

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

OFFICE OF THE MASTER IN EQUITY

Mikell Scarborough, Judge

Appellate Case No. 2013-002065

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DEC 16 2013

SC Court of Appeals

Bank of America, N.A.

Respondent,

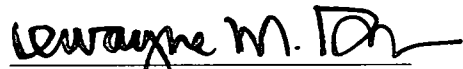
v.

Frank Cook a/k/a Frank W. Cook,
Judith H. Cook and Ian Cook, Defendants

Of whom Frank Cook & Judith Cook are the

Appellants.

APPELLANTS' RETURN TO RESPONDENT'S MOTION TO DISMISS


Dwayne M. Green (S.C. Bar # 9559)
HAMPTON GREEN, LLC
602 Rutledge Avenue
Charleston, SC 29403
843-266-2626 Telephone
843-266-2627 Facsimile
dwayne@hamptongreenllc

Attorneys for Appellants

December 11, 2013

INDEX

Index.....2

Table of Authorities.....3

Memorandum.....4

Conclusion.....5

TABLE OF AUTHORITIES

RULES

6(A), SCRPC

CASES

Camp v. Camp, 386 S.C. 571, 574-575, 689 S.E.2nd 634, 636 (2010).

MEMORANDUM

Appellants Frank and Judith Cook file this Memorandum in response to Respondent Bank of America, N.A.'s motion to dismiss this appeal. Respondents based their Motion on Rule 224 SCRCR, alleging that this court lacks jurisdiction to hear the appeal based on a late filing. According to the Respondent's brief, "By Rule, Appellants were therefore required to serve the Notice of Appeal by September 8, 2013." Respondent's Memorandum in Support of Motion to Dismiss, page 4, citing Rule 203, SCACR.

Rule 6(a) of the South Carolina Rules of Civil Procedure states:

"In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default, which the designated period of time begins to run is not to be included. *The last day of the period is so computed is to be included unless it is a Saturday, Sunday or a State or Federal holiday in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday.*" Rule 6(a), SCRCP.

Respondent's Motion to Dismiss alleges that Appellants were required to serve the Notice of Appeal by September 8, 2013. September 8, 2013 is a Sunday. Therefore, it was impossible for Appellants to serve a Notice of Appeal on a day which the post office and court of appeals were both closed. Also Rule 6(a) of the SCRCP specifically states that Saturdays, Sundays or state and federal holidays are not included in the designated period for service, if service is to be effected on that date. Rule 6(a), SCRCP.

Accordingly, Appellants' notice of appeal could not be served on September 8, 2013 as, Respondents claims, since it was a Sunday, the appeal had to be served on

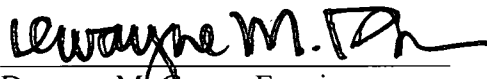
September 9, 2013, the date it was actually served. By requiring that the Notice of Appeal be served on a Monday rather than a Sunday, this court would neither be extending or expanding the time frame in which the notice of intent to appeal must be served. Camp v. Camp, 386 S.C. 571, 574-575, 689 S.E.2nd 634, 636 (2010).

Based on the plain language of Rule 6(a) of the SCRPC, and the fact that September 8, 2013 is a Sunday, Appellants properly served the Notice of Appeal on Monday, September 9, 2013, the first eligible day for service after the thirty day time period for noticing the appeal past (excluding Saturdays, Sundays, and state and federal holidays).

CONCLUSION

Based on the same, these Appellants respectfully requests that Respondent's Motion to Dismiss be denied.

Respectfully Submitted,
HAMPTON GREEN, LLC



Dwayne M. Green, Esquire
602 Rutledge Avenue
Charleston, South Carolina 29403
Telephone: 843-266-2626
Facsimile: 843-266-2627
E-Mail: dwayne@hamptongreenllc.com
Attorney for Appellants

December 11, 2013

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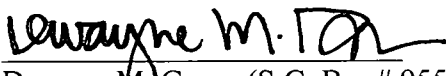
Frank Cook a/k/a Frank W. Cook,
Judith H. Cook and Ian Cook, Defendants

Of whom Frank Cook & Judith Cook are the

Appellants.

PROOF OF SERVICE

I certify that I have served Appellants' Return to Respondent's Motion to Dismiss on all attorneys and parties of record by depositing a copy of it in the United States Mail, postage prepaid, on December 11, 2013, to the addresses on the attached service list.


Dwayne M. Green (S.C. Bar # 9559)
HAMPTON GREEN, LLC
602 Rutledge Avenue
Charleston, SC 29403
843-266-2626 Telephone
843-266-2627 Facsimile
dwayne@hamptongreenllc

Attorneys for Appellants

Teresa Van Vlakte, Esquire
Post Office Box 11264
1300 Pickens Street
Columbia, South Carolina 29211-1264

H. Guyton Murrell, Esquire
Post Office Box 11264
1300 Pickens Street
Columbia, South Carolina 29211-1264

Sean Matthew Foerster, Esquire
Rogers Townsend & Thomas, PC
220 Executive Center Drive
Post Office Box 100200
Columbia, South Carolina 29202-3200

HAMPTONGREEN LLC
ATTORNEYS AT LAW

602 Rutledge Avenue
Charleston, SC • 29403 or
P.O. Box 20009
Charleston, SC • 29413
tel: 843-266-2626
fax: 843-266-2627

Dwayne M. Green
ATTORNEY AT LAW
dwayne@hamptongreenllc.com

December 11, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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RE: *Bank of America, N.A. vs. Frank Cook(2)*
Appellate Case No. 2013-002065

Dear Ms. Kitchings:

Enclosed please find an original and six copies of Appellant's Return to Respondent's Motion to Dismiss in the above referenced case.

By copy of this letter to counsel of record for the Respondent, I am serving them with a copy of this return. If you need anything further in order to file this return, do not hesitate to give me a call.

With kind regards, I remain

Yours very truly,
HAMPTON GREEN, LLC



Dwayne M. Green

DMG/lg
Enclosure

cc: Teresa Van Vlakte, Esquire
H. Guyton Murrell, Esquire
Mr. Frank Cook
Ms. Judith Cook
Sean Matthew Foerster, Esquire