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**Jan 31 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas  
The Honorable R. Scott Sprouse

Case No. 2020-CP-04-01202  
Appellate Case No. 2022-001527

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Moats Construction, Inc.,

Appellant,

v.

Cecil R. Dyar,

Respondent.

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APPELLANT’S RETURN TO RESPONDENT’S MOTION TO DISMISS

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Pursuant to Rule 240(e), SCACR, Appellant Moats Construction, Inc. (hereinafter, “Moats”) files this Return to Respondent Cecil Dyar’s (hereinafter, “Dyar”) Motion to Dismiss. Respondent’s motion to dismiss should be denied because: (1) this Court has the authority to reverse and modify judgments and order restitution of property lost by the erroneous judgment; and (2) Moats’s appeal raises issues that are separate and apart from the judgment of foreclosure that Moats paid in full.

**BACKGROUND**

On July 21, 2022, the circuit court entered an Order Granting [Respondent Dyar’s] Motion for Damages and Judgment of Foreclosure and Sale, attached as **Exhibit 1**, directing the sale of

Moats's real property to satisfy the judgment. Moats moved to alter or amend the order, which the circuit court denied on October 4, 2022, attached as **Exhibit 2**. Once Moats's motion to alter or amend was denied—because the filing of a notice of appeal does not automatically stay a judgment of foreclosure directing the sale of real property—Moats had to decide whether to pay the erroneous judgment or secure a bond. Rule 241(b)(4); S.C. Code Ann. §18-9-170 (“If the judgment appealed from directs the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed . . .”). If Moats filed a notice of appeal but took no other action, its property would be sold to satisfy the erroneous judgment. S.C. Code Ann. § 18-9-170; Notice of Sale (Oct. 10, 2022), attached as **Exhibit 3**.

In researching terms for a bond, Moats learned that a bond the size of the court's judgment would have to be secured by cash and have recurring annual costs, in addition to the statutory requirement that loan interest and reasonable rental value continue to accrue throughout the appeal. *Aff. Russell T. Moats* ¶ 5, attached as **Exhibit 4**; S.C. Code Ann. § 18-9-170. As such, to avoid these additional costs and move forward with clear title to the property, Moats determined to pay the erroneous judgment in full and seek restitution on appeal. *Moats Aff.* ¶ 6.

Moats's determination to pay the judgment and appeal the circuit court's errors was communicated to Respondent's attorney before the Respondent provided an adjusted judgment number that included additional interest and costs to be paid as part of the real estate closing on November 7, 2022. (Letter Jim Logan to David Paavola (Oct. 25, 2022), attached as **Exhibit 5**). Moats's intentions were also plainly reflected in the parties' Consent Order and Satisfaction of Judgment (Nov. 23, 2022), attached as **Exhibit 6**. Moats filed its notice of appeal on October 26, 2022, well before the real estate closing on November 7, 2022, and entry of the Consent Order and Satisfaction of Judgment on November 23, 2022. Moats's appeal is not moot by payment of the

judgment.

## ARGUMENT

### **I. The South Carolina Court of Appeals Can Order Restitution of Property Lost Due to an Erroneous Judgment.**

This Court has the statutory authority to reverse a circuit court judgment and order restitution of property that Moats lost due to the erroneous circuit court judgment. The South Carolina Code provides as follows:

Upon an appeal from a judgment or order the appellate court may reverse, affirm or modify the judgment or order appealed from as to any or all of the parties and may, if necessary or proper, order a new trial. When the judgment is reversed or modified the *appellate court may make complete restitution of all property and rights lost by the erroneous judgment.*

S.C. Code Ann. § 18-1-140 (emphasis added).

The South Carolina Supreme Court has approved restitution of a previously paid judgment. In *Moore v. North American Van Lines*, 319 S.C. 446, 462 S.E.2d 275 (1995), Moore brought a worker's compensation claim against North American Van Lines and was awarded benefits by the worker's compensation commission. *Moore*, 319 S.C. at 447, 462 S.E.2d at 275-76. North American Van Lines paid the judgment benefits to Moore and at the same time appealed the judgment to the circuit court and sought restitution. The circuit court reversed the commission's decision and granted North American restitution of the benefits paid to Moore. *Id.* at 448, 462 S.E.2d at 276. The South Carolina Supreme Court affirmed. *Id.*; see also *Case v. Hermitage Cotton Mills*, 236 S.C. 515, 533, 115 S.E.2d 57, 67 (1960) (explaining that if employer appeal of award is successful, employee would be required to repay the erroneous benefits) (citing 3 Am. Jur. Appeal and Error, Section 1242; 5B C.J.S. Appeal and Error § 1980; Restatement Restitution § 74)).

Respondent cites a 1918 case, *Reedy River Power Co. v. City of Laurens et al.*, 109 S.C.

210, 96 S.E. 116 (1918), for the proposition that this appeal is moot. *Reedy River* is a one-paragraph opinion with no substance explaining the context of the decision. It does not address the foreclosure context, this Court' statutory authority to order restitution for erroneous judgments, or the situation, as here, where Appellant has raised multiple issues for appeal outside of the satisfied judgment. Respondent also cites Ohio law for this same proposition. However, even Ohio courts are inconsistent on the application of this legal principle. At least two Ohio courts have ruled that in the foreclosure context, satisfaction of a judgment after the order of sale is issued qualifies as "involuntary," which in Ohio is an exception allowing an appeal of a satisfied judgment. *Chase Manhattan Mtg. Corp., v. Locker*, No. 19904, 2003 WL 22927244, at \*7-8 (Ohio Ct. App. Dec. 12, 2003) (citing *MIF Realty L.P. v. K.E.J. Corp.*, No. 94WD059, 1995 WL 322365, at \*2 (Ohio Ct. App. May 19, 1995)). The principle underlying the Ohio rule cited by Respondent arises in the context of an appeal after a judgment is satisfied through mutual agreement of the parties, and the question is whether one party can later avoid that settlement agreement. *Chase Manhattan*, 2003 WL 22927224, at \*7 (citing the leading Ohio case of *Blodgett* where the "appellant accepted the full amount of a marital award and signed a satisfaction of judgment"). That is not the situation here, there was never an agreement between the parties to end this litigation. In the foreclosure context, Ohio appears to follow essentially the same rule as set forth in the Restatement and followed by federal courts.

This rule as reflected in the Restatement (First) of Restitution § 74 (1937), is as follows:

A person who has conferred a benefit upon another in compliance with a judgment, or whose property has been taken thereunder, is entitled to restitution if the judgment is reversed or set aside, unless restitution would be inequitable or the parties contract that payment is to be final; if the judgment is modified, there is a right to restitution of the excess.

Under this rule, an appeal of a satisfied judgment is allowed unless there is an agreement among

the parties ending the litigation. This is the rule followed by federal courts. The United States Court of Appeals for the Fourth Circuit has long held that payment of a judgment does not moot an appeal. *Woodson v. Chamberlain*, 317 F.2d 245, 246 (4th Cir. 1963). As the Fourth Circuit stated in *Woodson*:

The usual rule in the federal courts is that payment of a judgment does not foreclose an appeal. Unless there is some contemporaneous agreement not to appeal, implicit in a compromise of the claim after judgment, and so long as, upon reversal, restitution can be enforced, payment of the judgment does not make the controversy moot.

*Id.* (citing cases from the Supreme Court, Fifth, Eighth, and Tenth Circuit Courts of Appeals); *cf. Gloria v. Valley Grain Products, Inc.*, 72 F.3d 497, 498 (5th Cir. 1996) (“It is a generally accepted rule of law that where a judgment is appealed on the ground that the damages awarded are inadequate, acceptance of payment of the amount of the unsatisfactory judgment does not, standing alone, amount to an accord and satisfaction of the entire claim.” (quoting *United States v. Hougham*, 364 U.S. 310, 312 (1960))).

The Fourth Circuit has further explained that it is only where the parties have a “mutual manifestation of an intention to bring the litigation to a definite conclusion upon a basis acceptable to all parties which bars a subsequent appeal, not the bare fact of payment of the judgment.” *Gadsden v. Fripp*, 330 F.3d 545, 548 (4th Cir. 1964). While it is true, as the Fourth Circuit observed in *Gadsden*, that “[i]f an appeal is taken by a defendant after he has paid a judgment, he runs the risk of being unable to obtain restitution if he prevails on appeal[,]” *id.*, this risk shifting, standing alone, does not moot an appeal.

Here, there was no mutual manifestation of intention among Moats and Dyar that the satisfaction of judgment and real estate closing bring this litigation to a definite conclusion. Rather, at all times Moats made clear that it intended to appeal the judgment. Exs. 5, 6.

Moats contends that it lost more than \$80,000 due to the lower court's erroneous order entering foreclosure, sale, and judgment. Nothing prevents this Court from taking up Moats's appeal and ordering restitution of erroneous amounts Moats has already paid to Dyar. As such, Dyar's motion to dismiss should be denied.

## **II. Moats's Appeal Raises Issues Separate and Apart From the Judgment of Foreclosure.**

Even if payment of the judgment in this instance were to foreclose an appeal, which Moats disputes, Moats has raised issues on appeal that are separate from the amount of the erroneous judgment. Moats contends that the lower court erred when it granted summary judgment on Dyar's equitable foreclosure claim and prevented Moats from moving forward with a jury trial on its legal claims for breach of contract and negligence. Moats seeks a remand so that it may pursue a jury trial of its legal claims against Dyar. These claims were never ruled on by the lower court or a jury and were not part of the order on damages and foreclosure that Moats paid.

Satisfaction of the judgment of foreclosure does not preclude Moats from pursuing an appeal on the basis that the circuit court erred when it precluded Moats from pursuing its legal claims against Dyar.

## **CONCLUSION**

Satisfaction of the judgment of foreclosure does not preclude Moats from pursuing an appeal and seeking restitution of erroneous amounts it paid to Dyar. This Court has statutory authority to order restitution to correct an erroneous judgment and restore lost property. South Carolina Supreme Court precedent supports this outcome, which is also in accord with the process followed by federal appellate courts.

Even if satisfaction of the judgment precluded an appeal of the judgment of foreclosure, which Moats contends it does not in this instance, Moats has raised issues on appeal that are

separate and apart from the judgment of foreclosure. In no way is Moats precluded from raising these issues on appeal.

For these reasons, Dyar's motion to dismiss should be denied.

/s/ David L. Paavola  
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Attorney for Appellant

January 31, 2023

# **EXHIBIT 1**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
	)	
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>Order Granting Defendant’s</b>
	)	<b>Motion for Damages and Judgment of</b>
	)	<b>Foreclosure and Sale</b>
Cecil R. Dyar,	)	
	)	
Defendant.	)	

This matter is before the Court for a damages hearing. In the Court’s Order filed June 10, 2021, the terms, provisions and rulings of this Court therein, which are incorporated herein and made a part of this Order by reference thereto, this Court found that Cecil R. Dyar (“Dyar”) was entitled to Summary Judgment against Moats Construction, Inc., (“Moats”) as a matter of law and, accordingly, ruled that Dyar was entitled to immediate possession of the premises and to retain all amounts paid by Moats as rent and liquidated damages or, in the alternative, and, at the option of Dyar, ordered and decreed that the entire balance, as determined at a promptly held damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure, was immediately due and payable entitling Dyar to seek a sale of the property and foreclosure of all rights of Moats in and to the property.

A damages hearing was held before the Court on February 24, 2022. Present at the hearing was Wendell Hawkins, attorney for Moats and Russell T. Moats, and James W. Logan, attorney for Dyar. After careful consideration of all of the evidence in this matter, including the testimony taken at this hearing and the admitted Exhibits, this Court finds and concludes as follows:

## FINDINGS OF FACT

1. That Dyar is entitled to a judgment of Foreclosure of the subject Agreement against Moats upon which there is owed the amount of \$222,415.95, as of February 1, 2022, plus interest at the legal rate from February 1, 2022, attorney's fees of fifteen percent (15%), pursuant to the Agreement for Sale and Purchase of Real Property ("Agreement") dated January 29, 2011 between the parties hereto, and the costs of this action.
2. Moats has admitted that foreclosure is appropriate in this case, although he disagreed as to the balance of the purchase price due and payable.
3. The real property, which is the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003 and is more particularly described as follows:

All that certain lot or parcel of land, situate, lying and being in Anderson, South Carolina, in Anderson County, more particularly described as follows: BEGINNING at a point 22.5 feet northeastwardly, measured at a right angle, from a point in the center line of the main track of Carolina and Northwestern Railway Company, 1997 feet northwestwardly, measured along said center line, from Milepost 10 on said railroad; and running thence southeastwardly, along the southerly boundary of property conveyed by Blue Ridge Railway Company to Abner J. Nagin, et al, by deed dated November 15, 1960, recorded in the Office of the Clerk of Court for Anderson County, in Book 12-N, at Page 60, a distance of 150 feet, more or less, to the southeasterly corner of said property; thence northeastwardly along the easterly boundary of the property conveyed to by said deed of November 15, 1960, a distance of 128.5 feet; thence northeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 60 feet; thence southeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 200 feet; thence southwestwardly, along a line forming an interior angle of 90 degrees with the preceding course, a distance of 231 feet, more or less, to a point 22.5 feet northwestwardly measured at right angle from the center line of the main track of Carolina and Northwestern Railway Company; thence northwestwardly parallel to and at all points 22.5 feet from the center line of said main track, a distance of 227 feet, more or less, to the point of beginning containing 0.61 of an acre, more or less, and being located substantially as shown outlined in orange on print of drawing No. 5/3434, dated September 10, 1964, and annexed to deed of Blue Ridge Railway Company to Kent Steel of South Carolina, Incorporated, recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Deed Book 16-V, at Page 816; SAVING and RESERVING unto Blue Ridge Railway Company a right of way or easement for said portion of tract 20 feet

in width or 10 feet on either side of the center line of said portion of track, together with such additional right of way as may be necessary to accommodate cut slopes, fill slopes and ditches for said portion of spur track; and also RESERVING unto Blue Ridge Railway Company the right to remove said track in the future if Blue Ridge Railway Company so elects.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

AND ALSO:

All that certain piece or parcel of land situate, lying and being in Anderson, South Carolina, more particularly described as follows: BEGINNING at an point 57.8 feet northeastwardly, measured at a right angle from point in the center line of the main track now or formerly of Blue Ridge Railway Company, 1850 feet northwestwardly measured along the center line of said main track from Milepost 10; and running thence northwestwardly a distance of 150 feet, more or less, to a point 22.5 feet northeastwardly, measured at a right angle, from the center line of said main track; thence Northwestwardly a distance of 287 feet, more or less, to a point 18.1 feet northeastwardly measured at a right angle, from the center line of said main track, thence northeastwardly parallel to 1.5 feet northeastwardly from the northwesterly line of an existing building or of said line as projected, a distance of 60 feet; thence southeastwardly, at a right angle to preceding course, a distance of 430 feet; thence southwestwardly a distance of 117 feet, more or less, to the point of beginning; containing .90 acres, more or less, and being located substantially as shown in orange on print of drawing No. B-7268, dated July 20, 1960, annexed to deed of Blue Ridge Railway Company by Abner J. Nagin, et al, dated November 15, 1960, SUBJECT however to such rights as Duke Power Company may have to maintain upon said premises its existing transformer, power lines and supports thereof located. RESERVING unto Blue Ridge Railway Company the portion of Tract 11-11 located upon and within the aforesaid described premises together with a right of way or easement for said portion of tract 16 feet in width or 8 feet on either side of the center line of said portion of tract.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

4. The real property which is the subject of this action is not an owner-occupied dwelling within the Supreme Court's Administrative Order dated May 2, 2011 and, therefore, Moats is not entitled to foreclosure intervention.

5. On January 29, 2011, Dyar entered into the Agreement regarding the property in question. Under the terms of that Agreement, Moats agreed to pay Dyar the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through April 1, 2016 with principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

6. The Agreement further provided that, upon payment of the Purchase Price, Dyar would convey to Moats title to the premises by General Warranty Deed, subject to the items referenced therein.

7. Moats is in default under the terms of said Agreement having failed and neglected to pay the installments due since December 31, 2017 and Dyar has elected, as is his right under the Agreement, to declare all sums due under the Agreement immediately due and payable entitling Dyar to seek a sale of the property and to foreclose all of Moats’ interest in and to said premises.

8. Dyar alleges that Moats has no equity in the property which is the subject of this action and that Moats has made no improvements to the subject real estate which he is entitled to be reimbursed under the plain language of the Agreement.

9. The payments made under the terms of this Agreement are representative of the fair market rental value of the subject real property.

10. At the damages hearing, Dyar presented the testimony of Joshua Pruet-Lange, a registered tax preparer with the Internal Revenue Service and a bookkeeper since 2016 employed by Electric City

Tax and Bookkeeping, formerly Shiflett Bookkeeping and Tax. Mr. Pruet-Lange examined the records of payments made under the Agreement by Moats to Dyar and testified that, in his opinion, the balance owed as of February 1, 2022 is \$222,415.95. Moats presented no expert testimony at the hearings regarding the amount owed under the Agreement nor any evidence at the hearings pertaining to any offsets/improvements, if any, to which he claims he is entitled or the value thereof. Further, Moats has failed to present at the hearings any testimony as to any equity he is entitled to and/or to receive the benefit for, other than “sweat equity.”

11. The balance due under the Agreement is the sum of \$222,415.95 as of February 1, 2022 together with attorney’s fees, any advance(s) for taxes and insurance, and the costs of this action, including Court costs.

12. The amount due and owing on the Agreement, with interest at the legal rate of 7.25% after February 1, 2022, together with 15% as attorney’s fees, advances for taxes and insurance, and the costs of this action is:

(a) Principal & Interest due as of February 1, 2022	\$222,415.95
(b) Interest due at 6% per annum thereafter through April 1, 2022 (\$1,112.08 per month)	\$ 2,224.16
(c) Costs of Collection prior to Hearing	\$ 3,677.84
(d) Attorney’s Fees (see attached Affidavit)	\$ 22,296.09
<b>Total Debt Secured by Agreement (including interest to date)</b>	<b>\$ 250,614.04</b>

### CONCLUSIONS OF LAW

NOW, ON MOTION OF DYAR’S ATTORNEY, James W. Logan, Jr. of Logan & Jolly, LLP,:

IT IS ORDERED, ADJUDGED AND DECREED:

1. That there is due to Dyar on the Agreement set forth in the Complaint the sum of \$250,614.04 representing the total debt due Dyar as set out in Paragraph 12 supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding Paragraph (the "Total Debt" as set forth in Paragraph 12 supra and later accrued interest on the principal) shall constitute the total debt due Dyar and shall bear interest hereafter at the rate of 6% per annum.

3. That Moats is liable for the aforesaid amount owed on the Bond for Title shall on or before the date of sale of the property hereinafter described, pay to Dyar, or Dyar's attorney the amount aforesaid, together with the costs and disbursements of this action.

4. That Moats, who is liable for the aforesaid amount owed on the Agreement, shall, on or before the date of the sale of the property hereinafter described, pay to Dyar or Dyar's attorney the amount aforesaid, together with the costs and disbursements of this action.

5. That, on default of payment at or before the time herein indicated, the subject property described in the Complaint, as hereinafter set forth, be sold by the Honorable Steven C. Kirven, Master in Equity for Anderson County, South Carolina at public auction at Courtroom Number Two on the Third Floor of the Courthouse for Anderson County, in the City of Anderson, County of Anderson, State of South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales shall be on the next Tuesday succeeding such holiday), on the following terms, that is to say:

(a) FOR CASH: The Master will require a deposit of five (5%) percent of the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance

with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs of Dyar's debt;

(b) Interest on the balance of the bid shall be paid to the day of compliance at the rate of 6% per annum.

(c) The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

(d) Purchaser to pay for deed stamps and costs of recording the deed.

6. If Dyar be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and indebtedness of Dyar in full, Dyar may pay to the Master in Equity only the amount of costs and expenses crediting the balance of the bid on the indebtedness.

7. That the Master in Equity, will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. Dyar, or any other party to this action, may become a purchaser at such sale, and that if, upon sale being made, the Purchaser or Purchasers should fail to comply with the terms thereof within twenty (20) days after the date of sale, then the undersigned Master in Equity may advertise said premises for sale on the next or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. Personal or deficiency judgment being waived the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

9. That the undersigned Master do apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under the Court;

NEXT: To the payment to Dyar or Dyar's attorney, of the amount owed on the Agreement and interest or so much thereof as the purchase money will pay.

NEXT: Any surplus will be held pending further Order of the Court.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than Moats in possession herein, the Sheriff of Anderson County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

11. And it is further ORDERED, ADJUDGED AND DECREED that Moats, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in said premises so sold, or any part thereof.

12. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the name of Dyar who is the titleholder of the property at the time of the filing of the within action, and the name of the grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

13. The Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to the issuance of the Order of Ejection.

14. The following is a description of the premises herein to be sold:

All that certain lot or parcel of land, situate, lying and being in Anderson, South Carolina, in Anderson County, more particularly described as follows: BEGINNING at a point 22.5 feet northeastwardly, measured at a right angle, from a point in the center line of the main track of Carolina and Northwestern Railway Company, 1997 feet northwestwardly, measured along said center line, from Milepost 10 on said railroad; and running thence southeastwardly, along the southerly boundary of property conveyed by Blue Ridge Railway Company to Abner J. Nagin, et al, by deed dated November 15, 1960, recorded in the Office of the Clerk of Court for Anderson County, in Book 12-N, at Page 60, a distance

of 150 feet, more or less, to the southeasterly corner of said property; thence northeastwardly along the easterly boundary of the property conveyed to by said deed of November 15, 1960, a distance of 128.5 feet; thence northeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 60 feet; thence southeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 200 feet; thence southwestwardly, along a line forming an interior angle of 90 degrees with the preceding course, a distance of 231 feet, more or less, to a point 22.5 feet northwestwardly measured at right angle from the center line of the main track of Carolina and Northwestern Railway Company; thence northwestwardly parallel to and at all points 22.5 feet from the center line of said main track, a distance of 227 feet, more or less, to the point of beginning containing 0.61 of an acre, more or less, and being located substantially as shown outlined in orange on print of drawing No. 5/3434, dated September 10, 1964, and annexed to deed of Blue Ridge Railway Company to Kent Steel of South Carolina, Incorporated, recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Deed Book 16-V, at Page 816; SAVING and RESERVING unto Blue Ridge Railway Company a right of way or easement for said portion of tract 20 feet in width or 10 feet on either side of the center line of said portion of track, together with such additional right of way as may be necessary to accommodate cut slopes, fill slopes and ditches for said portion of spur track; and also RESERVING unto Blue Ridge Railway Company the right to remove said track in the future if Blue Ridge Railway Company so elects.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

AND ALSO:

All that certain piece or parcel of land situate, lying and being in Anderson, South Carolina, more particularly described as follows: BEGINNING at an point 57.8 feet northeastwardly, measured at a right angle from point in the center line of the main track now or formerly of Blue Ridge Railway Company, 1850 feet northwestwardly measured along the center line of said main track from Milepost 10; and running thence northwestwardly a distance of 150 feet, more or less, to a point 22.5 feet northeastwardly, measured at a right angle, from the center line of said main track; thence Northwestwardly a distance of 287 feet, more or less, to a point 18.1 feet northeastwardly measured at a right angle, from the center line of said main track, thence northeastwardly parallel to 1.5 feet northeastwardly from the northwesterly line of an existing building or of said line as projected, a distance of 60 feet; thence southeastwardly, at a right angle to preceding course, a distance of 430 feet; thence southwestwardly a distance of 117 feet, more or less, to the point of beginning; containing .90 acres, more or less, and being located substantially as shown in orange on print of drawing No. B-7268, dated July 20, 1960, annexed to deed of Blue Ridge Railway Company by Abner J. Nagin, et al, dated November 15, 1960, SUBJECT however to such rights as Duke Power Company may have to maintain upon said premises its existing transformer, power lines and supports thereof located. RESERVING unto Blue Ridge

Railway Company the portion of Tract 11-11 located upon and within the aforesaid described premises together with a right of way or easement for said portion of tract 16 feet in width or 8 feet on either side of the center line of said portion of tract.

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IT IS SO ORDERED this \_\_\_\_\_ day of July, 2022.

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The Honorable R. Scott Sprouse  
Tenth Judicial Circuit



Anderson Common Pleas

**Case Caption:** Moats Construction Inc VS Cecil R Dyar

**Case Number:** 2020CP0401202

**Type:** Order/Damages

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

# **EXHIBIT 2**

STATE OF SOUTH CAROLIA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CASE NO.: 2020-CP-04-01202

Moats Construction, Inc.,  
Plaintiff,

Motion/Alter and/or Amend

Cecil R. Dyar,  
Defendant.,

This matter was before the Court pursuant to the Plaintiff's Motion for Reconsideration under Rules 59 and 60 of the South Carolina Rules of Civil Procedure. This case has multiple issues, with the Plaintiff and the Defendant having a dispute over real property located in Anderson County, SC. The property was subject to a mortgage held by the Defendant. The Plaintiff filed suit, alleging that the Defendant was responsible for problems with insurance coverage regarding a building on the subject property. The Defendant counterclaimed for foreclosure.

The Court held its initial hearing on April 13, 2021, in which the Defendant moved for Summary Judgement. At all times, the Plaintiff did not contest the Defendant's right to foreclosure. There was a disagreement between the parties as to the correct amount owed by the Plaintiff on the subject property. The Court ordered that a damages hearing be held so that evidence could be submitted for the Court to consider regarding the issue of the amount owed to the Defendant.

A damages hearing was held on February 24, 2022, with proper notice to the parties. The Plaintiff appeared along with his previous attorney, who moved to be relieved as counsel. The Court directed that the Plaintiff's counsel remain counsel of record until the damages hearing was completed. The Court took testimony, including that of the Plaintiff, and concluded that the Defendant was entitled to a judgement in the amount of **\$250,614.04.**

The Plaintiff retained new counsel, and moved that a new damages hearing be held or that the amount of the judgement be modified. Numerous exhibits were entered into the record by the Plaintiff to show discrepancies in the amounts as set by the Defendant's expert witness. The Defendant argues that this motion is improper, since the Plaintiff had ample opportunity to challenge the amount sought by the Defendant at the damages hearing and failed to do so.

The Court carefully considered the exhibits presented by the parties, the transcripts of the hearing, arguments of counsel, and applicable law. Accordingly, the Court concludes that Plaintiff's motion for reconsideration pursuant to Rule 59(e), SCRPC be denied as there was no misunderstanding or failure to fully consider all arguments and issues at the damages hearing. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). The Court notes that, at this motion for reconsideration, Plaintiff's counsel provided the materials in an organized and understandable manner. The Court may have arrived at a different conclusion regarding the judgement amount had these materials been presented at the damages hearing. However, it appears that none of these calculations were new, or based on information that was not in the Plaintiff's possession at the time of the damages hearing. The Court notes that the Plaintiff had retained an expert at some point in the litigation, although the Plaintiff testified that he disagreed

with the expert's calculations. Plaintiff's counsel at the time informed the Court that the expert was not called to testify at the damages hearing because he "had not yet been paid."

The Court concludes that it will be improper to set aside the judgement and order a new hearing and/or modify the amount of the judgement simply because the Plaintiff has done a much better job now of preparing the evidence/records in his possession than he did at the time of the damages hearing.

Accordingly, the Plaintiff's Motion is DENIED.



Anderson Common Pleas

**Case Caption:** Moats Construction Inc VS Cecil R Dyar

**Case Number:** 2020CP0401202

**Type:** Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

# **EXHIBIT 3**

STATE OF SOUTH CAROLINA    )  
COUNTY OF ANDERSON            )

NOTICE OF SALE  
CASE NUMBER: 2020-CP-04-01202

Pursuant to the terms of a Decree of Foreclosure and Sale by the Honorable Scott R. Sprouse dated July 21, 2022 in the case of Moats Construction, Inc., v. Cecil R. Dyar, I will sell at public outcry in Courtroom Number Two on the Third Floor of the Courthouse for Anderson County, South Carolina on November 1, 2022, during the usual hours of public sale to the highest bidder for cash the following described real estate:

Tax Map Number 123-24-03-003 and is more particularly described as follows:

All that certain lot or parcel of land, situate, lying and being in Anderson, South Carolina, in Anderson County, more particularly described as follows: BEGINNING at a point 22.5 feet northeastwardly, measured at a right angle, from a point in the center line of the main track of Carolina and Northwestern Railway Company, 1997 feet northwestwardly, measured along said center line, from Milepost 10 on said railroad; and running thence southeastwardly, along the southerly boundary of property conveyed by Blue Ridge Railway Company to Abner J. Nagin, et al, by deed dated November 15, 1960, recorded in the Office of the Clerk of Court for Anderson County, in Book 12-N, at Page 60, a distance of 150 feet, more or less, to the southeasterly corner of said property; thence northeastwardly along the easterly boundary of the property conveyed to by said deed of November 15, 1960, a distance of 128.5 feet; thence northeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 60 feet; thence southeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 200 feet; thence southwestwardly, along a line forming an interior angle of 90 degrees with the preceding course, a distance of 231 feet, more or less, to a point 22.5 feet northwestwardly measured at right angle from the center line of the main track of Carolina and Northwestern Railway Company; thence northwestwardly parallel to and at all points 22.5 feet from the center line of said main track, a distance of 227 feet, more or less, to the point of beginning containing 0.61 of an acre, more or less, and being located substantially as shown outlined in orange on print of drawing No. 5/3434, dated September 10, 1964, and annexed to deed of Blue Ridge Railway Company to Kent Steel of South Carolina, Incorporated, recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Deed Book 16-V, at Page 816; SAVING and RESERVING unto Blue Ridge Railway Company a right of way or easement for said portion of tract 20 feet in width or 10 feet on either side of the center line of said portion of track, together with such additional right of way as may be necessary to accommodate cut slopes, fill slopes and ditches for said portion of spur track; and also RESERVING unto Blue Ridge Railway Company the right to remove said track in the future if Blue Ridge Railway Company so elects.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

AND ALSO:

All that certain piece or parcel of land situate, lying and being in Anderson, South Carolina, more particularly described as follows: BEGINNING at an point 57.8 feet northeastwardly, measured at a right angle from point in the center line of the main track now or formerly of Blue Ridge Railway Company, 1850 feet northwestwardly measured along the center line of said main track from Milepost 10; and running thence northwestwardly a distance of 150 feet, more or less, to a point 22.5 feet northeastwardly, measured at a right angle, from the center line of said main track; thence Northwestwardly a distance of 287 feet, more or less, to a point 18.1 feet northeastwardly measured at a right angle, from the center line of said main track, thence northeastwardly parallel to 1.5 feet northeastwardly from the northwesterly line of an existing building or of said line as projected, a distance of 60 feet; thence southeastwardly, at a right angle to preceding course, a distance of 430 feet; thence southwestwardly a distance of 117 feet, more or less, to the point of beginning; containing .90 acres, more or less, and being located substantially as shown in orange on print of drawing No. B-7268, dated July 20, 1960, annexed to deed of Blue Ridge Railway Company by Abner J. Nagin, et al, dated November 15, 1960, SUBJECT however to such rights as Duke Power Company may have to maintain upon said premises its existing transformer, power lines and supports thereof located. RESERVING unto Blue Ridge Railway Company the portion of Tract 11-11 located upon and within the aforesaid described premises together with a right of way or easement for said portion of tract 16 feet in width or 8 feet on either side of the center line of said portion of tract.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

The above mentioned property shall be sold for cash to the highest bidder. The highest bidder, other than the Defendant, shall be required, at the conclusion of the bidding, to deposit five (5%) percent of the bid with the Master-in-Equity in cash or equivalent as evidence of good faith; said deposit to be applied to the purchase price in case of compliance; but to be forfeited and applied first to costs and them to Defendant's debt in the case of non-compliance.

If the highest bidder fails or refuses to make the required deposit at the time of the bid or to comply with the other terms of sale within twenty (20) days from the date of sale, then the Master-in-Equity shall resell the property at the risk and expense of the defaulting bidder upon the same terms as above set out. Purchaser shall pay extra for the preparation of the Master's Deed, for documentary stamps on the deed, recording of the deed and interest on the amount of the bid from the date of the sale to the date of compliance with the bid at the rate of five percent (5%), as designated in the Decree. The sale shall be subject to Assessments, Taxes due on the day of sale, Existing Easements, Easements and Restrictions of Record and other senior encumbrances.

Since personal or deficiency judgment being waived, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

---

Steven C. Kirven  
Master-in-Equity

Date: \_\_\_\_\_

James W. Logan, Jr.  
Logan & Jolly, LLP  
864-226-1910



Anderson Common Pleas

**Case Caption:** Moats Construction Inc VS Cecil R Dyar

**Case Number:** 2020CP0401202

**Type:** Master/Order/Notice of Foreclosure Sale

So Ordered

Steven C. Kirven, Master in Equity

# **EXHIBIT 4**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas  
The Honorable R. Scott Sprouse

Case No. 2020-CP-04-01202  
Appellate Case No. 2022-001527

---

Moats Construction, Inc.,

Appellant,

v.

Cecil R. Dyar,

Respondent.

AFFIDAVIT OF RUSSELL TYSON MOATS

---

PERSONALLY APPEARED before me Russell Tyson Moats, who, being first duly sworn, says and deposes:

1. That I am over the age of 18 and a resident of Anderson County, South Carolina.
2. I am the owner of Moats Construction, Inc.
3. The property at issue in the underlying lawsuit is known as 300-600 W. Orr Street, Anderson, South Carolina (the "Property").
4. Moats Construction, Inc. has invested significant money into the Property since 2011 and it was always its intention to keep the Property.
5. Upon entry of the circuit court's Order Granting Defendant's Motion for Damages and Judgment of Foreclosure and Sale, I undertook the process of investigating the process for obtaining a bond. During my research, I learned about potential costs of a bond secured by real estate and costs for a bond secured by cash. I was informed by one bond provider that a bond in the amount of the court's judgment would have to be secured by cash.
6. After considering the costs of a bond, as well as the potential for additional interest and rental value during the appeal, I determined to pay the judgment in full, obtain clear title to the Property, and also pursue an appeal.

  
Russell Tyson Moats

SWORN to before me this

30th

day of January, 2023

*[Signature]*  
Notary Public for South Carolina

My Commission Expires: October 23, 2025



# **EXHIBIT 5**



LOGAN & JOLLY, LLP.  
— ATTORNEYS AT LAW —

James W. Logan, Jr., Esquire  
Email: logan@loganandjolly.com

October 25, 2022

*(Via Electronic Mail Only)*

David L. Paavola, Esquire  
Lewis Babcock, LLP  
P.O. Box 11208  
Columbia, SC 29211

Re: Moats Construction, Inc. v. Cecil Dyar

Dear David:

At your request contained in your email of October 18, 2022, I enclose herein the wiring instructions from GrandSouth Bank pertaining to my firm's trust account along with the updated payoff calculations regarding the items referred to in Paragraph 12 of the Court's Order dated July 21, 2022.

A breakdown of the components of the updated calculations are as follows:

(a) Principal and Interest	\$226,449.26
(\$222,415.95 + \$4,033.31)	
(b) Interest @ 6%	\$7,784.56
(\$2,224.16 + \$5560.40)	
(c) Costs of Collection	\$5,616.59
(\$3,677.84 + \$1,938.75)	
(d) Additional Attorney's Fees	<u>\$24,756.09</u>
(\$22,296.09 + \$2,460.00)	

**Total Payoff as of 10/28/2022 - \$264,606.50**

It is my understanding from you that these funds will be wired into my trust account no later than this Friday, October 28, 2022.

Upon payment of this total payoff, my client will be in a position to execute a deed to your client and/or his designated grantee for the premises in question. You have informed me that your client believes that he has the legal right to pay off the judgment in this case and also appeal the Court's Order of October 4, 2022. I have informed you that, while I disagree with that position, I recognize that my client cannot prohibit your client from taking that position at this stage of the proceedings.

1805 North Boulevard  
Anderson, SC 29621  
Telephone: 864-226-1910  
Facsimile: 864-226-1931

Mailing Address  
Post Office Box 259  
Anderson, SC 29622

www.loganandjolly.com

David L. Paavola, Esquire  
October 25, 2022  
Page 2

Following your review, if you have any questions, do not hesitate to contact me.

With kind regards, I remain,

Yours Very Truly,

LOGAN & JOLLY, LLP

James W. Logan, Jr.

JWLjr:krm  
Enclosures

# **EXHIBIT 6**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	C/A NO. 2020-CP-04-01202
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	<b>CONSENT ORDER AND</b>
v.	)	<b>SATISFACTION OF JUDGMENT</b>
	)	
Cecil R. Dyar,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

---

On July 21, 2022, the Court entered an Order Granting Defendant’s Motion for Damages and Judgment of Foreclosure and Sale. Plaintiff filed a Motion to Alter or Amend on July 29, 2022, which was denied by the Court on October 4, 2022. Following entry of the Order denying the motion to alter or amend, Defendant moved forward to sell the subject property, and such sale was scheduled for November 1, 2022. Plaintiff filed a Notice of Appeal on October 26, 2022.

In a foreclosure, the filing of a notice of appeal does not automatically stay a property sale. As such, Plaintiff determined to pay the judgment in full while preserving its right to appeal the same. Defendant agreed to cancel the property sale if the full amount of the proceeds were deposited into Plaintiff’s attorney’s trust account prior to the November 1, 2022 sale date. Such funds were placed in trust to Defendant’s satisfaction and Defendant cancelled the sale. The parties closed on the transfer of subject property to Plaintiff on November 7, 2022.

The Order Granting Defendant's Motion for Damages and Judgment of Foreclosure and Sale set damages as of April 1, 2022 at the following:

(a)	Principal & Interest Due as of February 1, 2022	\$ 222,415.95
(b)	Interest due at 6% per annum thereafter through April 1, 2022 (\$1,112.08 per month)	\$ 2,224.16
(c)	Costs of Collection prior to Hearing	\$ 3,677.84
(d)	Attorney's Fees	\$ 22,296.09
	<b>Total Debt Secured by Agreement (including interest to date)</b>	<b>\$250,614.04</b>

Prior to closing, Defendant provided an updated payoff through November 7, 2022, as follows:

(a)	Principal & Interest Due	\$ 227,128.21
(b)	Interest due at 6%	\$ 8,340.60
(c)	Costs of Collection	\$ 5,616.59
(d)	Attorney's Fees	\$ 25,381.09
	<b>Total Debt</b>	<b>\$266,466.49</b>

Plaintiff paid the full adjusted payoff amount of \$266,466.49 to Defendant on November 7, 2022, in conjunction with closing on the purchase of the subject property and in full satisfaction of the judgment.

Defendant now acknowledges that the judgment entered and filed against Plaintiff on July 21, 2022, has been satisfied in full and said judgment is satisfied and forever discharged.

It is hereby ORDERED that:

(1) The judgment in this action be shown as satisfied;

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

WE SO MOVE:

Respectfully submitted,

s/ David L. Paavola

David L. Paavola (SC Bar No. 100714)

Lewis Babcock L.L.P.

1513 Hampton Street (29201)

Post Office Box 11208

Columbia, South Carolina 29211

Telephone: (803) 771-8000

Facsimile: (803) 733-3534

Email: [dlp@lewisbabcock.com](mailto:dlp@lewisbabcock.com)

*Counsel for Plaintiff*

Columbia, South Carolina

November 16, 2022

The E-Filer has obtained the required consent to insert the electronic signature(s) of the other Authorized E-Filer(s) to this motion.

WE CONSENT:

s/ James W. Logan, Jr.

James W. Logan, Jr. (SC Bar No. 3385)

Logan & Jolly, LLP

Post Office Box 259

Anderson, South Carolina 29622

Telephone: (864) 226-1910

Facsimile: (864) 226-1931

Email: [logan@loganandjolly.com](mailto:logan@loganandjolly.com)

*Counsel for Defendant*



Anderson Common Pleas

**Case Caption:** Moats Construction Inc VS Cecil R Dyar

**Case Number:** 2020CP0401202

**Type:** Order/Consent Order

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

**RECEIVED**

**Jan 31 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas  
The Honorable R. Scott Sprouse

Case No. 2020-CP-04-01202  
Appellate Case No. 2022-001527

---

Moats Construction, Inc.,

Appellant,

v.

Cecil R. Dyar,

Respondent.

---

PROOF OF SERVICE

---

I certify that I have served the Appellant's Return to Respondent's Motion to Dismiss on James W. Logan, Jr., counsel for Respondent Cecil R. Dyar, by email sent to his primary e-mail address listed in the Attorney Information System, [logan@loganandjolly.com](mailto:logan@loganandjolly.com) on January 31, 2023. See attached email.

/s/ David L. Paavola  
David L. Paavola, SC Bar# 100714  
LEWIS BABCOCK L.L.P.  
P.O. Box 11208  
Columbia, South Carolina 29211  
(803) 771-8000  
[dlp@lewisbabcock.com](mailto:dlp@lewisbabcock.com)

Attorney for Appellant

January 31, 2023

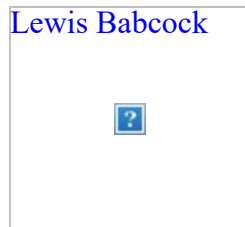
**From:** [David L. Paavola](#)  
**To:** [Jim Logan](#); [Kim Manley](#)  
**Cc:** [Pat K. McCright](#); [David L. Paavola](#)  
**Subject:** 22-106 Moats Construction Inc. v. Cecil Dyar - Return to Motion to Dismiss  
**Date:** Tuesday, January 31, 2023 4:52:39 PM  
**Attachments:** [Appellant's Return to Respondent's Motion to Dismiss.pdf](#)  
[Ex. 01 Order Granting Motion for Damages and Judgment of Foreclosure & Sale.pdf](#)  
[Ex. 02 Order Denying Pl's Motion Alter Amend.pdf](#)  
[Ex. 03 Notice of Sale.PDF](#)  
[Ex. 04 Affidavit of Russell T. Moats.pdf](#)  
[Ex. 05 Logan to DLP.pdf](#)  
[Ex. 06 Consent Order and Satisfaction of Judgment.PDF](#)  
[Proof of Service.pdf](#)

---

Jim,

Attached is Appellant's Return to Respondent's Motion to Dismiss for service in accordance with Rule 262, SCACR. These documents will be filed in the Court of Appeals shortly.

Sincerely,



**David L. Paavola**  
**Attorney**

Lewis Babcock L.L.P.  
1513 Hampton Street (29201)  
PO Box 11208  
Columbia, SC 29211

**Main** 803-771-8000  
**Direct** 803-733-3512

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DAVID L. PAAVOLA ATTORNEY

david.paavola@lewisbabcock.com

Lewis Babcock L.L.P.                    **O:** 803.771.8000  
1513 Hampton Street (29201)       **D:** 803.733.3512  
PO Box 11208  
Columbia, SC 29211

January 31, 2023

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Re:     Moats Construction, Inc. v. Cecil R. Dyar  
         Case No. 2020-CP-04-01202  
         Appellate Case No. 2022-001527  
         Our File Number 22-106

Dear Ms. Kitchings:

Enclosed for filing please find Appellant's Return to Respondent's Motion to Dismiss, and Proof of Service in the above referenced matter.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Paavola', written over a faint blue line.

David L. Paavola

DLP:pkm  
Enclosure

cc:     James W. Logan, Jr., Esq.  
         [logan@loganandjolly.com](mailto:logan@loganandjolly.com)