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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Patrick C. Fant, III
Tenth Judicial Circuit

Case No. 2026-001361
Appellate Case No.

American Pharma Machinery, LLC..... Appellant

v.

Clements Electrical, Inc., Alton Frederick Clements, Jr., Janet Gay Clements, Jason Dix, Nicholas Behringer, Sherry L. Burgess, Nicholson H. Jerry, Francesco Majia Armando Frank, Melissa C. Chastain, Jared Adam Pierce.....Respondents

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MOTION TO DISMISS FOR LACK OF APPELLATE JURISDICTION

Pursuant to Rules 240 and 269, SCACR, Defendants Clements Electrical. Inc., Alton Frederick Clements, Jr., Janet Gay Clements, Nicholas Behringer, Jeffery Pilgrim, and Jason Dix (hereinafter "Respondents" or "Clements Electrical Defendants") hereby move for dismissal of Plaintiff American Pharma Machinery, LLC's (hereinafter "Appellant") appeal on the grounds that Appellant's notice of appeal is untimely and therefore, this Court lacks appellate jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

On March 7, 2022, Appellant filed an Amended Complaint against Respondents asserting causes of action for unjust enrichment; intentional infliction of severe emotional distress; breach of contract; breach of implied duty of good faith and fair dealing; and conversion. Respondents filed their Answer to the Amended Complaint on March 9, 2022.

A history of the proceedings, insofar as necessary to an understanding of the Motion, is as follows:

1. On July 3, 2025, Dorothy Pierce filed a Motion for Protective Order, requesting protection from in-court appearances from September 2, 2025, through January 30, 2026.
2. On July 22, 2025, the Honorable Judge R. Lawton McIntosh issued an Order denying the Motion for Protective Order.
3. On August 5, 2025, the Clements Electrical Defendants noticed the 30(b)(6) deposition of Appellant for September 15, 2025, at 11:00 a.m. at the Oconee County Courthouse. The notice was sent via email to Dorothy Pierce, counsel for Appellant, and all other counsel of record.
4. On September 15, 2025, Dorothy Pierce, the owner and sole remaining employee of Appellant, appeared at the deposition. Counsel for Appellant did not. Because counsel for the Clements Electrical Defendants could not question Appellant without its attorney present, the deposition did not go forward.
5. On November 13, 2025, counsel for the Clements Electrical Defendants sent an email to Dorothy Pierce and counsel for Appellant asking for dates in December 2025 for the 30(b)(6) deposition of Appellant.

6. On November 13 and 14, 2025, Dorothy Pierce responded that she is the principal of Appellant and will be testifying on its behalf. Dorothy Pierce further stated that she is campaigning in Uganda until January 12, 2026 and will not sit for an in-person deposition until February 2026, despite having her motion for protection denied.
7. On November 18, 2025, during the hearing on the Clements Electrical Defendants' Motion to Strike Dorothy Pierce's Complaint, the Honorable Judge R. Lawton McIntosh placed this case in the #1 spot on the April 6, 2026, Jury Trial Roster.
8. On December 16, 2025, the Clements Electrical Defendants re-noticed the 30(b)(6) deposition of Appellant for January 8, 2026, at 11:00 a.m. at the Oconee County Courthouse. The notice was sent via email to counsel for American Pharma and all other counsel of record. Counsel for the Clements Electrical Defendants appeared at the specified time and place. Neither a representative of Appellant nor its counsel appeared at the deposition.
9. On January 8, 2026, the Clements Electrical Defendants filed a Motion to Strike Appellant's Complaint and supplemented the motion with a Memorandum in Support on January 30, 2026.
10. On February 3, 2026, Appellant filed a Memorandum in Opposition to the Clements Electrical Defendants' Motion to Strike.
11. On February 5, 2026, a hearing was held before the Honorable Judge Patrick C. Fant, III. Counsel for the Clements Electrical Defendants and counsel for Appellant attended the hearing. During the hearing, counsel for Appellant informed the Court that Dorothy Pierce was stuck in Uganda and that, due to her recently running for

political office in Uganda, was being prevented by the Ugandan government from leaving the country.

12. On February 26, 2026, the Court denied the Clements Electrical Defendants' Motion to Strike but ordered Dorothy Pierce to sit for a deposition within thirty (30) days, or risk the complaint being stricken.

13. On March 3, 2026, a WebEx hearing was held before the Honorable Judge Patrick C. Fant, III on the Clements Electrical Defendants' Motion for Reconsideration. Counsel for the Clements Electrical Defendants and counsel for Appellant attended the hearing. During the hearing, counsel for Appellant informed the Court that he had unintentionally misled the Court during the February 5, 2026, hearing on the Clements Electrical Defendants' Motion to Strike American Pharma's Complaint. Specifically, counsel for Appellant informed the Court that on March 2, 2026, he was informed by Dorothy Pierce that she was not being detained by the Ugandan government; in reality, on November 5, 2025, Dorothy Pierce was ordered by an immigration judge to leave the United States and cannot re-enter the country. Counsel for Appellant further informed the Court that because Appellant cannot produce a witness to testify on its behalf at a deposition or at the April 6, 2026, trial, Appellant cannot prosecute its case against the defendants.

14. On March 3, 2026, the Clements Electrical Defendants filed a Motion for Reconsideration, asking the Court to reconsider its February 26, 2026, ruling and strike American Pharma's Complaint, in light of the new information provided by counsel for Appellant.

15. On March 5, 2026, the court issued an Order granting the Clements Electrical Defendants' Motion for Reconsideration, and Appellant's Complaint was stricken. A formal order was issued by the court on March 18, 2026.

16. Appellant filed its Notice of Appeal on June 12, 2026.

ARGUMENT

Appellant failed to timely serve the notice of appeal on the Clements Electrical Defendants. As a result, Appellant's failure to comply with the service requirements, which are jurisdictional in nature, prevented this Court from acquiring appellate jurisdiction over the matter, and, since appellate jurisdiction does not exist, the appeal must be dismissed.

The requirement of service of the notice of appeal is jurisdictional"; that is, "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." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)).

"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." Rule 203(b)(1), SCACR; *see* Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal … may be extended … by the appellate court."). A timely motion under Rule 59, SCRCP, stays the time for appeal until "receipt of written notice of entry of the order granting or denying such motion," Rule 203(b)(1), SCACR.

The Circuit Court provided notice of the entry of its order denying Plaintiff's Motion to Reconsider by email service of the Notice of Electronic Filing dated March 5, 2026, at 8:31 A.M.

The Appellant filed its Notice of Appeal on June 12, 2026 – sixty-eight (68) days after the deadline for filing a Notice of Appeal.

The time-stamp on the circuit court's e-mail providing the parties notice of the entry of its order was the starting point for calculating the thirty-day deadline. *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 422 S.C. 211, 217, 810 S.E.2d 856, 859 (2018). In *Wells Fargo*, the South Carolian Supreme Court discussed the thirty-day deadline for filing a notice of appeal and stated, "[A]n email providing written notice of entry of an order or judgment for purposes of Rule 203(b)(1), SCACR[,] triggers the time to appeal *as long as the email is received from the court, an attorney of record, or a party." Id.* at 217, 810 S.E.2d at 859. The court explained that the notice of entry of the order being appealed does not have to be formally served by the court or an opposing party but rather "[a]ll that is required to trigger the time to appeal is that the parties *receive* such notice." *Id.* at 215-16, 810 S.E.2d at 858.

The failure to timely serve a notice of appeal "divests this court of subject matter jurisdiction and results in dismissal of the appeal." *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999).

Appellant received notice of the entry of the order denying its Motion to Reconsider and failed to file a Notice of Appeal within the mandated thirty-day deadline. This Court lacks jurisdiction to entertain this appeal, and it must be dismissed.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that Appellant's appeal be dismissed for lack of appellate jurisdiction. Respondents further request that they be awarded their costs pursuant to Rule 269, SCACR, as Appellant and its counsel were both fully aware that the notice of appeal was untimely and frivolous.

Respectfully submitted,

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Columbia, South Carolina
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