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**Feb 11 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Circuit Court

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2021-001400

IOS, LLC ..... Appellant-Respondent  
v.  
Lander University ..... Respondent-Appellant

RETURN TO APPELLANT’S MOTION TO DISMISS RESPONDENT’S CROSS APPEAL

Lander University hereby submits this Return to Appellant’s Motion to Dismiss Respondent’s Cross Appeal, dated February 1, 2022, perfected February 4, 2022. (Appellant initially submitted said Motion without the associated filing fee, which was subsequently forwarded on February 4, 2022.)

Appellant-Respondent requests that the Respondent-Appellant’s Cross Appeal be dismissed pursuant to SCACR Rule 203(d), which states a Notice of Appeal must be filed with the clerk of the Appellate Court and lower Court within ten (10) days after the Notice of Appeal is served. Inasmuch as Appellant-Respondent’s Notice of Appeal was already on file with the lower court at the time the cross appeal was instituted and there was no prejudice to the Appellant-Respondent, Respondent-Appellant respectfully requests this Motion be denied.

## PROCEDURAL HISTORY

The Respondent-Appellant would show that the Appellant-Respondent filed a Notice of Appeal on December 3, 2021, appealing the order of the Honorable Frank R. Addy, Jr. originally dated November 2, 2021 after Appellant-Respondent's Motion to Alter or Amend was denied on December 2, 2021. Respondent-Appellant was served with said Notice of Appeal and Petition for Emergency Writ of Supersedeas on December 3, 2021. Appellant-Respondent's Notice of Appeal was filed with the lower court on December 3, 2021. On December 8, 2021, Respondent-Appellant also filed a Return to the Petition for Emergency Writ of Supersedeas along with a Petition to Lift the Emergency Stay. Appellant-Respondent's Reply was filed on December 13, 2021 and this Court stayed the trial of the underlying action by Order dated December 13, 2021.

Pursuant to SCACR 203(c) a Respondent may file a Cross Appeal by "serving a notice of appeal on all adverse parties, or in the case of an administrative tribunal, by serving a notice of appeal on the agency, the administrative law court (if it has been involved in the case) and all parties of record, within 5 days after receipt of appellant's notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires."

Appellant filed the Cross Appeal at issue in this Motion with the Court of Appeals on December 7, 2021 and served same on both the Appellant-Respondent, as well as the trial court (electronically by email) on December 7, 2021. Appellant-Respondent's Notice of Appeal had already been filed with the Greenwood County Court of Common Pleas on December 3, 2021 at the time the cross appeal was filed.

Respondent-Appellant would show that a literal reading of SCACR 203(c) does not require that a copy of the Respondent's Cross Appeal be filed in the lower court. While SCACR 203(d) does requiring filing of a 'Notice of Appeal,' at the time the Respondent-Appellant filed the Cross

Appeal, the Appellant's primary Notice of Appeal regarding the identical Order at issue in the cross appeal had already been filed with the Greenwood County Court of Common Pleas. Out of an abundance of caution, Respondent-Appellant filed the Cross Appeal in the lower court on January 25, 2022 and filed a copy with Clerk of the Court of Appeals. Prior to that date, no deficiency notice or dismissal notice under SCACR 260 had been entered.

In support of his motion, Appellant-Respondent cites to the case of *Douglas v. State*, 332 SC 67, 504 S.E. 2d 307 (1998), which was a petition for certiorari to the Supreme Court on a conviction for involuntary manslaughter. It does not address a cross appeal or failure to timely file a Notice of Appeal in a lower court and Respondent-Appellant would argue it is not relevant or persuasive.

In the case of *State v. Scott*, 351 SC 584, 571 S.E.2d 700 (2002), the South Carolina Supreme Court held that it was not deprived of subject matter jurisdiction in an appeal due to non-prejudicial clerical errors, such as filing in error with in the incorrect underlying lower court, where said error was corrected. Likewise in *Charleston Lumber Company, Inc. v. Miller Housing Corporation*, the Court held that failure of a notice of appeal to mention one of five related suits was clerical in nature and did not warrant dismissal of an appeal where the appellee did not allege any prejudice as a result of the omission and there was no doubt that the appellee was on notice that appellants had appealed all cases. *Charleston Lumber Company, Inc. v. Miller Housing Corporation*, 318 SC 471, 458 S.E.2d 431 (1995). Respondent-Appellant would show that Appellant-Respondent has failed to argue that it was prejudiced by any delay in the filing of the Notice of the Cross Appeal with the lower court. In addition, Appellant-Respondent filed his Motion to Dismiss on February 1, 2022 after Respondent-Appellant's filing was complete, curing any arguable deficiency and rendering the matter moot.

February 11, 2022

*s/Lena Y. Meredith*

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PROOF OF SERVICE

I certify that I have served the Return to Appellant-Respondent, IOS, LLC's Motion to Dismiss by email and U.S. Mail postage prepaid, on February 11, 2021, addressed to Appellant-Respondent's attorney of record:

James E. Smith, Jr.  
James E. Smith, Jr., P.A.  
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February 11, 2022

**s/Lena Y. Meredith**  
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