

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2011-CP-26-447

Appellate Case No. 2014-000133

Daniel Watier and Tammy
Watier,

Respondents,


v.

Squirrel Systems, Inc.,
Kenneth J. Jackson, and Peggy
S. Jackson,

Appellants.

RETURN TO MOTION TO DISMISS

The Appellants Squirrel Systems, Inc., Kenneth J. Jackson and Peggy S. Jackson hereby file this Return to Respondents' Motion to Dismiss.



John C. Thomas
John C. Thomas, P.A.
107 Lewis Street
Conway, South Carolina 29526
(843) 248-6277
Attorney for Appellants

RECEIVED

MAR 10 2014

SC Court of Appeals

Other counsel of record:
Brent B. Greenberg
Daniel M. Bradley Law Firm, LLC
Post Office Box 2061
Mount Pleasant, SC 29465-2061
Attorney for Respondents

Kenneth R. Moss
628A Sea Mountain Highway
North Myrtle Beach, SC 29582

This matter is governed by Rule 203 (b) of the South Carolina Appellate Court rules, which states that a notice of appeal shall be served “within thirty (30) days **after receipt of written notice** of entry of the order or judgment” [emphasis added]. In this case, neither attorney who appeared for the Appellants at the motion hearing which is the subject of the order ever received the written order from the Horry County Clerk of Court, as shown by the attached affidavits.

Respondents’ attorney emphasizes the Clerk’s mailing the order to counsel, as opposed to counsel’s actual receipt of the Order, in the attachment to his motion. While it does seem unusual that both of the attorneys representing the Appellants at the hearing on November 6, 2013, failed to receive the order, this is exactly the reason why Rule 203 starts the clock running at the “receipt of”, as opposed to “service of”, which would have started running the day after it was mailed by the Clerk’s office.

The SC Supreme Court case of USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (S.C. 2008), involved an attorney who claimed that she did not receive notice of entry of the order until a later date. The Court stated that the attorney had to comply with various ethical rules, including Rule 3.3(a)(1), SCACR, which prohibits an attorney from knowingly making false statements of fact or law to a tribunal. Furthermore, although the USAA Court could not determine whether or not the attorney’s representations were made under oath, it still held that the Notice of Appeal was timely. In the instant case, not one, but two attorneys, as shown by the attached affidavits, both state under oath that neither received the order from the Court.

In view of the foregoing, Appellants respectfully ask the Court to deny Respondents’ motion.

THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No. 2011-CP-26-00447

Appellate Case No. 2014-000133

Daniel Watiere and Tammy Watier *Respondents,*

v.

Squirrel Systems, Inc.,
Kenneth J. Jackson and Peggy S. Jackson *Appellants.*

AFFIDAVIT OF KENNETH R. MOSS

Personally appeared before me the undersigned, who being duly sworn
deposes and says:

1. My name is Kenneth R. Moss, and I am over 21 years of age and competent to make this Affidavit.
2. I am an attorney and have been licensed to practice in the State of South Carolina for 15 years.
3. I do not represent any party to this Appeal, and am not being paid or compensated in any way to make this Affidavit.

4. Those other matters stated herein are matters of which I have personal knowledge at the time they are stated to have occurred.

5. Those matters stated herein as being made upon information and belief are matters into which I have made inquiry and am satisfied that they are complete and truthful, based upon my inquiries.

6. Upon information and belief, on October 17, 2013 Attorney John Thomas filed a *Motion to Set Aside Settlement* along with an *Affidavit of Kenneth J. Jackson*, with the Clerk of Court for Horry County. A copy of these clocked documents were forwarded to the Honorable W. Jeffrey Young on the same date.

7. Shortly before the Motion hearing I was retained as co-counsel with Attorney John Thomas to represent Defendant Kenneth J. Jackson, only. The *Notice of Appearance of Co-Counsel for the Defendant Kenneth J. Jackson*, dated November 5, 2013, was filed with the Clerk of Court for Horry County on November 6, 2013.

8. The Motion hearing was held before the Honorable Benjamin Culbertson on November 6, 2013.

9. A Form C Order dated November 6, 2013 was issued by Judge Culbertson and filed with the Clerk of Court for Horry County on November 13, 2013.

10. I received an email communication from Attorney Thomas the afternoon of December 12, 2013 advising that he had checked the Horry County

Public Index and discovered that the Clerk had mailed the Order to all counsel of record on November 13, 2013. Attorney Thomas had not received a copy, and he was inquiring if I had received a copy. I informed Attorney Thomas that I had not received a copy of the Order. (See Exhibit A)

11. Attorney Thomas obtained a copy of the Court's Order from the Clerk's Office and forwarded a copy to me by electronic mail the afternoon of December 13, 2013. (See Exhibit B)


12. To date, I have not received a copy of the Court's Form C Order for this matter, which was dated November 6, 2013 and issued by Judge Culbertson and filed with the Clerk of Court for Horry County on November 13, 2013.

FURTHER AFFIANT SAYETH NAUGHT!


Kenneth R. Moss

Dated 03 / 05 / 2013.

Sworn and subscribed before me this 5th day of March, 2013.


Notary Public for the State of South Carolina
My Commission expires: 6-14-2015

Kenneth Moss

From: Kenneth Moss
Sent: Thursday, December 12, 2013 6:16 PM
To: 'john@johnthomaspa.com'
Subject: RE: Watier vs. Jackson

I have not received anything.

Kenneth R. Moss
Wright, Worley, Pope, Ekster & Moss, PLLC

628-A Sea Mountain Highway
North Myrtle Beach SC 29582
Tel: 843/ 281-9901
Fax: 843/ 281-9903
wwpmlaw.com

Our full service legal team serves New Hanover, Pender, Brunswick, Horry, Columbus, Bladen, Georgetown, Marion, Dillon, and surrounding counties.

We have other offices in Shallotte, Wilmington, Whiteville, Tabor City, and Surfside Beach.

CIRCULAR 230 DISCLOSURE: To comply with Treasury Department regulations, we inform you that, unless otherwise expressly indicated, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the Internal Revenue Code or any other applicable tax law, or (ii) promoting, marketing or recommending to another party any transaction, arrangement, or other matter.

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If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

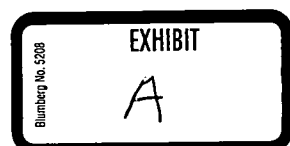
☐

Please consider the environment before printing this email.

-----Original Message-----

From: John Thomas [mailto:john@johnthomaspa.com]
Sent: Thursday, December 12, 2013 3:54 PM
To: Kenneth Moss
Subject: Watier vs. Jackson

Kenneth:



I could not reach you by phone. Not having received an order in the above matter, I checked the Horry County Website and discovered that the Clerk mailed the order out on 11/13/13, which would make 12/13/13, tomorrow, the 30th and last day in which to file an appeal. Have you received a copy of the order? I have not gone over there and pulled the file, yet. PLEASE LET ME KNOW SOMETHING.

--

John C. Thomas
John C. Thomas, P.A.
107 Lewis Street
Conway, South Carolina 29526
843.248.6277
843.248.7446 (fax)

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Kenneth Moss

From: John Thomas <john@johnthomaspa.com>
Sent: Friday, December 13, 2013 12:43 PM
To: Kenneth Moss
Subject: Jackson
Attachments: SKMBT_28313121313420.pdf

I just got this from the Clerk of Court's file. Please call me.

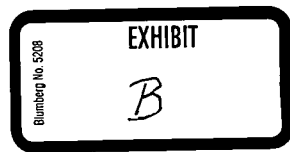
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John C. Thomas
John C. Thomas, P.A.
107 Lewis Street
Conway, South Carolina 29526
843.248.6277
843.248.7446 (fax)

CIRCULAR 230 DISCLOSURE: To comply with Treasury Department regulations, we inform you that, unless otherwise expressly indicated, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the Internal Revenue Code or any other applicable tax law, or (ii) promoting, marketing or recommending to another party any transaction, arrangement, or other matter.

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APPEAL FROM HORRY COUNTY
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Benjamin H. Culbertson, Circuit Court Judge

Case No. 2011-CP-26-447

Appellate Case No. 2014-000133

Daniel Watier and Tammy
Watier,

Respondents,

v.

Squirrel Systems, Inc.,
Kenneth J. Jackson, and Peggy
S. Jackson,

Appellants.

AFFIDAVIT OF JOHN C. THOMAS

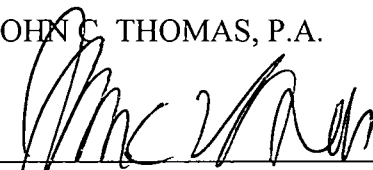
Personally appeared me the undersigned, who, upon duly sworn, deposes and states as follows:

1. My name is John C. Thomas, and I am attorney for the Appellants in the above referenced matter.
2. I have been a member of the South Carolina Bar since May 1986, and no disciplinary action has ever been taken against me by the Bar.
3. After we had the motion hearing in front of the Honorable Benjamin Culbertson on November 6, 2013, I alerted my staff that I would be receiving a copy of the Order, and that it was very important that it be brought to my immediate attention.

4. I was in contact with attorney Kenneth R. Moss, and both of us confirmed that neither had yet received the order.
5. Finally, on December 13, 2013; I accessed the public index on the Horry County website, and found an entry indicating that the Clerk of Court had mailed the order to all attorneys of record on November 13, 2013.
6. I then sent an email to Attorney Moss, who confirmed that he had never received a copy of the order.
7. I have never yet received a copy of the Order sent to me by either the Horry County Clerk of Court or Respondent's attorney. On the afternoon of November 13, 2013, I sent someone to the Clerk's office to look in the court file and see if there was an order, and if so, to make a copy and bring it back to me. That was the only way that I was able to get the order.
8. My address is correct on the AIS, and I routinely receive documents from the Clerk's office.

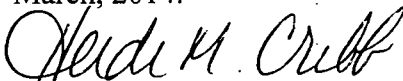
FURTHER AFFIANT SAITH NOT.

JOHN C. THOMAS, P.A.



John C. Thomas
107 Lewis Street
Conway, SC 29526
(843) 248-6277

SWORN to before me this 6 day of
March, 2014.



Notary Public for South Carolina

My commission expires: 2/7/2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2011-CP-26-447

Appellate Case No. 2014-000133

Daniel Watier and Tammy
Watier,

Respondents,

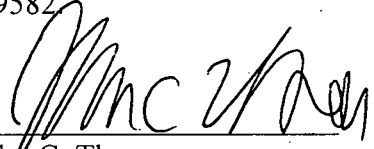
v.

Squirrel Systems, Inc.,
Kenneth J. Jackson, and Peggy
S. Jackson

Appellants.

PROOF OF SERVICE

I certify that I have served the Return to Motion to Dismiss on Daniel Watier and Tammy Watier by depositing a copy of it in the United States Mail, postage prepaid, on March ____, 2014, addressed to their attorney of record, Brent Greenberg, Post Office Box 2061, Mount Pleasant, South Carolina 29465, and to other counsel of record Kenneth R. Moss, 628A Sea Mountain Highway, North Myrtle Beach, SC 29582.



John C. Thomas
John C. Thomas, P.A.
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(843) 248-6277
Attorney for Appellants

JOHN C. THOMAS, P.A.
ATTORNEY AT LAW

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Telephone: (843)248-6277 Fax: (843)248-7446
E-mail: john@johnthomaspa.com

March 6, 2014

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

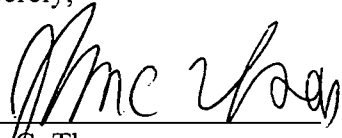
RE: Daniel Watier and Tammy Watier v. Squirrel Systems, Inc., Kenneth J. Jackson, and Peggy S. Jackson, Case No. 2011-CP-26-447
Appellate Case No. 2014-000133

Dear Ms. Kitchings:

Enclosed for filing is the original and six (6) copies of Appellants' Return to Motion to Dismiss, with accompanying affidavits, in the above case. Also enclosed is Proof of Service upon Respondents and other counsel of record.

Sincerely,

s/


John C. Thomas
107 Lewis Street
Conway, South Carolina 29526
(843) 248-6277
Attorney for Appellants

cc: Brent Greenberg
Post Office Box 2061
Mount Pleasant, SC 29465
(843) 424-9817
Attorney for Respondents

Kenneth R. Moss
628A Sea Mountain Highway
North Myrtle Beach, SC 29582

RECEIVED

MAR 10 2014

SC Court of Appeals