

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

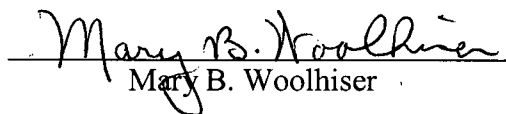
Kathy Ouzts Rushton, Special Referee

Case No. 2014-001742

CERTIFICATE OF SERVICE

I, Mary B. Woolhiser, Secretary for Attorney Philip H. Woolhiser, certify that I have caused Appellants' Motion for Lack of Jurisdiction and this Certificate of Service, in the above-referenced matter to be served, via U.S. Mail on December 20, 2014, to applicable parties as addressed below:

Aiken, South Carolina
December 20, 2014


Mary B. Woolhiser

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

Bernard Loyer, Jr., *pro se*
Sherry Loyer, *pro se*
61 Rachel Avenue
Trenton, SC 29847

Paul Knapp Simons, Esquire
111 Park Ave SW
Aiken, SC 29801
Attorney for Respondent, C. W. Miller

Marsha M. Banks, Esquire, Attorney for certain Defendants
319 Park Ave SE
Aiken, SC 29801
Attorney for certain Defendants

Robert J. Berning
120 Pine Needle Rd.
Aiken, SC 29803

S-17 Owners Association, Inc.
81 Rachel Ave
Trenton, SC 29847

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Kathy Ouzts Rushton, Special Referee

Appellant Case No. 2014-001742

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SC Court of Appeals
74614

Bernard Loyer, Jr. and Sherry Loyer, Respondents.

v.

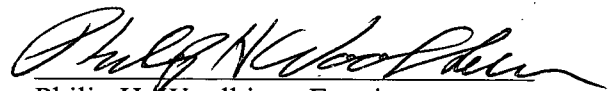
S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Robert J. Berning; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Charles Wilmont Miller; Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan, Defendants,

OF WHOM S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Greg Connell; Jonathan D. Dunn; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Michael O'Brien; Carolyn M. Rischbieter; and Belinda Smith-Sullivan, are Appellants.

And Charles Wilmot Miller is a Respondent.

MOTION OF APPELLANTS
Lack of Jurisdiction

This Motion requests that the Lower Court's finding of jurisdiction over the parties of the action be reversed. The applicable Lower Court Order is dated 6/05/2014.



Philip H. Woolhiser, Esquire
112 Trafalgar St., SW
Aiken, South Carolina
(803) 648-9994
SC Bar #0012466
Attorney for Appellants

December 20, 2014

SCACR Rule 240

GROUND FOR MOTION

By this current new Motion, the Court of Appeals is requested to declare that the Lower Court lacked jurisdiction over all 14 Appellants. The issue of jurisdiction could not have been raised at the Lower Court's Foreclosure Hearing, because the Appellants were not provided notice of said Hearing, and the Appellants were not represented at the Foreclosure Hearing.

The Appellants served a Motion upon all parties on 9/29/2014. The Motion requested this Court to require 2 attorneys to prove representation or service upon the Case Defendants. By this Court's Order, filed 11/20/2014, the Appellants' Motion was denied. The basis of the denial was SCACR Rule 210 (c), which provides that the record shall not include matter "which was not presented to the Lower Court".

The current Motion, dated and served 12/20/2014, does not request additional actions by the Respondents, nor their counsel. Attorney Marsha Banks has offered evidence that she does not represent any Appellants; this evidence is in the form of her "intent to withdraw" which she served upon 8 defendants. None of the defendants she served are an Appellant. There is no need for the Respondents' Counsel to act. The file for this Case, as maintained by the Edgefield County Clerk of Court, does not include an "Affidavit of Service" for any Appellant.

This current motion by the Appellants is not subject to SCACR Rule 210. The Appellants have never been served and have never authorized Marsha Banks, nor any other attorney, to represent them. The Appellants have never been under the jurisdiction of the lower court and thus, none of the Appellants had the legal obligation to appear at the Foreclosure Hearing. The Record on Appeal must be silent concerning the Appellants; the Appellants had no recognized participation in the Foreclosure Hearing by the Lower Court.

The Lower Court asked if there was anyone in the courtroom who was not represented by Attorney Marsha Banks, and there was no reply. However, if the Appellants were not under the jurisdiction of the court, there was no requirement for their presence. (Transcript Page 7, Lines 22-25). If the Appellants were not required to be present, (or represented) at the foreclosure hearing, then, the Appellants had no opportunity to provide evidence of the lack of jurisdiction. SCACR Rule 210 can not apply to an individual, not under the jurisdiction of the Lower Court.

SCRCP Rules 3.(a) and 4.(c), require service of a Summons and Complaint. SCRCP Rule 5.(d) and (e) requires Proof of Service to be filed with the Court. SCRCP Rules 4.(d)(1) and 4.(j) allow service upon an agent or an attorney. However, the attorney accepting service must be authorized by an individual to serve as the individual's attorney.

As set out below, there is no evidence of service upon the Appellants and Counsel for the Defendants does not recognize the Appellants as being her clients:

- 1) Evaluation of the documents on file at the Clerk of Court's Office at Edgefield, SC, for Civil Action Number 2009-CP-19-00353, has not found any Affidavits of Service. The file has no evidence of service upon the Appellants.
- 2) Attorney Marsha Banks, on December 1, 2014, mailed an "Affidavit of Mailing" to the Court of Appeals. The Affidavit of Marsha Banks lists 8 defendants: Jeanne Clavel, Les Galazka, Gerald Crawford, Laura Linn, the Estate of Dorothy Crawford, Roger McCoy, Bruce Douglas, and William Satcher. None of these represented defendants are among the 14 Appellants.

SCACR Rule 240 (c)(3)

SUPPORT AFFIDAVITS and DOCUMENTS

- 1) Page 7, Lines 22-25 of the Lower Court Hearing Transcript shows the Lower Court asking if anyone was represented by Attorney Marsha Banks, with no response.
- 2) Page 21, Lines 11 and 12 of the Lower Court Hearing Transcript shows the only attorney representing non-respondent defendants, as stating "I represent quite a few Defendants in this Case."
- 3) The Affidavit of the Appellants' attorney evidencing a lack of Service Affidavits in the Edgefield County Clerk of Courts' file.
- 4) The 10/14/2014 Affidavit of Attorney, Marsha Banks that notifies 7 individuals and an estate of her desire to withdraw. None of the 8 are an Appellant. The 10/14/2014 Affidavit was sent to the SC Court of Appeals on 12/1/2014.

SCACR Rule 240 (c)(2)

MEMORANDUM OF AUTHORITIES

SCRCP Rule 3.(a) requires the Summons and Complaint to be filed with the Clerk of Court, and served within 120 days.

SCRCP Rule 4.(c) requires service of the Summons and Complaint upon all Defendants.

SCRCP Rule 4.(d)(1) states that service may be made upon an agent.

SCRCP Rule 4.(j) allows individual's attorney to accept service.

SCRCP Rule 5.(d) and (e) defines the required Proof of Service which must be filed with the Court.

SCRCP Rule 210(c) states that the Record on Appeal "shall not, however, include matter which was not presented to the Lower Court".

1 of these Defendants, I believe. S17 Owners
2 Association, Inc is not represented is not
3 represented, is my understanding, is that correct?

4 **MR. MEDLOCK:** Yes, their Counsel withdrew
5 previously.

6 **THE COURT:** Okay. And Paul Simons is here
7 representing?

8 **MR. SIMONS:** Mr. Charles Wilmont Miller, your
9 Honor, and Ellen Miller, his wife, who are on the
10 note -- one of the notes.

11 **THE COURT:** And everyone else, I believe, is
12 represented by Marsha Banks, except for
13 Mr. Berning, is that correct?

14 **MR. MEDLOCK:** That is correct. And his
15 Counsel has asked to withdraw. He sent us all an
16 email on Monday -- I mean on Friday. I was out of
17 the office and did not see it. I certainly consent
18 to his Motion.

19 **MR. SIMONS:** I consent to his Motion, as well.

20 **MS. BANKS:** I consent to that Motion, as well,
21 your Honor.

22 **THE COURT:** Okay. So is everyone else
23 represented by Ms. Banks, is there anyone else
24 that's not represented by her?

25 **COURTROOM:** (No response.)

1 stipulated --

2 MR. MEDLOCK: No, we hadn't --

3 THE COURT: -- it didn't go on the record?

4 Are we stipulating that --

5 MR. SIMONS: Yes, your Honor, I have no
6 objections.

7 MS. BANKS: We have no objections to that.

8 MR. MEDLOCK: I didn't think to -- I
9 apologize.

10 THE COURT: Ms. Banks.

11 MS. BANKS: Your Honor, as you know, I
12 represent quite a few Defendants in this case. And
13 although I have contacted and notified every
14 Defendant that I represent I have not been
15 presented with original Promissory Notes by those
16 Defendants. So we do not have a litany of
17 testimony to present with a list of debt.

18 The Mortgage lists, in specificity, the
19 amounts that each Note holder contributed to the
20 situation that we have, as you know, and that was
21 pretty -- as was discussed, this is a community
22 airstrip where most of these people that
23 contributed money to the situation live in this
24 community and they have an airstrip where they fly
25 in and fly out. They contributed this money in the

BANKS & OWENSBY LLC

319 Park Avenue, SE
Aiken, South Carolina 29801

Telephone: (803) 648-5777

Fax: (803) 648-5228

December 1, 2014

Ms. Jenny Abbot Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: Bernard and Sherry Loyer v. S17 Owners Association, Inc., et al.
Case No.: 2014-00172

Dear Ms. Kitchings:

Enclosed please find the original and six copies each of the Affidavit of Mailing in response to the Order filed November 20, 2014 and of the Certificate of Service.

By copy of this letter, I am serving all opposing counsel and pro se parties.

Thank you for your consideration in this matter.

With regards, I remain

Sincerely yours,

Marsha M. Banks
Marsha M. Banks *with permission*

Enclosures

Cc: Phillip H. Woolhiser, Esq.
S-17 Owners Association, Inc.
Paul Knapp Simons, Esq.
Robert J. Berning
Bernard Loyer, Jr.
Sherry Loyer

Marsha M. Banks
mmb1aw@gmail.com

Bradford M. Owensby
bmowensby@gmail.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Kathy Ouzts Rushton, Special Referee

Appellate Case No.: 2014-001742

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Bernard Loyer, Jr., and Sherry Loyer, Respondents,

v.

S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Robert J. Berning; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John M. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Charles Wilmot Miller; Michael O'Brien; Carolyn M. Rischbieter; William Satcher; and Belinda Smith-Sullivan, Defendants,

OF WHOM S17 Owners Association, Inc.; John L. Avent, Frances Avent; Sylvia S. Berger; Greg Connell; Jonathan D. Dunn; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John M. Lacher; Kayle R. Larson; Michael O'Brien; Carolyn M. Rischbieter; and Belinda Smith-Sullivan are Appellants.

AFFIDAVIT OF MAILING

I, Marsha M. Banks, certify that I notified the Defendants of my intent to withdraw as counsel in the above-referenced matter and to be served, via US Mail, on October 14, 2014, as listed below:

Jeanne Clavel
70 Piper Drive
Trenton, SC 29847

Les Galazka
213 Woodward Lake Drive
Trenton, SC 29847

Gerald Crawford
410 Cessna Drive
Trenton, SC 29847


The Estate of Dorothy Crawford
410 Cessna Drive
Trenton, SC 29847

Bruce C. Douglas
85 Rachel Avenue
Trenton, SC 29847

Laura Linn
223 Woodward Lake Drive
Trenton, SC 29847

Roger McCoig
81 Chata Drive
Clark Hill, SC 29821

William Satcher
110 Cessna Drive
Trenton, SC 29847

 For Marsha Banks
Marsha M. Banks by Brant Owensby, Esq.
Attorney (70737)
319 Park Avenue SE
Aiken, SC 29801

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

AFFIDAVIT

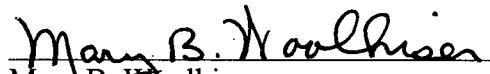
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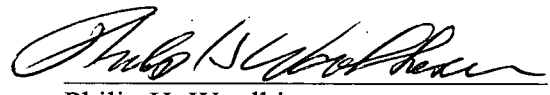
COMES NOW, Philip H. Woolhiser, who being duly sworn, deposes and states the following:

- (1) I am over the age of 18 and am competent to make this Affidavit.
- (2) I reviewed the Edgefield Clerk of Court Record, for Case 2009-CP-19-00353, several years ago and at that time found no applicable Affidavits of Service.
- (3) I requested a resident of Edgefield County to personally inspect the applicable court files for the presence of Affidavits of Service upon any of the Appellants.
- (4) My questioning of the inspection described in (3) above, revealed no applicable Affidavits were in the Case File.

FURTHER, the Affiant Sayeth Naught.

SWORN to before me, this
20th day of December 2014.


Mary B. Woolhiser
Notary Public for South Carolina
My Commission Expires 5/05/2018


Philip H. Woolhiser
112 Trafalgar St. SW
Aiken SC 29801
803-648-9994

Philip H. Woolhiser, Attorney at Law

112 Trafalgar St. SW
Aiken, SC 29801-3744

Phone: (803) 648-9994
FAX: (803) 753-9018

Email: woolhiser@bellsouth.net

December 20, 2014

The Honorable Jenny Abbott Kitchings
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Columbia, South Carolina 29211-1629

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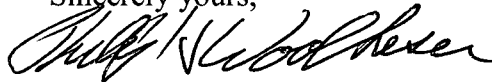
Subject: Bernard and Sherry Loyer v. S17 Owners Association, Inc. et. al.
Case No.: 2014-001742

Dear Ms. Kitchings,

Enclosed for filing is the original and six copies of Appellants' Motion concerning a Lack of Jurisdiction and the original Proof of Service of the Designation on the Respondent in compliance with Rule 209.

Also enclosed is my Check #2995 in the amount of \$25.00.

Sincerely yours,



Philip H. Woolhiser
Attorney for Appellants

cc: Bernard Loyer, Jr., *pro se*
Sherry Loyer, *pro se*
61 Rachel Avenue
Trenton, SC 29847

Paul Knapp Simons, Esquire
111 Park Ave SW
Aiken, SC 29801
Attorney for Respondent, C. W. Miller

Robert J. Berning *pro se*
120 Pine Needle Rd.
Aiken, SC 29803

S-17 Owners Association, Inc. *pro se*
81 Rachel Ave
Trenton, SC 29847

Marsha M. Banks, Esquire
319 Park Ave SE
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Attorney for certain Defendants

Philip H. Woolhiser, Attorney at Law

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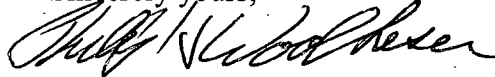
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Case No.: 2014-001742

Dear Ms. Kitchings,

Enclosed for filing is the original and six copies of Appellants' Motion concerning a Lack of Jurisdiction and the original Proof of Service of the Designation on the Respondent in compliance with Rule 209.

Also enclosed is my Check #2995 in the amount of \$25.00.

Sincerely yours,



Philip H. Woolhiser
Attorney for Appellants

cc: Bernard Loyer, Jr., *pro se*
Sherry Loyer, *pro se*
61 Rachel Avenue
Trenton, SC 29847

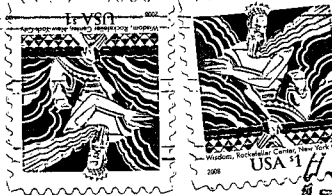
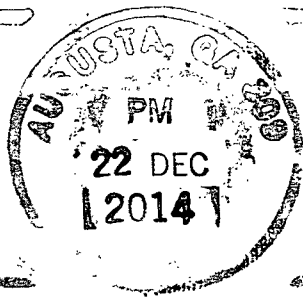
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319 Park Ave SE
Aiken, SC 29801
Attorney for certain Defendants

22 DEC
2014



PHILIP H. WOOLHISER
ATTORNEY AT LAW

112 Trafalgar St., S.W.
Aiken, South Carolina 29801

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