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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
The Honorable Brian Gibbons

Appellate Case No.: 2013-002675
Civil Action No.: 2013-CP-29-00152

LVNV Funding, L.L.C.....Respondent


v.

Jerry L. Moses.....Appellant.

MOTION TO DISMISS

Respondent LVNV Funding, L.L.C. hereby moves for dismissal of Appellant's appeal. The ground for this motion is Appellant's failure to perfect the appeal by addressing the deficiencies identified by this Court or otherwise file any briefs. The accompanying memorandum of law sets forth this grounds in more detail.

Respectfully submitted,



S. Nelson Weston, Esquire
Adam Tesh, Esquire
Sheila M. Bias, Esquire
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400

Counsel for Respondent LVNV Funding, L.L.C.

July 11, 2014

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

S. Nelson Weston, Esquire
Adam Tesh, Esquire
Sheila M. Bias, Esquire
RICHARDSON PLOWDEN & ROBINSON, P.A.
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Counsel for Respondent LVNV Funding, L.L.C.

July 11, 2014

The instant appeal arises from a Motion for Summary Judgment in a debt collection action. Appellant filed a Notice of Appeal on December 16, 2013. This Court acknowledged receipt of the Notice of Appeal, assigned the Appellate Case Number, and provided the appropriate caption on March 10, 2014. On March 13, 2014, this Court advised Appellant his Notice of Appeal was deficient in that it, and the required proof of service, were not signed.

On April 14, 2014, this Court advised Appellant that it had not received any information related to the ordering of the transcript as required by Rule 207, SCACR. On May 16, 2014, this Court advised Appellant of a deficiency with his purported transcript order in that (1) a copy of the document was not provided to the Office of Court Administration; (2) the letter did not confirm payment arrangements with the Court Reporter; and (3) the document was not timely filed.

On May 20, 2014, counsel for Respondent advised this Court that Appellant was not serving or otherwise copying Respondent on any correspondence related to this appeal. See Exhibit A. On July 2, 2014, counsel for Respondent attempted to Order a copy of the transcript from Aminah Hardy, the Court Reporter present at the time of the Motion for Summary Judgment hearing which is the subject of this appeal. See Exhibit B. Ms. Hardy responded, via email, advising that she received Appellant's request for a transcript, she informed him of payment arrangements, and that she subsequently had no further communication from Appellant. See Affidavit of Sheila M. Bias, attached as Exhibit C. To date, Appellant has not ordered the transcript or made payment

arrangements with the Court Reporter.

Rule 207, SCACR provides, “Where a transcript of the proceeding must be prepared by the Court reporter, appellant **shall**, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript) in writing with the court reporter for furnishing the transcript.” (emphasis added). The rule further provides that for appeals from the court of common pleas transcripts must be ordered within ten (10) days after the date of service of the Notice of Appeal. See Rule 207(a)(1), SCACR. Additionally, “Appellant shall contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court, with copies of all correspondence with the court reporter.” Id.

Appellant has failed to Order the transcript of the proceeding which is the subject of this appeal or provide counsel with copies of his correspondence with the Court Reporter. Given that this is an appeal from a Motion for Summary judgment, the transcript of the proceedings will be necessary for this Court to sufficiently review the trial judge’s rulings. Additionally, without the transcript, Appellant cannot carry his burden of providing this Court with a record sufficient to allow for appellate review. See Hundley ex rel. Hundley v. Rite Aid of South Carolina, Inc., 339 S.C. 285, 529 S.E.2d 45 (Ct. App. 2000) (“As Appellants, Jones and Rite Aid bear the burden of providing the court with a record sufficient to allow appellate review.”).

Finally, more than six (6) months have transpired since the filing of the Notice of Appeal and Appellant has not filed any briefs or otherwise attempted to

perfect his appeal. “Upon the failure of the appellant to serve and file his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal.” See Rule 208(4), SCACR.

Based on the foregoing, Respondent LVNV Funding, L.L.C. respectfully moves this honorable Court for an Order dismissing this appeal.

Respectfully submitted,



S. Nelson Weston, Esquire
Adam Tesh, Esquire
Sheila M. Bias, Esquire
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400

Counsel for Respondent LVNV Funding, L.L.C.

July 11, 2014

May 20, 2014

Columbia
Direct Dial (803) 576-3718
sbias@richardsonplowden.com

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

Re: LVNV Funding LLC v. Jerry L. Moses
Appellate Case No.: 2013-002675
Our File No.: 229-26483

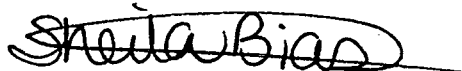
Dear Ms. Kitchings:

I represent LVNV Funding LLC, the respondent in the above referenced appeal. Our office has received this Court's May 16, 2014, deficiency notice directed toward Mr. Moses as well as this Court's April 14, 2014, deficiency notice to Mr. Moses. Upon reviewing the Court's Public Access C-Track system in conjunction with this Court's correspondence, it is apparent that Mr. Moses has not been serving us as opposing counsel with any of his correspondence to this Court related to this appeal. We are aware that Mr. Moses is appearing *pro se*, however we just wanted to advise the Court that we are not being properly included on correspondence and filings from Mr. Moses.

Thank you so much for your time in reviewing this letter and please do not hesitate to contact me if you have any questions.

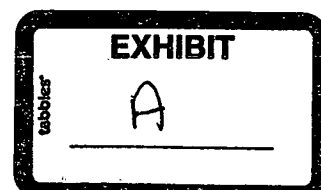
With kind regards, I am

Sincerely,



Sheila M. Bias
SC Bar # 100005

cc: Adam S. Tesh, Esq.
Nelson S. Weston, Jr., Esq.
Jerry L. Moses, *Pro Se*



July 2, 2014

Columbia
Direct Dial (803) 576-3718
sbias@richardsonplowden.com

Aminah Hardy
2879 Highway 160 West
Post Office Box 4525
Fort Mill, South Carolina 29708

Re: LVNV Funding LLC v. Jerry L. Moses
Appellate Case No.: 2013-002675
Civil Action No.: 2013-CP-29-00152
Our File No.: 229-26483

Dear Ms. Hardy:

I represent LVNV Funding in the above referenced matter. I am writing to order a copy of the transcript from a Motion for Summary Judgment hearing that took place on November 12, 2013 at 9:30 a.m. in the Lancaster County Courthouse in the matter of Jerry L. Moses and LVNV Funding LLC. This matter has currently been appealed, and it is my understanding that, by letter dated April 17, 2014, Mr. Jerry Moses has already ordered a copy of the transcript in question. I would just request a copy of the same. Please advise my office as to the cost of the transcript and we will remit payment per your terms.

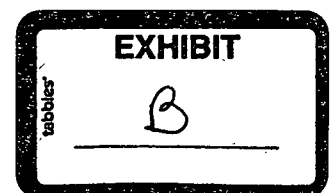
With kind regards, I am

Sincerely,

FILE COPY

Sheila M. Bias

SMB/dfb
cc: Jerry L. Moses



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Jerry L. Moses.....Appellant.

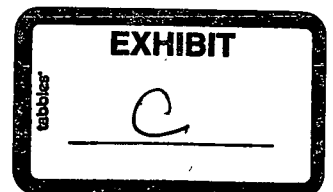
AFFIDAVIT OF SHEILA M. BIAS, ESQUIRE

I, Sheila M. Bias, being duly sworn, certify and state the following based on my personal knowledge:

1. I am a citizen and resident of the state of South Carolina and I am an attorney licensed to practice in the state of South Carolina.

2. Attached as Exhibit 1 and incorporated herewith as if repeated verbatim is a copy of an email exchange I had with Aminah Hardy, Court Reporter, regarding whether Appellant ordered the transcript of the proceedings which are the subject of this appeal. Upon my attempt to order a copy of the transcript, Ms. Hardy informed me that Mr. Moses had not made arrangements to order his transcript.

FURTHER THE AFFIANT SAYETH NOT.



Sheila M. Bias

Sheila M. Bias

Dated:

July 11, 2014

SWORN to and subscribed before me

this 11th day of July, 2014

Devin Bantz

Notary Public for the State of South Carolina

My Commission Expires: June 6, 2015

Sheila Bias

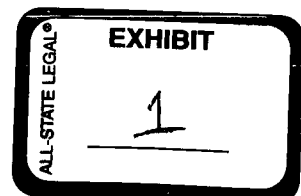
From: Hardy, Aminah <ahardy@sccourts.org>
Sent: Monday, July 07, 2014 12:21 PM
To: Sheila Bias
Subject: LVNV Funding v. Jerry L. Moses

Ms. Bias:

Good morning! I received your letter requesting a copy of the transcript in the above-referenced matter. I currently do not have a transcript request from Mr. Moses. As I recall, I spoke to him about a deposit request and never heard anything back. Please let me know if you would like to order the original, as this transcript is not under request at this time.

Best regards,

Aminah R. Hardy
16th Judicial Circuit - At Large



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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Respondent LVNV Funding, L.L.C., do hereby certify that I have this date served the foregoing Respondent's Motion Dismiss by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the following:

Jerry L. Moses
5916 Beecher Horton Road
Heath Springs, South Carolina 29058


Daisy F. Bonds

Dated: July 11, 2014

July 11, 2014

www.richardsonplowden.com

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

Columbia
Direct Dial (803) 576-3718
sbias@richardsonplowden.com

Re: LVNV Funding LLC v. Jerry L. Moses
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Our File No.: 229-26483

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Dear Ms. Kitchings:

As counsel for Respondent LVNV Funding, L.L.C., I have enclosed for filing an original and seven copies of our Motion to Dismiss in the above referenced matter, along with our original Certificate of Service. I would request that the additional copy of our Motion to Dismiss and would request that it be file stamped and returned to our courier. Also enclosed is a check for \$25.00 for the filing fee.

We are this day serving a copy of our Motion to Dismiss on the *pro se* Appellant.

Thank you for your assistance.

With kind regards, I am

Sincerely,



Sheila M. Bias
SC Bar # 100005

SMB/

cc: Adam S. Tesh, Esq.
Nelson S. Weston, Jr., Esq.
Jerry L. Moses, *Pro Se*