

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
CIRCUIT COURT

John C. Hayes, III, Circuit Court Judge

Case No.: 2009-CP-46-01244

RECEIVED

JAN 10 2014

SC Court of Appeals

70914

Phil Vasey and Pamela Vasey, Appellants,

vs.

Colton Builders, LLC, Respondent.

MOTION TO DISMISS

This motion is filed pursuant to Rule 240 of the South Carolina Appellate Court Rules. Through this motion, the Respondent requests that the Court dismiss this appeal because the appeal was not timely filed.

BACKGROUND

A hearing was held on August 27, 2013 pursuant to a Notice of Motion and Motion to Confirm Arbitration award filed by the Respondent, as well as a Notice of Motion and Motion to Vacate Arbitration Award filed by the Appellants. Appellants failed to appear for mediation and failed to appear for arbitration. The case was heard in their absence. An Order denying the Appellants' motion to vacate and confirming the arbitration award was signed by the Honorable John C. Hayes, III on September 16, 2013. The Order was filed with the York County Clerk of Court on September 23, 2013 and a copy of the Order was mailed to counsel for both the Appellants and the Respondent on September 23, 2013, as evidenced by the Form 4 completed by the Clerk of Court's Office. The signed and filed Order was received office of counsel for the Respondent on September 24, 2013.

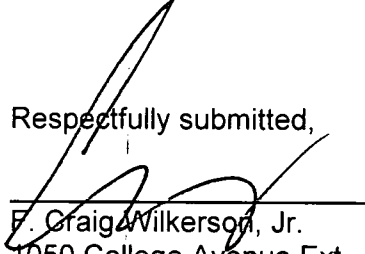
In addition to the Order being mailed to both attorneys from the Clerk of Court, a copy of the Order was also mailed from Respondent's attorney's office to Appellants' counsel by standard U.S. Mail on September 24, 2013, allowing for receipt of the Order by Appellants' counsel to be no later than October 2, 2013. Thirty days from October 2, 2013 would be November 2, 2013.

CONCLUSION

Because the appeal was not timely filed, the Court should dismiss this appeal.

January 6, 2014

Respectfully submitted,



F. Craig Wilkerson, Jr.
1050 College Avenue Ext.
Rock Hill, SC 29732
Attorney for Respondent
803-324-7200

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Phil Vasey and Pamela Vasey,

Plaintiffs,

vs

Colton Builders, LLC and
Collinswood Cabinetry, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action Number: 2009-CP-46-01244

AFFIDAVIT OF F. CRAIG WILKERSON, JR.

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Comes now the undersigned issuing his affidavit under oath as follows:

I am a licensed member of the South Carolina Bar and at all times relevant hereto have been the lawyer representing Colton Builders, LLC in the above-referenced matter.

A hearing was held on August 27, 2013 pursuant to a Notice of Motion and Motion to Confirm Arbitration award filed by the Defendant, Colton Builders, as well as a Notice of Motion and Motion to Vacate Arbitration Award filed by the Plaintiff. An Order denying the Plaintiffs' motion to vacate and confirming the arbitration award was signed by the Honorable John C. Hayes, III on September 16, 2013. The Order was filed with the York County Clerk of Court on September 23, 2013 and a copy of the Order was mailed to counsel for both the Plaintiffs and Defendant, Colton Builders on September 23, 2013, as evidenced by the Form 4 completed by the Clerk of Court's Office. The signed and filed Order was received in my office on September 24, 2013.

In addition to the Order being mailed to both attorneys from the Clerk of Court, a copy of the Order was also mailed from my office to Plaintiffs' counsel by standard U.S. Mail on September 24, 2013, as evidenced by the Certificate of Service which is attached hereto, allowing for receipt of the Order by Plaintiffs' counsel to be no later than October 2, 2013. Thirty days from October 2, 2013 would be November 2, 2013.

AND FURTHER THE DEPONENT SAYETH NOT

Sworn to before me this 6
day of JANUARY, 2014
Lauri J. Hattenberga
Notary Public for SC
My Commission Expires: 10-8-2018



F. Craig Wilkerson, Jr.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
CIRCUIT COURT

John C. Hayes, III, Circuit Court Judge

Case No.:2009-CP-46-01244

Phil Vasey and Pamela Vasey.Appellants,

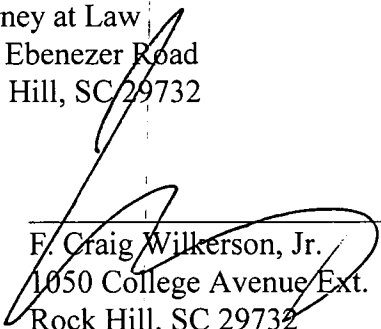
v.

Colton Builders, LLC, Respondent.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss on counsel for the Appellant by depositing a copy of same in the United States Mail, postage prepaid, on January 6, 2014, addressed as follows:

David B. Sample
Attorney at Law
1506 Ebenezer Road
Rock Hill, SC 29732


F. Craig Wilkerson, Jr.
1050 College Avenue Ext.
Rock Hill, SC 29732
Attorney for Respondent
803-324-7200



LAW OFFICES OF
F. CRAIG WILKERSON, JR.

F. CRAIG WILKERSON JR.
Attorney at Law

BRANDON G. NOBLES
Attorney at Law

January 6, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211-1629

RE: Phil Vasey and Pamela Vasey vs. Colton Builders, LLC
Case No.: 2009-CP-46-01244

Dear Ms. Kitchings:

Enclosed for filing please find and original and six copies of a Motion to Dismiss in the above-referenced matter, together with a Proof of Service. I am also enclosing a filing fee check in the amount of \$25.00. Please return one filed copy to my office in the enclosed.

With best regards, I am

Sincerely,


F. Craig Wilkerson, Jr.

FCWjr:lgf
Enclosures as Noted
cc: David Sample (w/encl.)

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JAN 10 2014

SC Court of Appeals

F. Craig Wilkerson, Jr.
1050 College Avenue Ext.
Rock Hill, SC 29732

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