

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2013-001623

South Carolina Electric & Gas Company,Respondent,

v.

Anson Construction Company,Appellant.

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SC Court of Appeals

APPELLANT ANSON CONSTRUCTION COMPANY'S

MOTION TO STRIKE RESPONDENT'S MOTION TO DISMISS APPEAL

OR IN THE ALTERNATIVE FOR EXTENSION OF TIME TO FILE RETURN

Appellant Anson Construction Company ("Anson") hereby moves this Honorable Court for an Order Striking Respondent South Carolina Electric and Gas Company, Inc.'s ("SCE&G") Motion to Dismiss or in the Alternative for an Extension of Time for Appellant to file its Return to SCE&G's motion. Appellant's Motion to Strike is made pursuant to South Carolina Appellate Court Rule 240(c) and is supported by case law as cited below. The basis of this Motion is that Respondent has failed to comply with SCRAP 240(c) by failing to provide any substantiation or citation for the facts on which the Motion is predicated.

APPELLATE PROCEDURAL HISTORY

Appellant filed a Notice of Appeal with this Court on July 23, 2013, pursuant to S.C. Code Ann. § 14-3-330 (1) and (2), appealing the Circuit Court's July 23, 2013 Order. Notice of Appeal, July 23, 2013. The appealed Order granted Respondent's motion for partial summary judgment, thereby determining the terms making up a contract between the parties. Order Granting Mot. Partial Sum. J., July 23, 2013. The appeal was appropriate because the Order deprived Appellant of a defense presented by its Answer to Respondent's claims, deprived the Appellant of a substantial right to present to a jury evidence of intent regarding the terms of a contract, and was an order on the merits such that it would deprive the Appellant of any appeal on the terms of the contract. After receiving a copy of the Circuit Court's Order on July 29, 2013 via regular U.S. Mail, Appellant timely filed an Amended Notice of Appeal on August 7, 2013. Amended Notice of Appeal, August 7, 2013.

Appellant requested and received an extension of time to serve and file its initial brief and designation of matter. Due to the voluminous record on appeal, Anson requested a second extension on November 15, 2013. The Court granted Appellant's motion for an extension on December 11, 2013. Pursuant to the Court's December 11, 2013 Order, Appellant timely filed its Initial Brief on December 23, 2013. Initial Brief of Appellant, Dec. 23, 2013. Appellant simultaneously filed its Designation of Matter for Inclusion in the Record on Appeal. Desig. of Matter for Inclusion in the Record on Appeal, Dec. 23, 2013.

Respondent filed a motion for extension of time to respond to Appellant's Initial Brief on January 22, 2014. Respondent has not yet filed its Initial Brief, but rather, filed a motion to dismiss the appeal on February 21, 2014.

Respondent's Motion to Dismiss is the subject of this motion.

CITATION OF AUTHORITIES

Rule 240(c), SCACR specifies the form and content of motions and petitions submitted to this Court. Specifically, Rule 240(c), SCACR requires that the pages of a motion or petition, including all supporting documents, be numbered consecutively. In addition, motions and petitions must include citations to the Record on Appeal or Appendix. (Rule 240(c), SCACR.) In cases where there is no Record on Appeal or Appendix, the filing party must submit affidavits and other documents supporting their positions. (Id.) A party's failure to comply with the requirements of Rule 240, SCACR, can be treated as an abandonment of the motion. (Rule 240(g), SCACR.)

In Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992), the Supreme Court considered the impact of a party's failure to comply with the South Carolina Appellate Court Rules. Specifically, the Henning Court was asked to dismiss the appeal due to the appellant's failure to comply with Rule 207, SCACR because appellant's initial brief was deficient. Id. at 437, 415 S.E.2d at 794. In addition to other deficiencies, the Court noted that the appellant's initial brief's statement of the case contained contested matters and the arguments raised by appellant did not contain any citations to the record. Id.

While the Court did not dismiss the appeal, the Court ordered appellant to file and serve an amended initial brief within fifteen (15) days that fully complied with the South Carolina Appellate Court Rules. Id. at 437-438, 415 S.E.2d at 794. Furthermore, The Court did not allow the appellant to make any changes to the arguments set forth in the brief but rather limited the appellant's amendments to including citations and references required by the Rules. Id. at 438, 415 S.E.2d at 794. In issuing its Order, the Court stated clearly that "the South Carolina Appellate Court Rules are not mere technicalities" that can be ignored by the parties but instead

“provide an orderly mechanism through which to guide appeals in this State.” Id. at 437, 415 S.E.2d at 794.

ARGUMENT

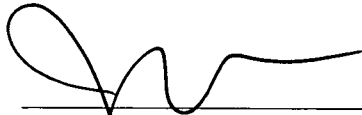
Respondent’s Motion to Dismiss clearly fails to comply with the requirements of Rule 240(c), SCACR. First, Respondent does not include consecutive page numbers on the motion and supporting documents. Second, and most importantly, Respondent’s Background and description of the facts does not contain any citations to the Record on Appeal, nor does it contain citations to affidavits or other documents which support its position. Rather, Respondent details its version of the background without any reference for the Court, or the Appellant, as to where the stated facts are contained in the Record on Appeal.

CONCLUSION

Based on the foregoing, it is clear that Respondent has failed to comply with the requirements of Rule 240(c), SCACR. For that reason, Appellant requests this Honorable Court strike Respondent’s motion to dismiss. In the alternative, Appellant requests this Court issue an order requiring Respondent to amend its motion and limit any changes to the addition of citations and references to the record. Finally, should the court deny Appellant’s motion to strike, Appellant requests this Court grant Appellant a ten (10) day extension of time in which to file a Return to Respondent’s motion.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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**Attorneys for Appellant
Anson Construction Company**

Columbia, South Carolina

February 28, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2011-CP-10-5099

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SC Court of Appeals

South Carolina Electric & Gas Co.,Respondent,

v.

Anson Construction Co.,Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Strike Respondent's Motion to Dismiss on South Carolina Electric & Gas Co. by depositing a copy of it in the United States Mail, postage prepaid, on February 28, 2014, addressed to their attorneys of record, listed as follows:

John A. Massalon, Esquire
I. Ryan Neville, Esquire
Wills Massalon & Allen, LLC
97 Broad Street
Post Office Box 859
Charleston, SC 29402

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Attorneys for Respondent SCE&G

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**Attorney for Appellant Anson
Construction Company**



SWEENY WINGATE & BARROW P.A.

February 28, 2014

Reply to: Main Office

J. Eric Cavanaugh
(803) 256-2233 x7150
jec@swblaw.com

VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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SC Court of Appeals

RE: SCE&G v. Anson Construction Co., Inc.
Case No.: 2013-001623
Our File: 1395-7955

Dear Ms. Kitchings:

Enclosed for filing is the original and six copies of Anson Construction Company, Inc.'s, Motion to Strike Respondent's Motion to Dismiss, along with the Proof of Service. Please return a filed stamped copy of the Appellant's Motion and Proof of Service with the courier.

By copy hereof, all counsel of record are being served with the above.

Thank you for your assistance, and should you have any questions, please do not hesitate to contact me.

Best regards,

SWEENY, WINGATE & BARROW, P.A.

J. Eric Cavanaugh

JEC/elw

Enclosure

cc: John A. Massalon, Esquire
I. Ryan Neville, Esquire
SC Court of Appeals – Office of Court Administration

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