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Aug 24 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Judge Dale Van Slambrook, Master-in-Equity

APPELLATE COURT CASE NO. 2020-001218
COMMON PLEAS CASE NO. 2015-CP-08-00803

South Carolina Community Bank, Plaintiff,

v.

The Omega Group, LLC, Donald Muhammad and Norris, Inc. d/b/a Disaster Plus, Defendants,

of whom Samuel Daniel Cooper III is the Appellant, and
1250 Old Gilliard Road, LLC is the Respondent.

MOTION TO DISMISS APPEAL

Respondent 1250 Old Gilliard Road, LLC submits this Motion to Dismiss Appeal, pursuant to Rules 260(a) and 269 of the South Carolina Appellate Court Rules (“SCACR”), on the basis of Appellant’s repeated noncompliance with the SCACR and the frivolity of and unnecessary delays caused by Appellant’s filings during the course of this Appeal.

The grounds for this Motion include, but are not limited to:

1. Appellant’s Notice of Appeal was initially deficient because it was not accompanied by the order and/or judgment challenged on appeal and failed to include the required filing fee, as stated in this Court’s September 11, 2020 letter to Appellant;

2. Appellant's amended certificate of service for the notice of appeal was initially deficient because it did not copy opposing counsel, as stated in this Court's September 15, 2020 letter to Appellant;
3. Appellant failed to timely correct the deficiencies related to the Notice of Appeal, and the Court dismissed the Appeal by Order dated October 5, 2020;¹
4. The Court sent correspondence to Appellant on November 23, 2020, providing Appellant with clear notice that the deadline for filing his initial brief and designation of matter was thirty (30) days from the date of the letter;
5. The Court granted Appellant's Motion for extension of time to complete initial brief, filed on December 23, 2020, and extended the time for serving and filing Appellant's initial brief and designation of matter until January 25, 2021;
6. Appellant filed his initial brief with this Court on January 25, 2021, but he did not serve Respondent with the brief in accordance with Rule 208(a) of the South Carolina Appellate Court Rules;²
7. Furthermore, by letter dated March 8, 2021, the Court notified Appellant that his initial brief was deficient because the caption/title did not comply with Rule 267(a), SCACR, and failed to adhere to the caption/title provided by the Court to Appellant in its initial September 11, 2020 letter; no designation of matter was filed; no proof of service was filed; and the attachments filed with his brief could not be considered as part of the brief, thus necessitating an amended initial brief without those attachments

¹ The Appeal was subsequently reinstated on October 26, 2020, after the Court obtained copies of the challenged orders and Appellant provided the filing fee.

² Respondent thus filed a motion to extend time to file Respondent's Brief to March 26, 2021, which was subsequently granted by the Court. Respondent filed its Initial Brief and Designation of Matter on March 26, 2021.

- to be served and filed;
8. Appellant then filed a Motion for extension of time to complete initial brief and file corrections on March 25, 2021, and the Court extended Appellant's deadline for serving and filing corrections of the initial brief and designation of matter to April 26, 2021;
 9. Appellant filed a second Motion for extension of time to complete initial brief and file corrections on April 26, 2021, without providing any reasons for the continued delay except for his "right to liberty interest which is Fundamental in Nature" and "several Personal Things" that were out of his control;
 10. The Court granted Appellant an additional extension until May 26, 2021, but provided that "[n]o further extensions will be granted absent extraordinary circumstances;"
 11. Appellant did file a designation of matter on May 26, 2021, but did not correctly serve the respondent, and further failed to serve or file corrections to his initial brief by the May 26, 2021 deadline;
 12. In a letter dated June 29, 2021, the Court again notified Appellant of the deficiencies in his initial brief and stated Appellant had ten (10) days from the date of the letter to correct the deficiencies or the appeal would be dismissed;
 13. Appellant's ten (10) day deadline has passed, and Appellant has not served or filed, based upon Respondent's review of the docket on the South Carolina Appellate Case Management System, corrections to his initial brief.

For these reasons above and the reasons asserted in Respondent's Initial Brief regarding Appellant's disregard of appellate procedure and noncompliance with rules, which Respondent

incorporates herein, Respondent moves this Court to dismiss the Appeal and impose any other strong and deterrent sanctions deemed appropriate by this Court. Throughout the Appeal, Appellant has continually failed to comply with the SCACR despite receiving numerous instructive letters from the Court regarding form, substance, and deadlines, as well as several extensions on deadlines and opportunities to correct deficient filings. This Motion is based upon the South Carolina Code of Laws, the South Carolina Appellate Court Rules, controlling/persuasive common law and equity, and any other and further matters the Court deems fair, just, equitable, and/or appropriate.

WE SO MOVE:

s/ Irish Ryan Neville
Stephen A. Spitz (SC Bar #5287)
Irish “Ryan” Neville (SC Bar #76513)
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August 24, 2021

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PROOF OF SERVICE

I certify that I have served Respondent's Motion to Dismiss Appeal by depositing a copy of the same in the United States mail, postage prepaid, on August 24, 2021, to Mr. Samuel D. Cooper, III, P.O. Box 221, Ridgeville, South Carolina 29472.

s/ Irish Ryan Neville
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