

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Diane Goodstein, Circuit Court Judge

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Case No.: 13-CP-26-244  
Appellate Case No. 2014-001809

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**RECEIVED**

NOV 12 2014

**SC Court of Appeals**

174135

Carol Karesh,

Respondent,

v.

Elite Auto Wholesale, 1<sup>st</sup> Choice Auto Sales, Inc.,  
Timothy B. Williams, Jerry Little and Anthony R. Ellis, are the

Appellants.

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Motion to Dismiss

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Respondent, Carol Karesh, respectfully requests the Court dismiss the Appellant, Timothy B. Williams' appeal for failure to comply with the South Carolina Appellate Court Rules, and 1<sup>st</sup> Choice Auto Sales, Inc.'s (hereinafter 1<sup>st</sup> Choice) Appeal for failure to file a Notice of Appeal, to timely correct deficiencies in its attempted Appeal and to comply with the Appellate Court Rules.

On July 26, 2014, Williams and 1<sup>st</sup> Choice were served with a copy of the Honorable Diane Goodstein's Final Order in this matter. Twenty-five days after being served with the

Final Order, Williams, individually, and on behalf of 1<sup>st</sup> Choice, submitted a Notice of Appeal on August 20, 2014. The Notice of Appeal, for Williams and 1<sup>st</sup> Choice, was submitted with only a Proof of Service signed by Timothy B. Williams, indicating that Ms. Karesh was served by placing the Notice of Appeal in the United States Mail on August 20, 2014, and sent to her attorney at the incorrect address of 535 Stinson Drive. This address has not been occupied by this firm in over a year, and in all correspondence to the Williams and 1<sup>st</sup> Choice since October 2013, the firm letterhead has conspicuously displayed the new address.

On August 26, 2014, Williams faxed a copy of Judge Goodstein's Order to the Court of Appeals.

In correspondence to Williams, dated August 27, 2014, the Court notified the Williams of two deficiencies. The Court gave Williams ten days to correct these deficiencies. The first deficiency was that the Notice of Appeal was not accompanied by the order and/or judgment challenged on appeal. The second deficiency was that "a non-lawyer individual cannot represent a corporation", 1<sup>st</sup> Choice. The Court allowed Williams, thirty days to retain an attorney to perfect the appeal for 1<sup>st</sup> Choice. The Court further stated that the "[t]ime limits for perfecting this appeal will be held in abeyance until September 25, 2014."

On October 2, 2014, seven days after the Court's deadline, the Court received a letter from Mr. John Breeden, Esq., notifying the Court that he would be representing Williams and 1<sup>st</sup> Choice in this matter and that he would be making a motion to reopen the case. This document was post marked September 30, 2014, five days after the time limits imposed by the Court. Clearly, Williams and 1<sup>st</sup> Choice knew they were beyond the Court's

time frames as they intended to file a motion to be allowed to “reopen” the case.

On October 6, 2014, the Court sent correspondence to Mr. Breeden, notifying him that there was still an outstanding deficiency. The Court stated that a proof of service regarding Mr. Breeden’s notice of appearance had not been provided. The Court allowed Mr. Breeden ten days to correct this deficiency.

On October 17, 2014, the Court received the Proof of Service from Mr. Breeden stating that he had served the Notice of Appeal on Carol Karesh on October 14, 2014, eighty (80) days after service of the Final Order, by addressing it to her attorney of record, again at the incorrect address of 535 Stinson Dr. in Charleston. The Notice of Appeal referenced in the Proof of Service was never filed with the Court of Appeals nor was it received by Ms. Karesh’s counsel.

On October 20, 2014, yet another deficiency letter was sent to Mr. Breeden regarding the proof of service received by the Court on October 17, 2014. The Court gave Mr. Breeden ten days to correct this deficiency. Mr. Breeden corrected this deficiency by submitting a Proof of Service received by the Court on October 24, 2014.

In the August 20, Notice of Appeal, Williams acknowledged receipt of Judge Goodstein’s order on July 26, 2014, thus, beginning the Defendants’ thirty day clock in which to file a Notice of Appeal. Appellant Williams timely submitted his Notice of Appeal and Proof of Service to the Court on August 22, 2014. Mr. Williams, who is not an attorney, also filed an appeal on behalf of 1<sup>st</sup> Choice. The Court informed Mr. Williams that he could not represent 1<sup>st</sup> Choice and allowed him until September 25, 2014 to retain an attorney to represent 1<sup>st</sup> Choice. An attorney did not make an appearance on behalf of 1<sup>st</sup> Choice as of September 25, 2014. Mr. Breeden’s first appearance in this case was on

October 2, 2014, but only a Proof of Service regarding the Notice of Appeal was filed. Ms. Karesh's review of the Court's file indicates 1<sup>st</sup> Choice still has not properly submitted a Notice of Intent to Appeal even though more than 100 days have passed since the service of Judge Goodstein's Final Order. Counsel for Ms. Karesh has not received a copy of the Notice of Appeal for 1<sup>st</sup> Choice as set forth in the Proofs of Service received by the Court on October 17 and 24 nor has the Proof of Service been sent to his current address.

The only document filed so far by an attorney on behalf of 1<sup>st</sup> Choice is the Proof of Service. If the Court accepts 1<sup>st</sup> Choice's Proof of Service, received by the Court on October 17, 2014, as the Notice of Appeal, this would mean that the Notice of Appeal was filed 83 days after the service of Judge Goodstein's Order, well outside the appropriate time frame as outlined in SCACR Rule 203(b)(1) and 22 days after the Court of Appeal's deadline in its August 27, 2014 letter. Furthermore, the Proof of Service, submitted by Mr. Breeden fails to indicate who Mr. Breeden is representing as so required in SCACR Rule 267(a).

Additionally, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript from the Court of Common Pleas "must be ordered within ten days after the date of service of the notice of appeal". Appellant, Timothy B. Williams, submitted his Notice of Appeal and Proof of Service on August 22, 2014. He corrected the deficiency in his appeal on August 26, 2014, still within the 30 day time frame. However, he has not fully complied with Rule 207(a) SCACR, by ordering a copy of the transcript within ten (10) days after the date of service of the notice of appeal. To perfect his Appeal and to comply fully with the South Carolina Appellate Court Rules, Mr. Williams should have ordered the transcript of the Lower Court no later than September 2, 2014. Seventy-nine days have

passed since Appellant Williams filed his Notice of Appeal. To date, Ms, Karesh has not received any notice that the transcript has been ordered. As of the date of this motion, there does not appear to be any proof in the Court's record that the transcript has been ordered as mandated by Rule 207(a) SCACR.

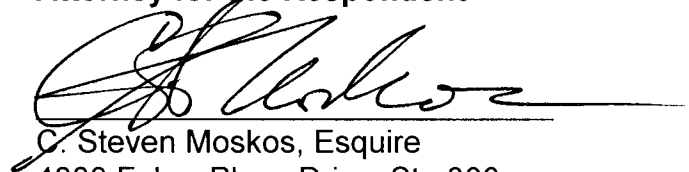
1<sup>st</sup> Choice has not ordered a copy of the transcript either.

Respondent respectfully requests that Appellant Williams' Appeal be dismissed for failure to comply with the South Carolina Appellate Court Rules, and 1<sup>st</sup> Choice's Appeal be dismissed for failure to file a Notice of Appeal, for failure to file a Notice of Appeal timely and for failure to order the transcript of record.

Respectfully submitted,

**C. STEVEN MOSKOS, P.A.**  
**Attorney for the Respondent**

BY:



C. Steven Moskos, Esquire  
4000 Faber Place Drive, Ste 300  
North Charleston, SC 29405  
Telephone: (843) 763-5297

Charleston, South Carolina  
11/7, 2014

**FORM 7**  
**PROOF OF SERVICE OF RESPONDENT'S MOTION TO DISMISS**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Diane Goodstein, Circuit Court Judge

Case No. 2013-CP-26-02443  
Appellate Case No. 2014-001809

Carol Karesh,

Respondent,

v.

Elite Auto Wholesale, 1<sup>st</sup>  
Choice Auto Sales In.,  
Timothy B. Williams, Jerry  
Little and Anthony R. Ellis,  
are the

Appellants.

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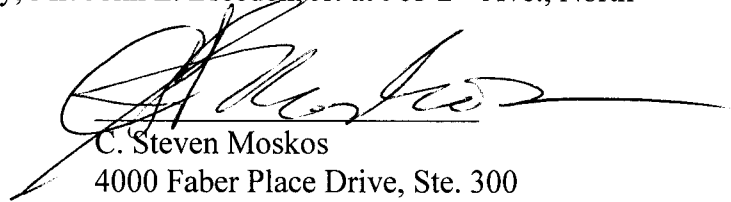
NOV 12 2014

**SC Court of Appeals**

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss on 1<sup>st</sup> Choice Auto Sales, Inc. and Timothy B. Williams, by depositing a copy of it in the United States Mail, postage prepaid, on November 7, 2014, addressed to their attorney, Mr. John L. Breeden, Jr. at 905 2<sup>nd</sup> Ave., North Myrtle Beach, SC 29582.

November 7, 2014



C. Steven Moskos  
4000 Faber Place Drive, Ste. 300  
North Charleston, SC 29405  
(843) 763-5297  
Attorney for Respondent

# C. STEVEN MOSKOS, P.A.

Attorney and Counselor at Law

C. Steven Moskos  
Board Certified Civil Trial Attorney  
Board Certified Civil Pretrial Advocate  
By the National Board of Trial Advocacy  
Board Certified Circuit Court Mediator

M

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North Charleston, SC 29405  
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November 7, 2014

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

RE: Carol Karesh, Respondent v. Elite Auto Wholesale, 1<sup>st</sup> Choice Auto Sales, Inc.,  
Timothy B. Williams, Jerry Little and Anthony R. Ellis,  
Appellate Case No.: 2014-001809

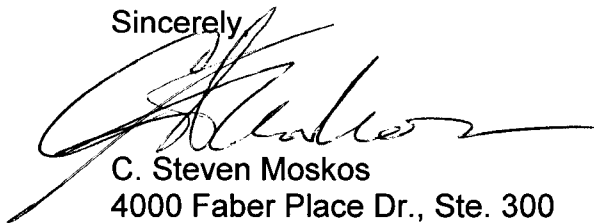
Dear Ms. Gee:

Enclosed for filing is a Motion to Dismiss in the above case. Also enclosed are the following:

- (1) Proof of service of the Motion to Dismiss on John L. Breeden, Attorney for Appellants, 1<sup>st</sup> Choice Auto Sales, Inc. and Timothy B. Williams.
- (2) Original and Six Copies of the motion.
- (3) A filing fee of \$25.00.

If you have any questions, please do not hesitate to contact me.

Sincerely



C. Steven Moskos  
4000 Faber Place Dr., Ste. 300  
North Charleston, SC 29405  
(843) 763-5297  
Attorney for Respondent

cc: John L. Breeden, Esq.  
905 2<sup>nd</sup> Ave  
North Myrtle Beach, SC 29582  
Attorney for Appellants

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**SC Court of Appeals**

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**SHIP TO:** The Honorable Tanya A. Gee  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia SC 29211-1629



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