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May 23 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2022-CP-22-00176
Appeal Number: 2022-000513

KEVIN PENLAND

Appellant

v.

KEY LARGO MOBILE HOME PARK,

Respondent

**APPELLANT'S REPLY TO RESPONDENT'S RETURN TO PETITION FOR
SUPERSEDEAS**

The Respondent incorrectly claims that Appellant failed to file the undertaking before May 6, 2022. Appellant submitted the Undertaking for e-filing on April 26, 2022, as shown on the Public Index printout submitted as Exhibit 2 with the Appellant's Petition. The entry for filing the Undertaking is identified on the Public Index as "Order/Order Coversheet \$25", though an image was not available.

The court's electronic filing system does not have a specific entry for the Undertaking on Appeal. Because the Undertaking needed to be signed by the circuit court judge, the Clerk of Court informed counsel for the Appellant that it needed to be filed as a proposed order. The

format for the Undertaking requires a signature by the Appellant, so the document had to be scanned and filed as a PDF. The only option for filing a PDF as a proposed order was a Consent Order, which is how the Undertaking was filed, though counsel for Appellant included notes to the clerk explaining that it was filed that way pursuant to their instructions. Unfortunately, because proposed orders are not clocked by the clerk until signed, and the judge declined to sign the Undertaking, we did not receive a clocked copy of the Undertaking. However, Appellant complied with the requirements of S.C. Code § 27-40-800 to the best of his ability within the restrictions imposed by the circuit court's e-filing system.

The Respondent tangentially argues a lack of service for the undertaking. Pursuant to Rule 4(e) of the South Carolina Electronic Filing Policies and Guidelines, the E-Filing of the document, together with the transmission of an NEF, constitutes proper service under Rule 5, SCRPC, as to all other parties who are E-Filers in that case. The NEF for the Undertaking filed in this action, which shows that counsel for the Respondent was served, is attached as Exhibit 3.

Having addressed the matters raised in Respondent's Return, the Appellant respectfully requests the Petition for Supersedeas be granted until the appeal is complete, so long as Appellant continues to comply with the terms of the Undertaking and/or with any changes that may be ordered by the court.

May 23, 2022



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PROOF OF SERVICE

I certify that I served the foregoing Appellant's Reply to Respondent's Return to Petition for Supersedeas in this case on the Respondent by electronic mail addressed to its attorney of record, Jason Boan, at the primary e-mail address listed in the Attorney Information System (AIS), jason@boanlawfirm.com, pursuant to Rule 262 of the S.C. Appellate Court Rules and Administrative Order 2021-08-25-02.

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