

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

SEP 27 2021

SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable James E. Chellis  
Dorchester County Master-in-Equity

APELLATE CASE NO. 2020-001168

NCP PILGRIM, LLC, ..... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL  
CREDIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and  
DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY  
and DAVID SEAN CLANCY are the ..... Appellants.

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**APPELLANTS' RETURN TO MOTION TO DISMISS**

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The Appellants Mary Lou Cercopely, David S. Clancy and David Sean Clancy ("Appellants"), by and through the undersigned attorneys, hereby file the following return to the Motion to Dismiss of the Respondent NCP Pilgrim, LLC ("Respondent"), filed September 14, 2021.

Respondent filed a motion to dismiss the appeal pursuant to Rule 211, SCACR on September 14, 2021, stating that Appellant's final brief was due on or around July 8, 2021. Appellants filed a Motion to Retroactively Enlarge the Time to File Final Briefs the following day, September 15, 2021, along with the Appellant's Final Brief and the Appellant's Final Reply Brief.

As the undersigned counsel indicated in the Motion to Retroactively Enlarge Time, this was a mistake caused by the incorrect belief that Appellants had filed for an extension of time.

In addition, Respondent and Appellant were engaging in settlement discussion during the very time that Respondent filed its Motion to Dismiss; in fact, as demonstrated by the attached emails; in fact, the Appellants had three more days to accept the Respondent's settlement on the date Respondent filed its Motion to Dismiss (See Exhibit A, unnecessary spacing condensed and both attorneys' notices omitted).

Appellants submit that dismissal of their appeal is too strong a sanction for the error of their counsel in filing the final briefs within the deadline established by Rule 211, SCACR. Appellant's briefed the case extensively on two occasions, and also sought to correct errors in the record on appeal with the assistance of Respondent's counsel. Likewise, there are no procedural defects in the Appellant's briefing (e.g., differences between the initial brief and final brief) which apparently have been the sole cause of dismissal in both reported/unreported decisions for the past twenty (20) years. Finally the Appellants were engaging with (what they thought were) good faith settlement discussions with Respondent as shown in Exhibit A, which were cut short by the filing of the Motion to Dismiss.

There is no prejudice incurred by Respondent in the late submission of Appellant's final briefs, and the Appellant's counsel did nothing to cause Respondent's counsel to reasonably believe either that he: (1) had abandoned the appeal; or (2) had ceased representing his clients. Appellants should not suffer dismissal of their appeal due to the mistake of their counsel, especially after so much time was spent in preparing their arguments and the record on appeal. The undersigned therefore submits that the Court of Appeals should retroactively extend Appellant's time to file and excuse his mistake.

Respectfully submitted,

*s Robert B. Varnado*

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Robert B. Varnado (S.C. Bar # 0007850)  
VARNADO LAW FIRM, LLC  
36 Broad Street, Suite 200  
Charleston, South Carolina 29401  
(843) 737-7301  
*Attorneys for Appellants*

September 24, 2021  
Charleston, South Carolina

# **EXHIBIT A**

**From:** Lauren Williams <lauren@russellpattersonlaw.com>  
**Sent:** Monday, September 13, 2021 3:51 PM  
**To:** Rob Varnado <rvarnado@varnado-law.com>; Rob Varnado <rvarnado@brown-varnado.com>  
**Subject:** RE: NCP Pilgrim v. Cercopely, et al. (Appl. Case No. 2020-1168) - Settlement Offer

Rob,

Thank you for your response. My client's full and final offer of settlement is \$ [REDACTED], which needs to be accepted in writing by **Friday, September 17, 2021**. An extension will not be granted for this offer.  
Thank you,

Lauren P. Williams  
Associate Attorney  
Russell P. Patterson P. A.  
P. O. Box 8047  
HHI SC 29938  
Ph: 843-341-9300  
Fax: 843-341-9301  
E-Mail: [lauren@russellpattersonlaw.com](mailto:lauren@russellpattersonlaw.com)  
Street Address: 19 Shelter Cove Lane, Suite 107 Watersedge @ Shelter Cove, HHI SC 29928

**From:** Rob Varnado <rvarnado@varnado-law.com>  
**Sent:** Monday, September 13, 2021 10:45 AM  
**To:** Lauren Williams <lauren@russellpattersonlaw.com>; Rob Varnado <rvarnado@brown-varnado.com>  
**Subject:** RE: NCP Pilgrim v. Cercopely, et al. (Appl. Case No. 2020-1168) - Settlement Offer

Lauren:

Thank you. My client would respond with a demand of \$ [REDACTED] to your offer of \$ [REDACTED]  
Thank you and with best regards,  
Rob

Robert B. Varnado  
S.C. Bar No. 7085  
Varnado Law Firm, LLC  
36 Broad Street, Suite 200  
P.O. Box 387 (29402)  
Charleston, SC 29401  
(843) 737-7301 Direct  
(843) 670-1826 Cell – Voice-Mail Not Enabled  
[rvarnado@varnado-law.com](mailto:rvarnado@varnado-law.com)

**From:** Lauren Williams <lauren@russellpattersonlaw.com>  
**Sent:** Monday, September 13, 2021 9:45 AM  
**To:** Rob Varnado <rvarnado@varnado-law.com>; Rob Varnado <rvarnado@brown-varnado.com>  
**Subject:** RE: NCP Pilgrim v. Cercopely, et al. (Appl. Case No. 2020-1168) - Settlement Offer

Rob,

I have not heard anything back from you. Please let me know **today** your client's response to our settlement offer.

Thank you,

Lauren P. Williams

Associate Attorney

Russell P. Patterson P. A.

P. O. Box 8047

HHI SC 29938

Ph: 843-341-9300

Fax: 843-341-9301

E-Mail: [lauren@russellpattersonlaw.com](mailto:lauren@russellpattersonlaw.com)

Street Address: 19 Shelter Cove Lane, Suite 107 Watersedge @ Shelter Cove, HHI SC 29928

**From:** Lauren Williams

**Sent:** Tuesday, September 7, 2021 3:55 PM

**To:** Rob Varnado <[rvarnado@varnado-law.com](mailto:rvarnado@varnado-law.com)>; Rob Varnado <[rvarnado@brown-varnado.com](mailto:rvarnado@brown-varnado.com)>

**Subject:** RE: NCP Pilgrim v. Cercopely, et al. (Appl. Case No. 2020-1168) - Settlement Offer

Rob,

I understand that you were finally able to reach your client this morning regarding our settlement offer. Pursuant to our telephone conversation this afternoon, the deadline to accept our settlement offer has been extended until Friday, September 10<sup>th</sup>.

Thank you,

Lauren P. Williams

Associate Attorney

Russell P. Patterson P. A.

P. O. Box 8047

HHI SC 29938

Ph: 843-341-9300

Fax: 843-341-9301

E-Mail: [lauren@russellpattersonlaw.com](mailto:lauren@russellpattersonlaw.com)

Street Address: 19 Shelter Cove Lane, Suite 107 Watersedge @ Shelter Cove, HHI SC 29928

**From:** Rob Varnado <[rvarnado@varnado-law.com](mailto:rvarnado@varnado-law.com)>

**Sent:** Tuesday, August 31, 2021 10:41 AM

**To:** Lauren Williams <[lauren@russellpattersonlaw.com](mailto:lauren@russellpattersonlaw.com)>; Rob Varnado <[rvarnado@brown-varnado.com](mailto:rvarnado@brown-varnado.com)>

**Cc:** Russell Patterson <[russell@russellpattersonlaw.com](mailto:russell@russellpattersonlaw.com)>

**Subject:** RE: NCP Pilgrim v. Cercopely, et al. (Appl. Case No. 2020-1168) - Settlement Offer

I have. Presented it ro client. Havent heard from him but will try to call today. Thank

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Lauren Williams <[lauren@russellpattersonlaw.com](mailto:lauren@russellpattersonlaw.com)>

Date: 8/31/21 10:23 AM (GMT-05:00)

To: Rob Varnado <[rvarnado@brown-varnado.com](mailto:rvarnado@brown-varnado.com)>

Cc: Russell Patterson <[russell@russellpattersonlaw.com](mailto:russell@russellpattersonlaw.com)>

Subject: RE: NCP Pilgrim v. Cercopely, et al. (Appl. Case No. 2020-1168) - Settlement Offer

Rob,

I am following up to ensure that you received my email below. Please let me know.

Thank you,

Lauren P. Williams

Associate Attorney

Russell P. Patterson P. A.

P. O. Box 8047

HHI SC 29938

Ph: 843-341-9300

Fax: 843-341-9301

E-Mail: [lauren@russellpattersonlaw.com](mailto:lauren@russellpattersonlaw.com)

Street Address: 19 Shelter Cove Lane, Suite 107 Watersedge @ Shelter Cove, HHI SC 29928

**From:** Lauren Williams

**Sent:** Monday, August 23, 2021 11:11 AM

**To:** Rob Varnado <[rvarnado@brown-varnado.com](mailto:rvarnado@brown-varnado.com)>

**Cc:** Russell Patterson <[russell@russellpattersonlaw.com](mailto:russell@russellpattersonlaw.com)>

**Subject:** RE: NCP Pilgrim v. Cercopely, et al. (Appl. Case No. 2020-1168)

Rob,

Thank you for the update. While we feel very confident in our position in this Appeal, my client is willing to pay Mr. Clancy \$[REDACTED] in exchange for a complete dismissal of the appeal, a quit claim deed to the property signed by Mr. Clancy and his sister, and a mutual release. This offer is valid for ten (10) days and must be accepted in writing.

Please let me know your client's response.

Thank you,

Lauren P. Williams

Associate Attorney

Russell P. Patterson P. A.

P. O. Box 8047

HHI SC 29938

Ph: 843-341-9300

Fax: 843-341-9301

E-Mail: [lauren@russellpattersonlaw.com](mailto:lauren@russellpattersonlaw.com)

Street Address: 19 Shelter Cove Lane, Suite 107 Watersedge @ Shelter Cove, HHI SC 29928**From:**

Rob Varnado <[rvarnado@brown-varnado.com](mailto:rvarnado@brown-varnado.com)>

**Sent:** Thursday, August 19, 2021 3:54 PM

**To:** Lauren Williams <[lauren@russellpattersonlaw.com](mailto:lauren@russellpattersonlaw.com)>

**Subject:** RE: NCP Pilgrim v. Cercopely, et al. (Appl. Case No. 2020-1168)

Hey Lauren: I am out of town today and tomorrow on getting my son to Charlotte for college. I thought I had an extension on this. I will check in when I get back, but my client does want to proceed with the appeal. Thnks so much. Rob

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** Lauren Williams <[lauren@russellpattersonlaw.com](mailto:lauren@russellpattersonlaw.com)>

**Date:** 8/19/21 3:25 PM (GMT-05:00)

**To:** Rob Varnado <[rvarnado@brown-varnado.com](mailto:rvarnado@brown-varnado.com)>

**Subject:** NCP Pilgrim v. Cercopely, et al. (Appl. Case No. 2020-1168)

Rob,

Based on my calendar your Final Brief in the above referenced matter was due on July 8, 2021. In light of this rather lengthy delay, I am reaching out to see if your client intends to move forward with this Appeal or if he would rather dismiss it. Please let me know how you intend to proceed.

Thank you,

Lauren P. Williams

Associate Attorney

Russell P. Patterson P. A.

P. O. Box 8047

HHI SC 29938

Ph: 843-341-9300

Fax: 843-341-9301

E-Mail: [lauren@russellpattersonlaw.com](mailto:lauren@russellpattersonlaw.com)

Street Address: 19 Shelter Cove Lane, Suite 107 Watersedge @ Shelter Cove, HHI SC 29928

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APELLATE CASE NO. 2020-001168

NCP PILGRIM, LLC, ..... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL  
CREDIIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and  
DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY  
and DAVID SEAN CLANCY are the ..... Appellants.

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that their *Appellants' Return to Motion to Dismiss* in the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on this day to the following or via e-mail if so indicated

Russell P. Patterson, Esquire  
Lauren P. Williams, Esquire  
Russell P. Patterson P. A.  
P. O. Box 8047  
Hilton Head Island, SC 29938  
*Attorneys for Respondent*

VIA EMAIL

(signature on following page)

*/s Robert B. Varnado*

---

Robert B. Varnado (S.C. Bar # 0007850)  
VARNADO LAW FIRM, LLC  
36 Broad Street, Suite 200  
Charleston, South Carolina 29401  
(843) 737-7301  
***Attorneys for Appellants***

September 24, 2021  
Charleston, South Carolina

# VARNADO LAW FIRM LLC

ROBERT B. VARNADO  
ATTORNEY AT LAW  
36 BROAD STREET, SUITE 200  
CHARLESTON, SC 29401  
DIRECT: (843) 737-7301  
FACSIMILE: (843) 577-4550  
rvarnado@varnado-law.com

September 24, 2021

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SEP 27 2021

SC Court of Appeals

**VIA U.S. MAIL**

The Honorable V. Claire Allen  
Deputy Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**Re: *Appeal: Mary Lou Cercopely et al v. NCP Pilgrim, LLC***  
Appellate Case No.: 2020-001168  
Our File No. 6305

Dear Ms. Allen:

Please find the *Appellants' Return to Motion to Dismiss*.

With best regards, I remain

Very truly yours,

BROWN AND VARNADO LLC

/s Robert B. Varnado

Robert B. Varnado

RBV

cc: Lauren Williams, Esquire



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SEP 27 2021

SC Court of Appeals

Brown & Vamado, LLC  
P.O. Box 1127  
Mount Pleasant, SC 29465

The Honorable Jenny Abbott Kitchings  
Clerk of the S.C. Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

