

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable S. Jackson Kimball, Master-in-Equity

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Case No. 2011-CP-46-01595

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Crescent Resources, LLC,.....Respondent,

v.

J & J Properties of Lake Wylie, LLC

and

Jerrold H. Pettus, Sr., ..... Appellants.

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REPLY IN SUPPORT OF MOTION TO REINSTATE APPEAL

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Appellants seek an order pursuant to Rule 260(a), SCACR, reinstating the appeal in this matter. Appellants have obtained new counsel to prosecute the appeal and ask the Court to grant them the opportunity to have this case decided on the merits.

The appeal was dismissed by order of the Court on June 7, 2013, for failure to file and serve a corrected proof of service. As explained in the motion to reinstate the appeal, counsel for Appellants failed to file a corrected proof of service due to illness. In addition, counsel received an email from Appellants on May 13, 2013, indicating that they were dissatisfied with his representation of them and intended to hire new counsel to prosecute the appeal. The emails are attached to the motion to reinstate the appeal. On July 3, 2013, Appellants retained the undersigned counsel to represent them on the appeal.

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Given these circumstances, Appellants submit that they have met the good cause standard under Rule 260(a), SCACR.

Respondent contends that the Court should follow the good cause standard set forth in Rule 55(c), SCRCF. But the good cause standard in Rule 55(c) does not apply to the reinstatement of appeals. A party seeking relief from entry of default is not in the same position as a party seeking to have an appeal reinstated. A party seeking relief from entry of default never answered the complaint or appeared in the case in the first instance. A party seeking to reinstate an appeal, on the other hand, has appeared in the case and notified the court and his adversary of the intent to appeal. That is what happened here. Appellants filed and served the Notice of Appeal on December 13, 2012, giving both the Court and Respondent notice of the intent to appeal.

Even if the good cause standard in Rule 55(c) did apply, courts recognize that the standard should be “liberally construed to promote justice and dispose of cases on the merits.” *Melton v. Olenik*, 664 S.E.2d 487, 492 (Ct. App. 2008). Appellants ask the Court to permit the reinstatement of the appeal so that the case can be disposed of on the merits rather than on the ground that Appellants’ now former counsel failed to file a corrected proof of service. Appellants filed the motion to reinstate the appeal quickly, within 10 days of the Court’s order dismissing the appeal, which is five days earlier than the 15-day deadline provided for under Rule 260(a), SCACR.

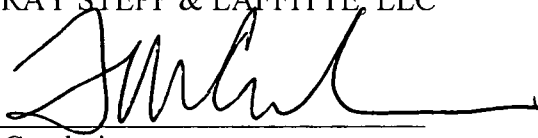
Respondent has not established any prejudice that would result if the appeal is reinstated. The appellate court rules give aggrieved parties the right to seek review of judgments against them. Rule 201, SCACR. Appellants availed themselves of this right by filing and serving a Notice of Appeal on December 13, 2012. Respondent has had notice of Appellants’ intent to appeal since that time, and does not contend that the Notice of Appeal was not served or that the appeal was not perfected. Additionally, Respondent did not seek a dismissal of the appeal. The Court dismissed the appeal *sua*

*sponte*. Accordingly, Respondent has failed to demonstrate any prejudice that would result from reinstating the appeal.

Having established good cause under Rule 260, SCACR, Appellants ask the Court to grant the motion to reinstate the appeal. Appellants seek to have their case decided on the merits. With new counsel, Appellants intend to pursue the appeal and to fully comply with the appellate court rules.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: \_\_\_\_\_

  
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Attorneys for Appellants

Columbia, South Carolina  
July 5, 2013

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PROOF OF SERVICE

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I, the undersigned, of the law firm of Sowell Gray Stepp & Laffitte, LLC, attorneys for Appellants, certify that I have served the Reply in Support of Motion to Reinstate Appeal by placing a copy of same in the United States Mail, postage prepaid, on July 5, 2013, addressed to:

Wm. Mark White  
Jeremy D. Melville  
Spencer & Spencer, PA  
Post Office Box 790  
Rock Hill, South Carolina 29731

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Tina M. Cundari

Columbia, South Carolina  
July 5, 2013