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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Hon. Bentley D. Price, Circuit Court Judge

APPELLATE CASE NO. 2022-000469

Case No. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik,, Respondents,

v.

Advanced Flooring & Design Division of ISI, LLC; Archer Exteriors, Inc.; Crossroads Enterprises, LLC; D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc.; Professional Drywall & Paint Services, LLC; Professional Exteriors II, LLC; and Valim Construction, LLC, Defendants,

Of which D. R. Horton, Inc. is Appellant.

PETITIONER'S REPLY RE PETITION FOR WRIT OF CERTIORARI

Let us be clear. The Petitioner is not seeking an extension of the 30 day requirement for serving and filing a Notice of Appeal. It was served and filed on April 11, 2022, 18 days after the circuit court issued its March 24, 2022 order on Petitioner's motion to alter or amend.

Its Notice of Appeal was timely served electronically through the SC Courts E-Filing System according to the South Carolina Electronic Filing Policies and Guidelines. **“Service Complete Upon E-Filing.** Service of a pleading, motion, or other paper by NEF subsequent to the summons and complaint or other filing initiating a case is complete at the time of the submission of the pleading, motion, or other paper for E-Filing, provided an NEF is transmitted by the E-Filing System in accordance with paragraph (e)(2) of this Section. The Act of E-Filing the pleading, motion or other paper is the equivalent of depositing it in the United States Mail under Rule 5(b)(1), SCRCF.” SCEF 4(e)(3) **“Scope.** [A]ll filings in all civil cases commenced or pending in any E-Filing county after the effective date of the Pilot Program shall be E-Filed if the party is represented by any attorney.” SCEF 2(b) **“Consent to Electronic Service and Electronic Filing of all Documents.** An Authorized E-Filer consents to E-Service ...” SCEF 3(b) **“Construction.** These Policies and Guidelines shall be liberally construed to ensure substantial justice for all parties, and that cases are disposed of on the merits.” SCEF 11(e)

A Notice of Appeal is unique in that it falls under both the lower courts and appellate courts systems because it is required to be filed in both. Rule 203(d) SCACR. For that reason, the E-Filings policies and guidelines in both systems were available to the Petitioner for it. E-filing was in place with the lower court in this case and the Respondents' attorneys were registered users of the system. E-filing with the lower court on April 11, 2022 was timely and sufficient filing and service.

The Petitioner followed the applicable appellate court rule when it filed in the lower court. Rule 203(d) SCACR. Filing with the lower court through that E-filing System then resulted in proper service of the Notice of Appeal.

The Petitioner is not suggesting that the lower court E-filing system is generally applicable to appeals. Only the Notice of Appeal falls into both.

The Respondents do not and cannot refute the Petitioner's citation of South Carolina Supreme Court and Court of Appeals authority that allows amendment of its Notice of Appeal. That occurred on April 28, 2022 to correct the identities of the Respondents. The Notice of Appeal correctly described the orders on appeal and they were the only orders in the case. No one was misled. The Respondents rely upon *Connor v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002) for the proposition that Connor's appeal was not perfected because she had not listed two defendants as respondents within 30 days of the order on appeal. However, that is an incorrect understanding of *Connor*. The appeals court notified Connor of her error and she did not correct the error soon after filing or even within 5 months of having filed her appeal. The court held that "Indeed, the rule of *Moody* compels us under these facts to find Rowe and Langley were misled into believing they were not part of this appeal by the almost five-month delay in amending the Notice, and therefore, they clearly were prejudiced by the amendment." *Id.* at 462. Here, unlike in *Connor*, the correction was quickly made, the Respondents were served both Notices of Appeal, and the description of what is being appealed is clear. Counsel for the Petitioner did not delay. There was no prejudice or laxity alleged in the Respondents' Motions to Dismiss Appeal; nor could any be alleged in this case.

The Respondents cannot escape *Wells Fargo v. Fallon*, Opinion 27773, Feb. 28, 2018. There the South Carolina Supreme Court observed that confusion has arisen in the litigation sphere because of electronic communications. One need look no farther than the multiple orders concerning E-Filing and service issued by the Supreme Court in the last 5 years for the truth of that observation. In addition, the Supreme Court has issued order after order during the past 3 years as it fought the pandemic. All of this has created confusion which is only now beginning to abate.

The Supreme Court has stated, “Civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party.” *Elam v. S.C. Dep’t of Transp.* 361 S.C. 9, 602 S.E.2d 772 (2004). The Petitioner followed both the appellate rules and the lower court rules. It should not be put into a trap.

This case provides the Supreme Court an opportunity to clarify application of the electronic filing rules to the notice of appeal, which is a unique bridge between two systems: lower court and appellate court, and to do so in a manner that comports with its allegiance to fairness and justice.

Date: January 19, 2023

Respectfully,

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