

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

Appellate Case No. 2013- 000300

RECEIVED

JUN 20 2014

SC Court of Appeals

M2578

Larry Dinkins,.....Appellant

v.

Cooper Tools, Inc., and
Indemnity Insurance Company
c/o ACE USA/ESIS,.....Respondents

APPELLANT'S MOTION
FOR REHEARING

The Appellant moves pursuant to Appellant Court Rule 221 for a rehearing regarding the Court's June 12, 2014 Order denying the Appellant's Motion to Reinstate Appeal. The grounds for the Motion for Rehearing are that the Court overlooked or misapprehended the standard for granting a Motion to Reinstate Appeal under Rule 260 and misapprehended the factual background of the case.

In the June 12, 2014 Order the Court ruled that "after careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for

granting a rehearing.” (Emphasis added). The Motion that was before the Court was not a “petition for rehearing.” The Court states “petition for rehearing” a total of four times in its Order, but never properly describes the Motion pending before the Court, which was a Motion to Reinstate Appeal.

Appellate Court Rule 260 governs the “Dismissals and Reinstatement” of appeals, whereas Rule 221 governs a Motion for “Rehearing.” The standard for evaluating a Motion to Reinstate Appeal under Rule 260 is “good cause shown.” The standard for evaluating a Motion for Rehearing under Rule 221 is “points supposed to have been overlooked or misapprehended by the court.” Although the Court’s June 12, 2014 Order does not state the Appellant Rule that is being used to evaluate the Motion to Reinstate Appeal the wording used in the Order demonstrates that the wrong standard was used. In its Order the Court never states the phrase “good cause shown,” but does use the phrase “material fact or principle of law has been either overlooked or disregarded.” The use of “overlooked or disregarded” reads much like Rule 221’s “overlooked or misapprehended” and nothing like Rule 260’s “good cause shown.” The wording in the Order makes it clear that the June 12, 2014 Order of the Court was based on the wrong standard.

Given that the proper standard that should have been used by the Court is “good cause shown” it is important to look at what that standard means. The standard of “good cause shown” is also the standard used in the Rules of Civil Procedure for Setting Aside Default under Rule 55(c). This Court held in Melton v. Olenik, 664 S.E.2d 487, 379 S.C. 45 (S.C. App. 2008) that “under Rule 55(c) of the South Carolina Rules of Civil Procedure, a default may be set aside ‘for good cause shown.’ Rule 55(c) should be

'liberally construed to promote justice and dispose of cases on the merits.' Id. at 492, 54. (Citations omitted). The "good cause shown" standard is the same under Appellant Rule 260 and Civil Rule 55(c), therefore this Court should likewise "liberally construe[]" the "good cause shown" standard to "promote justice and dispose of cases on the merits" and not dismiss this appeal because of confusion over whether or not mediation has been agreed to by the parties while the appeal was pending.

Now applying the "overlooked or misapprehended" standard under Rule 221 to the Motion for Rehearing currently before the Court. As discussed above the Court misapprehends the standard to be used for a Motion under Rule 260. This misapprehension alone should be grounds for the granting of a Rehearing on the June 12, 2014 Order. Furthermore, the Court overlooks the factual background that led to the dismissal of the Appeal. The Court writes: "In a November 18, 2013 e-mail attached to the petition for rehearing, one of the Respondents stated they refused to participate in mediation and '[Appellant's] attorney was informed of this on October 16, 2013.'" The e-mail that is quoted in the Court's Order is an e-mail that was sent at 1:30 p.m. by Stephanie Kluszczynski, a paralegal at McAngus, Goudelock & Courie. A mere two minutes later at 1:32 p.m. Rocky Hughey, the attorney at McAngus, Goudelock & Courie representing the Defendants in the above matter wrote "Just to clarify, my clients just have not approved yet, and we'll need more time if we're going to do it. If we mediate it, we want Buster to do it." (emphasis added), (Ex. 1). It is clear from the attorney involved in the case that mediation is still a possibility and he even suggested a mediator that he wished to use.

The undersigned believes that because the Court used the wrong standard to analyze the Motion to Reinstate Appeal this Court must grant a Rehearing under Rule 221. The Court clearly "overlooked or misapprehended" the proper standard to rule on a Motion to Reinstate Appeal filed under Rule 260. Furthermore, the Court improperly relied on an e-mail from a paralegal that was immediately clarified by the attorney for the Respondent stating that "we'll need more time" to decide on mediation. This Court should apply the "good cause shown" standard and it should be "liberally construed to promote justice and dispose of [this] cases on the merits."

Respectfully submitted.

LAND, PARKER & WELCH, P.A.

By: 

William Ceth Land
Attorney for Appellant
P.O. Box 138
29 S. Mill Street
Manning, S.C. 29102
803-435-8894

Manning, S.C.
July 19, 2014

Land

From: Sharon Ridgeway
Sent: Monday, November 18, 2013 5:03 PM
To: Ceth Land
Subject: FW: Mediation on 11/26/13 - Larry Dinkins v. Cooper Tools, Inc. (6530-20130945)

From: Rocky Hughey [<mailto:rhughey@mgclaw.com>]
Sent: Monday, November 18, 2013 1:32 PM
To: Stephanie Kluszczynski; Morgan, Jennifer (jmorgan@ycrlaw.com)
Cc: Sharon Ridgeway
Subject: RE: Mediation on 11/26/13 - Larry Dinkins v. Cooper Tools, Inc. (6530-20130945)


Jennifer:


Just to clarify, my clients just have not approved yet and we'll need more time if we're going to do it. If we mediate it, we want Buster to do it.

Thanks.

From: Stephanie Kluszczynski
Sent: Monday, November 18, 2013 1:30 PM
To: Morgan, Jennifer (jmorgan@ycrlaw.com)
Cc: Sharon@lpwlawfirm.com; Rocky Hughey
Subject: RE: Mediation on 11/26/13 - Larry Dinkins v. Cooper Tools, Inc. (6530-20130945)
Importance: High

Jennifer, we received the Agreement to Mediate today from your office. Please note that we will not be moving forward with this Mediation on 11/26/2013. Our client never agreed to Mediation and claimants attorney was informed of this on 10/16/2013. Please confirm that this Mediation has been cancelled and no cancellation fees will be applied. I appreciate your help! Thank you!

| Phone | Location |
|---|---|
|  Main: 803-227-2300 Direct: 802-227-2250 Fax: 803-749-0528 | Stephanie Kluszczynski WC Paralegal 1320 Main St. 10th Floor Columbia, SC USA 29201 Stephanie.K@mgclaw.com |

 Please consider the environment
before printing this email.

LAND, PARKER & WELCH, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 138
MANNING, SOUTH CAROLINA 29102

JOHN C. LAND, III
NELSON R. PARKER
J. CALHOUN LAND, IV
RICCI LAND WELCH
WILLIAM CETH LAND

29 SOUTH MILL STREET
TELEPHONE: 803-435-8894
FACSIMILE: 803-435-8362
Email: ceth@pwlawfirm.com

June 19, 2014

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

Re: Larry Dinkins vs. Cooper Tools
WCC File No: 0922191 DOI: 11/20/09
Carrier: Indemnity Ins. Co. c/o ACE USA/ESIS

Dear Ms. Gee:

Please find enclosed the original and six copies of the Appellant's Motion For Rehearing and a check in the amount of \$25.00 which represents the Motion fee.

I am by copy of this letter serving the same on Landon L. Hughey, Esquire.

I would appreciate you sending me a certified copy of the same in the enclosed envelope.

With warm regards, I am

Sincerely,


William Ceth Land

WCL/sr

Encls.

Cc: Landon L. Hughey, Esquire
Virginia L. Crocker, SCWCC

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Larry Dinkins,.....Claimant/Appellant

v.

Cooper Tools, Inc., and
Indemnity Insurance Company
c/o ACE USA/ESIS,.....Defendants/Respondents

CERTIFICATE OF SERVICE

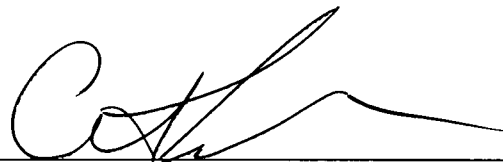
I hereby certify that due and proper service of the documents described below was made on the 19th day of June, 2014, by depositing a true copy of same in the United States mail at Manning, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon and addressed to:

The Honorable Jennie Abbott Kitchings
S.C. Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

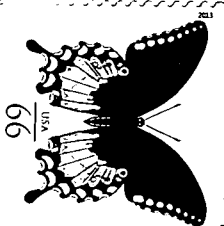
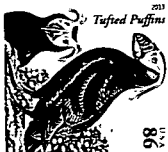
Ms. Virginia L. Crocker
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, South Carolina 29202-1715

Mr. Landon L. Hughey, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 12519
Columbia, South Carolina 29211

Description of Documents:
**APPELLANT'S MOTION FOR
REHEARING**

A handwritten signature in black ink, appearing to read 'William C. Land', written over a horizontal line.

William C. Land, Esquire
Land, Parker & Welch, P.A.
Post Office Drawer 138
Manning, South Carolina 29102
803-435-8894



LAND, PARKER & WELCH, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 138
29 SOUTH MILL STREET
MANNING, SOUTH CAROLINA 29102

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