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Oct 06 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Master-in-Equity

Alan D. Clemmons, Master-in-Equity

Appellate Case No. 2022-001265

Jason C. Bealand, Johnathan A. Bealand, and Revive Air, LLC, . . . Respondents.

v.

Nicholas P. DeLuca, Appellant,

MOTION TO DISMISS APPEAL

Respondents now come and move this Honorable Court of Appeals to Dismiss this Appeal for lack of jurisdiction on the following grounds:

1. Appellant did not meet the requirement of South Carolina Appellate Court Rule (S.C. App. Ct. R.) 203(b)(1) because he failed to timely serve his Notice of Appeal on the Respondents within thirty (30) days;
2. Appellant did not meet the requirement of S.C. App. Ct. R. 203(d)(B)(ii) and/or 262(b) because he failed to attach the Order from which he appeals to his Notice of Appeal and/or serve all documents filed with appellate court on all parties;

3. Appellant did not meet the requirement of S.C. App. Ct. R. 203(e)(1)(E) because he failed to include in his filed Notice of Appeal “[t]he names, mailing addresses, and telephone numbers of *all* attorneys of record and the names of the party or parties represented by each.” *Emphasis added*;

4. Appellant did not meet the requirement of S.C. App. Ct. R. 203(d)(1)(B) because he failed to timely file his Notice of Appeal with the lower court;


5. Appellant did not provide Respondents with a copy of any communications made to a court reporter related to this appeal pursuant to the S.C. App. Ct. R. 207(a)(1); and

6. Further, to the extent that it may be considered that Appellant is appealing the July 14, 2022, Order for Partial Judgment, Delivery of Assets, and Full Accounting Disclosure, Appellant failed to meet the requirement of S.C. App. Ct. R. 203(e)(1)(C) because he failed to include the date of this order in his Notice of Appeal.

The S.C. App. Ct. R. 206 (a) provides that when an Appellant fails to meet requirements of the SC Appellant Court Rules, the clerk shall issue an order of dismissal. Therefore, Respondents pray that this appeal be dismissed for failure to meet the requirements of the Appellate Rules of South Carolina. Further, Respondents pray for an order for reimbursement of costs incurred with this motion.

Respectfully submitted,

By:


Natalie Shawn Stevens-Graziani Bar # 74222

Stevens Law Firm, P.C.

Post Office Box 1149

Little River, South Carolina 29566

843.663.0127; 843.663.0688-Fax

Attorney for Respondents

October 6, 2022

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Master-in-Equity

Alan D. Clemmons, Master-in-Equity

Appellate Case No. 2022-001265

Jason C. Bealand, Johnathan A. Bealand, and Revive Air, LLC, . Respondents.

v.

Nicholas P. DeLuca, Appellant,

MEMORANDUM OF LAW FOR DISMISSAL

Respondents submit the following Memorandum of Law in support of their Motion to Dismiss this Appeal.

PROCEDURAL HISTORY

Respondents, a limited liability company (LLC) and two of its three members, filed their Summons and Complaint on March 31, 2022, asserting derivative actions against Appellant, the third and only other member of the LLC. It was served upon Appellant April 5, 2022. Appellant failed to respond to the Complaint. An Affidavit of Default was filed May 12, 2022, and the matter was referred to the Master-in-Equity by Order entered June 3, 2022. A hearing for remedies and damages was scheduled and noticed for July 14, 2022. Appearing at the hearing before the

Honorable Allen Clemmons, Master-in-Equity were the Plaintiffs and their attorney Natalie Shawn Stevens-Graziani. A court reporter was requested by Respondents'/Plaintiffs' counsel and appeared at this hearing. A Partial Judgment and Order resulted from said hearing and was entered on July 14, 2022. The Partial Judgment and Order was served on Appellant by the Sheriff on July 19, 2022. **(Respondents' Exhibit A)**

Appellant initially appeared in this litigation through Notice of Electronic Filing (NEF) that provided Notice of Appearance of Counsel July 25, 2022, and he filed four motions the same day requesting the court to stay the Partial Judgment and Order, to reconsider, amend, and/or alter it, and to set aside default judgment. Appellant never filed a responsive pleading to the Summons and Complaint.

Appellant's motions were heard August 10, 2022, and denial of said Motions was entered and served by NEF to all parties on August 11, 2022. **(Respondents' Exhibit B)**. There was no court reporter present for the August 10, 2022, hearing.

PROCEDURAL FACTS AND HISTORY RELEVANT TO THIS MOTION

Thirty-two days after receipt of entry of an Order, Appellant filed a Notice of Appeal and Proof of Service that he was appealing "the order of the Honorable Allen Clemmons dated August 10, 2022." The notice included only one of the attorneys of record, John M. Leiter of Myrtle Beach, for Respondents and failed to identify James P. Stevens, Jr. and/or Natalie Shawn Stevens-Graziani of Little River who were also attorneys of record for the three Respondents.

Appellant served the Notice of Appeal and Proof of Service upon John M. Leiter by placing it in the mail on September 13, 2022, according to the postmark on the envelope received by John M. Leiter only, and he failed to serve the other two attorneys of record. The envelope addressed to John M. Leiter did not include the Order that the Notice of Appeal referenced or anything except

the Notice of Appeal and Proof of Service. (**Respondents’ Exhibit C**, Affidavit of John M. Leiter)

Appellant filed his Notice of Appeal with the lower court on September 26, 2022, more than ten days after he served his Notice of Appeal. (**Respondents’ Exhibit D**)

To date, Appellant has not served the Respondents’ attorneys of record any communications made to a court reporter.

STANDARD OF REVIEW

Rule 260 (a) of South Carolina Appellate Court Rule (S.C. App. Ct. R.) states that, “Whenever it appears that an appellant or petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded).”

ARGUMENT

I. This appeal should be dismissed because Appellant did not timely serve the Notice of Appeal on the Respondents.

“A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRPC), motion to alter or amend the judgment (Rules 52 and 59, SCRPC), or a motion for a new trial (Rule 59, SCRPC) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more

complete order or judgment.” *Rule 203(b)(1)*. - *Notice of Appeal*, S.C. App. Ct. R. 203. “Service by mail is complete upon mailing.” *Rule 262 - Filing and Service*, S.C. App. Ct. R. 262. “The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1).” *Rule 203 - Notice of Appeal*, S.C. App. Ct. R. 203.

Appellant failed to hand deliver or deposit his Notice of Appeal and Proof of Service in the United States Postal Service within thirty days from the date of his notice of entry of the Order. Appellant received Notice of the entry of the Order through Notice of Electronic Filing to his attorney of Record, Thomas William Winslow on August 11, 2022. Appellant mailed the Notice of Appeal and Proof of Service in the United States Postal Service on September 13, 2022, to John M. Leiter only. (**Respondents’ Exhibit C**, John Leiter’s Affidavit). Therefore, service on Mr. Leiter was made thirty-three days after Appellant received notice of entry of the Order reference in his Notice of Appeal, which is not timely. Further, Appellant failed to serve the Notice of Appeal and Proof of Service on the Respondents’ attorneys of record at Stevens Law Firm, PC. Since Appellant has not met the requirement of timeliness of service of this appeal, the South Carolina Court of Appeals lacks jurisdiction, and this appeal should be dismissed.

II. This appeal should be dismissed because Appellant did not meet the requirement of South Carolina Appellate Court Rule (S.C. App. Ct. R.) 203(d)(B)(ii) and/or 262(b) because he failed to attach the Order from which he appeals to his Notice of Appeal and/or serve a complete copy of documents filed with Appellate Court on all parties.

“The notice filed with the appellate court shall be accompanied by ... [a] copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing...” *Rule 203 (d)(B)(ii)- Notice of Appeal*, S.C. App. Ct. R. 203. Further, Rule 262(b), of the S.C. App. Ct. R.

requires “any document filed with the appellate court shall be accompanied by a proof of service showing the document has been served on all parties.”

Three Orders have been reduced to writing and filed in the lower court in this case. Appellant referred only to the August 10, 2022, Order in his Notice of Appeal. He did not provide that order in the envelope serving his Notice of Appeal on John Leiter¹. Therefore, upon information and belief, he did not attach the Order to be challenged to his Notice of Appeal. Since Appellant has not met the requirement of attaching the Order to be challenge to his Notice of Appeal and serving it on all parties, the South Carolina Court of Appeals lacks jurisdiction, and this appeal should be dismissed.

III. This appeal should be dismissed because Appellant did not meet the requirement of S.C. App. Ct. R. 203(e)(1)(E) because he failed to include in his filed Notice of Appeal “[t]he names, mailing addresses, and telephone numbers of *all* attorneys of record and the names of the party or parties represented by each.” *Emphasis added.*

S.C. App. Ct. R. 203(e)(1)(E) provides as follows:

(e) Form and Content. The notice of appeal *shall* be substantially in the form designated in the Appendix to these Rules.

(1) Appeals from the Circuit Court, Family Court and Probate Court. In appeals from lower courts, the notice of appeal shall contain the following information:

* * * * *

(E)The names, mailing addresses, and telephone numbers *of all attorneys of record* and the names of the party or parties represented by each.” *Emphasis added.*

Respondents have been represented by three attorneys of record in the lower court. They include John M. Leiter, James P. Stevens, Jr., and Natalie Shawn Stevens-Graziani. The latter two attorneys of record for the Respondents were not contained in Appellant’s Notice of Appeal.

¹ Appellant failed to serve any documents he filed for his appeal on Natalie Stevens-Graziani or James P. Stevens, Jr. who are also attorneys of record for Respondents.

Appellants did not meet the requirement of 203(e)(1)(E). Therefore, the S.C. Court of Appeals lacks jurisdiction in this matter and this appeal should be dismissed.

IV. This appeal should be dismissed because Appellant did not meet the requirement of S.C. App. Ct. R. 203(d)(1)(B) because he failed to timely file his Notice of Appeal with the lower court. Said notice was filed September 26, 2022, when the deadline to file such was September 22, 2022.

“The notice of appeal shall be filed with the clerk of the lower court ... within ten (10) days after the notice of appeal is served.” S.C. App. Ct. R. 203(d)(1)(B).

The Notice of Appeal was served on one of the Respondents’ attorneys of record September 13, 2022. Appellant filed his Notice of Appeal in the Horry County Clerk of Court thirteen days after serving his Notice of Appeal and Proof of Service. **(Respondents’ Exhibit D).**

Since Appellant has not met the requirement of timeliness to file his Notice of Appeal with the lower court, the South Carolina Court of Appeals lacks jurisdiction, and this appeal should be dismissed.

V. This appeal should be dismissed because Appellant did not meet the requirement of S.C. App. Ct. R. 207(a)(1) because he failed to provide Respondents with a copy of any communications made to a court reporter related to this appeal.

"In appeals from the court of common pleas, masters-in-equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal..." S.C. App. Ct. R. 207(a)(I) Transcript of Proceeding (South Carolina Appellate Court Rules (2022 Edition)). “Appellant shall contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.” S.C. App. Ct. R. 207(a)(I) Transcript of Proceeding (South Carolina Appellate Court Rules (2022 Edition)).

More than twenty days have passed since the filing of the Notice of Appeal and Respondents have not received any copy of Appellant's communications made to any court reporter. (**Respondents' Exhibit C**, John M. Leiter's affidavit; **Respondents' Exhibit E**, James P. Stevens, Jr.'s affidavit; and **Respondents' Exhibit F**, Natalie Shawn Stevens-Graziani's affidavit).

Since Appellant has not met the requirement of furnishing all counsel of record with copies of all correspondence with the court reporter, the South Carolina Court of Appeals lacks jurisdiction, and this appeal should be dismissed.

VI. Any appeal of the July 14, 2022 Order for Partial Judgment, Delivery of Assets, and Full Accounting Disclosure should be dismissed since Appellant did not meet the requirement of S.C. App. Ct. R. 203(e)(1)(C) because he failed to include the date of this order in his Notice of Appeal.

S.C. App. Ct. R. 203(e)(1)(C) provides as follows:

(e) Form and Content. The notice of appeal *shall* be substantially in the form designated in the Appendix to these Rules.

(1) Appeals from the Circuit Court, Family Court and Probate Court. In appeals from lower courts, the notice of appeal shall contain the following information:

* * * * *

(C)The date of the order, judgment, or sentence from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.

Appellant failed to provide the date of the Order dated July 14, 2022, in his Notice of Appeal that was served upon him by the Horry County Sherriff on July 19, 2022. Therefore, for the above reasons, the Appellant Court does not have jurisdiction in determining any challenge to the order of July 14, 2022, which was not listed in the Notice of Appeal.

CONCLUSION

Since Appellant has not met requirements of the Rules of South Carolina Court of Appeals, The South Carolina Court of Appeals lacks jurisdiction and dismissal of Appellant's Appeal should be granted.

DATED this 6th day of October, 2022.

Respectfully submitted,

By: 

Natalie Shawn Stevens-Graziani Bar # 74222

Stevens Law Firm, P.C.

Post Office Box 1149

Little River, South Carolina 29566

843.663.0127; 843.663.0688-Fax

Attorney for Respondents

STATE OF SOUTH CAROLINA,
COUNTY OF HORRY

Capps

PLAINTIFF NAME

Revive Air, LLC, Jason C Bealand, and Jonathan A Bealand

Vs.

DEFENDANT NAME

Nicholas P DeLuca
493 Emerson Dr.
Myrtle Beach, SC 29579

AFFIDAVIT OF SERVICE

CASE # 2022CP2601967

Deputy K. Capps, personally appeared before me, the undersigned deponent, who being duly sworn states that he/she is a Deputy for the Horry County Sheriff's Office and that he served the **Order For Partial Judgment, Delivery of Assets, and Full Accounting Disclosure** in the action on **Nicholas P DeLuca** by delivery to

- Nicholas P DeLuca**, personally;
- _____, the _____ of the party served, and a person of discretion residing at the residence of the party served;
- _____, the _____ of the _____;

_____ and leaving a copy with him/her at:

2850 Robert Grissom Pkwy (Top Golf)
MB, SC.

Residence / Place of Employment / Other

in Horry County, South Carolina on the 19 day of July, at 3:00 o'clock am/pm, that the deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Defendant was not served for the following reason:

- 1st Attempt: on 7/18 @ 13:00. Spoke w/ mother in law. Left card.
- 2nd Attempt: DeLuca called on 7/18 @ 5:15pm (Arrange to meet 7/19)
- 3rd Attempt: called DeLuca on 7/19 @ 10:15am. Left message.

Sworn to and subscribed before me on this

19th day of July, 2022

[Signature]
Notary Public of South Carolina
My Commission Expires: January 122026

[Signature]
Deputy Sheriff



Natalie Graziani

From: efiledonotreply@sccourts.org
Sent: Thursday, August 11 2022, 8:11 am
To: Natalie Graziani
Cc: Meredith
Subject: Courtesy NEF RE: 2022CP2601967

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
 NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2022CP2601967

Official File Stamp: 08-11-2022 08:11:10 AM
Court: CIRCUIT COURT
 Common Pleas
 Horry
Case Caption: Jason C Bealand , plaintiff, et al VS Nicholas P Deluca
Document(s) Submitted: Order Denying Defendants Motion (1) Set Aside Judgment Master/Order/Other
Filed by or on behalf of: Ralph Prioleau, Jr.

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Thomas William Winslow for Nicholas P Deluca
 James P Stevens, Jr. for Jason C Bealand et al
 Natalie Shawn Stevens-Graziani for Jason C Bealand et al
 John M. Leiter for Jason C Bealand et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Master-in-Equity

Alan D. Clemmons, Master-in-Equity

---

Appellate Case No. 2022-001265

---

Jason C. Bealand, Jonathan A. Bealand, and Revive Air, LLC, . Respondents.

v.

Nicholas P. DeLuca, ..... Appellant,

---

AFFIDAVIT OF JOHN M. LEITER

---

1. That I am one of the attorneys of record for the Respondents in the lower court action in this appealed matter.
2. That on July 14, 2022, following a damages hearing, the Master in Equity of Horry County issued an Order for Partial Judgment, Delivery of Assets, and Full Accounting Disclosure in the Circuit Court of the Fifteenth Judicial Circuit. I received service of the filing of the Order by Notice of Electronic Filing (NEF) on the same day.
3. That I received a NEF of Defendant's Notice Appearance on July 25, 2022, indicating that Appellant had made an initial appearance through his attorney, Thomas William Winslow, Esq.

**Respondents'  
Exhibit C**

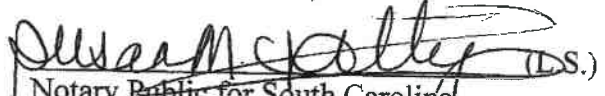
4. I received NEFs of three (3) motions filed by Thomas William Winslow on July 25, 2022, including a Motion to Reconsider the Order filed on July 14, 2022.
5. That on August 11, 2022, I received a NEF of the Order Denying Appellant's Motions pursuant to South Carolina Rules of Civil Procedure (SCRCP) 52, 59, 60(b) and 62(a)(b)(d) that indicated, "**The following people were served electronically:** Thomas William Winslow for Nicholas P. Deluca" (Exhibit 1).
6. That, as of August 11, 2022, the other attorneys of record for the Respondents were Natalie Stevens-Graziani and James P. Stevens, Jr. of Stevens Law Firm, Post Office Box 1149, Little River South Carolina 29566.
7. That on September 16, 2022, I received the attached envelope, postmark dated September 13, 2022, by the U.S. Postal Service, with the Notice of Appeal and Proof of Service (Exhibit 2) enclosed therein.
8. That a copy of the Order filed on August 11, 2022 referenced in the Notice of Appeal was not enclosed in said envelope.
9. That I received an additional NEF on September 20, 2022, filed by Natalie Shawn Stevens-Graziani, an attorney of record for Respondents, which was a Motion/Execution of Judgment.
10. That I have not received any further documents or communications from the Appellant or his attorney, by mail or e-mail, since the Notice of Appeal and Proof of Service described above, and nothing more from the Appellant or his attorney has been hand delivered to me.

FURTHER THE AFFIANT SAYETH NOT.



JOHN M. LEITER  
S.C. Bar #3187  
405 79th Avenue North, Suite B  
Myrtle Beach, SC 29572  
Tel. (843) 449-1451

SWORN BEFORE ME THIS  
5th day of October, 2022.



(L.S.)  
Notary Public for South Carolina  
My Commission expires: 08/16/2027

# Natalie Graziani

**From:** efiledonotreply@sccourts.org  
**Sent:** Thursday, August 11 2022, 8:11 am  
**To:** Natalie Graziani  
**Cc:** Meredith  
**Subject:** Courtesy NEF RE: 2022CP2601967

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**NOTICE OF ELECTRONIC FILING [NEF]**

A filing has been submitted to the court **RE:** 2022CP2601967

**Official File Stamp:** 08-11-2022 08:11:10 AM  
**Court:** CIRCUIT COURT  
Common Pleas  
Horry  
**Case Caption:** Jason C Bealand , plaintiff, et al VS Nicholas P Deluca  
**Document(s) Submitted:** Order Denying Defendants Motion (1) Set Aside Judgment Master/Order/Other  
**Filed by or on behalf of:** Ralph Pringleau, Jr.

This notice was automatically generated by the Court's auto-notification system.

**The following people were served electronically:**

Thomas William Winslow for Nicholas P Deluca  
James P Stevens, Jr. for Jason C Bealand et al  
Natalie Shawn Stevens-Graziani for Jason C Bealand et al  
John M. Leiter for Jason C Bealand et al

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



Nicholas DeLuca
493 Emerson Dr
Myrtle Beach, SC 29579

RECEIVED SEP 18 2022

John M. Leiter, PA
405 79th Ave North Suite B
Myrtle Beach, SC 29572

9572435274



John Leiter's Affidavit
EXHIBIT
2

RECEIVED

Sep 12 2022

SC Court of Appeals

FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Allen Clemmons, Master-in-Equity

Case No. 2022-CP-26-01967

Jason C. Bealand & Jonathan A. Bealand,
and Revive Air, LLC.,

Respondent,

v.

Nicholas P. DeLuca,

Appellant.

NOTICE OF APPEAL

Nicholas P. DeLuca appeals the order of the Honorable Allen Clemmons dated August 10, 2022. Appellant received verbal notice of entry of this order on August 15, 2022, from his then Attorney Thomas W. Winslow. Appellant received written notice of entry of this order on September 12, 2022, from Horry County Court Building after his then Attorney Thomas W. Winslow denied a written order had been issued yet to date.

September 12, 2022

s/ Nicholas P. DeLuca
Nicholas P. DeLuca
493 Emerson Dr
Myrtle Beach, South Carolina 29579
(843) 582-5186
Appellant

Other Counsel of Record:
John M. Leiter, PA
405 79th Ave North Suite B
Myrtle Beach, South Carolina 29579
Attorney for Respondent
(843) 449-1451

RECEIVED

Sep 12 2022

SC Court of Appeals

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Allen Clemmons, Master-in-Equity

Case No. 2022-CP-26-01967

Jason C. Bealand & Jonathan
A. Bealand, and Revive Air,
LLC.,

Respondent,

v.

Nicholas P. DeLuca,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jason C. Bealand & Jonathan A. Bealand and Revive Air, LLC. by depositing a copy of it in the United States Mail, postage prepaid, on September 12, 2022, addressed to their attorney of record, John M. Leiter, PA., 405 79th Ave North, Suite B Myrtle Beach, South Carolina 29572.

September 12, 2022

s/ Nicholas P. DeLuca
Nicholas P. DeLuca
493 Emerson Dr.
Myrtle Beach, South Carolina 29579
(843) 582-5186
Appellant

RECEIVED

Sep 12 2022

SC Court of Appeals

FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Allen Clemmons, Master-in-Equity

Case No. 2022-CP-26-01967

Jason C. Bealand & Jonathan A. Bealand,
and Revive Air, LLC.,

Respondent,

v.

Nicholas P. DeLuca,

Appellant.

FILED
HORRY COUNTY
2022 SEP 26 P 4: 22
RENEEN N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

NOTICE OF APPEAL

Nicholas P. DeLuca appeals the order of the Honorable Allen Clemmons dated August 10, 2022. Appellant received verbal notice of entry of this order on August 15, 2022, from his then Attorney Thomas W. Winslow. Appellant received written notice of entry of this order on September 12, 2022, from Horry County Court Building after his then Attorney Thomas W. Winslow denied a written order had been issued yet to date.

September 12, 2022

s/ Nicholas P. DeLuca
Nicholas P. DeLuca
493 Emerson Dr
Myrtle Beach, South Carolina 29579
(843) 582-5186
Appellant

Other Counsel of Record:
John M. Leiter, PA
405 79th Ave North Suite B
Myrtle Beach, South Carolina 29579
Attorney for Respondent
(843) 449-1451

**Respondents
Exhibit D**

RECEIVED

Sep 12 2022

SC Court of Appeals

FORM 7

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Allen Clemmons, Master-in-Equity

Case No. 2022-CP-26-01967

Jason C. Bealand & Jonathan
A. Bealand, and Revive Air,
LLC.,

Respondent,

v.

Nicholas P. DeLuca,

Appellant.

FILED
HORRY COUNTY
2022 SEP 26 P 4: 22
RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jason C. Bealand & Jonathan A. Bealand and Revive Air, LLC. by depositing a copy of it in the United States Mail, postage prepaid, on September 12, 2022, addressed to their attorney of record, John M. Leiter, PA., 405 79th Ave North, Suite B Myrtle Beach, South Carolina 29572.

September 12, 2022

s/ Nicholas P. DeLuca
Nicholas P. DeLuca
493 Emerson Dr.
Myrtle Beach, South Carolina 29579
(843) 582-5186
Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Master-in-Equity

Alan D. Clemmons, Master-in-Equity

Appellate Case No. 2022-001265

Jason C. Bealand, Johnathan A. Bealand, and Revive Air, LLC, . Respondents.

v.

Nicholas P. DeLuca, Appellant,

AFFIDAVIT OF JAMES P. STEVENS, JR.

1. That I am one of the attorneys of record for the Respondents in the lower court action in this appealed matter.
2. To date, Appellant has not filed a responsive pleading to the Summons and Complaint served upon him on April 5, 2022.
3. That I have not received any notice, communication, and/or document from the Appellant concerning this appellate matter.

FURTHER THE AFFIANT SAYETH NOT.

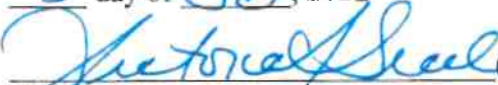




JAMES P. STEVENS, JR.
S.C. Bar #5433
Post Office Box 1149
Little River, South Carolina 29568
Tel. 843-663-0127

SWORN BEFORE ME THIS

5 day of Oct, 2022.

 (L.S.)

Notary Public for South Carolina

My Commission expires: 6/8/2032



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Master-in-Equity

Alan D. Clemmons, Master-in-Equity

Appellate Case No. 2022-001265

Jason C. Bealand, Johnathan A. Bealand, and Revive Air, LLC, . Respondents.

v.

Nicholas P. DeLuca, Appellant,

AFFIDAVIT OF NATALIE SHAWN STEVENS-GRAZIANI

1. That I am one of the attorneys of record for the Respondents in the lower court action in this appealed matter.
2. To date, Appellant has not filed a responsive pleading to the Summons and Complaint served upon him on April 5, 2022.
3. That I have not received any notice, communication, and/or document from the Appellant concerning this appellate matter.

FURTHER THE AFFIANT SAYETH NOT.

Natalie Shawn Stevens-Graziani
NATALIE SHAWN STEVENS-GRAZIANI

S.C. Bar #74222
Post Office Box 1149
Little River, South Carolina 29568
Tel. 843-663-0127

SWORN BEFORE ME THIS
_____ day of _____, 2022.

Victoria A. Sicilian (L.S.)
Notary Public for South Carolina
My Commission expires: *6/8/22*



RECEIVED
Oct 06 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Master-in-Equity

Alan D. Clemmons, Master-in-Equity

Appellate Case No. 2022-001265

Jason C. Bealand, Johnathan A. Bealand, and Revive Air, LLC, . Respondents.

v.

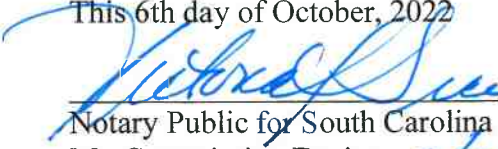
Nicholas P. DeLuca, Appellant,

CERTIFICATE OF SERVICE BY MAIL

The undersigned attorney hereby certifies that a true copy of the **Respondents Motion to Dismiss, Memorandum in Support of Motion to Dismiss, and all supporting exhibits**, in the above referenced case has been served upon Pro-Se Appellant Nicholas DeLuca by mailing the above referenced documents in an envelope properly addressed to 493 Emerson Drive, Myrtle Beach, South Carolina 29579, his address of record, with postage prepaid this 6th day of October, 2022.


Natalie Shawn Stevens-Graziani

Sworn to and subscribed before me
This 6th day of October, 2022


Notary Public for South Carolina
My Commission Expires: 



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v.

Nicholas P. DeLuca, Appellant,

CERTIFICATE OF SERVICE BY MAIL

The undersigned attorney hereby certifies that a true copy of the **Respondents Motion to Dismiss, Memorandum in Support of Motion to Dismiss, and all supporting exhibits**, in the above referenced case has been served by email to Appellant’s attorney of record in the lower court, Thomas William Winslow at his email listed in the Lawyer’s Desk Book Directory on the SC Bar website, Tom@winslowlawyers.com on the 6th day of October, 2022.

Natalie Shawn Stevens Graziani
Natalie Shawn Stevens-Graziani

Sworn to ad subscribed before me
This 6th day of October, 2022

Notary Public for South Carolina
My Commission Expires: Sept 2022





Stevens Law Firm, P.C.

James P. Stevens (1920-2002)
James P. Stevens, Jr.*
Email: jim@stevens-law-firm.com
Natalie S. Stevens-Graziani
Email: natalie@stevens-law-firm.com

*Certified Civil Mediator

Established 1952

October 6, 2022

Jenny Abbot Kitching, Clerk of SCCOA
Via email ctappfilings@sccourts.org

Re: Appellate Case No. 2022-001265

Dear Madame Clerk of the South Carolina Court of Appeals:

Please find the following enclosed in this attachment to this email for filing:

1. Respondents' Motion to Dismiss,
2. Memorandum of Law in Support of Respondents' Motion to Dismiss
3. Supporting affidavits with its supporting documents and referenced exhibits, and
4. Certificates of Mailing to Nicholas DeLuca by mail and Tom Winslow by email.

Payment of \$50 for said motion will be promptly made to South Carolina Court of Appeals via mail today.

If you would kindly return a clocked copy of these filings to me at natalie@stevens-law-firm.com, I would greatly appreciate it.

Sincerely,


Natalie Shawn Stevens-Graziani

NS-G/vas

Enclosures

cc. Nicholas P. DeLuca, Tom Winslow, and John M. Leiter

RECEIVED
Oct 06 2022
SC Court of Appeals