

68616

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity
Joseph M. Strickland

Case No. 2010-CP-40-06781

2000 Watermark Association,
Inc.,

Respondent,

vs.

Evelyn A. Lee, Mark Lee
individually and as Guardian
and Conservator for Evelyn A. Lee,

Appellants,

RESPONDENT'S RETURN TO APPELLANTS'
PETITION TO REINSTATE AND REQUEST
TO FILE RETURN OUT OF TIME

RECEIVED

JUN 04 2013

SC Court of Appeals

The Respondent, 2000 Watermark Association, Inc. ("Watermark") hereby files the following return to Appellants' Petition to Reinstate the Appeal. ("Petition")(A copy of this document, improperly titled "Notice of Appeal") is attached as Exhibit "A". By order dated April 23, 2013, this court dismissed the above captioned appeal because Appellants failed to file proof of ordering the transcript, and failed to file Appellants' Initial Brief and Designation of Matter. ("Exhibit "B")

In the Petition, the Appellants claim to have ordered the transcript on February 28, 2013; however, Respondent never received a copy of any correspondence with the court reporter and apparently, Appellants never filed a copy of any correspondence

with this court as required by Rule 207(a)(1) SCACR. Appellants also claim to have received a copy of the transcript, but again Respondent has not received any correspondence or written notification that the transcript was received until the Petition was filed, another violation of Rule 207(a)(1). Once the transcript was received the Appellants have the obligation to file an Initial Brief and Designation of Matter within 30 days (Rules 207 and 208 SCACR), but the Appellants have failed to do either. After learning that this court elected to treat the "Notice of Appeal" as a Petition for Reinstatement, the Respondent's counsel contacted the court reporter who has confirmed that the Appellants ordered the transcript on February 28, 2013, and were notified that the transcript was available on March 18, 2013¹. Since the transcript was available on March 18, 2013, the Appellants should have filed Appellants' Initial Brief and Designation of Matter by April 17, 2013, but failed to do so in violation of Rules 208 and 209 SCACR. The court should further note that this date was before the court dismissed the appeal on April 23, 2013. For all these reasons, the order dismissing the appeal was proper and the Petition should be denied.

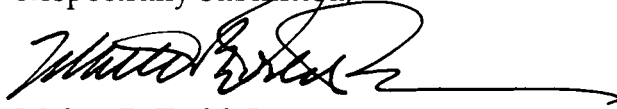
Furthermore, the Appellants have failed to offer any explanation why they have failed to comply with the South Carolina Appellate Court rules or "good cause" for reinstating the appeal under Rule 260 SCACR. The Petition should be denied.

Pursuant to Rule 240(e) SCACR, the Respondent requests this court to accept this Return filed out of time. On May 9, 2013, someone in Respondent's counsel's office signed for certified street mail for Lee's "Notice of Appeal." This letter was not opened until Monday, May 13, 2013. At that time, Respondent's counsel thought pursuant to Rule 260(a) SCACR that the Court had already sent the remittitur to Richland County. In calling the court this week to confirm the remittitur, Respondent's counsel learned

¹ The Respondents will supplement this filing with evidence showing when the transcript was available but in the interests of time have represented this to the court based on oral conversation with the court reporter subject to written documentation to be provided by the court reporter.

for the first time that the court was treating the "Notice of Appeal" as a Petition to reinstate the appeal. Therefore, this court should allow the Return to be filed out of time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Walter B. Todd, Jr.", with a long horizontal flourish extending to the right.

Walter B. Todd, Jr.

Post Office Box 1549

Columbia, South Carolina 29202-1549

(803) 779-4383

Attorney for Respondent

June 3, 2013.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph M. Strickland

Case No. 2010-CP-40-06781

2000 Watermark Association,
Inc.,

Respondent,

v.

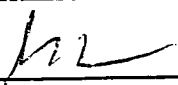
Evelyn A. Lee, Mark Lee
individually and as Guardian
and Conservator for Evelyn A.
Lee,

Appellant.

NOTICE OF APPEAL

Evelyn A. Lee, Mark Lee individually and as Guardian and Conservator for Evelyn A. Lee appeal the Order of having not order the transcript. I ordered the transcript February 28, 2013. I have possession of the transcript. I mailed copy of order to Court of Appeal February 28, 2013 by US mail. I am appealing the order of dismissal.

March 8, 2013



Mark A. Lee
2042 Watermark Place
Columbia, SC 29210
803-779-3535

Other Counsel of Record:
Walter B. Todd

RECEIVED

MAY 08 2013

SC Court of Appeals

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph M. Strickland

Case No. 2010-CP-40-06781

2000 Watermark Association,
Inc.,

Respondent,

v.

Evelyn A. Lee, Mark Lee
individually and as Guardian
and Conservator for Evelyn A.
Lee,

Appellant.

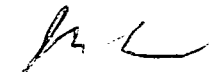
RECEIVED
JUN 04 2013
SC Court of Appeals

CERTIFICATE OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal of Evelyn A. Lee, Mark Lee individually and as Guardian and Conservator for Evelyn A. Lee, on Counsel of Record by depositing a copy of it in the United States Mail, postage prepaid, on March 8, 2013, addressed as follows:

Walter B. Todd

1709 Devonshire Drive
Columbia SC 29202



Mark A. Lee
P.O Box 2102
Columbia, SC 29202
803-513-8443

Other Counsel of Record:

RECEIVED
MAY 08 2013

SC Court of Appeals

The South Carolina Court of Appeals

2000 Watermark Association, Inc., Respondent,

v.

Evelyn A. Lee and Mark A. Lee, Defendants,

Of whom Mark A. Lee is the Appellant.

Appellate Case No. 2013-000388

The Honorable Joseph M. Strickland
Richland County
Trial Court Case No. 2010CP4006781

ORDER

Appellant has failed to provide proof of having ordered the transcript and/or has failed to serve and file the appellant's initial brief and designation of matter, as required by Rules 207, 208 and 209 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

4/23/13 EAC

EXHIBIT B

cc:

Mark Lee

Walter B. Todd, Jr.

CERTIFICATE OF SERVICE BY MAIL

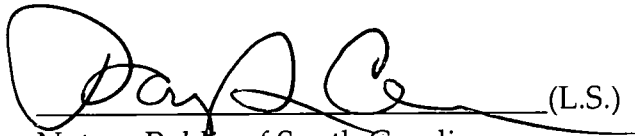
I, Walter B. Todd, Jr., attorney for the Respondent, 2000 Watermark Association, Inc., hereby certify that I served a copy of the foregoing Respondent's Return to Appellants' Petition to Reinstate and Request to File Return Out of Time upon the Appellants, by mailing a copy thereof on the 3rd day of June, 2013, via United States Mail, postage prepaid, duly addressed to the Appellants, as follows:

Ms. Evelyn A. Lee
Mr. Mark Lee
Post Office Box 2102
Columbia, South Carolina 29202



Walter B. Todd, Jr.

SWORN to before me this
3rd day of June, 2013.



(L.S.)
Notary Public of South Carolina
My Commission Expires: 02/11/2021

RECEIVED
JUN 04 2013
SC Court of Appeals

WALTER B. TODD, JR., PC

COUNSELORS AND ATTORNEYS AT LAW

1709 DEVONSHIRE DRIVE
COLUMBIA, SOUTH CAROLINA 29204

POST OFFICE BOX 1549
COLUMBIA, SOUTH CAROLINA 29202-1549

WALTER B. TODD, JR.*
wbt@thw-law.com

*CERTIFIED MEDIATOR AND ARBITRATOR

NYSSA GOMES
nyssa@thw-law.com

OF COUNSEL:
TOBIAS G. WARD, JR.
J. DERRICK JACKSON

TELEPHONE (803) 779-4383

FAX (803) 799-7604

June 3, 2013

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
1015 Sumter Street (29201)
Post Office Box 11629
Columbia, South Carolina 29211

RE: 2000 Watermark Association, Inc., Respondent vs.
Evelyn A. Lee, Mark Lee, individually and as Guardian
and Conservator for Evelyn A. Lee, Appellants
Appellate Case No.: 2013-000388
Our File No.: 05-043

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of the Respondent's Return to Appellants' Petition to Reinstate and Request to File Return Out of Time. Please file the original, clock the copies, and return one clocked copy to me in the envelope provided.

Also enclosed is my firm's check in the amount of \$25.00 for the court's filing fee.

By copy of this correspondence, I am serving a copy of the Respondent's Return upon the Appellants.

Sincerely,



Walter B. Todd, Jr.

WBT,Jr.:fsc
Enclosures

cc: Mrs. Charmaine J. Hutchins, w/copy of enclosure
The H & J Company of Columbia

Ms. Evelyn A. Lee and Mr. Mark Lee, w/copy of enclosure

RECEIVED
JUN 04 2013
SC Court of Appeals