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**Jan 21 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Morgan, Circuit Court Judge

Common Pleas Case No.: 2020-CP-23-05229

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Appellate Case No. 2024-001849

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Boyce Street, LLC

*Appellant,*

v.

David Smith Company, LLC,

*Respondent.*

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**REPLY IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING**

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Sarah Anderson Timmons, Esquire  
SC Bar No. 100007  
25 Delano Drive, Suite E  
Greenville, SC 29601  
(864)906-0289  
sarah@timmonsbrogdon.com

Attorney for Respondent

Respondent/Defendant David Smith Company, LLC (“Respondent”) respectfully submits this Reply in Opposition to the Appellant/Plaintiff Boyce Street, LLC (“Appellant”)’s Petition for Rehearing. Respondent opposes Appellant’s petition for rehearing, because this Court correctly concluded in its Order dated January 3, 2025 that Appellant’s appeal was untimely and dismissed the appeal, pursuant to Rule 203(b)(1), SCACR.

“[T]he notice of appeal is a jurisdictional requirement, and the appellate courts have no authority to extend the time in which the notice of intent to appeal must be served.” *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985). Rule 203(b), SCACR states:

A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a **timely** motion for judgment n.o.v. (Rule 50 SCRPC), motion to alter or amend the judgment (Rules 52 and 59 SCRPC), or a motion for a new trial (Rule 59, SCRPC) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.

Rule 203(b), SCACR (emphasis added).

Because “[t]he requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772 (2004) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)); accord *Camp v. Camp*, 386 S.C. 571, 574, 689 S.E.2d 634, 636 (2010). Therefore, Appellant’s appeal not only must be dismissed as untimely, the Court has no authority or discretion to “rescue” Appellant by extending or ignoring the deadline for service of notice and cannot consider whether Respondent would be prejudiced by same.

Respondent would further note that Appellant was on notice that the appellate deadline was not tolled, as Respondent filed its Memorandum in Opposition to Appellant's Motion for New Trial based on Appellant's untimeliness on September 13, 2024 and the deadline for Appellant to file an appeal on the underlying judgment was not until September 30, 2024.

Therefore, for the reasons stated herein and stated in Respondent's Motion to Dismiss, Respondent respectfully requests the Court deny Appellant's Petition for Rehearing and renews its request that this Court dismiss Appellant's appeal.

January 20, 2025

Respectfully submitted,

/s/ Sarah Anderson Timmons, Esquire  
Sarah Anderson Timmons, Esquire  
SC Bar No. 100007  
25 Delano Drive, Suite E  
Greenville, SC 29601  
(864)906-0289  
sarah@timmonsbrogdon.com

*Attorney for Respondent*

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**PROOF OF SERVICE**

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Pursuant to Rule 262(c)(3), SCACR and Section (d)(1) of the Supreme Court's Order dated April 24, 2024, undersigned counsel hereby certifies I have served a copy of Respondent's Reply in Opposition to Appellant's Petition for Rehearing on counsel of record by electronic mail (see attached sent email):

**Counsel Served:**

Devon M. Puriefoy  
Truluck Thomason LLC  
3 Boyce Avenue  
Greenville, SC 29601  
devon@truluckthomason.com  
(864) 331-1751

[Signature Block Next Page]

By: /s/ Sarah Anderson Timmons  
Sarah Anderson Timmons, Esq.  
SC Bar No. 100007  
25 Delano Drive, Suite E  
Greenville, SC 29601  
(864)906-0289  
sarah@timmonsbrogdon.com

*Attorney for Respondent*

January 20, 2025  
Greenville, South Carolina

**Monday, January 20, 2025 at 12:34:38 Eastern Standard Time**

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**Subject:** Re: Boyce St, LLC v. David Smith Company, LLC: 2024-001849  
**Date:** Monday, January 20, 2025 at 12:34:27 PM Eastern Standard Time  
**From:** Sarah Timmons  
**To:** Devon Puriefoy, Tom Dudley  
**CC:** Brandi Larobardiere  
**Attachments:** 2025.01.20 Reply in Opposition to Petition for Rehearing - DSC.pdf

Good afternoon,

Attached please find a copy of the Reply in Opposition to the Petition for Rehearing in the above-referenced case. I will file a copy with the Court of Appeals shortly.

Thank you,

Sarah Timmons  
Timmons Law Firm, LLC  
25 Delano Drive, Suite E  
Greenville, SC 29601  
(864)906-0289

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