

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

69896

Haigh Porter, Special Referee

Case No. 2011-CP-33-00016

RECEIVED

SEP 25 2013

SC Court of Appeals

Wells Fargo Bank, N.A. successor-in-interest
to Wachovia Bank, National
Association.....Respondent,

v.

Marion Amphitheatre, LLC, David P. Gannon,
Michael Guarco, Carolina Entertainment Complex, LLC
and 4 Prophets, LLC a/k/a 4 Profits,
LLC.....Defendants,

Of Whom,
Marion Amphitheatre, LLC, and Michael Guarco are
the.....Appellants,

MOTION TO DISMISS APPELLANTS' APPEAL

David B. Wheeler
Moore & Van Allen PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, South Carolina 29413-2828
(843) 579-7000
(843) 579-8727 Fax
Attorneys for Respondent

September 23, 2013

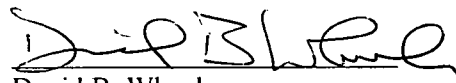
Other Counsel of Record:

E. Lloyd Willcox, II
Willcox, Buyck & Williams, P.A.
P.O. Box 1909
Florence SC 29503-0909
(843) 662-3258 Tel (843) 662-1342 Fax
Attorneys for Appellants

MOTION

Respondent, Wells Fargo Bank, N.A., moves that Appellants' (hereinafter, collectively, referred to as "Guarco") appeal be dismissed as violative of SCACR 208 and 209 and untimely. Guarco timely filed a Notice of Appeal on July 3, 2013. Prior to the deadline for the filing of the Appellants' Designation of Matter to be Included in the Record on Appeal ("Designation of Matter") and Initial Brief, Guarco requested a 30-day extension of time, to which Respondent did not object and which the Court approved in its Order filed August 7, 2013 ("Extension Order"). The Extension Order prescribed an extended deadline for Appellants to file their Designation of Matter and Initial Brief on September 2, 2013. On September 3, 2013, Guarco again requested a filing extension. Believing Appellants to be engaging in unreasonable delay, Respondent objected to the second extension request by its Objection to Appellants' Second Motion for Extension of Time to File its Initial Brief and Designation of Matter, dated September 6, 2013. To date, the Court has not ruled on the second extension request.

SCACR 240(b) clearly provides that absent a ruling by this Court or a provision in the Court Rules to the contrary, "...the time limits imposed by these Rules shall not be stayed pending by the filing of a motion or petition." Under the circumstances, Guarco has failed to comply with the prescribed time limits for pursuing and perfecting an appeal and, as such, it is respectfully submitted that the within appeal should be dismissed by the Court.



David B. Wheeler
Moore & Van Allen PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, South Carolina 29413-2828
(843) 579-7000
Attorneys for Respondent

September 23, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Haigh Porter, Special Referee

Case No. 2011-CP-33-00016

Wells Fargo Bank, N.A. successor-in-interest
to Wachovia Bank, National Association..... Respondent,

v.

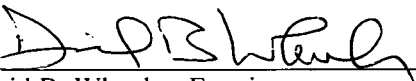
Marion Amphitheatre, LLC, David P. Gannon,
Michael Guarco, Carolina Entertainment Complex, LLC
and 4 Prophets, LLC a/k/a 4 Profits, LLC..... Defendants,

Of Whom,
Marion Amphitheatre, LLC, and Michael Guarco are the..... Appellants,

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED the Respondent's Motion to Dismiss Appellants' Appeal on Marion Amphitheatre, LLC and Michael Guarco by depositing a copy in the United States Mail, postage prepaid, addressed to their attorney of record:

E. LLOYD WILLCOX, II
P.O. Box 1909
Florence SC 29503-0909
Attorney for Appellants

By: 

David B. Wheeler, Esquire
Moore & Van Allen PLLC
P.O. Box 22828
Charleston, SC 29413-2828
**Attorney for Respondent Wells Fargo Bank, N.A.
successor-in-interest to Wachovia Bank, National Association**

September 23, 2013

September 23, 2013

RECEIVED

SEP 25 2013

SC Court of Appeals

David B. Wheeler
Certified Bankruptcy Specialist
South Carolina Supreme Court
T 843 579 7015
F 843 579 8727
davidwheeler@mvalaw.com

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Calhoun Building
1015 Sumter Street
Columbia, SC 29201

Moore & Van Allen PLLC

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

**Re: Respondent: Wells Fargo Bank, N.A. successor-in-interest to Wachovia Bank,
National Association**
**Defendants: Marion Amphitheatre, LLC, David P. Gannon, Michael Guarco, Carolina
Entertainment Complex, LLC and 4 Prophets, LLC a/k/a 4 Profits, LLC**
Appellants: Marion Amphitheatre, LLC, and Michael Guarco
Case No. 2011-CP-33-00016
MVA File No. 027497.7

Dear Ms. Kitchings:

Enclosed for filing, please find one (1) original and seven (7) copies of a Motion To Dismiss Appellants' Appeal and the Proof of Service in the above case. Also enclosed is our firm's check in the amount of \$25.00 for the filing fee.

Please return a filed copy of the Motion and Proof of Service in the enclosed, self-addressed, stamped envelope.

Sincerely,

MOORE & VAN ALLEN PLLC



David B. Wheeler

DBW/ecp

cc (w/ encl.): E. Lloyd Willcox, II, Esquire
Willcox, Buyck & Williams, P.A.
P.O. Box 1909
Florence, SC 29503-0909