Respondent

v.

Zbigniew Marek Drzazgowski and Alicja Anna Drzazgowski

Of whom Zbigniew Marek Drzazgowski

Appellate Case No. 2019-001420

APPELLANT'S INITIAL BRIEF
Statement of the Case and the Facts

TABLE OF CONTENTS

Table of Authorities	1
Statement of the Issue on the Appeal	2
Statement of the Case- Facts	3
Conclusion	4-7
Designation of Matter	8

TABLE OF AUTHORITIES

STATUTES

Rule 4(h)(2).....	3
Rule 4(h)(3).....	3
Rule 4(e)(2).....	3
Rule 4(l)(1).....	3
Rule 4 Notice of law suit and Request of Waive Service of Summons.....	3
Rule 4 Waiver of the Service of Summons.....	3
Title 15 - Civil Remedies and Procedures, Chapter 9 , sec.15-9-210.....	3
Title 15 - Civil Remedies and Procedures Chapter 9, sec.15-9-280.....	3
Description of Hearing Court Of Common Pleas 14 th Judicial Circuit No. 2019-CP-07-01326 October 8, 2019	3
Delivery by Commercial Delivery services. Rule 4(d)(9) SCRCP.....	3
Confirmation(Certified Mail Receipts) regarding “Proof of Service”.....	3
Service by Certified Mail, Rule 4(d)(8).....	3

I. STATEMENT OF ISSUE ON THE APPEAL

Decision of the South Carolina Court of Appeals

“ On January 31, 2020, this court sent Appellant a letter, noting several deficiencies relating to Appellant's second amended initial brief. This court explained that “failure to comply with this court's request within ten days [would] result in the dismissal of this appeal.” Although Appellant has filed a third amended initial brief, Appellant still has not filed a designation of matter or a proof of service showing the amended initial brief was served on Respondent. Accordingly, this appeal is dismissed. The remittitur will be sent as provided in Rule 221, SCACR.”Lack of Name and signature is not readable.(Rule 58(a)) .

1. The statement regarding my response to the court letters: The US Post Service on April 17, 2020, Article Number 000004253 issued a statement to customers information “USPS Coronavirus Updates: Expected delivery Changes. “ USPS products and packages may require more time to be delivered due to limited transportation availability as a result of the ongoing COVID-19 impacts”. The next statement states that ” First Class Mail two and three day service commitments will be extended to three and four days respectively.”

2. Supreme Court issued an order supplementing and altering current practices regarding the operation of the appellate courts. See **RE: Operation of the Appellate courts During the Coronavirus Emergency** (SC. Sup. Ct. Order dated March 20, 2020, amended May 29, 2020). It allows to use emails in communication with Appellate Courts. I was informed about those changes on **March 15, 2021**.

3. Next, the reason of my appeal was dismissed because ”**Appellant still has not filed a designation of matter or proof of service showing the amended initial brief was served on Respondent.**”

After few requested changes from SC Court of Appeals on July 01, 2020, my Appellant's petition to reinstate appeal was granted with designation of matter. On July 08, 2020 I got information that initial brief and designation of matter are due within thirty days.

4. On November 18, 2019, SC. Court of Appeals stated “Accordingly, the time for service and filing of the appellant's initial brief and designation of matter has expired and December 31, 2019,. SC, Court of Appeal stated “appellant's initial brief and designation of matter outside of the filing deadlines.” After that SC. Court of Appeals on July 01, 2020 said “After careful consideration and because the designation of matter has been filed, Appellant's petition to reinstate is Granted.”

5. Designation of matter (in acceptable form, for SC. Court of Appeals) was accepted July 19, 2020. Before July 19, 2020 I was sending copies of Certified Mail Receipts to all the persons which this case required and SC. Court of Appeals.

II Statement of Case - Facts

1. The distance between CT and SC is approximately 1000 miles. Based on the US Post Service criteria, one way mail delivery takes four days(COVIV-19) , multiply by 2(two ways delivery) it is eight days.

2. In accordance with Federal Rules of Appellate procedure, Rule 26, point (1), (A) and (B), the first and last day of the event that triggers the period will be ten days for delivery. Within ten days there is, additionally, Saturday and Sunday which extend the time of delivery to twelve days. It is impossible to respond in the ten days, even assuming that nothing additional will happen on the way plus I need time to prepare the response.

3. The format of initial brief was used on the basis of the template provided by the US Court of Appeals. The South Carolina Court of Appeals does not have a template of its own to be available (another Appeals Courts have it). The rules of SCACR , do not say that some parts of the initial brief supposed to be on separate pages or had a different format. At least I was never informed about that. Adoption of initial brief form to the requirements of the SC Court of Appeals required from me more time.(I have been trying defend me and my wife by my self). The corrections suggested by SC. Court of Appeals were unitary and resulted in that correction being done several times.

4. The designation of matter was send to SC. Court of Appeals in the requested format on July 19, 2020 and it was accepted. I would like to inform the Court that all the elements of designation of matter have been attached in the first initial brief (and the next one) on August 19, 2019, however it was not specified on the separate page but in a form of attachments. (Lock of correct templates of the brief of SC Court of Appeals Rules caused the problem for me.)

5. The proof of service has always been presented in a form of the copies of USPS Certified Mail Receipt, and were always attached to the responding letters. Few times correction was so marginal that required only to include or add one word.

III. Conclusion

1.The fact in this Case, which never has never been presented in the Court is that me and my wife were eliminated from the Initial Case in Beaufort County, Court of Common Pleas, Case No. 2019-CP-07-01326 regarding burglary to my business apartment.

Before the burglary the Management of Bluff Villas had never had a problem to access my apartment. The signatures of the pest control services in the apartment can confirm that.

2.Despite that the Management broke to my apartment without my knowledge. I received the new key after 2 weeks after the burglary. Because this is my Rental Business I have an electronic programmable lock on the door to manage access for rental guests. The burglary destroyed the programmed codes in the lock for at least 10 guests. In consultation with KABA, which controls the lock and the codes, informed me that the lock must be reset and reprogrammed again by KABA specialist. Special module is required.

In this situation, I did not have a choice but leave my remodeling business in CT (at the time I worked on the house preparation for sale for one of my clients) and drove to my apartment in SC to address the issues with the lock, find KABA specialist and prepare the apartment for business. When I arrived, I found in the apartment more damages: broken washer, damages on the wall and doors. It took more then a week to bring the apartment back to rental standards . I had to order a new washer in a specific size that is available only through the internet and its delivery took 5 days.

I also had to repair the walls, doors and the bathroom and clean the entire apartment.

3. During the burglary they replaced the entry door panel and requested me to pay for it without any invoice. Since the apartment is my rental business, I refused and requested detailed invoice. In addition this panel door does not has standards for fire, tornado and hurricane, which is very common in this area. My request was refused. When I checked the manufacture specifications of that panel, this panel completely did not full fill those requirements. In this situation, I requested to replace this panel with the one that would be proper for public buildings for this area, and gave safety for my guests. South Beach Village Horizontal Property Regime 56 refused to provide me with the invoice.

4. When I was waiting for the replacement of the panel and the invoice, South Beach Village... opened the Case in the Beaufort County, Court of Common Pleas No. 2019-CP-07-01326. The case was opened without delivery of summons for me and my wife.

I noticed some papers under the doormat at the entry door to my house which I do not use (have two entrance doors). I had no idea how many days they were there at this time. The first few very important pages, were completely unreadable probably because we had rain for a few days. To find out which Court issued those papers I sent a copy of the first few pages to the Bluffton Magistrate Court asking if they belonged to them. On July 23, 2019 I received the negative answer, however they suggested to check with the Beaufort County Court of Common Pleas. The Beaufort Court of Common Pleas did not recognize them too. Therefore I sent a letter to Janine M. Mutterer which represent South Beach Village.... asking to send the summons for me and my wife and to give me thirty(30) days to respond to the complains and participate in the Case (Rule 4 SC Judicial Branch, Rule (b).

I sent a second request on 08/05/2019 (Certified Mail). I didn't receive any response to those requests.

Jannine M. Mutterer presented in the Court of Common Pleas "Affidavit of Service" which contains statement that the delivery of summons was at 9:30 am. The person which worked on the roof of my house at this time was not paying attention to the package, and the package was placed under the doormat(**second entrance door, which I do not using**, Rule4(d)(9) and Rule 4(d)(8)) by the person who delivered it without any protection.

5. Lack of summons and deliberate delays in correspondence, have eliminated me and my wife from being able to participate in the defense process.

6. Beaufort Court of Common Pleas accepted this procedure(no signature of summons delivery, Rule 4(d)(9) SCRCPC) and opened the Case without confirmations the signed summons delivery form, for me and my wife.

7. Case was opened without my presence and the verdict of course was negative for me.

8. It was the reason that I decided to open Case In the South Carolina Appeals Court.

9. During the Appeal Case in SC. Court of Appeals, I received new documents, which I had never seen before, from Jannine M. Mutterer who represents South Beach Village... which South Carolina Court Of Appeals disregarded.

On August 25, 2020, (**one year after the Case in Court of Common Pleas was opened**), Mrs. Mutterer presented the confirmation of package delivery. The signature are not compatible with mine or my wife's signature. In the original USPS receipt there is the following note: "Actual Recipient Name may vary if the intended recipient is not available at the time of delivery". Neither my wife or I had seen that receipt or signed it.

10. On March 4, 2020, before I even received the decision of the dismissal of my Appeal, Brooks R. Fudenberg, the lawyer representing South Beach Village..., sent a letter to SC Court of Appeals requesting to dismiss my Appeal Case.

Two weeks before the suggestions for dismissal of my Appeal presented in his letter were following: time of delivering correspondence, the lack of designation of matter and proof of service. Identical elements were set out in the South Carolina Court of Appeals decision on March 18, 2020 regarding dismissal of my Appeal.

Unfortunately these are not all the elements in this case. In addition they are not based on existing facts.

How person from the outside of the Court of Appeals can suggest future Court decision. Court decision was exactly identical how those suggestions.

11. In each initial brief, all the attachments were specified in the text of the Appeal by stating " check the attachment..." This form of listing the attachments has the same meaning as if it was written on a separate paper. Each initial of brief was accompanied by a confirmation of sending identical documents to each person working on this case (Certified Mail Receipt). The Court of Appeals did not accepted it.

12. We have many Appeal Courts in this country and each has different Appeal Rules in presentation of the documents. Most of them present ready-to use templates This makes it easier for a person who has chosen to defend himself in the Court and fulfill all the requirements for the Court. Nobody in United States of America knows all the procedures in the Courts.

13. The most important fact is that SC Court of Appeals informed me about the possibility of using email in the communication between us one year later from the day it was allowed by the federal goverment. In this situation the 10 days Rules, main problem in our communication, stopped being a legal issue. In my opinion the late acceptance of email as a system of communication was done intentionally. My emails, always provided a proof of when they were sent and the list of attachments.

14. To confirm this situation in the South Carolina Court of Appeals I will present two letters: one of them I received by email on July 27, 2021 allowing me to apply for extension of the Appeal and the second one dated July 22, 2021 (I got it July 27, 2021, both this same day) which stated "No further action will be taken on your filing." In my opinion this problem was created intentionally. These two different statements cause a confusing situation for me and shows that the interpretations of the Rules of SC Court of Appeals always supports SC Court of Appeals decision without taking into consideration all the facts that I presented in my statements.

August 16, 2021

with respect


Zbigniew Drzazgowski

CC:

South Beach Village....
Honorable Marvin H. Dukes III
South Carolina Court of Appeals

D
Zbigniew Demagowski
9 W. District Rd.
Waterbury, CT 06215-1430



*South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201*

RECEIVED
AUG 20 2021
SC Court of Appeals

