

THE SOUTH CAROLINA COURT OF APPEALS

November 1, 2013

Clerk of Court ,

Re: Appellate Case No. 2013-000610

RECEIVED

NOV 15 2013

SC Court of Appeals

Motion to Recall Remittitur and Reinstate Case

Pursuant to Rule 221 and Rule 240 ,Appellant motions court to recall the remittitur and reinstate case. Appellant believe the case was remitted in error to the Common Pleas Court of Greenville, South Carolina. Appellant is entitled to be heard on appeal in the name and justice and fairness.

BANKRUPTCY AUTOMATIC STAY

On May 3, 2013 Appellant filed a bankruptcy petition with the South Carolina Bankruptcy Court under case number 13-02646 hb. An automatic stay is an automatic injunction that halts actions by creditors. The automatic stay begins at the moment the bankruptcy petition is filed . On May 3,2013 the automatic stay went into effect . At this stage of the Appeal, the case is stayed until the completion of the Bankruptcy case. In my case the tolling of time to receive my transcripts from the commons pleas court and time

to file my brief ought to have been stayed or suspended. Here in my case it appears the S.C. Appeals Court continued to toll time for not receiving the Appellant briefs even though Jurisdiction had shifted to the Bankruptcy Case. Federal law and case law supports my position.

Pursuant to U.S. Bankruptcy Code section 362 (a) (1) Automatic Stay provides in part “ the commencement or continuation , including the issuance or employment of process, of a judicial, administrative , or other action or proceeding against the debtor that would have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title is stayed. Automatic Stay provisions work to protect the debtor against certain actions from the creditor including : beginning or continuing judicial proceedings against the debtor’s, actions to obtain the debtor’s property. The plain language of 11 USC 362(a)(1) automatic stay is unambiguous. Thus, the debtor in a bankruptcy proceeding is protected from the commencement or continuation of suit.

The Tenth Circuit Court of Appeals reversed its longstanding position , and held that section 362(a) of the Bankruptcy Code does automatically stay the debtor’s appeal of an action commenced against the debtor prior to

a bankruptcy filing , regardless of whether the debtor is the appellant or the appellee. This decision aligns the Tenth Circuit with at least nine other circuits. In TW Telecom Holdings Inc. v. Carolina Internet Ltd., Case No.11-1068(10th Cir. Nov. 15,2011) . The court held that it was rejecting its prior interpretation of section 362(a)(1), and stated that , “[f]rom this date forward , this Circuit will read section 362..... to stay appeals in proceeding that were originally brought against the debtor , regardless of whether the debtor is the appellant or the appellee. Thus, whether a case is subject to the automatic stay must be determine at it inception.” The court therefore order the debtor’s appeal stayed.

RECALL THE REMITTITUR

When the remittitur have been properly sent , the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. Mickle v Blackmon, 255 S.C. 136,177 S.E.2d 548 (1970);Thomas v. Lynch, 87 S.C. 44, 68 S.E. 817 (1910); Carpenter v. Lewis , 65 S.C. 400, 43 S.E. 881 (1903); State v. Keels, 39 S.C. 553 17 S.E 802 (1893). The only exception to this rule is when the remittitur is sent down by mistake ,error or inadvertence of the Court. Keels, supra.

The remittitur in this case was sent down by error as the US Bankruptcy Code section 362 Automatic Stay went into effect on May 3, 2013. The Appellant motions the Court of Appeals to recall the remittitur and reinstate my case consistence with Cases cited above and consistent with the Bankruptcy Code. Appellant have a constitutional right to be heard and is entitled to have my case heard on appeal.

Enclosed please find a copy of the South Carolina Court of Appeals Order dismissing the case . (Exhibit 1). Additionally please find a copy of the

I certify a copy of this letter have been mailed to all parties of interest on this 11 day of November 2013.

Respectfully Submitted ,



Sonya Hawthorne
9 Crossbow Way

Greenville, SC 29607

(864)918-9041

Exhibit 1

The South Carolina Court of Appeals

The Bank of New York Mellon Trust Company as
successor-in interest to JP Morgan Chase Trust,
Respondent,

v.

Sonya D. Hawthorne, Appellant.

Appellate Case No. 2013-000610

The Honorable Charles B. Simmons, Jr.
Greenville County
Trial Court Case No. 2012CP2307781

ORDER

Appellant has failed to timely serve and file the appellant's initial brief and designation of matter as required by Rule 208 and 209 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY *Jayakits*
CLERK

Columbia, South Carolina

cc:
Sonya D. Hawthorne
Jason David Wyman

FILED

24 July 2013

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FOR THE COURT

BY _____

Sonya D. Hawthorne
CLERK

Columbia, South Carolina

cc:

Sonya D. Hawthorne
Jason David Wyman

FILED

24 July 2013

Exhibit 2

Returned Mail Notice to the Debtor/Debtor's Attorney

May 17, 2013

From: United States Bankruptcy Court, District of South Carolina

Re: U.S. Courts, Bankruptcy Noticing Center - Returned Mail Notice

In re: Sonya Hawthorne Briggs, Case Number 13-02646, hb

TO THE DEBTOR/DEBTOR'S ATTORNEY:

The attached document was mailed to the notice recipient(s) listed below via the U.S. Postal Service, and it was returned to the Bankruptcy Noticing Center as undeliverable. Please be advised that dischargeability of a debt may be affected if a creditor fails to receive certain notices. You should determine whether the address should be updated.

NOTE: THIS FORM CANNOT BE USED TO ADD A NEW CREDITOR NOT PREVIOUSLY LISTED ON YOUR SCHEDULES.

If this form is used by the court in place of filing a separate notice of change of address and/or an amended schedule: 1) determine the updated address and send the attached document to the notice recipient; 2) type or print legibly the updated address below; 3) sign and date the form; and 4) file this form with the court at the following address:

**J. Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423**

Notice Recipient's Address on Envelope Returned to the Bankruptcy Noticing Center:

US DEP. EDUCATION
BOX 7202
UTICA NY 13504

THE UPDATED ADDRESS IS:

Signature of Debtor or Debtor's Attorney

Date

The Bankruptcy Noticing Center does not respond to messages regarding returned mail notification. Please contact the U.S. Bankruptcy Court where the case is pending with questions or comments.

Over
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Exhibit 2

UNITED STATES BANKRUPTCY COURT
District of South Carolina

Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines

The debtor(s) listed below filed a chapter 13 bankruptcy case on 5/3/13.
You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the Bankruptcy Clerk's Office at the address listed below.
NOTE: The staff of the Bankruptcy Clerk's Office cannot give legal advice.

Creditors - Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side For Important Explanations.

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Sonya Hawthorne Briggs
aka Sonya Hawthorne
9 Crossbow Way
Greenville, SC 29607

Case Number:
13-02646-hb

Social Security / Individual Taxpayer ID / Employer Tax ID / Other Nos:
xxx-xx-7095

Attorney for Debtor(s) (name and address):
Sonya Hawthorne Briggs
9 Crossbow Way
Greenville, SC 29607
Telephone Number: 864-918-9041

Bankruptcy Trustee (name and address):
Gretchen D. Holland
3 Caledon Court, Suite A
Greenville, SC 29615
Telephone number: (864) 242-0314

Meeting of Creditors:

Date: June 5, 2013 **Time:** 02:00 PM
Location: Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, SC 29306-2355

Deadlines:

Papers must be *received* by the Bankruptcy Clerk's Office by the following deadlines:

Deadline to File a Proof of Claim

For all creditors (except a governmental unit): **9/3/13** For a governmental unit (except as otherwise provided in Fed. R. Bankr. P. 3002(c)(1)): **10/30/13**

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

8/5/13

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

The hearing on confirmation will be held:

Date: 7/11/13 Time: 09:00 AM

Location: Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, SC 29306-2355

*Time: In the event the time of the confirmation hearing is changed, an amended notice of confirmation hearing will be sent.

Creditors May Not Take Certain Actions

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the Court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Mailing Address of the Bankruptcy Clerk's Office:
United States Bankruptcy Court
J. Bratton Davis United States Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423
Telephone Number: 1-803-765-5436
www.scb.uscourts.gov

Public Business Hours: 9:00 AM - 5:00 PM

FILED BY THE COURT ON:

05/03/13

L. Jefferson Davis IV (Acting) Clerk
U.S. Bankruptcy Court

Dated: 5/3/13

EXHIBIT 2

Returned Mail Notice to the Debtor/Debtor's Attorney

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Over
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