

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
CIRCUIT COURT

John C. Hayes, III, Circuit Court Judge

Case No.: 2009-CP-46-01244

RECEIVED

MAR 10 2015

SC Court of Appeals

Phil Vasey and Pamela Vasey, Appellants,

vs.

Colton Builders, LLC, Respondent.

RETURN TO MOTION TO REINSTATE

This motion is filed pursuant to Rule 240 of the South Carolina Appellate Court Rules. The Respondent seeks to have the Appellants' Motion to Dismiss denied as the Appellants' have failed to timely file their initial brief and designation of matter. Additionally, ten days has transpired since Appellants' motion was filed and there has been no initial brief or designation of matter on appeal filed, as Respondent indicated he would do.

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.

A subsequent Order was filed on June 17, 2014, 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 the appeal on July 2, 2014, alleging that the transcript had been ordered. The Appellants motion was granted by Order filed September 26, 2014.

On October 13, 2014, Respondent filed another Motion to Dismiss for Appellants' Failure to timely order the transcript. The Respondent's motion to dismiss was denied by Order filed December 2, 2014.

On January 15, 2015 the Court notified Appellant's counsel by mail that their records indicated the initial brief and designation of matter should have been filed with the Court and gave Appellant's counsel 10 days to file the initial brief and designation of matter, along with a motion to file the document out of time, or the appeal will be dismissed. Appellants failed to serve and file their initial brief and designation of matter as required and the appeal was dismissed by Order filed February 3, 2015.

Appellants' counsel has filed yet another Motion to Reinstate indicating that he has had health issues, although no one with counsel's office has contacted Respondent's counsel, whether by mail, e-mail, telephone, or fax to advise of same, despite the fact that Appellant's counsel's office is located less than one mile from

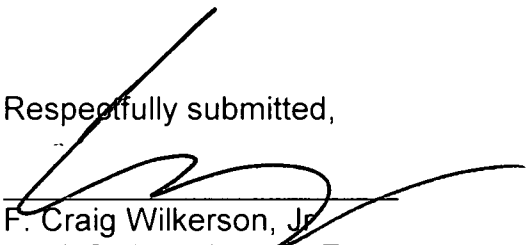
Respondent's counsel's office. Appellants further seek to have the appeal reinstated and a "short 10 day period in which to file the required documents with the Court." Counsel for the Respondent would show that 10 days has lapsed since Appellant's Motion to Reinstate was filed.

CONCLUSION

The Respondent has an interest in having this matter ended. While Appellants seek to preserve their rights, it is doing so by trampling on the legitimate right of the Respondent to have this matter concluded. Based on the foregoing, Respondent is informed and believe that the Appellant's Motion to Reinstate should be denied.

March 5, 2015

Respectfully submitted,



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

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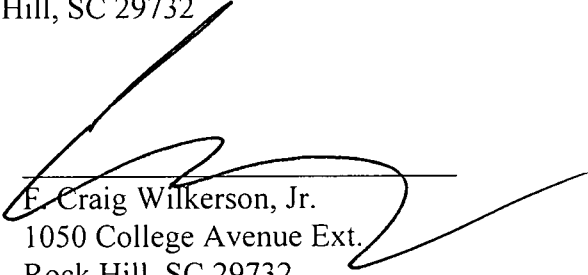
v.

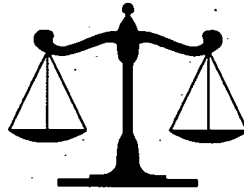
Colton Builders, LLC, Respondent.

PROOF OF SERVICE

I certify that I have served the Return to Motion to Reinstate on counsel for the Appellant by depositing a copy of same in the United States Mail, postage prepaid, on March 6, 2015, addressed as follows:

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


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



LAW OFFICES OF
F. CRAIG WILKERSON, JR.

F. CRAIG WILKERSON, JR.
Attorney at Law

BRANDON G. NOBLES
Attorney at Law

March 6, 2015

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 Return to Motion to Reinstate in the above-referenced matter, together with a Proof of Service. By copy of this letter, I am serving a copy of the Return to Motion to Reinstate on David Sample, attorney for Appellants.

With best regards, I am

Sincerely,


F. Craig Wilkerson, Jr.

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

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