

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 10 2015

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2010-CP-23-5880
Appellate Case No 2015-000523

Overland, Inc., d/b/a Land Rover Greenville ... Appellant,

Vs

Lara Marie Nance, Charlie Andrew Nance, Roger Fields,
Synovus Financial Corporation, d/b/a NBSC, Branch Banking
And Trust Company, Bank of America Corporation, and
SunTrust Banks, Inc. ... Defendants,

Of whom, Lara Marie Nance, Charlie Andrew Nance, Roger Fields, Bank of America
Corporation, and SunTrust Banks, Inc. are the Respondents

RESPONSE TO MOTION TO DISMISS APPEAL

This case involves the embezzlement of approximately \$1,400,000 and the liability of the embezzler's banks, to wit Bank of America and Sun Trust. Exhibit A – Affidavit of Michael F O’Shea The case was given complex case status, and assigned to the Hon. Letitia H. Verdin “to hear and handle all pre-trial motions and all other matters pertaining to this case, including trial” Exhibit B – Consent Order Designating Case Complex.

By Order dated December 15, 2014, and received by Plaintiff's counsel on December 17, 2014, Judge Verdin granted summary judgment to the banks Within 10 days,

plus the allowable holiday and weekend grace period, Plaintiff's counsel, T Hunt Reid, sought and received from Judge Verdin an extension of time to file a motion for reconsideration. He was out of town for the Christmas holidays, and sick. Exhibit C – E-mail chain of December 29, 2014

Relying on Judge Verdin's extension, Plaintiff's counsel then filed his motion. On February 5, 2015, Judge Verdin denied it. Within 30 days, on March 4, 2015, Plaintiff's counsel filed a notice of appeal.

Counsel for Bank of America has moved to dismiss the appeal. He argues that the motion for reconsideration was not timely presented, but has provided no South Carolina authority for that proposition. The sole South Carolina case cited is unpublished, which means that the appellate court was unwilling to make it the law. Additionally, the cases cited in that unpublished opinion do not stand for the proposition that the trial court may not extend the time to file a Rule 59(e) Motion when the request to file such a motion is made prior to the initial deadline to file the motion.

Judge Verdin had jurisdiction not only of the motion for summary judgment, but the entire case. She had this jurisdiction by court order and consent of the parties. The argument of counsel for Bank of America misconceives the nature of the trial court's jurisdiction and the 10-day window in Rule 59(e). The 10-day window was put into the rule not as a limitation of the court's jurisdiction, but rather as an extension of it. Historically, a traveling circuit judge was deprived of jurisdiction when she or he left the circuit. The 10-day window was inserted into the rule to allow greater - not lesser - flexibility. Cox v. Fleetwood Homes of Georgia, Inc., 334 S.C. 55, 512 S.E.2d 498 (1999), decided years after the adoption of Rule 59, provided further flexibility, and shows the unwillingness of the appellate courts to be hidebound on the handling of cases at the circuit level under the prior

restrictive practice Judge Verdin did not need the 10-day window because she had continuing jurisdiction of the case Because she had jurisdiction, she could grant the extension

Moreover, by accepting and then ruling on the motion for reconsideration, Judge Verdin eliminated the argument by Bank of America's counsel about the 10-day window A similar argument was rejected in Gallagher v Evert, 353 S C 59, 577 S E 2d 217 Ct App 2002) That case also involved a Rule 59(e) motion.

“Because the circuit court found it appropriate to hear the matter, we find no error in the circuit court’s decision to decide the motion despite Gallagher’s failure to comply with Rule 59(g), SCRPC. The notes to Rule 59, SCRPC, indicate that subsection (g) was added ‘to help insure the judge is promptly notified that the motion has been filed.’ There is no indication that the failure to transmit a copy of the motion to the circuit court affects the tolling provision of Rule 203(b)(1), SCACR Therefore, the time for filing the notice of appeal did not begin to run until after the circuit court denied the motion on December 27, 2000. After the circuit court denied the motion, only twenty days passed before Gallagher filed his notice of appeal on January 16, 2001, thus Gallagher complied with Rule 203(b), SCACR.” (Hearn, C J.)

The federal cases cited by counsel for Bank of America are beside the point The South Carolina Supreme Court has made clear that its interpretation of the South Carolina Rules of Civil Procedure is not controlled by the federal courts In Camp v Camp, 386 S C. 571, 689 S E.2d 634 (2010), it reversed a South Carolina Court of Appeals decision construing Rule 7(b)(1), SCRPC, that had relied on an identical United States Court of Appeals case The Supreme Court reasoned that as long as “neither party is prejudiced and the court is able to deal fairly with a motion for reconsideration”, the motion is proper Id at 637. There is no prejudice to the Bank of America in this case, and its counsel has not argued it

Bank of America is estopped from even bringing its motion because its counsel did not object to the enlargement of time, and in fact, expressed his willingness to be

accommodating, when the request for enlargement of time was made. Exhibit C – E-mail chain of December 29, 2014 While Mr. Sheedy raised the question whether the Judge could grant such an extension, neither he nor his client Bank of America objected to the extension. Therefore, any objection to the extension was waived on December 29, 2014 and Bank of America is estopped from bringing this motion.

Finally, and perhaps most importantly, the Due Process Clauses of the United States Constitution and the South Carolina Constitution, and simple fairness, require denial of the Bank of America's motion to dismiss. Here we have a young lawyer, sick and out-of-town during Christmas, doing what is expected of him. He contacts opposing counsel and the judge to ask for a brief extension of time. The judge grants the request and he files his motion. Of all things that one should be able to count on in the practice of law, it is the time given by the judge personally to file something with the court. In fairness, that reliance should not be undercut. Under Due Process, it cannot be. This is especially true in a case such as this one, where the South Carolina Supreme Court has not visited the issue and provided the lawyers and litigants of this State with notice whether the ten day timeframe in Rule 59(e) may or may not be enlarged upon a motion timely made before the ten day period has expired.

There is nothing remarkable about the request that the motion to dismiss be denied. This is a matter of fundamental rights. The South Carolina Supreme Court has held that in such a circumstance, "those rights take precedence over procedural rules otherwise limiting action by the court." See Galloway v. Galloway, 249 S.C. 157, 153 S.E.2d 326 (1967) (involving rights of minors) *cited by* Stefan v. Stefan, 320 S.C. 419, 465 S.E.2d 734 Ct App (1995) (involving failure to preserve issue of visitation by father). The Due Process right at

issue in this case is no less fundamental than those in Galloway and Stefan. It lies at the heart of our system of justice.

The motion to dismiss of Bank of America is misplaced. For technical reasons under Rule 59(e), estoppel, and for broader considerations of fundamental fairness and Due Process, it should be denied.

Respectfully submitted,

Date: April 8, 2015



Carl F. Muller Esq. SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 200
Greenville, SC 29601
864-991-8904
carl@carlmullerlaw.com

T. Hunt Reid, Esq. SC Bar No. 77538
Fayssoux Law Firm, P.A.
PO Box 10207
Greenville, SC 29603
864-233-0445
hunter@fayssouxlaw.com

Attorneys for Appellant

EXHIBIT “A”

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A No : 2010-CP-23-5880

Overland, Inc., d/b/a Land Rover)
Greenville,)
Plaintiff,)

**AFFIDAVIT OF MICHAEL F.
O'SHEA**

v.)

Lara Marie Nance, Charlie Andrew Nance)
Roger Fields, Synovus Financial)
Corporation d/b/a NBSC, Branch Banking)
and Trust Company, Bank of America)
Corporation, and Suntrust Banks, Inc)
Defendants)

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSIMMER
2019 OCT 27 PM 4 19

AFFIDAVIT ATTACHED

Affidavit

State of South Carolina

County of Greenville

I, Michael F O'Shea, do hereby swear under penalty that,

- 1 I am over 18 years of age and competent to testify as to my knowledge of the facts stated herein
- 2 I am a forensic accountant and Director of Investigations at Forensic Research Group, Inc a financial investigative and consulting firm specializing in forensic accounting reviews, damage analysis and litigation support I have previously been admitted as an expert witness in forensic accounting in both Federal and State Court A copy of my CV is attached to this affidavit
- 3 I was initially retained, in February 2010, by Overland Inc as a Forensic Accountant and investigator to review various books and records relating to an apparent employee embezzlement case
4. On 08 March 2010 I issued an Initial Report (copy attached) outlining my initial findings indicating, with a reasonable degree of accounting certainty, that the Company had sustained a loss of \$1,008,911 78 due to embezzlement by Laura Nance
- 5 Subsequent to this initial report I became aware of additional losses on review of documents provided by current and prior defendants in this matter as well as discussions with US Secret Service James Motley who investigated this matter as well
- 6 Based on subsequent reviews I believe that, with a reasonable degree of accounting certainty, that the total loss exceeded \$1,400,000 00
- 7 During my entire engagement I never expressed an opinion or made a statement that wasn't supported by the documentation available to me at the time

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 27th day of October 2014



A handwritten signature in black ink, appearing to read "Michael F. O'Shea", is written over a solid horizontal line.

Affiant

Before me, the undersigned authority in and for Greenville County, South Carolina personally appeared Michael F O'Shea who is known to me and who Sworn to and subscribed before me this 27th day of October 2014



A handwritten signature in black ink, appearing to read "Judith T. Sozzi", is written over a solid horizontal line.

NOTARY PUBLIC

My Commission Expires

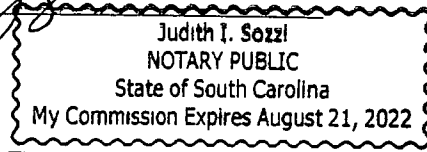


EXHIBIT “B”

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER **2010CP2305880**

FILED-CLERK OF COURT
 GREENVILLE CO S.C.
 PAUL B. WICKENS/SMH

Overland Inc

Land Rover Greenville

Lara Marie Nance

Charlie Andrew Nance

Roger Fields

Synovus Financial Corporation

2013 SEP 23 P 3:08

NBSC

Branch Banking And Trust Company

Bank Of America Corporation

Suntrust Banks Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- 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, OR 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 INFORMATION

This order ends does not end the case

Additional Information for the Clerk _____

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)

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.**

9/23/2013

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 23rd day of September, 2013, and a copy mailed first class or placed in the appropriate attorney's box on 23rd day of September, 2013, to attorneys of record or to parties (when appearing pro se) as follows

James Walter Fayssoux Jr. 209 E Washington St
Greenville, SC 29601

James H. Price III 644 E Washington St Greenville, SC
29601
David L. Moore Jr. Nexsen Pruet, LLC P O Drawer 10648
Greenville, SC 296030648
Bruce A. Byrholdt Chapman, Byrholdt & Yon, LLP P O
Box 2506 Anderson, SC 29622
Elbert Stockman Dorn 1101 Johnson Ave, Ste 300 Myrtle
Beach, SC 29577
Andrew A. Mathias Nexsen Pruet, LLC P O Drawer 10648
Greenville, SC 296030648
Gregory Jacobs English Wyche, P A P O Box 728
Greenville, SC 296020728
Martin Mason Tomlinson PO Box 480 Ben Franklin Station
Washington, DC 20044
Joshua L. Howard Haynsworth Sinkler Boyd, P A P O Box
2048 Greenville, SC 29602
Brent O. E. Clinkscale PO Box 10208 Greenville, SC
296030208

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered

STATE OF SOUTH CAROLINA

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSTIER
IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2013 SEP 23 P 3: 08 Case No 2010-CP-23-5880

Overland, Inc , d/b/a Land Rover of
Greenville,

Plaintiffs,

vs

Lara Marie Nance, Charlie Andrew
Nance, Roger Fields, Synovus Financial
Corporation d/b/a NBSC; Branch Banking
and Trust Company, Bank of America
Corporation, and SunTrust Banks. Inc ,

Defendants

**CONSENT ORDER
DESIGNATING CASE COMPLEX**

This matter is before the Court on the Joint Motion of the Plaintiff and Defendants to have this case designated as complex and assigned to a single Circuit Court Judge to hear and handle all pre-trial motions and other matters, including any trial

For good cause shown, the Parties' Motion is granted. this case is designated as a complex case and assigned to the Honorable LETITIA H. VERDIN, Circuit Judge. to hear and handle all pre-trial motions and all other matters pertaining to this case, including any trial At this time, the Parties have not agreed on a proposed trial date The Parties are to consult on this issue with Judge VERDIN who has discretion to determine the date after which this case will be called for trial

HLH
M18

[Signature Below]

IT IS SO ORDERED.

D. Garrison Hill

D. Garrison Hill
Chief Administrative Judge, Common Pleas
Thirteenth Judicial Circuit

Dated: 9.20, 2013
Greenville, South Carolina

EXHIBIT “C”

Hunter Reid

From: Verdin, Letitia H Secretary (Angela G Hyder)
Sent: Monday, December 29, 2014 3 21 PM
To: Jim Sheedy, hunter@fayssouxlaw.com, sdriscoll@driscollsheedy.com
Subject: RE Overland's Rule 59(e) motion, request for extension

Hunter,
Judge Verdin grants a ten-day extension for you to file your Motion

Thank you,
Angie Hyder
Administrative Specialist for
Letitia H Verdin
Greenville County Courthouse
305 East North Street, Suite 318
Greenville, SC 29601-2120
(864)467-8448 Office
(864)467-8504 Fax

From: Jim Sheedy [mailto:jimsheedy@driscollsheedy.com]
Sent: Monday, December 29, 2014 2:47 PM
To: Verdin, Letitia H. Secretary (Angela G. Hyder)
Subject: Overland's Rule 59(e) motion, request for extension

Pls see below (which bounced back)

From: Jim Sheedy
Sent: Monday, December 29, 2014 2:38 PM
To: lverdinsc@sCourts.org
Cc: 'Hunter Reid'; Susan Driscoll; 'Verdin, Letitia H. Law Clerk (Virginia Rogers)'
Subject: Overland's Rule 59(e) motion, request for extension

Judge Verdin,

Actually, I said to Hunter it was my belief upon review of Rules 6(b) and 59(e) that I do not have the power to extend, and the ten (10) day time limit is non-discretionary, i.e., "not later than", "shall", nor am I aware of any cases allowing for extensions under Rule 59(e)

But I was also unaware of any Rule or decisional law prohibiting an amended Rule 59(e) so long as the amendment is not tantamount to a new motion (beyond the time limit)

While I am willing to be accommodating, I cannot do more than what the law allows me to do.

Jim

From: Hunter Reid [mailto:hunter@fayssouxlaw.com]
Sent: Monday, December 29, 2014 2:29 PM
To: lverdinsc@sCourts.org

Cc: Jim Sheedy

Subject: FW: Overland's Rule 59(e) motion, request for extension

Judge Verdin,

Good afternoon. I am writing you to request an extension of time to file a Rule 59(e) Motion in the Overland v Nance lawsuit I was out of the state all of last week for Christmas holidays, and I have been sick as well. If your Honor believes it cannot grant me an extension until the end of this week under these circumstances, then would your Honor please also consider allowing me to submit an Amended Motion at a later date?

I have conferred with opposing counsel, Jim Sheedy, and he doesn't have any objections to this request.

Thank you,

Hunter Reid



T. Hunt "Hunter" Reid

209 EAST WASHINGTON STREET (29601)

POST OFFICE BOX 10207

GREENVILLE, SC 29603

864 233 0445

864 672 3706 FAX

WWW.FAYSSOUXLAW.COM

From: Jim Sheedy [mailto:jimsheedy@driscollsheedy.com]

Sent: Monday, December 29, 2014 2:16 PM

To: Hunter Reid

Cc: Susan Driscoll

Subject: Overland's Rule 59(e) motion, request for extension

Hunter, look at Rule 6(b) and Rule 59(e) I don't think we can consent or that Judge Verdin has the discretion to extend, i.e. "shall be served not later than 10 days .." If you have a case that says I can do this, I'm happy to oblige, but I honestly don't think there is one under Rule 59(e) Rather, the time is mandatory, I believe

From: Hunter Reid [mailto:hunter@fayssouxlaw.com]

Sent: Monday, December 29, 2014 2:08 PM

To: Jim Sheedy; Susan Driscoll

Subject: Overland's Rule 59(e) motion, request for extension

Guys,

Do you have any problem if I seek an extension of time to file my Rule 59e motion with Judge Verdin? I have been out of town for Christmas and sick the whole time I would like more time to submit a motion

Let me know as soon as you can

Thanks,

Hunter

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

APR 10 2015

SC Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Letitia H Verdin, Circuit Court Judge

---

Case No. 2010-CP-23-5880  
Appellate Case No · 2015-000523

Overland, Inc , d/b/a Land Rover Greenville . . . Appellant,

Vs

Lara Marie Nance, Charlie Andrew Nance, Roger Fields,  
Synovus Financial Corporation, d/b/a NBSC, Branch Banking  
And Trust Company, Bank of America Corporation, and  
SunTrust Banks, Inc . . . Defendants,

Of whom, Lara Marie Nance, Charlie Andrew Nance, Roger Fields, Bank of America Corporation, and SunTrust Banks, Inc are the Respondents.

---

PROOF OF SERVICE

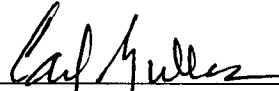
---

The undersigned hereby certifies that on the date indicated below he served copies of the Response To Motion To Dismiss Appeal on the following by mailing a copy of the same via First Class, U.S. Mail, postage prepaid on the date set forth below:

W. Howard Boyd, Jr , Esq  
Gallivan White & Boyd, P.A.  
55 Beattie Place, Suite 1200  
Greenville, SC 29601

Counsel for Respondent,  
Suntrust Banks, Inc.

James W. Sheedy, Esq.  
Driscoll Sheedy, P.A.  
11520 N. Community House Rd  
Suite 200  
Charlotte, NC 28277  
Counsel for Movant/Respondent  
Bank of America



---

Carl F Muller Esq SC Bar No.. 4131  
Carl F Muller, Attorney at Law, P.A.  
607 Pendleton Street, Suite 200  
Greenville, SC 29601  
864-991-8904  
[carl@carlmullerlaw.com](mailto:carl@carlmullerlaw.com)

T Hunt Reid, Esq SC Bar No . 77538  
Fayssoux Law Firm, P.A.  
PO Box 10207  
Greenville, SC 29603  
864-233-0445  
[hunter@fayssouxlaw.com](mailto:hunter@fayssouxlaw.com)

Attorneys for Appellant

April 8, 2015

CARL F. MULLER, ATTORNEY AT LAW, P.A.

607 PENDLETON STREET, SUITE 201  
GREENVILLE, SOUTH CAROLINA 29601

POST OFFICE BOX 1717  
GREENVILLE, SOUTH CAROLINA 29602-1717

PHONE: 864-991-8904  
FAX: 864-751-2831

CARL@CARLMULLERLAW.COM

April 8, 2015

RECEIVED

APR 10 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1014 Sumter Street  
Columbia, SC 29201

Re Overland, Inc., d/b/a Land Rover Greenville, Appellant, vs  
Lara Marie Nance, et al., Defendants  
Greenville County Case No · 2010-CP-23-5880  
Appellate Case No · 2015-000523

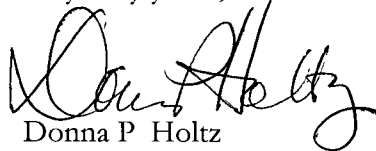
Dear Ms. Kitchings.

Enclosed for filing please find the original and seven (7) copies of our Response to Motion to Dismiss Appeal and our Proof of Service. We are captioning the case and serving the parties consistent with Mr. Sheedy's letter of March 30, wherein he filed his Motion to Dismiss. Please let us know if we should proceed in a different manner

Please return a copy of the filed documents to us in the envelope provided for your convenience

Thank you for your assistance. If you need anything further, please do not hesitate to contact us

Very truly yours,



Donna P Holtz  
Assistant to Carl F Muller

/dph

c. W Howard Boyd, Esq.  
James W Sheedy, Esq

**PRIORITY MAIL**

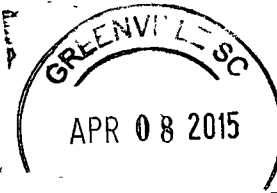
**TRACKED INSURED**



For Domestic Use Only

Label 107R, July 2013

CARL F. MULLER, ATTORNEY AT LAW, P.A.  
POST OFFICE BOX 1717  
GREENVILLE, SOUTH CAROLINA 29602-1717



1024

U.S. POSTAGE  
PAID  
GREENVILLE, SC  
29802  
APR 08, 15  
AMOUNT  
**\$5.95**  
00109948-07

Expected Delivery Day: 04/10/15

USPS TRACKING NUMBER



9505 5110 9948 5098 5934 56

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1014 Sumter Street  
Columbia, SC 29201

**RECEIVED**

APR 10 2015

SC Court of Appeals