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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS**

RALPH P. STROMAN, SPECIAL REFEREE

APPELLATE CASE NO. 2014-002593

Dewey Lee Small,.....Respondent,

v.

Maxine Johnson a.k.a. Maxine McQueen a.k.a. Maxcine Johnson,
Ernestine Small Bass, Rose Small a/k/a Rosemary Mary McQueen,
Kassandra D. Odom a/k/a Kassandra D. Shea, Michelle D. Odom
a/k/a Michelle D. DeLa Corte, Queenie Small a/k/a Queenie B.
Arnold a/k/a Qunnie Arnold, Lewis Filton Small, Jr. a/k/a Pete
Small, William Franklin Small a/k/a Danny Small, Patsy Ann
Small a/k/a Patsy Small Crock a/k/a Patsy Ann Small Pierick
Crock a/k/a Patsy Pierick, Donald Lee Small, Janava Small
a/k/a Janava Small Lonneux a/k/a Candy Small, Daisy Dean
Small a/k/a Dean Small, Sandra Small a/k/a Sandra Howard,
Jacqueline L. White, Jimmy Prince, Jr., Veretta Norman, Venata
Small Olivera Marcus Johnson, Jr., Dewey Jerome Johnson,
John Doe and Jane Doe, Representatives of any unknown Heirs,

In Re: The Estate of Lewis Small, Defendants,

of whom Patsy Ann Crock and Fulton Louis Small, are.....Appellants.

**MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION FOR EXTENSION OF
TIME**

N. David DuRant, Sr., Esquire
Law Offices of N. David DuRant
P.O. Box 14722
Surfside Beach, SC 29587
Phone: (843) 650-7800
Fax: (843) 650-8090
Attorney for Respondents

February 25, 2015
Surfside Beach, South Carolina

**MEMORDANDUM IN SUPPORT OF MOTION TO DISMISS OR IN THE
ALTERNATIVE A MOTION FOR EXTENSION OF TIME**

I. INTRODUCTION

Pursuant to Rule 240 of the South Carolina Appellate Court Rules the Respondent files a Motion to Dismiss or in the Alternative a Motion for Extension of Time for filing his Initial Brief and his Designation of Matter to be Included in the Record on Appeal.

II. STATEMENT OF THE FACTS

A Hearing was held September 29, 2015, heard by the Special Referee Ralph P. Stroman, and a final order was issued in the aforementioned matter and filed October 16, 2014. The Appellant sent a Notice of Appeal regarding the aforesaid final order on November 7, 2014. On December 5, 2014, the Clerk of the South Carolina Court of Appeals indicated in a letter to Appellants' counsel that the record showed that the time for ordering the transcript of the final hearing had expired. On December 15, 2014, the Appellant sent correspondence to the Clerk of the South Carolina Court of Appeals, and copied the Respondent. This correspondence stated that the Appellant had received the transcript from the May 9, 2014 hearing but had not received the transcript from the aforementioned September 29, 2014 hearing. On February 5, 2015 the respondent was served with the Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal. That as of February 25, 2015, the Respondent has failed to receive the transcript for the hearing held September 29, 2015 and that if opposing counsel has received this transcript he has failed to copy the Respondent on correspondence concerning this transcript. That without the transcript of the hearing held September 29, 2015, it will be extremely difficult for the Respondent to complete his Initial Brief and Designation of Matter to be Included in the Record on Appeal.

That upon information and belief, and after calling and being told by the court reporter of record concerning the aforementioned hearing, opposing counsel has already received the aforementioned transcript. That upon this belief, on February 24, 2015, the Respondent ordered his copy of the transcript for the hearing held September 29, 2015.

The Respondent seeks an order from this court in granting either a Motion to Dismiss or a Motion for Extension of Time, in allowing a 30 day extension for the Respondent to complete and file his Initial Brief and his Designation of Matter to be Included in the Record on Appeal.

III. STATEMENT OF THE LAW

Rule 240 of the South Carolina Appellate Court Rules governs all motions filed with the appellate court. Rule 240, SCACR. Rule 207(a) of the South Carolina Appellate Court Rules states“(w)here 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.” Rule 207(a), SCACR. The Rule further states, “appeals from the court of common pleas, masters in equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal.” Id. Finally, the Rule states “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.

“Whenever it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal shall be issued.” Wise v. South Carolina Dept. of Corrections, 642 S.E.2d 551, 551 (2007).

IV. ARGUMENT

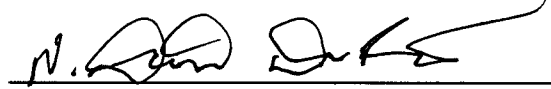
The Appellants failed to order the Transcript of the September 29, 2014 hearing within the ten (10) days required by the South Carolina Appellate Court Rules. The Respondent was not furnished with copies of any correspondence between the Appellants and the court reporter regarding the transcript of the September 29, 2014 hearing, after the December 15, 2014 correspondence mentioned above. The Appellants and there counsel have clearly failed to comply with the requirements of SCACR in to distinct areas of the rules. In light of these lapses, the Respondent believes the Appellants' Appeal should be dismissed with prejudice.

In the alternative, Respondent requests that his Motion for Extension of Time be granted and 30 day extension be allowed for the Respondent to complete and file his Initial Brief and his Designation of Matter to be Included in the Record on Appeal.

V. CONCLUSION

In accordance with the above mentioned facts, rules, case law, and the attached affidavit, the Respondent requests that the court grant his Motion to Dismiss or in the alternative if the Motion to Dismiss is denied the Respondent requests the court grant his Motion for Extension of Time. Finally, in compliance with Rule 240(b) of the South Carolina Appellate Court Rules, the Respondent requests that the time limits for submitting the Initial Brief and the Designation of Matter to be Included in the Record on Appeal be stayed until the determination of this matter.

**LAW OFFICES OF N. DAVID DuRANT
AND ASSOCIATES, P.A.**



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ATTORNEY FOR Respondent

February 25, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

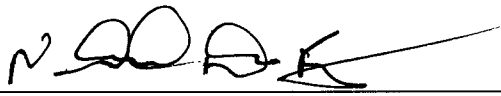
AFFIDAVIT

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PERSONALLY APPEARED BEFORE ME, N. David DuRant, Sr., deposes and states:

1. That I am N. David DuRant, Sr. and I am Counsel for the Respondent for the Appellant case no. 2014-002593.
2. I have not received any correspondence from counsel of the Appellant, Charles Owen Nation, after December 15, 2014, concerning the issue of ordering the transcript of the hearing on September 29, 2014 heard by Special Referee Ralph P. Stroman.
3. That on February 24, 2015 our office contacted the court reporter of record for the aforementioned September 29, 2014 hearing, and that they informed us that counsel for the Appellant, Charles Owen Nation, had already ordered and been sent the transcript for the aforementioned hearing.
4. On February 24, 2015, after learning that the transcript had been delivered to opposing counsel, I ordered a copy of said transcript.

FURTHER DEPONENT SAYETH NOT.



N. David DuRant, Sr.

SWORN to before me this 25
Day of February 2015.



Notary Public for South Carolina

My Commission Expires: 11/4/24

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Appellate Case No. 2014-002593

Dewey Lee
Small,.....Respondent,

v.

Maxine Johnson a.k.a. Maxine McQueen a.k.a. Maxcine Johnson,
Ernestine Small Bass, Rose Small a/k/a Rosemary Mary McQueen,
Kassandra D. Odom a/k/a Kassandra D. Shea, Michelle D. Odom
a/k/a Michelle D. DeLa Corte, Queenie Small a/k/a Queenie B.
Arnold a/k/a Qunnie Arnold, Lewis Filton Small, Jr. a/k/a Pete
Small, William Franklin Small a/k/a Danny Small, Patsy Ann
Small a/k/a Patsy Small Crock a/k/a Patsy Ann Small Pierick
Crock a/k/a Patsy Pierick, Donald Lee Small, Janava Small
a/k/a Janava Small Lonneux a/k/a Candy Small, Daisy Dean
Small a/k/a Dean Small, Sandra Small a/k/a Sandra Howard,
Jacqueline L. White, Jimmy Prince, Jr., Veretta Norman, Venata
Small Olivera Marcus Johnson, Jr., Dewey Jerome Johnson,
John Doe and Jane Doe, Representatives of any unknown Heirs,

In Re: The Estate of Lewis Small, Defendants,

of whom Patsy Ann Crock and Fulton Louis Small, are.....Appellants.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss or in the alternative Motion for Extension of Time on February 25, 2015 by depositing a copy of it in the United States Mail, postage prepaid, on February 25, 2015, addressed to, Maxine McQueen, 21 Charles St., Apt. #5A, Poughkeepsie, NY 12601.



Christina Judge, Paralegal to N. David DuRant

P.O. Box 14722

Surside Beach, South Carolina 29587

Phone: (843) 650-7800

Fax: (843) 650-8090

N. David DuRant

Attorney for Respondent

February 25, 2015

LAW OFFICES OF N. DAVID DuRANT AND ASSOCIATES, P.A.
ATTORNEYS AT LAW

N. DAVID DuRANT, SR.
NORWOOD D. DuRANT, JR.
L. JAMES PURVIS, JR.

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REAL ESTATE E-MAIL: durantre@lawofficesofdurant.com

February 25, 2015

The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: Dewey Lee Small v. Maxine Johnson
Appellate Case No.: 2014-002593

Dear South Carolina Court of Appeals:

Please find enclosed an Original Motion To Dismiss Or In The Alternative Motion For Extension Of Time along with the Seven (7) copies, Two (2) Proof of Service's and a check in the amount of **Twenty Five (\$25.00) Dollars and 00/100** to file this Motion. All parties involved in this Appeal have been sent notice along with a proof of service attached within.

I am requesting for a clocked copy of the Motion and Proof of Service be returned to my office in the self addressed stamped envelope that I have provide within for my records.

Should you have any questions regarding this matter, please do not hesitate to contact my office.

With sincere regards, I am

Very truly yours,



N. David DuRant
Attorney for the Estate of Lewis Small a/k/a Louis Small

NDD/cbj
Enclosures
Cc: Dewey Lee Small

**LAW OFFICES OF N. DAVID DuRANT
AND ASSOCIATES, P.A.**

Attorneys-At-Law

1801 Glens Bay Road

Post Office Box 14722

Surfside Beach, South Carolina 29587

Telephone # 843-650-7800

Litigation FAX # 843-650-8090

Real Estate FAX #843-650-8077

PLEASE RESPOND:

_____ MAIL

_____ FAX

N. DAVID DuRANT, SR.

ATTORNEY AT LAW

L. JAMES PURVIS, JR.

ATTORNEY AT LAW

NORWOOD D. DuRANT, JR.

ATTORNEY AT LAW

February 25, 2015

The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Estate of Lewis Small a/k/a Louis Small
Appellate Case Number: 2014/002593

Dear South Carolina Court of Appeals:

Enclosed herewith please find the following:

<input type="checkbox"/>	Summons and Complaint	<input type="checkbox"/>	Mortgage
<input type="checkbox"/>	Order & Rule to Show Cause	<input type="checkbox"/>	Note
<input type="checkbox"/>	Interrogatories	<input type="checkbox"/>	Option of Title
<input type="checkbox"/>	Answers to Interrogatories	<input type="checkbox"/>	Application for EIN
<input type="checkbox"/>	Answer To Petition for Real Estate	<input type="checkbox"/>	Initial Report of Corp.
<input type="checkbox"/>	Final Order	<input type="checkbox"/>	Satisfied Note & Mortgage
<input type="checkbox"/>	Subpoena	<input type="checkbox"/>	Corrective Deed of Distribution
<input type="checkbox"/>	Affidavit of Personal	<input type="checkbox"/>	Title Insurance
<input type="checkbox"/>	Notice of Deposition	<input checked="" type="checkbox"/>	Check Number: 002781 \$25.00
<input type="checkbox"/>	Request for Production	<input type="checkbox"/>	Invoice
<input type="checkbox"/>	Self-addressed Envelope	<input type="checkbox"/>	Articles of Incorporation
<input type="checkbox"/>	Notice of Motion for Extension	<input type="checkbox"/>	Election by Small Business Corp.
<input checked="" type="checkbox"/>	Proof of Delivery	<input type="checkbox"/>	Release
<input checked="" type="checkbox"/>	Self Addressed Envelope	<input type="checkbox"/>	Endorsement
<input type="checkbox"/>	Certificate of Mailing	<input type="checkbox"/>	Power of Attorney
<input type="checkbox"/>	Inventory and Appraisalment	<input type="checkbox"/>	Notice of Correction
<input type="checkbox"/>	Information to Heirs and Devisees	<input checked="" type="checkbox"/>	Motion To Dismiss or in the Alternative Motion for Extension of Time

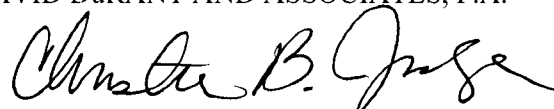
Would you please:

<input checked="" type="checkbox"/>	File the original	<input type="checkbox"/>	Certify Copy
<input checked="" type="checkbox"/>	Return Clocked-in copies	<input type="checkbox"/>	Sign and Return
<input type="checkbox"/>	Serve and Return Affidavit	<input type="checkbox"/>	Furnish Case Number
<input type="checkbox"/>	File For Your Records	<input checked="" type="checkbox"/>	For Full Payment
<input checked="" type="checkbox"/>	Handle Accordingly		

Yours very truly,

N. DAVID DuRANT AND ASSOCIATES, P.A.

By



Christina B. Judge, Paralegal

MINY BOWES
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