

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

68733

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., Appellant,

v.

Mark Skelly, Respondent.

MOTION TO RECONSIDER ORDER FOR COSTS FILED
JUNE 6, 2013 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 Appellant Williams Carpet

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

RECEIVED
JUN 13 2013
SC Court of Appeals

YOU WILL PLEASE TAKE NOTICE that the undersigned moves before this Court to reconsider its Order granting costs in Case No.: 2010-176606. The grounds for this motion are that the Court has not ruled on the Respondent's Motion to be Relieved as Counsel previously filed in this case (which should have stayed all further proceedings) nor has the Court recalled the Remittitur in this case (which it should do based on the procedural facts set forth below). 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.: 2010-176606;

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.: 2010-176606 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. Because of the pending motion to be relieved, the motion for rehearing of this Court's original opinion was never filed.

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 (2010-176606) and the second appeal (2012-213575).

13. On May 31, 2013, the undersigned moved to have the status of this appeal (2010-176606) ruled upon by the court, specifically, the pending motion to be relieved and the status of the improper remittitur.

14. Notwithstanding the pending motions and the improperly submitted remittitur in this appeal (2010-176606), this Court erroneously ordered costs against the Respondent for a case still stayed by the filing of the motion to be relieved.

Based upon the foregoing procedural facts, the undersigned is informed and believes that this Court has erroneously failed to recall the remittitur and has erroneously assessed costs against the Respondent in Case No.: 2010-176606. Further,

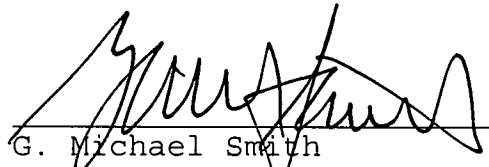
based upon this Court's Order in Case No.: 2012-213575 and the case of Johnson v. Hall (case tracking number 2012-208988), the Court should have recalled the remittitur in Williams Carpet v. Skelly (2010-176606) as it did in 2012-213575.

Should the Court recall the remittitur in the initial appeal (2010-176606), the appeal of Case No.: 2012-213575 will be moot in that it would be premature until the final appeal of the initial case (2010-176606) is concluded. Because the Court has not yet ruled on the remittitur or the undersigned's motion to be relieved as counsel in the initial case (2010-176606), 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 (2010-176606), including assessing costs as set forth in the Order dated June 6, 2013.

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, vacate the Order for costs dated June 6, 2013, and allow the appeal of the Respondent to proceed with new counsel or Pro se.

Respectfully submitted,

Thompson & Henry, P.A.


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

Attorneys for Respondent Mark
Skelly

June 12, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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.

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 12 day of June,
2013 mailed a copy and/or copies of the following:

**MOTION TO RECONSIDER ORDER FOR COSTS
FILED JUNE 6, 2013 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

RECEIVED

JUN 13 2013

SC Court of Appeals

Conway, South Carolina


Tenna Turman

THOMPSON & HENRY, P.A.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

TELEPHONE
(843) 248-5741
FACSIMILE
(843) 248-5112

G. MICHAEL SMITH
msmith@thompsonlaw.com

June 12, 2013

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.: 2010-176606
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 Reconsider Order for Costs filed June 6, 2013 in Case No. 2010176606
- 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
G. Michael Smith

GMS/tlt
Enclosures
cc: Henrietta U. Golding, Esquire
James K. Gilliam, Esquire
Clients

RECEIVED
JUN 13 2013

SC Court of Appeals