

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

OCT 13 2014

APPEAL FROM YORK COUNTY  
CIRCUIT COURT

**SC Court of Appeals**

John C. Hayes, III, Circuit Court Judge

73825

Case No.: 2009-CP-46-01244

Phil Vasey and Pamela Vasey, ..... Appellants,

vs.

Colton Builders, LLC, ..... Respondent.

**MOTION TO DISMISS**

This motion is filed pursuant to Rule 240 of the South Carolina Appellate Court Rules. Through this motion, the Respondent requests that the Court dismiss this appeal because the appeal was not timely filed.

**BACKGROUND**

A hearing was held on August 27, 2013 pursuant to a Notice of Motion and Motion to Confirm Arbitration award filed by the Respondent, as well as a Notice of Motion and Motion to Vacate Arbitration Award filed by the Appellants. Appellants failed to appear for mediation and failed to appear for arbitration. The case was heard in their absence. An Order denying the Appellants' motion to vacate and confirming the arbitration award was signed by the Honorable John C. Hayes, III on September 16, 2013. The Order was filed with the York County Clerk of Court on September 23, 2013 and a copy of the Order was mailed to counsel for both the Appellants and the Respondent on September 23, 2013, as evidenced by the Form 4 completed by the Clerk of Court's Office. The signed and filed Order was received office of counsel for the Respondent on September 24, 2013.

Respondents filed a Motion to Dismiss on January 10, 2014 seeking to dismiss the appeal because the Appellants had failed to timely file their notice of appeal with the Court. The motion was denied, as evidenced by the Order filed March 28, 2014, which is attached hereto as Exhibit A. A subsequent Order was filed on June 17, 2014, a copy of which is attached hereto as Exhibit B, dismissing the appeal for the Appellants failure to provide proof of ordering the transcript or to serve and file their initial brief. The Appellants filed a Motion to Reinstate on July 2, 2014 the appeal alleging that the transcript had been ordered. The motion was granted by Order filed September 26, 2014, a copy of which is attached hereto as Exhibit C.

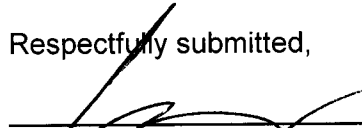
The Respondents seek to have the appeal dismissed as they are informed and believe that the transcript of record was not ordered for over one year, as evidenced by the correspondence from Wanda Nelson, the Court Reporter to Appellants attorney dated August 26, 2014, a copy off which is attached hereto as Exhibit D.

#### CONCLUSION

Because the transcript was not timely ordered and filed, the Court should dismiss this appeal.

October 8, 2014

Respectfully submitted,

  
\_\_\_\_\_  
F. Craig Wilkerson, Jr.  
1050 College Avenue Ext.  
Rock Hill, SC 29732  
Attorney for Respondent  
803-324-7200

# The South Carolina Court of Appeals

Phil and Pamela Vasey, Appellants,

v.

Colton Builders, LLC and Collinswood Cabinetry, LLC,  
Defendants,

Of whom Colton Builders, LLC is the Respondent.

Appellate Case No. 2013-002633

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## ORDER

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Respondent has filed a motion to dismiss this appeal because Appellants failed to timely file their notice of appeal with this Court. After careful consideration, Respondent's motion is denied. *See* Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for *-serving* the notice of appeal . . . may be extended or shortened by the appellate court . . .").

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FOR THE COURT

Columbia, South Carolina

cc:

David B. Sample, Esquire

F. Craig Wilkerson, Jr., Esquire

FILED  
3/28/14

# Exhibit B

## The South Carolina Court of Appeals

Phil and Pamela Vasey, Appellants,

v.

Colton Builders, LLC and Collinswood Cabinetry, LLC,  
Defendants,

Of whom Colton Builders, LLC is the Respondent.

Appellate Case No. 2013-002633

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### ORDER

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Appellants have failed to provide proof of ordering the transcript or to serve and file their initial brief and designation of matter as required by Rules 207(a), 208(a) and 209(a) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

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BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc:

David B. Sample, Esquire

F. Craig Wilkerson, Jr., Esquire

**FILED**

6-17-14

Exhibit C

The South Carolina Court of Appeals

Phil and Pamela Vasey, Appellants,

v.


Colton Builders, LLC and Collinswood Cabinetry, LLC,  
Defendants,

Of whom Colton Builders, LLC is the Respondent.

Appellate Case No. 2013-002633

ORDER

Appellants' motion to reinstate the appeal is granted. Appellants shall serve and file the initial brief within thirty days of receipt of the transcript.

  
FOR THE COURT

Columbia, South Carolina

cc: David B. Sample, Esquire  
F. Craig Wilkerson, Jr., Esquire

**FILED**  
9/26/14

Exhibit D

**Wanda S. Nelson, CVR, M  
Official Court Reporter  
Post Office Box 743  
York, SC 29745**

**Date: August 26, 2014**

**ACKNOWLEDGEMENT OF RECEIPT OF  
LETTER REGARDING TRANSCRIPT OF RECORD**

TO: Attorney David B. Sample  
1506 Ebenezer Road  
Rock Hill, South Carolina 29732

DATE OF HEARING: August 27, 2013

CAPTION: Phil Vasey, et al -v- Colton Builders LLC, et al Case No.: 2009-CP-46-01244

This is to acknowledge that on August 23, 2014, I received your letter postmarked August 21, 2014, requesting the transcript of record from the above referenced hearing.

Please be advised that I have made a diligent search through my entire transcript request dating back to the date of this hearing – Motion to Vacate Arbitration Award - on August 27, 2013. My records do not reflect a letter from you or your office requesting this transcript. I also do not have a letter and or email from you, or your office, to indicate a follow up on your transcript request.

However, if you have a copy of your first letter requesting the transcript, please provide me with a copy.

The transcript is complete and you will find attached the Invoice for the amount due. The fees set forth in the Invoice are set Pursuant to Rule 607, SCACR. Upon receipt of your payment the transcript will be forwarded to you.

Thank you for your request in this matter.

Wanda Nelson, CVR-M  
Official Court Reporter  
Sixteenth Judicial Circuit

CC: F. Craig Wilkerson, Esquire  
South Carolina Court Administration

Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
1015 Sumter St. Columbia, SC 29201

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
CIRCUIT COURT

John C. Hayes, III, Circuit Court Judge

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Phil Vasey and Pamela Vasey. . . . .Appellants,

v.

Colton Builders, LLC, . . . . . Respondent.

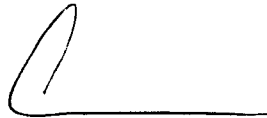
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PROOF OF SERVICE

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I certify that I have served the Motion to Dismiss on counsel for the Appellant by depositing a copy of same in the United States Mail, postage prepaid, on October 9, 2014, addressed as follows:

David B. Sample  
Attorney at Law  
1506 Ebenezer Road  
Rock Hill, SC 29732



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F. Craig Wilkerson, Jr.  
1050 College Avenue Ext.  
Rock Hill, SC 29732  
Attorney for Respondent  
803-324-7200

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**SC Court of Appeals**

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LAW OFFICES OF  
**E CRAIG WILKERSON JR**

F. CRAIG WILKERSON JR.  
*Attorney at Law*

BRANDON G. NOBLES  
*Attorney at Law*

October 9, 2014

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211-1629

RE: Phil Vasey and Pamela Vasey vs. Colton Builders, LLC  
Appellate Case No.: 2013-002633

Dear Ms. Kitchings:

Please find enclosed herewith an original and six (6) copies of Respondent's Motion to Dismiss in the above-referenced matter, together with a Proof of Service and the filing fee of \$25.00. By copy of this letter, I am serving a copy of the Motion to Dismiss on David Sample, attorney for Appellants.

With best regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "F. Craig Wilkerson, Jr.", written over a horizontal line.

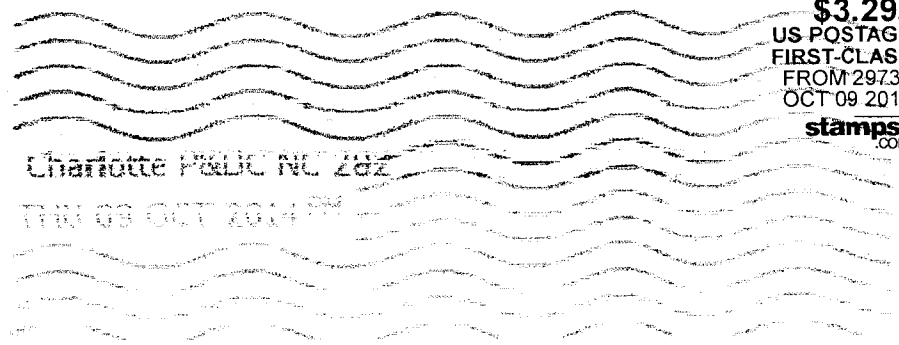
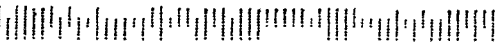
F. Craig Wilkerson, Jr.

FCWjr:lgf  
Enclosures as Noted  
cc: David Sample (w/encl.)

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**SC Court of Appeals**



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Charlotte NC 28202  
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Craig Wilkerson  
 1050 College Avenue Ext.  
 Rock Hill, SC 29732



Hon. Jenny Abbott Kitchings  
 Clerk, SC Court of Appeals  
 P.O. Box 11629  
 Columbia SC 29211-1629

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