

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 11 2015

APPEAL FROM FLORENCE COUNTY
Thomas A. Russo, Circuit Court Judge

SC Court of Appeals

Lonnie William
Britt,.....Appellant,
and Bernice
Britt,.....Appellant ,

v.

Marshall's Marine,
Inc.,.....Respondent.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

A. Lori Jones
The Jones Law Firm
600 Foxtail Drive
Longs, SC 29568
(843) 602-2340
Attorney for Appellant

Matthew N. Tyler
Aiken Bridges, P.A.
181 E. Evans
Suite 409
Florence, SC 29506
(843) 669-8787
Attorney for Respondent

This matter comes before the Court pursuant to Rule 203(b)(1), Rule 262, Rule 263 and Rule 6(b) SCRCP.

The Defendant files this Memorandum in Support of Motion to Dismiss this matter as the intended Appellant did not file the appeal in a timely manner and thus, respectfully, this Court lacks jurisdiction.

The record reflects that on April 28, 2015 an Order Granting Summary Judgment to the Defendant was signed by the Honorable Thomas A. Russo, and on April 29, 2015 a form order was attached to the formal Order Granting Summary Judgment, both then mailed April 30, 2015 to counsel for the Plaintiff as reflected in the Court's form order attached hereto as Exhibit 1 (front and back pages).

Pursuant to Appellate Court Rule 203, a party intending to appeal must serve and file a Notice of Appeal, and such Notice of Appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the Order of Judgment. Additionally, pursuant to Rule 6(b) SCRCF "the time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order."

Appellate Court Rule 263 states that in computing any period of time, the day of the act is not to be included, meaning that the thirty (30) days would begin May 1st. Being that the last day of the period to be included was a Saturday; the deadline would run Monday, June 1, 2015. Further, consistent with Appellate Court Rule 263 "no additional time shall be allowed after service by mail or upon a statutory agent."

On June 5, 2015 the Plaintiff and intended Appellant¹ provided by USPS a Notice of Intent to Appeal. Although the correspondence with such documentation was dated May 19th, the date stamp (Exhibit 2, face of envelope) from the United States Postal Service reflects June 3rd, and the Certificate of Service was blank (Exhibit 3). Further, upon communication with the Court of Appeals June 5, 2015, no appeal had yet been perfected.

Our court rules provide that "[A] Notice of Appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."

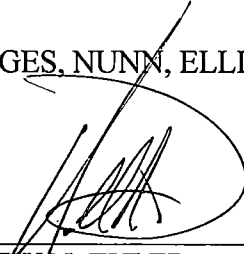
¹ The Notice of Appeal and Certificate of Service submitted on June 5, 2015 have the parties backward, as it reflects Marshall's Marine, Inc. as the Appellant when in fact Marshall's Marine, Inc. would be a Respondent if the appeal had been timely filed.

Rule 203(b), SCACR. As stated by our Supreme Court in Upchurch v. Upchurch, 367 S.C. 16, 624 S.E.2d 643 (2006) “entry of the order occurs when the clerk of court files the order.” Here, the record reflects (Exhibit 1) that this was done April 29, 2015 and a copy mailed to counsel for the Plaintiff/Intended Appellant April 30, 2015. The record further reflects that no motions (which may toll or stay the time for appeal) were filed.

This Defendant/Intended Respondent thus moves before this Court for dismissal as this Court lacks subject matter jurisdiction, in accordance with USAA v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008) and Elam v. SCDOT, 361 S.C. 9, 602 S.E.2d 772 (2004) (“the requirement of service of the Notice of Appeal is jurisdictional, i.e. if a party misses the deadline, the Appellate Court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice”).


Respectfully submitted,

AIKEN, BRIDGES, NUNN, ELLIOT & TYLER, P.A.



MATTHEW N. TYLER
SUITE 409
181 EAST EVANS STREET
PO DRAWER 1931
FLORENCE, SC 29503
(843) 669-8787

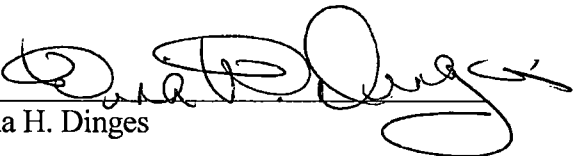
ATTORNEY FOR THE RESPONDENT

Florence, South Carolina
 9, 2015

CERTIFICATE OF SERVICE

I, the undersigned employee of Aiken, Bridges, Elliott, Saleeby & Tyler, P.A., do hereby certify that the foregoing *Memorandum in Support of Motion to Dismiss Appeal* has this day been served by mailing copies thereof, postage prepaid, to the following person(s), this 9th day of June, 2015.

A. Lori Jones
The Jones Law Firm
600 Foxtail Drive
Longs, SC 29568


Tina H. Dinges

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JUN 11 2015

Exhibit 1 SC Court of Appeals

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

JUDGMENT IN A CIVIL CASE
CASE NO. 14 CP-21-441

Ronnie William Britt
and Bernice Britt
PLAINTIFF(S)

Marshall's Marine, Inc.
DEFENDANT(S)

Submitted by:

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. 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.

Circuit Court Judge _____ Judge Code _____ Date _____

CERTIFIED: A TRUE COPY
Cristie Red. Spivey

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2018 APR 29 PM 2:53

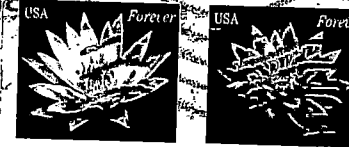
Exhibit 2

A. Lori Jones, Esq.
PO Box 71207
Myrtle Beach, SC 29572

Received
6/5/15
-MNT

COLUMBIA, SC 29

06 JUN 2015 PM 1



Matthew N. Tyler, Esq.
Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.
PO Drawer 1931
Florence, SC 29503

29503193131

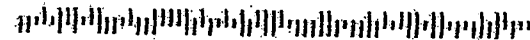


Exhibit 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2014-CP-21-441

CERTIFICATE OF SERVICE

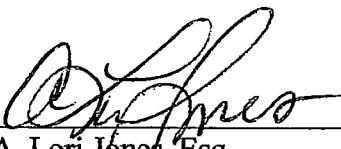
Bernice Britt, as Personal
Representative of the Estate of
Lonnie William Britt, and
Bernice Britt, Respondent(s),

v.

Marshall's Marine, Inc, Appellant.

I, A. Lori Jones, Attorney for Plaintiffs, do hereby certify that the foregoing Notice of Appeal have this day been served by regular U.S. Mail, postage prepaid, to the following person(s), this the _____ day of **May, 2015**.

Matthew N. Tyler, Esq.
Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.
PO Drawer 1931
Florence, SC 29503
mnt@aikenbridge.com



A. Lori Jones, Esq.
Attorney for Plaintiffs

J. Boone Aiken, III •
Saunders M. Bridges, Jr. •+
E. Glenn Elliott •
Matthew N. Tyler •
James M. Saleeby, Jr.
J. David Banner
Samuel F. Arthur, III
Jay R. Lee
Preston B. Dawkins
Carrie A. Fox
J. Rufus Bratton, III
John G. Hofler, III

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MNT@AIKENBRIDGES.COM
843-669-8787, ext. 305
Facsimile: 843-664-0097

Alvin A. Coleman (1930-1995)

June 8, 2015

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JUN 11 2015

SC Court of Appeals

•Certified Mediator/Arbitrator
+Also Admitted District of Columbia

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: *Lonnie William Britt and Bernice Britt v. Marshall's Marine, Inc.*
Court of Appeals Case No.:
AB Case No.: 30426

Dear Ms. Kitchings:

Enclosed with this letter please find the original and six (6) copies of a Motion to Dismiss, as well as Certificate of Service and Memorandum in support of such motion. We are also enclosing our filing fee of \$25.00.

I will look forward to receiving filed copies back from your office in the near future, and if anything further is needed, please advise.

With kind regards, I am

Sincerely yours,

MATTHEW N. TYLER

MNT/thd
Enclosure

I understand this
may have been submitted
to your office over the
weekend and thus we
have no Court of Appeals
filing/reference number at
present as we have not
seen any filed documents.

-M.T.

181 East Evans St. Suite 409
Florence, South Carolina 29506

Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.

www.aikenbridges.com

Post Office Drawer 1931
Florence, South Carolina 29503

Aiken
Bridges
Attorneys at Law

June 8, 2015

Page 2

cc:

A. Lori Jones, Esq.
600 Foxtail Drive
Longs, SC 29568



000000000000



**Aiken
Bridges**
Attorneys at Law
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FLORENCE, SOUTH CAROLINA 29503

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