

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
The Honorable Letitia H. Verdin

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Appellate Case No. 2021-000511

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Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc. and on behalf of all other similarly situated members of Woodington Homeowners' Association, Inc.,

Appellant,

v.

Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craigo, Edward Decker, and Sandra LaCroix; McCabe, Trotter, & Beverly, P.C.; and State Farm Fire and Casualty Company,

Respondents,

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**RESPONDENT MCCABE TROTTER & BEVERLY, PC'S FINAL BRIEF**

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November 5, 2021

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## STATEMENT OF ISSUES ON APPEAL

- I. **DID THE LOWER COURT CORRECTLY HOLD THAT APPELLANT'S CLAIM FOR "CASTING IN A FALSE LIGHT" WAS BARRED BY THE STATUTE OF LIMITATIONS?**
- II. **DID THE LOWER COURT CORRECTLY FIND APPELLANT WAS NOT PERMITTED TO BRING THE DERIVATIVE CLAIMS?**
- III. **DID THE LOWER COURT CORRECTLY HOLD THAT APPELLANT'S CLAIMS REGARDING THE INVOICING AND PAYMENT OF MCCABE TROTTER & BEVERLY, P.C.'S LEGAL FEES WERE BARRED BY COLLATERAL ESTOPPEL?**
- IV. **DID THE LOWER COURT CORRECTLY DISMISS APPELLANT'S CONSPIRACY CLAIM BECAUSE APPELLANT FAILED TO PLEAD SPECIAL DAMAGES?**
- V. **DOES SOUTH CAROLINA RECOGNIZE A CIVIL CAUSE OF ACTION FOR EXTORTION?**
- VI. **DOES S.C. CODE § 33-31-833 REQUIRE MCCABE TROTTER & BEVERLY, P.C. DISGORGE ATTORNEY'S FEES RECEIVED FROM WOODINGTON HOMEOWNERS' ASSOCIATION?**

## STATEMENT OF THE CASE

This case originated when Appellant, Raymond A. Wedlake, filed suit in the Greenville County Magistrate Court on June 2, 2020. The suit originally listed two Defendants, the Board of Directors of Woodington Homeowners Association ("BOD") and McCabe Trotter & Beverly, PC ("MTB"). R. pp. 136-188. Wedlake later amended his suit to add State Farm Fire and Casualty Company as a defendant. R. pp. 189-202. As it pertains to MTB, Wedlake's suit sought damages for casting Wedlake in a false light, extortion, conspiracy to extort corporate funds, and violation of S.C. Code Ann. § 33-31-833(b)(2). R. p. 182, ¶ 93; pp. 184-185 ¶ B1, B2, D1. Wedlake purported to bring these claims against MTB in both an individual capacity and representative capacity. R. p. 161, ¶ 49. MTB timely filed its answer and motion to dismiss pursuant to Rule 12(b)(6). R. pp. 203-204; R. pp. 220-226. In support of dismissal, MTB argued:

- South Carolina does not recognize a cause of action for “Casting in False Light;”
- To the extent the court construed Wedlake’s Casting in False Light claim as one for defamation, such claim would be barred by the statute of limitations;
- South Carolina does not recognize a civil cause of action for extortion;
- Wedlake failed to plead special damages as required to support a conspiracy claim;
- S.C. Code § 33-31-833(b)(2) does not apply to payments from the corporation to a vendor like MTB;
- Wedlake was not permitted to bring the derivative claims because he is not a licensed attorney and the corporate entity did not authorize him to represent the corporation before the magistrate court.
- Wedlake’s claims for extortion, conspiracy, and disgorgement pursuant to S.C. Code § 33-31-833(b)(2) are barred by collateral estoppel because a prior court already ruled that WHOA’s payment of the legal fees was proper.

R. pp. 220-226.

The Honorable Laura Saunders, Magistrate Judge for Greenville County, heard MTB's motion to dismiss on November 24, 2020. On December 28, 2020 Judge Saunders entered an order dismissing with prejudice all of Wedlake's claims against MTB. R. pp. 27-36.

On December 31, 2020 Wedlake appealed the magistrate's decision to the Greenville County Circuit Court. The Honorable Letitia H. Verdin heard arguments on Wedlake's appeal on October 16, 2020. On May 10, 2021 Judge Verdin entered an order affirming the magistrate's dismissal. R. pp. 33-45. Thereafter, on May 17, 2021 Wedlake filed his Notice of Appeal with this Court. (Not. of Appeal).

### STANDARD OF REVIEW

In reviewing an affirmance by a circuit court of a magistrate's judgment, "findings of facts are to be upheld if there is any supporting evidence and absent an error of law, the circuit court's holding is to be affirmed." McNair v. United Energy Distributors, 390 S.C. 44, 49, 699 S.E.2d 723, 726 (Ct. App. 2010). The underlying case in this matter was dismissed without any findings of facts. Accordingly, this court must uphold the circuit court's affirmance unless Appellant can demonstrate an error of law.

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a trial court may dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the court. FOC Lawshe Ltd. P'ship v. Int'l Paper Co., 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002). When ruling on a motion to dismiss for failure to state facts to constitute a cause of action, the trial court must base its decision solely upon the allegations set forth on the face of the complaint. Brown v. Leverette, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). The trial court must grant the motion if the facts alleged in the complaint and the inferences reasonably deduced therefrom do not entitle the plaintiff to relief on any theory of the case. Id.

## FACTS

Woodington Homeowners' Association ("WHOA") is a non-profit corporation formed to govern the community association for the property owners within Woodington Subdivision in Greenville County, South Carolina. R. p. 144, ¶ 5. On or about October 5, 2017, Wedlake filed case 2017-CP-23-6301 against several members of WHOA who were then serving on the WHOA Board of Directors ("Case 6301"). R.pp. 46-75. In Case 6301 Mr. Wedlake sought Declaratory Judgment regarding the WHOA bylaws and purported violations by the WHOA board members, as well as injunctive relief requiring the board members take certain actions. The board members and WHOA retained MTB to defend the case. R. p. 28. Case 6301 was tried before The Honorable Charles B. Simmons, Master in Equity for Greenville County, on April 20, 2018. On May 29, 2018 Judge Simmons issued an order finding, in relevant part:

1. Wedlake did not fairly and adequately represent the other members of the WHOA that were similarly situated and therefore dismissed the derivative claims;
2. Because the parties did not enter the WHOA Bylaws into evidence, the court was unable to rule on the remaining issues.

Wedlake appealed the final order in Case 6301 and this court affirmed Judge Simmons' ruling in Appellate Case 2018-001209. Wedlake's Petition for Writ of Certiorari to the South Carolina Supreme Court is currently pending.

In November 2018, the WHOA members held a vote to determine whether the association should indemnify the individual board members named in Case 6301 and whether the association should pay certain legal fees to MTB through a repayment plan.

WHOA minutes indicate that both measures passed. Thereafter WHOA paid MTB \$33,000.00 in legal fees.

On March 23, 2019 Wedlake filed Case 2019-CP-23-01501 against several members of WHOA who were then serving on the WHOA Board of Directors ("Case 1501"). This lawsuit claimed the WHOA Board of Directors violated the WHOA governing documents and the South Carolina Non-Profit Act by accepting and paying MTB's legal fees and by counting the 2018 ballots related to indemnification and repayment. Specifically, Wedlake claimed WHOA should not have counted any ballots that were not returned as "Yes" votes. Case 1501 was dismissed via summary judgment after a hearing before The Honorable Edward W. Miller. Wedlake appealed the decision and that appeal is currently pending before this court in Appellate Case 2020-000506.

In July 2020 Wedlake filed Case 2020-CV-23-10201384 against MTB and several members of WHOA who were then serving on the WHOA Board of Directors ("Case 1384"). Wedlake purported to bring Case 1384 both individually and derivatively. In his individual claims, Wedlake alleged that in September 2016, J. Ryan Oates, Esquire, an attorney employed by MTB at the time, wrote a letter to the WHOA membership that cast Wedlake in a false light. In his derivative claims, Wedlake alleged that the 2018 vote and subsequent payment of fees to MTB was improper. Specifically, Wedlake alleged that MTB both: (1) improperly coerced and threatened the WHOA board to issue the payment; and (2) MTB conspired with the WHOA board to improperly issue the payment. Wedlake also alleged that MTB should be required to disgorge \$7499.00<sup>1</sup> of the fee paid to WHOA pursuant to S.C. Code § 33-31-833(b)(2).

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<sup>1</sup> Wedlake's Complaint indicates he chose this amount so as to stay within the magistrate court's jurisdiction.

## ARGUMENTS

### **I. SOUTH CAROLINA DOES NOT RECOGNIZE A CAUSE OF ACTION FOR "CASTING IN A FALSE LIGHT." TO THE EXTENT THE ALLEGATIONS FORM THE BASIS FOR DEFAMATION, SUCH CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.**

#### **A. South Carolina Does Not Recognize A Cause Of Action For "Casting In A False Light."**

Wedlake's Complaint alleged that an attorney for MTB cast Wedlake in a false light in a letter sent to the WHOA membership on September 20, 2016. R. pp. 177-180, ¶¶ 79-85; R. p. 183, ¶ 98. South Carolina does not recognize such a cause of action. Brown v. Pearson, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997). Accordingly, the circuit court correctly upheld the magistrate's dismissal finding South Carolina does not recognize a claim for "casting in a false light."

#### **B. Wedlake's Claim Is Barred By The Statute Of Limitations Pursuant To S.C. Code § 15-3-550.**

The trial court appropriately considered this claim as one for defamation because this was the "theory it deem[ed] most in accord with the facts alleged." Bramlett v. Young, 229 S.C. 519, 531, 93 S.E.2d 873, 879 (1956). Specifically, Wedlake alleges the September 21, 2016 letter to his neighbors was false and intended to damage his reputation. R. p. 177, ¶ 79; R. p. 178; ¶ 81; R. p. 183, ¶ 98. Wedlake even characterizes the subject letter as "defamatory". R. p. 553.

"The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff." Argoe v. Three Rivers Behav. Health, L.L.C., 392 S.C. 462, 474, 710 E.2d 67, 73 (2011) (quoting Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 464, 629 S.E.2d

653, 664 (2006)). “In order to prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Id.*

A claim for libel or slander must be brought within two years. S.C. Code § 15-3-550. The statute of limitations begins running at the time of the allegedly defamatory statement because “South Carolina has not adopted the discovery rule in libel and slander cases.” *Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997).

While Wedlake argues that the statute of limitations cannot begin to run until he learned MTB “acted on [its] own initiative,” Wedlake does not, and cannot, cite any authority for this position. Instead, the case law of this state is clear that the statutory period began on September 21, 2016 and expired on or about September 21, 2018. Plaintiff did not bring this suit until almost 2 years after that time. Accordingly, the circuit court correctly affirmed the magistrate's ruling dismissing Wedlake's claim as time-barred.

## **II. WEDLAKE'S CLAIMS FOR EXTORTION, CONSPIRACY, AND DISGORGEMENT PURSUANT TO S.C. CODE § 33-31-833 FAIL BECAUSE WEDLAKE IS NOT AUTHORIZED TO BRING DERIVATIVE CLAIMS.**

### **A. Wedlake Cannot Bring Derivative Claims on Behalf of WHOA Because WHOA Has Not Authorized Him to Represent the Corporation. Additionally, Wedlake Cannot Bring Derivative Claims on Behalf of His Individual Neighbors Because He is Not Licensed to Practice Law.**

Wedlake's pleadings indicate that at least some of his claim are brought derivatively on behalf of the other members of WHOA. R. p. 136-186; R. p. 246, ¶ 17; R. p. 249, ¶ 27; R. p. 250, ¶ 28(a). However, Wedlake cannot bring a derivative suit on behalf of a non-profit corporation as a *pro se* litigant. In a derivative suit the shareholder bringing the suit is only

a nominal plaintiff and the corporation is the real party in interest. Johnson v. Baldwin, 69 S.E.2d 585, 588 221 S.C. 141, 149 (1952). In the instant action Wedlake is attempting to represent the corporate entity and “other-similarly-situated Members of Woodington Homeowners' Association, Inc.” R. p. 136-186; R. p. 161, ¶ 49. State law prohibits an individual from representing “another person or entity” without first possessing a law license. S.C. Code § 40-5-310. While a non-lawyer is allowed to represent a corporation before the magistrate court, the corporation must first give the non-lawyer “written authorization from the entity’s president, chairperson, general partner, owner, or chief executive officer.” In re Unauthorized Practice of Law Rules Proposed by SC Bar, 422 S.E.2d 123, 124, 309 S.C. 304, 306 (1992). Such written authorization must be submitted to the magistrate at the time the initial pleading in the case is filed. S.C. Code § 33-1-103.

Wedlake is not a licensed lawyer and therefore may not represent his fellow HOA members at any stage of these proceedings. Additionally, Wedlake did not submit written authorization from the WHOA’s chief executive officer with his filing and therefore could not represent the corporation before the magistrate. Accordingly, the lower court correctly held that Wedlake's derivative claims against MTB should be dismissed.

### **III. WEDLAKE'S CLAIMS RELATED TO THE INVOICING AND PAYMENT OF MTB'S LEGAL FEES ARE BARRED BY COLLATERAL ESTOPPEL.**

#### **A. The Greenville County Circuit Court Has Already Held That WHOA's Payment Of The Subject Legal Fees Was Proper, Thus Barring Wedlake From Re-Litigating This Matter Before The Magistrate.**

“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” Carolina Renewal, Inc. v. S.C. Dep't of Transp.,

385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that **the issue** in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* (emphasis added). "The doctrine of collateral estoppel prevents the relitigation of issues, not claims, necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same." *Id.*, 385 S.C. at 556, 684 S.E.2d at 783.

In the instant case Wedlake alleges that, due to the alleged bad acts of MTB, WHOA improperly and involuntarily paid an invoice for legal fees related to Case 6301. R. p. 139. This the same underlying issue Wedlake alleged in a lawsuit filed in March 2020 in Case 1501. Specifically, Wedlake alleged:

COMES NOW, Raymond A. Wedlake (Plaintiff), in his capacity as a member in good standing of Woodington Homeowners' Association, Inc.(WHOA), and by and through his undersigned legal counsel, Grant H. Gibson, Esq., hereby asserts a breach of covenants and breach of fiduciary duty by Defendants arising from acceptance of an improper invoice from the law firm of McCabe, Trotter, and Beverly, P.C. (McCabe), coupled with disbursement of WHOA funds to McCabe, or any partner or associate thereof.

In Case 1501 Wedlake laid out almost identical facts to allege that several directors of WHOA improperly accepted a bill from MTB, held an improper vote to attempt to approve payment of that bill, miscounted votes in determining the membership approved the vote, demanded the court require WHOA seek recovery of over \$6,000 from MTB, and suggested any funds owed to MTB should be held in escrow until the appeal in Case 6301 has been decided. These claims were all dismissed via Summary Judgment on March 13, 2020. Specifically, The Honorable Edward Miller held the following:

- “The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members.” R. p. 21.
- “[P]laintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal . . .” R. p. 22.
- “Based on the plain language of the Bylaws, it appears that the [board members] acted in accordance with WHOA Bylaws . . .” R. p. 22.
- “[The board members] have done nothing improper, have acted in accordance with the WHOA Bylaws, and did not violate their fiduciary duty to its members.” R. p. 22.
- “[The board members] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees.” R. p. 24.

Case 1501 was entirely based on Wedlake's claim that WHOA's payment of the legal fees to MTB was improper. Judge Miller's Order in Case 1501 unequivocally found that membership of WHOA voted indemnify the individual defendants from Case 6301 and such vote was properly held and valid. He further held the membership voted to pay the legal fee invoice submitted by MTB through a payment plan.

Conversely, in the instant case, Wedlake claims that MTB improperly forced WHOA to pay the legal fees through conspiracy, extortion, or both. These claims directly contradict Judge Miller's final order in Case 1501. Wedlake cannot seek to collaterally attack Judge Miller's holding by seeking relief in a different court. Yet, Wedlake admits to doing just that because he "suffers from extreme-discriminatory bias in Greenville-

County-Circuit Court of Common Pleas." R. p. 231, ¶ 4. Because these issues have already been litigated and Wedlake's claims denied, the lower courts appropriately dismissed Case 1384.

**B. Wedlake's Claims Are Barred Even Though MTB Was Not A Party To The Prior Suit.**

MTB was not a named party to Case 1501. However, this does not prevent MTB from asserting collateral estoppel as a bar to this suit because "modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." Carolina Renewal, 385 S.C. at 554, 684 S.E.2d at 782.

MTB is asserting collateral estoppel against Wedlake. Wedlake filed Case 1501 and vigorously defended against the Defendants' summary judgment motion. Wedlake submitted voluminous pleadings in support of his case and argued his position before Judge Miller. It cannot be said that Wedlake did not have a full and fair opportunity to litigate the attorney's fee issue in the prior litigation. Accordingly, the lower courts appropriately applied collateral estoppel in this case even though MTB was not a party to the prior litigation.

**IV. THE TRIAL COURT APPROPRIATE DISMISSED WEDLAKE'S CONSPIRACY CLAIM BECAUSE HE FAILED TO PLEAD SPECIAL DAMAGES.**

Wedlake's conspiracy claim was appropriately dismissed pursuant to Rule 12(b)(6) because Wedlake failed to state with specificity what special damages he suffered as a result of an alleged conspiracy. Special damages are an essential element in proving a claim for conspiracy. LaMotte v. Punchline of Columbia, Inc., 296 S.C. 66, 370 S.E.2d

711 (1988)<sup>2</sup>. Specifically, damages alleged in a civil conspiracy claim must go beyond those alleged in other causes of action. Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006). However, in this case the damages sought by Wedlake, a refund of legal fees allegedly paid in violation of the WHOA's covenants, are the same damages he seeks for his Breach of Contract claim. Additionally, Wedlake has failed to specifically state the special damages allegedly suffered as required by Rule 9(g), SCRCF. As such, the lower court appropriately upheld the magistrate's dismissal of the conspiracy claim.

**V. THE LOWER COURT CORRECTLY DISMISSED WEDLAKE'S CLAIM FOR EXTORTION BECAUSE SOUTH CAROLINA DOES NOT RECOGNIZE A CIVIL CAUSE OF ACTION FOR EXTORTION.**

Wedlake claims MTB extorted WHOA's funds by threatening judicial action if the legal fees were not paid. R. p. 153, ¶ 24; R. p. 161, ¶ 48). However, MTB was unable to locate any case law or statute indicating South Carolina recognizes a civil cause of action for extortion. Wedlake was similarly unable to produce any authority for a civil extortion claim. Instead, Wedlake argues that it was the court and not Wedlake that labeled this action as a civil action. R. p. 247, ¶ 22. However, as a non-lawyer, Wedlake cannot prosecute a criminal offense in magistrate's court. In re Matter of Richland Cty. Mag. Ct., 389 S.C. 408, 699 S.E.2d 161 (2010). For these reasons, the lower courts appropriately dismissed Wedlake's claim for extortion.

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<sup>2</sup> The South Carolina Supreme Court recently abolished this requirement in Paradis v. Charleston County School Dist., 2021 WL 3668152. However, the Court made clear that any case pending appeal at the time of the August 18, 2021 decision must be decided under prior precedent requiring a litigant plead special damages. Accordingly, Paradis does not impact this court's analysis of the lower courts' rulings in this matter.

**VI. S.C. CODE § 33-31-833 DOES NOT REQUIRE MTB DISGORGE FEES IT RECEIVED BECAUSE THE FEES WERE NOT PAID AS A "DISTRIBUTION."**

Wedlake alleges MTB is “lawfully obligated to pay back to WHOA Board . . . unlawful distributions of WHOA funds because McCabe [received an unlawful distribution pursuant to S.C. Code § 33-31-833(b)(2)].” R. p. 164, ¶ 56; R. p. 182, ¶ 93. However, S.C. Code § 33-31-833(b)(2) is inapplicable to the case at hand because the payment to MTB was not a "distribution" as defined by the statute.

Section 33-31-833(b)(2) provides as follows: “A director held liable for an unlawful distribution under [§ 33-31-830] is entitled to contribution . . . (2) from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.” “Distribution” is defined as “the direct or indirect transfer of assets or any part of the income or profit of a corporation to **its members, directors, or officers**. S.C. Code § 33-31-140(11) (emphasis added). Distribution does not include the "repayment of debt obligations in the ordinary course of conducting activities." S.C. Code § 33-31-140(11)(c).

As Wedlake concedes, the funds Plaintiff seeks reimbursed were paid from WHOA to MTB. R. p. 182, ¶ 93. Wedlake does not allege that MTB is a member, officer, or director of WHOA, so these funds could not possible have been a “distribution” as defined by the Non-Profit Act. Instead, WHOA paid MTB for a debt it incurred as part of its ordinary business activities.

Additionally, §33-31-833 merely provides a mechanism by which a guilty director can receive contribution for damages from each member, director, or officer that received the impermissible distribution. Section 33-31-833 is only triggered where a guilty director

repays the entire illegal distribution and seeks to have the other beneficiaries of the illegal distribution repay their part. Because Wedlake does not claim to be a director who is guilty of violating S.C. Code § 33-31-830, he has no standing to invoke the contribution section of S.C. Code § 33-31-833(b)(2). Accordingly, the magistrate appropriately dismissed Wedlake's claims related to S.C. Code § 33-31-833.

### CONCLUSION

For all the foregoing reasons, Respondent respectfully requests this court uphold the trial court's ruling.

Respectfully submitted,

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### CERTIFICATION OF COUNSEL

The undersigned certifies that Respondent MTB's Final Brief complies with Rule 211(b), SCACR.

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