

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

ORIGINAL

The Honorable Larry B. Hyman, Circuit Court Judge

Case No. 2011-CP-26-4800
Appellate Case No. 2013-002602

Becky Lynette West, Appellant.

Luck Avenue Properties, Inc. v.
a/k/a Luck Avenue Properties, LLC, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE HEARING JUDGE ERR IN DENYING PLAINTIFF'S MOTION TO RESTORE?
-

STATEMENT OF THE CASE

This appeal arises from a Motion to Restore which was filed by the Plaintiff on July 16, 2013. The Order Striking this Matter From The Docket pursuant to Rule 40(j) South-Carolina Rules of Civil Procedure was signed by the Judge on July 13, 2012. The Order was not filed until July 16, 2012.

The Motion Was Heard by the Honorable Larry B. Hyman on October 1, 2013. The Hearing Judge denied the Motion to restore Because he held that the Order Striking the case went into effect on July 13, 2012, the date it was signed by the Judge. Therefore, he held that the motion to restore was not filed within the one year provided for in the rule. This Appeal followed.

ARGUMENT

THE HEARING JUDGE ERRED IN FINDING THAT THE ORDER TO STRIKE WENT INTO EFFECT ON THE DATE IT WAS SIGNED BY THE JUDGE.

In Upchurch vs. Upchurch, 367 S.C. 16, 624 S.E.2d 643 (2006) the court held that "the effective date of an order is not when it is signed by the judge, but when it is entered by the clerk of court." Id at 23, citing Bowman vs. Richland Memorial Hospital, 335 S.C. 88 (Ct.App. 1999) at 93. The Court further held " that principles of fairness and equity required a finding of timeliness because "parties to an action are not provided notice of a judge's ruling at the time the judge signs an order. Rather, only after the order is filed with the clerk of court are the parties given notice of the order."Id at 24, citing Bowman at 92.

In this case the Order Striking the case was signed on July 13, 2012, but was not filed until July 16, 2012. The parties would have no notice that the order was signed by the Judge until it was


filed with the court. It would be fair under the standard set forth in Bowman for the Restoring Party to rely upon the Date of Filing as the date in which the one year time limit to restore the case would begin to run. Since the Motion to Restore in this case was filed within one year of the date the Order to strike was filed, the motion was timely made and the motion should not have been denied.

CONCLUSION

For the reasons stated, this Honorable Court should reverse and remand the Order Denying Plaintiff's Motion to Restore.

June 2, 2014

Respectfully submitted,

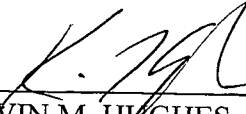


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CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that this Final Brief of Appellant complies with Rule 211(b) SCAR.

June 2, 2014



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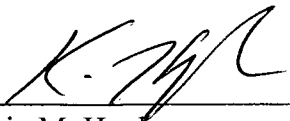
Luck Avenue Properties, Inc. Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Final Brief of the Appellant on Christopher H. Pearce, Attorney for Respondent by depositing a copy of it in the United States Mail, postage prepaid, on June 6, 2014, addressed as follows:

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