

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

68520

APPEAL FROM BAMBERG COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No.: 11-CP-05-65

Claude McAlhany,..... Appellant,

-v-

Kenneth A. Carter, Sr. d/b/a Carter & Son Pest Control,  
Carter & Son Pest Control, Inc. and Erick Cogburn,..... Respondent

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MAY 28 2013

MOTION TO REINSTATE APPEAL

SC Court of Appeals

PLEASE TAKE NOTICE that the Appellant, Claude McAlhaney, by and through his undersigned counsel, moves to reinstate this appeal pursuant to Rule 260(a), SCACR. The basis for this motion, as will be more fully set forth below, is that the appellate court deadlines were inadvertently miscalendared and an issue arose as to the undersigned counsel's representation of the Appellant prior to the Notice of Appeal being filed.

This appeal arises from a grant of summary judgment as to Respondents, Kenneth A. Carter, Sr. d/b/a Carter & Son Pest Control, Carter & Son Pest Control, Inc., and Erick Cogburn. The trial court's order granting summary judgment was filed September 13, 2012. Appellant filed a Motion for Reconsideration on September 24, 2012. Appellant received a copy of the trial court's order on February 15, 2013.

Following receipt of the trial court's order dated February 15, 2013 denying Appellant's Motion to Reconsider, the undersigned counsel discussed the appellate process with the Appellant. After several conversations, the Appellant decided that he did not wish to file an appeal. The undersigned counsel wrote Appellant a letter dated February 27, 2013, confirming the telephone conversation regarding the Appellant's decision not to pursue an appeal. The letter advised Appellant that the undersigned would be taking no further action on his behalf and should the Appellant wish to file an appeal, he would need to do so within 30 days from the date of the order denying the motion to reconsider. The letter also contained a copy of the trial court's order denying the motion to reconsider.

Before the expiration of the 30 days to file the Notice of Appeal – approximately March 5, 2013, the undersigned counsel received a voicemail message from Appellant advising that he discussed things with his wife and they would like to pursue an appeal.

The undersigned sought to obtain an order from the circuit court relieving him as counsel for appellant. However, during this time the undersigned was not able to reach the Appellant to discuss obtaining his consent to be relieved as counsel before the expiration of the thirty days to file the Notice of Appeal. With the thirty days soon to expire, the undersigned filed a notice of appeal to preserve the appellant's right to an appeal.

After the filing of the Notice of Appeal, the undersigned again attempted to contact Appellant to discuss his representation of Appellant in the appeal. Following the filing of the notice of appeal, the undersigned's paralegal was out on maternity leave. Inadvertently, the appellate deadlines required by the South Carolina Appellate Court Rules were miscalendared.

For these reasons, the undersigned moves to reinstate this appeal pursuant to Rule 260(a), SCACR. The undersigned has left messages with counsel for the Respondents, Richard Ness and Danielle Payne, seeking to discuss this matter and ask whether they would consent to this motion. The undersigned

has not been able to discuss this motion with Mr. Ness or Mrs. Payne prior to filing this motion in order to satisfy the requirements of Rule 260(a), SCACR. Appellant believes that reinstatement of the appeal will not prejudice the Respondents.

PETERS, MURDAUGH, PARKER, ELTZROTH  
& DETRICK, P.A.

BY: Wil. Barnes  
William F. Barnes, III  
101 Mulberry Street East  
P.O. Box 457  
Hampton, SC 29924  
Phone: (803) 943-2111  
wbarnes@pmped.com

ATTORNEYS FOR PLAINTIFF

May 22, 2013  
Hampton, South Carolina

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BAMBERG COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No.: 11-CP-05-65

Claude McAlhany,..... Appellant,

-v-

Kenneth A. Carter, Sr. d/b/a Carter & Son Pest Control,  
Carter & Son Pest Control, Inc. and Erick Cogburn,..... Respondents.

PROOF OF SERVICE

This is to certify that I, *William F. Barnes, III*, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Plaintiff(s), have this date forwarded via facsimile and mailed via the U.S. Postal Service, a true and correct copy of the within *Plaintiff's Notice of Motion and Motion to Reinstate* with first class postage prepaid to:

DANIELLE F. PAYNE, ESQUIRE  
GRIER, COX & CRANSHAW, LLC  
PO BOX 2823  
COLUMBIA, SC 29202

ATTORNEYS FOR KENNETH CARTER SR. AND CARTER & SONS PEST CONTROL, INC.

Richard B. Ness, Esquire  
NESS & JETT, LLC  
Post Office Box 909  
Bamberg, SC 29003

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ATTORNEY FOR ERICK COGBURN.

RE: *Claude McAlhany v. Kenneth A. Carter, Sr., Kenneth A. Carter, Sr. d/b/a Carter & Son Pest Control, Carter & Son Pest Control, Inc. and Erick Cogburn,*  
C/A No.: 2011-CP-05-65

PETERS, MURDAUGH, PARKER, ELTZROTH  
& DETRICK, P.A.

BY:   
William F. Barnes, III

May 22, 2013  
Hampton, South Carolina

LAW OFFICES  
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

JOHN E. PARKER  
CLYDE A. ELTZROTH, JR.  
J. PAUL DETRICK  
DANIEL E. HENDERSON  
MARK D. BALL  
RANDOLPH MURDAUGH, IV  
RONNIE L. CROSBY  
R. ALEXANDER MURDAUGH  
BERT G. UTSEY, III  
RANDOLPH MURDAUGH, III  
GRAHAME E. HOLMES  
LEE D. COPE  
MATTHEW V. CREECH  
LEAGUE B. CREECH  
STEVEN D. MURDAUGH  
WILLIAM F. BARNES, III  
AUSTIN H. CROSBY  

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INACTIVE

PROFESSIONAL ASSOCIATION  
101 MULBERRY STREET EAST  
P.O. BOX 457  
HAMPTON, SOUTH CAROLINA  
29924-0457

May 22, 2013

RANDOLPH MURDAUGH, SR.  
(1887-1940)  
RANDOLPH MURDAUGH, JR.  
(1915-1998)  
J. ROBERT PETERS, JR.  
(1927-2008)

TELEPHONE  
(803) 943-2111  
TOLL FREE  
(866) 943-2113  
FACSIMILE  
(803) 943-3943  
(803) 914-2014  
WEBSITE  
www.pmped.com

William F. Barnes, III  
Direct Dial: (803) 914-6702  
Email: [wbarnes@pmped.com](mailto:wbarnes@pmped.com)  
Asst. Email: [mdavis@pmped.com](mailto:mdavis@pmped.com)

The Honorable Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211-1629

*Re: Claude McAlhaney v Kenneth A. Carter, Sr., Kenneth A. Carter, Sr, d/b/a Cater & Son  
Pest Control, Carter & Son Pest Control, Inc., and Erick Cogburn  
Case#: 2011-CP-05-65  
Tracking Number: 2013-000578*

Dear Ms. Kitchings:

Enclosed for filing in your office, please find the original and six copies of a Motion to Reinstatement Appeal in the above entitled matter.

Please return a copy of the filed documents in the envelope provided.

By copy of this letter all counsel of record is being served.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd ✓  
Enclosures as stated

cc: Danielle F. Payne, Esquire  
Richard B. Ness, Esquire

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**SC Court of Appeals**