

**In The Court Of Appeals
State Of South Carolina**

68629

Jerry Gadson and Sheila Gadson

Appellant

Appellate Case No.: 2012-211466

Caroline Deloatch and Bank of America,
Individually and Jointly,

Respondents

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SC Court of Appeals

On appeal from the Court of Common Pleas for the

Fifth Judicial District

County of Richland

South Carolina

LT. Case No.: 2011-CP-0517OR

PETITION FOR REOPENING

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A. Proceedings Until Now

1. Appellants filed an Action against Respondents in Richland County Court of Common Pleas on May 26, 2009.
2. Respondents filed an amended Motion for Summary Judgment on December 28, 2011.
3. On March 20, 2012 the trial judge dismissed Appellants' Motion to Extend time to Respond to Respondents' Request for Admission, and/or Motion to Withdraw Deemed Admissions.
4. The Trial Court granted Respondents' Amended Motion for Summary Judgment.
5. Appellants file Notice of Appeal on April 17, 2012.
6. On October 30, 2012 Appellants file and serve on Respondents their Final Brief and Reply.
7. On October 18, 2012 Appellants file and serve on Respondents the Record on Appeal.
8. On December 3, 2012 Respondents file and serve Motion to Strike Portions of Record on Appeal.
9. On December 13, 2012 Appellants file and serve Return to Respondents' Motion to Strike Portion of Record on Appeal.
10. On December 20, 2012 Respondents file and serve Reply to Appellants Return to Respondents' Motion to Strike Portion of Record on Appeal.
11. On April 16, 2013 Respondents' Motion to Strike Portions of Records on Appeal was granted.

12. On April 16, 2013 Appellants were granted 30 days of the date of the clerk's letter to amend Record on Appeal and file the proof of service. All amended Briefs had to be file within 20 days after the service of the Amended Record on Appeal.

13. On May 23, 2013 the Clerk of Court dismissed Appellants' appeal due to the failure to serve and file the amended record on appeal as required by the Court of Appeals.

B. ARGUMENT

1. Whether Dismissing Appellants' Appeal is in the Best Interest of Justice?

Because the Appellants counsel failed to submit a timely Amended Records on Appeal and Briefs to the Court of Appeals, the Appellants' appeal was dismissed. Appellants counsel's reasoning for the delay to amend the Record on Appeal and Briefs was due to the reorganization in Appellants counsel's office. Changes in the office legal assistants disrupted the flow of timely providing the Court of Appeals the necessary amended pleadings.

In addition, Appellants counsel admits the error and should have known, could have known, and would had known that there was an issue of a lack of follow up to the Court of Appeals due to improper management. Appellants counsel made the presumption that the amended documents on appeal were submitted to the Court of Appeals prior to the reorganization in her office. Appellants counsel hired new staff after the deadline to file the amended Record on Appeal and Briefs. It would be an injustice caused by the Appellants counsel's omission to dismiss this appeal.

Furthermore, Appellants counsel admits the harmless error and argues that The Court of Appeals should decide whether the error alleged to have been made by the Appellants counsel is harmless or prejudicial. An error that substantially injures the rights of one party, in this case the Appellants, is called a prejudicial or reversible error and warrants the reversal of the final

judgment or order. Appellants counsel argues that the error is technical or minimally affects the rights of the Respondents and is considered a harmless error.

Appellants counsel argue that the Court of Appeal erred in dismissing the appeal specifically because Appellants failed to timely file and serve the amended Record on Appeal and Briefs.

2. Improper Office Management Coupled With Insufficient Funds to Amend Record on Appeal and Briefs Resulted In Appellants' Prejudice.

Although, Appellants timely filed the Record on Appeal and Briefs in the Court of Appeals, Appellants lacked the financial capability to amend the Record on Appeal and Briefs. Appellants included in The Record on Appeal a letter dated December 6, 2012 that Respondents requested to be stricken from the Record on Appeal and Briefs. The costs involved in filing again all Record on Appeal and Briefs were beyond Appellants financial capabilities. Appellants counsel was limited to refinance and redo all of the Record on Appeal and Briefs. Therefore, it cannot be construed that Appellants and Appellants counsel failure to file the amended Record on Appeal and Briefs were a voluntary incompliance with the Court of Appeals requirement. Appellants counsel argues that orders dismissing appeals are condemnation on the parties if this Court does not have exceptions when justified by exigent circumstances.

3. Did The Court of Appeal In Dismissing Appellants' Appeal Prejudice Appellants Appeal Rights?

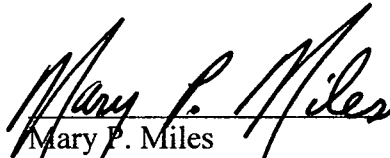
Even if Appellants had properly filed and served the amended Record on Appeal and Briefs, which they have not, the legal issues raised by the appeal to the allegedly erroneous rulings of the trial judge is not improper before the Court of Appeals or prejudiced Respondents. Thereafter, the Appellants counsel presents arguments in favor of this petition to reopen the

appeal to give Appellants an opportunity to present their appeal and hence the dismissal of the appeal must be reversed.

CONCLUSION

For the foregoing reasons, Appellants request that the Honorable Court please reconsider its order of dismissal of Appellants appeal.

Respectfully submitted,



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June 3, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea G. Benjamin, Circuit Court Judge

Appellant Case No. 2012-211466

Jerry Gadson and Sheila Gadson,.....Appellants,

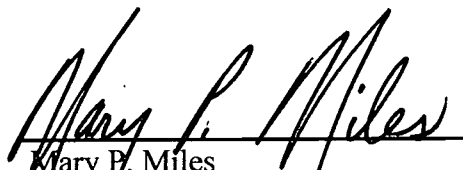
v.

Caroline Deloatch and Bank of America,
Individually and JointlyRespondent,

PROOF OF SERVICE

I certify that I have served the Petition For Reopening of Appeal by hand delivering a copy on June 4, 2013, at address to their attorney of Record, Michael J. Anezlmo and Thad H. Westbrook, Esquire, at her office located at Nelson Mullins Riley & Scarborough LLP, Main Street, 17th Floor, 1320 Main Street, Columbia, SC 29201.

LAW OFFICE OF MARY P. MILES



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