

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Appellate Case Number 2015-000157

Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A.,
successor-by-merger to
Wachovia Bank, N.A.,

Respondent,

v.

Fallon Properties South
Carolina, LLC, Timothy R.
Fallon, Susan C. Fallon,
Fallon Luminous Products
Corporation, G. E. Business
Capital Corporation, formerly
Transamerica Business Capital
Corporation, FSD Repurchase
Solutions, LLC and South
Carolina Department of
Revenue,

Defendants,

Of Whom Fallon Properties
South Carolina, LLC, Timothy
R. Fallon, Susan C. Fallon are
the,

Appellants.

RETURN TO MOTION TO DISMISS

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APR 01 2015
SC Court of Appeals

Appellants respectfully oppose the Respondent's Motion to Dismiss. This return is based on the arguments set forth herein and upon the exhibits attached. Appellants assert that the notice of appeal (Notice) was served and filed timely and that the transmission of an email from the trial court, or the receipt of the same, does not constitute written notice of the entry of an order as required by Rule 203 SCACR.

Pursuant to the requirements of Rule 203 (b) (1) SCACR service of a notice of appeal shall be served within thirty (30) days after receipt of written notice of entry of the order or judgment. The time in which to serve notice is based upon the date of the receipt of the order, not the date the order is mailed or transmitted. In this case the order was received by Appellants' trial counsel Rodney F. Pillsbury (Pillsbury) on December 18, 2014 (Tab #1, 6 and 7). Based upon the receipt of the order on that date Pillsbury correctly calculated the last day upon which the notice of appeal (Notice) could be served as January 19, 2015 (Tab #1, 7). The Notice was served on January 15, 2015 within the time frame required (see Tab B to the Respondent's Motion). (Footnote 1)

By email dated December 19, 2014 from Pillsbury to Appellants and appellate counsel, Alexander Hray, Jr. (Hray), Pillsbury notified them that the order had been received by him and last day to serve a Notice was January 19, 2015 and the Notice was served on January 15, 2015 (Tab #1, Ex. B and Tab #2, Ex. A). Based on the date that Pillsbury had calculated the due date to serve the

¹ At the time the Notice was served, Hray understood that Pillsbury had received the order on December 19, 2014 and it was later realized that the Pillsbury received the order on December 18, 2014; however, if the order was received by Pillsbury on either of these two days the last date to serve the notice of appeal would nevertheless fall on January 19, 2015. Rule 203(e)(1)(C) of the SCACR provides "**if appropriate** for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken" shall be included in the notice of appeal. (Emphasis supplied). The dispute regarding the timeliness of the service of the Notice was not known by Hray until

Notice the Notice was served four (4) days prior to the last date such was required. After service of the Notice the issue of the timeliness of the service of the Notice was raised by Respondent's trial counsel, Weyman C. Carter (Carter), by phone call to Hray and by email to Hray on January 30, 2015 (Tab #2, Ex. B).

The rules of both civil and appellate procedure adopted by our supreme court anticipate the transmission of notices and pleadings by way of hand delivery or use of the United States Postal Service (USPS). Rule 5 SCRCF and Rule 262 (b) SCRAP are, in pertinent part, identical with respect to how legal process is to be effected. Both provide that "service upon the attorney or upon a party shall be made by delivering a copy to him or by **mailing** it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this Rule means: **handing** it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein . . ." (Emphasis added).

Furthermore, Rule 77 SCRCF provides that "(i)mmediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by **first class mail** upon every party affected thereby . . . and shall make a note in the case file or docket sheet of the **mailing**. For parties proceeding in the SCE-File electronic filing system, the clerk shall serve a notice of the entry by electronically transmitting a Notice of Electronic Filing to all parties. Such mailing or electronic transmission shall not be necessary to parties who have already received notice. Such mailing or electronic transmission is sufficient notice for all purposes for which notice of the entry of an order or judgment is required by these rules; . . ." In this action the parties were not proceeding in the

after the Notice had been served.

SCE-File system and in any event the electron transmission giving rise to the Respondent's motion was made by an employ of the master's office and not from the clerk of court; therefore, that portion of Rule 77 is inapplicable.

Appellants agree with Respondent that there is no South Carolina precedent with respect to the effectiveness of notice of the entry of an order by an email transmission. The Respondent relies heavily on the case of *Canal Ins. Co. v. Caldwell*, 524 S.E.2d 416 (S.C. App. 1999); however, Respondent places more weight on the holding in *Canal* to support its position than is merited. In *Canal* an extensive amount of time had elapsed from the time that the order was rendered to when the Appellant in that case served its notice of appeal. In that case the order was dated March 17, 1997 and a form judgment entered on March 19, 1997 in which was indicated that copies had been sent to all parties. The trial counsel for that appellant wrote to opposing counsel by letter dated June 24, 1997 and inquired about the status of the final order. (*Canal* 417).

In *Canal* the attorney for the Respondent "responded via fax and **mail** on July 8, expressing surprise that opposing counsel had not been notified of the judgment and stating that it had been entered on March 19 as Judgment Roll Number 211763" (Emphasis added) (*Canal* at 417). In that case the court noted that the letter of opposing counsel, in addition to being faxed, had also been mailed. Also in the *Canal* case there existed a very long period between the dates of rendering of the order and the service of the notice of appeal. The *Canal* court calculated that the date notice of appeal should have been served was August 1997 and one wasn't filed until March 17, 1998. In the present case the time differential between when the Respondent contends the Notice should have been served and when it was served is one (1) day. The court in *Canal* held that there was no question that he (appellant's attorney) received written notice of entry of the judgment, including the

judgment roll number, from opposing counsel on July 8, 1997 (Canal at 418). The court in *Canal* however did not specifically rule that service by fax constituted receipt by the attorney on the date of transmission. The facts as recited by the court in *Canal* do not provide a full explanation and leaves to conjecture regarding other facts may have been involved; it is not stated one way or the other by the court in *Canal* whether the appellant's attorney disputed (1) whether he in fact had received the faxed letter or, if he had received it, (2) its effectiveness as receipt of notice of entry of an order. The *Canal* court didn't explicitly state that a fax transmittal constituted the receipt by counsel of the notice of entry of an order of filing as required by Rule 203 SCACR and certainly that holding should not be extrapolated to be construed that a transmission of an order or notice of entry of order via email to counsel of record meets that requirements of Rule 203 SCACR. [Ultimately the *Canal* case was determined on its merits and not with regards to the timeliness of the appeal.]

Respondent cites *Ackerman v. 3-V Chemical, Inc.*, 562 S.E.2nd 613 (2002) in support of its motion. In *Ackerman* the court held that under Rule 59 SCRCR the receipt of the Form 4 was written notice of entry of the order which commenced the running of the time in which to file a motion to reconsider. Appellants concede that the mere receipt of a Form 4, not accompanied by a signed order, is sufficient to commence the running of the thirty (30) days in which to serve the Notice; but the issues raised by the Respondent's motion and this return has to do with the method of how the notice of filing given and what constitutes receipt a prescribed by the Rules not whether a Form 4 or a copy of the signed order has to be supplied. In this case the date of receipt by Pillsbury of the Form 4 and the order occurred simultaneously. (Attachment #1) The *Ackerman* case did not address receipt by a certain method of transmission rather what is to be transmitted as the notice of entry.

If the supreme court wished to permit other methods, such as email, to be utilized to

constitute receipt then the supreme court could adopt rules specifically making that method allowable, but it has not.

In the case of *White v South Carolina Dep't of Health & Env'tl. Control*, 708 S.E.2nd 812 (SC App. 2011) the appellate counsel undeniably received an email copy of the decision of the ALC but the counsel maintained that Rule 203(b)(6) contemplates receipt of the decision through proper service by mail or hand delivery and that the applicable rules do not authorize service of the decision by email. (*White* at 815) Accordingly, the thirty-day period in which to file a notice of appeal did not commence on the day that counsel received the decision via e-mail. Respondent in its motion attempts to make a distinction in this case as opposed to the *White* case in that the *White* case fell under rule 203 (b) (6) requiring the receipt of the administrative law decision rather than receipt of a written notice of entry of an order. However, that distinction is invalid. The issue in this case is, as in *White*, whether receipt of the decision by counsel via email was met the requirement of the rule. In *White* under the ALR the decision was to be transmitted to trigger the running of the time to serve a notice of appeal, and in that case it was undisputed that the decision actually was provided by email prior to its mailing, as in this case. Nevertheless, the court in *White* held that such a notice was not in compliance with the Rules and held that the appeal was timely.

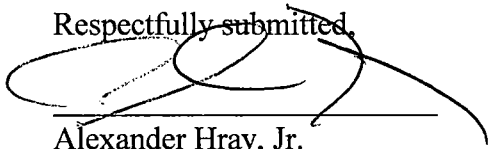
CONCLUSION

The court rules cited in this Return contemplate that legal process is to be handled in basically one of two ways, either via the United States Postal Service or hand delivery. The *Canal* case does not directly address the effectiveness of receipt via fax and the facts of that case, especially with the length of delay in serving the notice of appeal, lie in sharp contrast to the facts of this case. Likewise the issue in the *Ackerman* is not applicable to the issues in this case in that that case dealt

with what type document was received by counsel and not how it was transmitted. The *White* case cited by Respondent did involve the receipt of decision by way of an email transmission; however, the *White* case is, if anything, supportive of the Appellants' position that an email transmission is not effective as receipt of a notice of entry of order. For the reasons given, the Respondent's Motion to Dismiss the Appeal should be DENIED.

March 30, 2015

Respectfully submitted,



Alexander Hray, Jr.
389 E. Henry St., Suite 107
Spartanburg, South Carolina 29302
(864) 342-1111
Fax: (864) 342-1113
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Appellate Case Number 2015-000157

Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A.,
successor-by-merger to
Wachovia Bank, N.A.,

Respondent,

v.

Fallon Properties South
Carolina, LLC, Timothy R.
Fallon, Susan C. Fallon,
Fallon Luminous Products
Corporation, G. E. Business
Capital Corporation, formerly
Transamerica Business
Capital Corporation, FSD
Repurchase Solutions, LLC
and South Carolina
Department of Revenue,

Defendants,

Of Whom Fallon Properties
South Carolina, LLC, Timothy
R. Fallon, Susan C. Fallon are
the,

Appellants.

AFFIDAVIT OF RODNEY PILLSBURY

PERSONALLY APPEARED before me Rodney F. Pillsbury, who first being duly sworn,
does depose and state as follows:

1. I was the trial attorney for the Appellants in the proceedings before the Master-in-Equity on December 11, 2014 at which the Master ruled in favor of the Respondent and directed the attorney for the Respondent, Weyman C. Carter ("Carter"), to revise the proposed order Carter had submitted at the time of the proceeding and to send the revised order to me.

2. The revised order was sent to me by Carter via email transmission for my review and approval.

3. As set forth in paragraph 4 of the Affidavit of Carter filed with Respondent's motion I did receive, as a copy recipient, an email from Sharon Winstead, administrative assistant to the master, the date of transmission shown thereon being December 15, 2014 at 2:48 P.M.; however, do not have an independent recollection of when this email was received on my computer or on what date I had opened this email.

4. My office policy is to open mail received from the United States Postal Service (USPS) upon its receipt in my office and to place a date stamp on the contents of the USPS mail.

5. The date stamped on the contents of mail received from the USPS corresponds with the date mail is received.

6. Attached as Exhibit A hereto is a true copy of the Form 4 (Form 4) and attached order I had received from the USPS with respect to this proceeding and on the bottom right hand corner is stamped "Received December 18, 2014" which is the stamp placed thereon by my office.

7. On December 19, 2014, the day after the receipt of this Form 4 from the USPS, I notified my Appellant, Timothy R. Fallon, and Appellants' appeal attorney, Alexander Hray, Jr., both by email, that I had received the order and indicated that the last day on which to file an

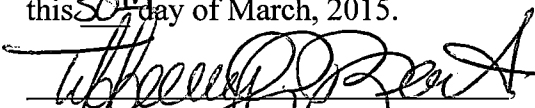
appeal in this proceeding was January 19, 2015, a true copy of this email being attached hereto as Exhibit B.

FURTHER AFFIANT SAYETH NOT.



Rodney F. Pillsbury

Sworn to and subscribed before me
this ^{30th} day of March, 2015.


Notary Public for South Carolina
My commission expires. 10/18/21

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-42-4430

Wells Fargo Bank, N.A.

Fallon Properties South Carolina, LLC., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Weyman C. Carter

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Order Denying Petition for Appraisal

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : This is a foreclosure action

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CLERK OF COURT
SPARTANBURG COUNTY
2010 DEC 5 PM 2:21
MORRIS BLANKLEY

INFORMATION FOR THE JUDGMENT INDEX

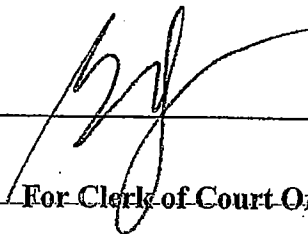
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Wells Fargo Bank, N.A.	Fallon Properties South Carolina, LLC, Timothy R. Fallon, and Susan C. Fallon	N/A-deficiency judgment already entered

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Master-in-Equity



3065
Judge Code

12-15-2014
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Weyman C. Carter
P.O. Box 447
Greenville, SC 29602

Rodney F. Pillsbury
Pillsbury & Read, P.A.
1204-A East Washington Street
Greenville, SC 29601

*Attorney for Fallon Properties South
Carolina, LLC,
Timothy R. Fallon and Susan C. Fallon*

Patrick Clisham
ENGELMAN BERGER, PC
3636 North Central Avenue
Suite 700
Phoenix, Arizona 85012
*Attorney for Fallon Luminous Products
Corporation*

Barry T. Mehlman
LOEB & LOEB LLP
345 Park Avenue
New York, NY 10154
Attorney for FSD Repurchase Solutions

GE Business Capital Corporation, formerly
Transamerica Business Capital Corporation
c/o CT Corporation, Registered Agent
2 Office Park Court, Suite 103
Columbia, SC 29223

Milton G. Kimpson
South Carolina Department of Revenue
Post Office Box 12265
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

PRO SE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 DEC 15 PM 2:21
M. JOSE BLANCHETT

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

) C/A No. 2010-CP-42-4430

WELLS FARGO BANK, N.A.,
successor-by-merger to
Wachovia Bank, N.A.,

Plaintiff,

v.

**ORDER DENYING PETITION
FOR APPRAISAL**

Fallon Properties South Carolina, LLC,
Timothy R. Fallon, Susan C. Fallon,
Fallon Luminous Products Corporation,
GE Business Capital Corporation, formerly
Transamerica Business Capital Corporation,
and FSD Repurchase Solutions, LLC,
and South Carolina Department of Revenue,

Defendants.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 DEC 15 PM 2:21
M. HOPE ELACRE

The matter before the court is the Petition for Order of Appraisal filed by the Defendants Timothy R. Fallon and Susan C. Fallon on or about April 4, 2014. The Petition was timely filed. The Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") served a Return to the Petition on April 16, 2014 asserting that the petitioners had signed a Waiver of Appraisal Rights, both in their individual capacities as guarantors and on behalf of the Borrower Fallon Properties South Carolina, LLC. A hearing was scheduled, canceled and ultimately rescheduled for December 11, 2014.

An application for an order of appraisal, and a waiver of appraisal rights, are governed by S.C. Code Section 29-3-680, which provides as follows:

(A) In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.

(B) Except in any real estate foreclosure proceeding relating to a dwelling place, as defined in Section 12-37-250, or to a consumer credit transaction, as defined in Section 37-1-301(11), a defendant against whom a personal judgment may be taken on a real estate secured transaction may waive the appraisal rights as provided by this section if the debtors, makers, borrowers, and/or guarantors are notified in writing before the transaction that a waiver of appraisal rights will be required and upon signing a statement during the transaction similar to the following:

"The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**"

This waiver may be in any document relating to the transaction; however, the required language must be on a page containing the signature of the person making the waiver and the capitalized sentence must be underlined, in capital letters, or disclosed in another prominent manner.

S.C. Code Ann. § 29-3-680.

Wells Fargo relies upon a Waiver of Appraisal Rights dated February 15, 2007 bearing the signatures of Timothy R. Fallon as sole member and sole manager of the borrower/mortgagor Fallon Properties South Carolina, LLC and of the guarantors Timothy R. Fallon and Susan C. Fallon. The Waiver of Appraisal Rights meets the requirements of Section 29-3-680(B) in that the language contained therein is the same as the sample statement contained in the statute, including the capitalization of the waiver language, and the signatures of the borrower and guarantor appear on the same page as the required language.

The petition does not assert that the foreclosure action relates to a dwelling place or to a consumer credit transaction such that a waiver would not be allowed under the statute. The only

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M. HOPE SLACKLEY

remaining issue is the requirement that the petitioners be "notified in writing before the transaction that a waiver of appraisal rights will be required...." Wells Fargo has provided ample evidence of such notice.

First, the Waiver of Appraisal Rights itself contains a statement whereby the borrower and guarantors "acknowledge[d] receipt of written notification before this transaction that signing of a waiver of appraisal rights would be required during this transaction". Second, Wells Fargo tendered the testimony of Ethan Burroughs, the Spartanburg Market President of Wells Fargo Bank, that Wachovia Bank's standard practice at the time was for the loan administration staff to generate a written notice that a waiver will be required, and to forward that notice to the loan officer who in turn sends the notice to the obligor. This notice is typically mailed to the borrower a week or so prior to closing. Mr. Burroughs testified that he did not have a specific recollection of sending the notice in connection with this loan, nor was there any document in the loan file confirming this. Mr. Burroughs testified that because the obligor is not required to sign this notice, Plaintiff does not retain a copy of it as part of the loan file. Tim Fallon testified that he did not receive any documents prior to receiving the loan closing package.

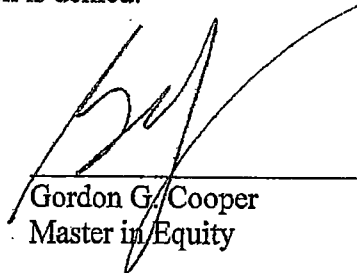
While there is a dispute in the testimony about whether pre-closing notice was given to the Petitioners in this case, the Court finds that documents provided in the loan closing package sent to Petitioners' attorney prior to closing fulfill the statutory requirement. In this transaction, the loan documents were prepared by Wachovia Bank and transmitted to the borrower's attorney by letter dated February 12, 2007 which was three days prior to the execution date of the documents. The Waiver of Appraisal Rights was one of the documents transmitted to the borrower's attorney. The delivery of the Waiver to the obligors' attorney was notice to the obligors that the waiver would be required as part of the mortgage loan transaction.

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SPARTANBURG COUNTY
SOUTH CAROLINA
2007 DEC 25 PM 2:11
MORRIS BLAIR

#3
[Signature]

Since Wells Fargo has demonstrated to the satisfaction of the court that it obtained a waiver of appraisal rights from the petitioners that comports with the requirements of the applicable statute, the court finds that the waiver should be given its effect and that the court must deny the Petition for Order of Appraisal.

It is therefore ORDERED, that the Petition for Order of Appraisal filed by the Defendants Timothy R. Fallon and Susan C. Fallon is denied.



Gordon G. Cooper
Master in Equity

CLERK OF COURT
SPARTANBURG COUNTY
2014 DEC 15 PM 2:21
M. HOPE BLACKLEY

December 15, 2014



EXHIBIT B

Alexander Hray, Jr.

From: Rodney Pillsbury <RPillsbury@prlawpa.com>
Sent: Friday, December 19, 2014 10:05 AM
To: timfallon@ftwoutfitters.com; 'Alexander Hray, Jr.'
Cc: Tiffany Davenport
Subject: Order from Petition for Appraisal
Attachments: sharp@prlawpa.com_20141218_160359.pdf

Importance: High

I received the signed order denying our petition for appraisal.

If we are going to appeal, the notice must be filed within 30 days (i.e., on or before January 19, 2015).

I know we informally discussed options following the hearing. But we need to have a firm decision by the 1st week of January.

If you would like to do a conference call to discuss, I can arrange one.

Let me know.

I will not file an notice of intent to appeal unless we decide to proceed with the appeal.

Rodney F. Pillsbury, Esq.
Pillsbury & Read, P.A.
1204 E. Washington St.
Greenville, SC 29601
(w) 864-241-9828
(f) 864-241-9818
(e) rpillsbury@prlawpa.com

NOTICE:

The information transmitted is intended only for the person or entity to which it is addressed and contain confidential and/or legally privileged material. The Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, which governs this e-mail, prohibits unauthorized interception, unauthorized use, and unauthorized disclosure of an e-mail, of the contents of an e-mail, and of any attachments to the e-mail. 18 U.S.C. §§ 2510-2521. The Act provides for civil remedies, including an award of damages, in cases of unauthorized interception, unauthorized use, or unauthorized disclosure of an e-mail, of the contents of an e-mail, or of any attachments to the e-mail. Recipients who reasonably should know they were not intended to receive this electronic communication may be to the subject the penalties and provisions of this Act.

-----Original Message-----

From: sharp@prlawpa.com [<mailto:sharp@prlawpa.com>] On Behalf Of sharp@
Sent: Thursday, December 18, 2014 4:04 PM
To: Rodney Pillsbury
Subject: Scanned image from MX-M283N

Reply to: sharp@prlawpa.com <sharp@prlawpa.com> Device Name: Not Set Device Model: MX-M283N

Location: Not Set

File Format: PDF MH(G3)

Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
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Gordon G. Cooper, Master in Equity

Appellate Case Number 2015-000157

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Wells Fargo Bank, N.A.,
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Respondent,

v.

Fallon Properties South
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Fallon, Susan C. Fallon,
Fallon Luminous Products
Corporation, G. E. Business
Capital Corporation, formerly
Transamerica Business
Capital Corporation, FSD
Repurchase Solutions, LLC
and South Carolina
Department of Revenue,

Defendants,

Of Whom Fallon Properties
South Carolina, LLC, Timothy
R. Fallon, Susan C. Fallon are
the,

Appellants.

AFFIDAVIT OF ALEXANDER HRAY, JR.

PERSONALLY APPEARED before me Alexander Hray, Jr., who first being duly sworn,
does depose and state as follows:

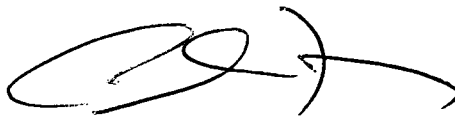
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APR 01 2015

SC Court of Appeals

1. I am the Appellate attorney for the Appellants.
2. On December 19, 2014 I was copied on an email along with Timothy R. Fallon sent by Rodney F. Pillsbury (Pillsbury) in which Pillsbury noted that he had received the signed order and that the last day on which to file an appeal in this proceeding was January 19, 2015, a true copy of this email being attached hereto as Exhibit A.
3. I served the notice of appeal on January 15, 2015.
4. On January 30, 2015 I received a phone call from Weyman C. Carter (Carter), trial attorney for the Respondent, in which Carter informed me that the serve of the notice of appeal may not be timely and Carter followed up his phone call to me via email, the same being attached hereto as Exhibit B.

FURTHER AFFIANT SAYETH NOT.



Alexander Hray, Jr., Attorney

Sworn to and subscribed before me
This 30th day of March, 2015.

Karen M. Haselder

Notary Public for South Carolina

My commission expires: 11/29/2024

EXHIBIT A

Alexander Hray, Jr.

From: Rodney Pillsbury <RPillsbury@prlawpa.com>
Sent: Friday, December 19, 2014 10:05 AM
To: timfallon@ftwoutfitters.com; 'Alexander Hray, Jr.'
Cc: Tiffany Davenport
Subject: Order from Petition for Appraisal
Attachments: sharp@prlawpa.com_20141218_160359.pdf

Importance: High

I received the signed order denying our petition for appraisal.

If we are going to appeal, the notice must be filed within 30 days (i.e., on or before January 19, 2015).

I know we informally discussed options following the hearing. But we need to have a firm decision by the 1st week of January.

If you would like to do a conference call to discuss, I can arrange one.

Let me know.

I will not file an notice of intent to appeal unless we decide to proceed with the appeal.

Rodney F. Pillsbury, Esq.
Pillsbury & Read, P.A.
1204 E. Washington St.
Greenville, SC 29601
(w) 864-241-9828
(f) 864-241-9818
(e) rpillsbury@prlawpa.com

NOTICE:

The information transmitted is intended only for the person or entity to which it is addressed and contain confidential and/or legally privileged material. The Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, which governs this e-mail, prohibits unauthorized interception, unauthorized use, and unauthorized disclosure of an e-mail, of the contents of an e-mail, and of any attachments to the e-mail. 18 U.S.C. §§ 2510-2521. The Act provides for civil remedies, including an award of damages, in cases of unauthorized interception, unauthorized use, or unauthorized disclosure of an e-mail, of the contents of an e-mail, or of any attachments to the e-mail. Recipients who reasonably should know they were not intended to receiver this electronic communication may be to the subject the penalties and provisions of this Act.

-----Original Message-----

From: sharp@prlawpa.com [<mailto:sharp@prlawpa.com>] On Behalf Of sharp@
Sent: Thursday, December 18, 2014 4:04 PM
To: Rodney Pillsbury
Subject: Scanned image from MX-M283N

Reply to: sharp@prlawpa.com <sharp@prlawpa.com> Device Name: Not Set Device Model: MX-M283N

EXHIBIT B

Alexander Hray, Jr.

From: Carter, Weyman <WCarter@mcnair.net>
Sent: Friday, January 30, 2015 3:46 PM
To: Hray Alexander Jr. (lexhray@bellsouth.net)
Cc: Rodney Pillsbury; Widener, Robert
Subject: FW: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)
Attachments: image0006.pdf

Lex:

Thanks for returning my call. I am forwarding an email message from Judge Cooper's secretary on December 15, 2014 transmitting an image of the signed, filed order and Form 4 to me and to Mr. Pillsbury.

I marked January 14, 2015 (the 30th day from this message) on my calendar as the deadline for service of a Notice of Appeal. The Notice was served on the 15th, so it seemed to me that the email transmittal of the message raises an issue as to the timeliness of the appeal.

I am copying Robert Widener, an appellate practitioner in my Firm's Columbia office, on this message.



Weyman C. Carter
Shareholder
wcarter@mcnair.net

McNair Law Firm, P.A.
Greenville Office Poinsett Plaza, 104 South Main Street | Suite 700 | Greenville, SC 29601
864 271 4940 Main | 864 271 4015 Fax
Mailing Post Office Box 447 | Greenville, SC 29602
VCard | **Bio URL** | **Web site**

From: Winstead, Sharon [<mailto:swinstead@spartanburgcounty.org>]
Sent: Monday, December 15, 2014 2:48 PM
To: Carter, Weyman
Cc: Rodney Pillsbury
Subject: RE: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

Gentlemen,
Please see attached copy of signed and clocked Form 4 and Order. I have also mailed a copy to all listed on the Form 4.
Thanks,
Sharon

From: Carter, Weyman [<mailto:WCarter@mcnair.net>]
Sent: Friday, December 12, 2014 4:05 PM
To: Winstead, Sharon
Cc: Rodney Pillsbury; 'Alexander Hray, Jr.'
Subject: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

I have attached a proposed order and a Form 4 from the hearing held yesterday. The proposed order includes additional language that Judge Cooper requested. I and Mr. Pillsbury agree on the form and content of the proposed order.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

RECEIVED

APR 01 2015

The Honorable Gordon G. Cooper, Master in Equity
SC Court of Appeals

Appellate Case No.: 2015-000157

Case No.: 2010-CP-42-4430

Wells Fargo Bank, N.A.,
successor-by-merger to
Wachovia Bank, N.A.,

Respondent,

v.

Fallon Properties South
Carolina, LLC, Timothy R.
Fallon, Susan C. Fallon,
Fallon Luminous Products
Corporation, G. E. Business
Capital Corporation, formerly
Transamerica Business Capital
Corporation, FSD Repurchase
Solutions, LLC and South
Carolina Department of
Revenue,

Defendants,

Of Whom Fallon Properties
South Carolina, LLC, Timothy
R. Fallon, Susan C. Fallon are
the,

Appellants.

PROOF OF SERVICE

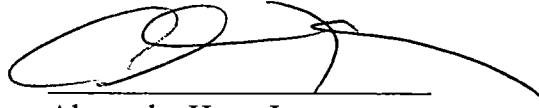
I certify that I have served the Appellants Return on Motion to Dismiss Appeal by depositing a copy of it in the United States Mail, postage prepaid, on March 30, 2015, addressed to Respondent's attorneys of record, as follows:

(CONTINUED NEXT PAGE)

Robert L. Widener, Esq.
McNair Law Firm, P.A.
P. O. Box 11390
Columbia, SC 29201

Weyman C. Carter, Esq.
McNair Law Firm, P.A.
P.O. Box 447
Greenville, SC 29602

March 30, 2015

A handwritten signature in black ink, appearing to read "Alexander Hray, Jr.", written over a horizontal line.

Alexander Hray, Jr.
389 E. Henry St., Suite 107
Spartanburg, South Carolina 29302
(864) 342-1111
Fax: (864) 342-1113
Attorney for Appellants

ALEXANDER HRAY, JR.
ATTORNEY AT LAW
389 EAST HENRY STREET, SUITE 107
SPARTANBURG, SC 29302
Phone: (864) 342-1111 FAX: (864) 342-1113
E-mail: lexhray@bellsouth.net

March 30, 2015

RECEIVED

APR 01 2015

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

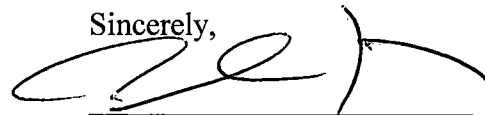
SC Court of Appeals

RE: Wells Fargo Bank, N.A. *etc.* v. Fallon Properties South Carolina, LLC, *et al.*; Case No. 2010-CP-42-4430; Appellate Case No. 2015-000157

Dear Ms. Kitchens:

Enclosed for filing is the original Return of Appellants to the Respondent's Motion to Dismiss together with six (6) copies thereof. Also enclosed is a Proof of Service of the Return on the Respondent.

Sincerely,



Alexander Hray, Jr.
389 E. Henry St., Suite 107
Spartanburg, South Carolina 29302
(864) 342-1111
Fax: (864) 342-1113
Attorney for Appellants

Enclosures as noted

cc: Weyman C. Carter, Esq., Attorney for Respondent
Robert L. Widener, Esq., Attorney for Respondent
Rodney F. Pillsbury, Esq., Appellants' Trial Attorney



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APR 01 2015

SC Court of Appeals

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

