

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

RECEIVED

APR 16 2015

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

SC Court of Appeals

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

REPLY TO RESPONSE TO MOTION TO DISMISS APPEAL

Pursuant to Rule 240(f) SCACR, respondent Bank of America (B of A) hereby replies to the Response to Motion to Dismiss Appeal of Appellant (Response).

Appellant Has No Law for its Position

Cox v Fleetwood Homes of Georgia, 334 S.C. 55, 512 S.E.2d 498 (1999), *Gallagher v Evert*, 353 S.C. 59, 577 S.E.2d 217 (Ct. App. 2002), and *Camp v Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010), are inapposite to the issue raised by the Motion to Dismiss. None of these

cases pertain to failure to serve any motion under Rule 59(e), SCRCF, within ten days. *Cox* holds, under Rule 59(f), SCRCF, that the circuit court judge who ruled on the dispositive motion can hear a Rule 59 motion although the judge is outside the circuit. *Gallagher* involves not providing the circuit court judge with a copy of the Rule 59(e) motion as required by Rule 59(g). *Camp* concerns a Rule 59(e) motion which lacked particularity. In all three cases, there was a motion. Here, there was no motion at all within the ten day limit imposed by Rule 59(e).

Appellant Is Asking for a Re-Write of Rule 59(e)

Appellant's Rule 59(e) motion was untimely. The multiple reasons Appellant gives as to why it was served outside the ten (10) day time limit do not matter under the Rules. Because the Rule 59(e) motion was not served timely in accordance with the SCRCF, the time to file a notice of appeal was not stayed. The notice of appeal was not served until over two months after Appellant received written notice of entry of the order granting B of A's motion for summary judgment, which is well beyond the thirty day time limit set forth in Rule 203(b), SCACR. This appeal, therefore, is untimely. This Court lacks jurisdiction to hear the appeal. The appeal should be dismissed with prejudice.

Equity lies on the side of B of A, not Appellant

On December 29, 2014, the date upon which Appellant had to serve a Rule 59(e) motion, Appellant approached counsel for B of A to obtain consent to an extension of time. Counsel for B of A informed counsel for Appellant that "the time is mandatory" and he could not consent to an extension of time. (Exhibit C to Response.) Counsel for B of A reiterated his position to the trial court, making clear that 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)." (Exhibit C to Response.) These e-mails were exchanged between 2:00 p.m. and 3:00 p.m. on the

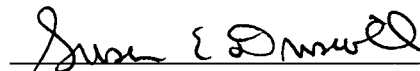
afternoon of December 29, 2014. At that time, the ten days had not expired. Counsel for Appellant could have served a simple Rule 59(e) motion to avoid any question as to timeliness. He could have filed a notice of appeal within thirty days of his receipt of written notice of entry of the order. He chose to ignore the problem and file an untimely motion and subsequent appeal.

The filing and service requirements set forth in the SCRCP and SCACR should not be ignored. The requirements must be enforced. Timely filing of the motion (and hence, extension of the time to appeal) is a jurisdictional prerequisite. No court, trial or appellate, may extend jurisdictional time limits, nor can an opponent waive them or be estopped from raising them since the appellate court must dismiss the appeal on its own motion if it lacks appellate jurisdiction. The Motion to Dismiss should be granted. The appeal should be dismissed with prejudice.

WHEREFORE, respondent B of A respectfully requests this Court grant the Motion and dismiss the appeal with prejudice.

Date: 4/15/15

Respectfully submitted,



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Attorneys for Respondent Bank of America

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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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below he served copies of the *Reply to Response to Motion to Dismiss Appeal* on the following by sending a copy of the same via Federal Express on the date set forth below.


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Date: 4/15/15

Respectfully submitted,



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April 15, 2015

Via Federal Express
Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201

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SC Court of Appeals

Re: Overland, Inc., d/b/a Land Rover Greenville v. Lara Marie Nance, et al.
C.A. No.: 2010-CP-23-5880
Appellate Case No.: 2015-000523

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Reply to Response to Motion to Dismiss Appeal and a Certificate of Service in the above captioned matter. Please return a filed copy to me in the enclosed envelope.

By copy of this letter, I have served the Reply on counsel of record.

With kindest regards, I remain

Respectfully,

DRISCOLL SHEEDY, P.A.

Susan E. D. Moore for James W. Sheedy
James W. Sheedy

April 15, 2015

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Via Federal Express

cc: James W. Fayssoux, Jr., Esq.
T. Hunter Reid, Esq.
W. Howard Boyd, Jr., Esq.
Carl F. Muller, Esq.