

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

68621

APPEAL FROM Horry COUNTY
Court of Common Pleas

The Honorable Steven H. John
Fifteenth Circuit Court Judge

Case No.: 2007-CP-26-00265

Williams Carpet Contractors, Inc., Respondent,

v.

Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc., Defendants,

Of Whom Mark Skelly is Appellant.

MOTION TO RECALL REMITTITUR AND ADDRESS
MOTION TO BE RELIEVED AS COUNSEL
IN CASE NO. 2010176606

Henrietta U. Golding, Esquire
James K. Gilliam, Esquire
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, SC 29578
Attorneys for Respondent Williams Carpet

G. Michael Smith, Esquire
Thompson & Henry, P.A.
Post Office Box 1740
Conway, SC 29528
(843)248-5741
Attorneys for Petitioner

YOU WILL PLEASE TAKE NOTICE that the undersigned moves before this Court for an order recalling the remittitur in Case No.: 2010176606 and ruling on the undersigned's motion to be relieved as counsel in Case No.: 2010176606. This motion is based upon the following:

1. On November 6, 2012, the undersigned moved to be relieved as counsel for the Respondent in case captioned Williams Carpet v. Skelly, Case No.: 2010176606;

2. The undersigned was informed and believed that the filing of the motion to be relieved as counsel stayed the appeal pursuant to Rule 240(b) of the South Carolina Appellate Court Rules;

3. Notwithstanding the filing of the motion to be relieved as counsel, Case No.: 2010176606 was remitted to the lower court on November 9, 2012;

4. On December 10, 2012, the undersigned appealed the original jury verdict in this case as a result of the Court's allegedly improper remittitur. The Court indicated the new appeal would be designated Williams Carpet v. Mark Skelly (2), Case No.: 2012-213575;

5. On January 7, 2013, the undersigned filed a motion to be relieved as counsel in Case No.: 2012-213575;

6. On March 11, 2013, the Court entered an Order

dismissing the appeal of Case No.: 2012-213575;

7. On March 22, 2013, the undersigned petitioned for rehearing of the Order of Dismissal of Case No.: 2012-213575 filed on March 11, 2013;

8. On March 27, 2013, the Court remitted Williams Carpet v. Mark Skelly (2), Appellate Case No.: 2012-213575 to the lower court;

9. The undersigned received an Order dated April 3, 2013 from this Court indicating that Case No.: 2012-213575 was remitted on March 27, 2013 in error and that the remittitur be recalled;

10. On April 10, 2013, the undersigned received an order of the Court granting the undersigned's motion to be relieved as counsel in case referenced as Williams Carpet v. Mark Skelly (2), Case No.: 2012-213575;

11. On May 3, 2013, this Court erroneously entered an order in Case No.: 2012-213575 wherein it ruled as follows:

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

The ruling was in error because the Petition for Rehearing filed by the Respondent was based on the Court remitting a case when a motion to be relieved as counsel was pending. Said

motion should have stayed the appeal and the Order dismissing the case while stayed was inconsistent with Rule 240(b) of the South Carolina Appellate Court Rules.

12. On May 30, 2013, the undersigned was hired by Mr. Skelly for the limited purpose of establishing the correct procedural history and current status of the initial appeal (2010176606) and the second appeal (2012-213575).

Based upon the foregoing procedural facts, the undersigned is informed and believes that this Court has erroneously failed to recall the remittitur in Case No.: 2010176606. The basis for this assertion is that the Court recalled only the remittitur of the second appeal and not the first appeal. Based upon this Court's Order in Case No.: 2012-213575 and the case of Johnson v. Hall (case tracking number 2012-208988), the Court should have recalled the remittitur in the initial Williams Carpet v. Skelly (2010176606) case as well as 2012-213575.

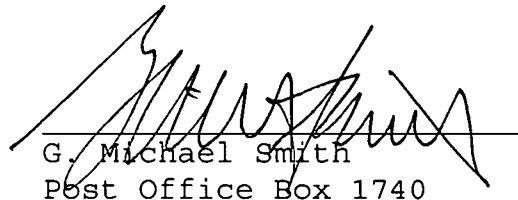
Should the Court recall the remittitur in the initial appeal (2010176606), the appeal of Case No.: 2012-213575 will be moot in that it would be premature until the final appeal of the initial case (2010176606). Because the Court has not yet ruled on the remittitur or the undersigned's motion to be relieved as counsel in the initial case (2010176606), the undersigned is informed and believes that this Court should take no action which would prejudice the Respondent's rights to

perfect the initial appeal (2010176606).

WHEREFORE, the undersigned respectfully moves that this Court recall the remittitur erroneously sent in the initial appeal on November 9, 2012, and grant the undersigned's motion to be relieved as counsel in the initial appeal.

Respectfully submitted,

Thompson & Henry, P.A.

A handwritten signature in black ink, appearing to read "G. Michael Smith", is written over a horizontal line.

G. Michael Smith
Post Office Box 1740
Conway, SC 29528
(843)248-5741

Attorneys for Petitioner Mark
Skelly

May 31, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
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The Honorable Steven H. John
Fifteenth Circuit Court Judge

Case No.: 2007-CP-26-00265

Williams Carpet Contractors, Inc., Respondent,

v.

Ruonala and Company, LLC, Mark Skelly and
M.S. Industries, Inc., Defendants,

Of Whom Mark Skelly is Appellant.

PROOF OF SERVICE

I, Tenna Turman, an employee for Thompson & Henry, P.A.,
attorneys for the Appellant Mark Skelly, in the above-captioned
action and/or actions, certify that I have this 3rd day of May, 2013
mailed a copy and/or copies of the following:

**MOTION TO RECALL REMITTITUR AND ADDRESS MOTION
TO BE RELIEVED AS COUNSEL IN CASE NO. 2010176606**

to the undersigned at his/her/their address(es) of record, with
sufficient postage attached thereto, as follows:

**Henrietta U. Golding, Esquire
James K. Gilliam, Esquire
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, SC 29578
Attorneys for Williams Carpet**


Tenna Turman

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May 31, 2013

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RECEIVED

JUN 04 2013

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Williams Carpet Contractors, Inc. v. Ruonala and Company,
LLC, Mark Skelly and M.S. Industries, Inc.
Case Track No.: 2010176606 and 2012-213575
Civil Action No.: 2007-CP-26-0265
Our File No.: 15156

Dear Ms. Gee:

I am enclosing for filing with the court in connection with the above captioned matter the following:

- Original and 6 copies of the Motion to Recall Remittitur and Address Motion to be Relieved as Counsel
- Filing Fee of \$25.00,
- Proof of Service.

By copy of this letter, I am serving a copy of the aforementioned documents on other counsel of record and the client, Mark Skelly and his legal counsel, John Martini, Esquire. Please return to me a clocked copy of the filed documents in the enclosed self-addressed envelope.

Very truly yours,


G. Michael Smith

GMS/tlt

Enclosures

cc: Henrietta U. Golding, Esquire
James K. Gilliam, Esquire
Clients