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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

APPEAL FROM CHESTER COUNTY

JUL 10 2015

Court of Common Pleas

SC Court of Appeals

Brian Gibbons, Circuit Court Judge

Court of Appeals Number 2015-001036

Circuit Case Number 2015-CP-12-0179

Robert H. Breakfield, Esquire as attorney-in-fact for John D. Hinson, John C. Hinson, Jerry Hinson, Kathy Huffstickle, Robert H. Hinson, Lois Hinson, Tina Jones, George Stanford as Personal Representative of the Estate of Linda Stanford, William L. Hinson, Elaine H. Hensley, and William C. Hinson, Jr.,

Respondents,

v.

Mell Woods,

Appellant.

RULE 221(a), SCACR PETITION FOR REHEARING

Appellant Mell Woods respectfully asks that the the decision filed on June 25, 2015 dismissing the appellant appeal be reexamined based on the following points:

-/-

1. The Court of Appeals failed to address the issue of a *structural* defect, and whether the trial judge in not going the policy of the State of South Carolina as articulated by the South Carolina Rules of Civil Procedure is merely harmless error, or actually a structural defect.

2. The Court of Appeals also failed to rule on the standing of the respondent to even to have communicated with the trial court about the status of appellant's appeal below.

3. In addition to LaSalle Bank v. Davidson, 386 S.C. 276, 688 S.E.2d 121 (2009), where the South Carolina Supreme Court Ruled that bogus court orders are structural defects instead of harmless error, and that the failure of a court to adhere to procedural due process is reversible error, there is also a Court of Appeals case which says nearly the same thing, Adams v. H.R. Allen, Inc., Op. No. 4967 (S.C. Ct. App. Filed May 02, 2012); the Court of Appeals in Adams ruled that procedural due process requires an opportunity to be heard even in a civil case.

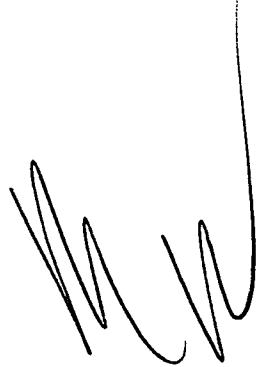
4. Argument: the Record shows that the case below was only on file for six hours instead of the required ten days as mandated by Rule 6(d), SCRCF before being ruled on by the trial court. This shows by the Record that the the court below never intended to afford due process to appellant, but that the court below was only interested in going by the instructions provided by B. Michael Brackett, the respondent counsel.

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5. As part of this Rule 221(a), SCACR Petition for Rehearing, appellant incorporates by reference, and attaches appellant's Return to the Respondent Motion to Dismiss Appeal brought by appellant Mell Woods, (8 pages) which is more detailed.

Respectfully submitted,

this 10 day of July, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

[Certificate of Service is placed last, after Exhibits]

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Robert H. Hinson,
Lois Hinson,
Tina Jones, George Stanford as
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William L. Hinson, Elaine H.
Hensley, and
William C. Hinson, Jr.,

Respondents,

v.

Mell Woods,

Appellant.

RETURN TO THE RESPONDENT MOTION TO DISMISS THE APPEAL BROUGHT

BY APPELLANT MELL WOODS:

1. The above appeal should be allowed to proceed based
on the following facts, to wit:

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EXHIBIT TO
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2. The respondent attorney, Mr. Michael Brackett went behind appellant's back and obtained an *ex parte* order which is the subject of this Appeal.

3. There was no need for any *ex parte* order and appellant was and is entitled to ten days notice before any motion is ruled on, Rule 6(d) SCRPC.

4. Rule 7(b)(1) SCRPC instructs that "An application to the court for an order shall be by motion" (and in writing) unless made during open court.

5. In this case, instead of a motion as required by Rule 7(b)(1) SCRPC, Brackett issued a "notice" to the circuit court judge, telling the judge what Brackett wanted done, and without any input whatsoever from Mell Woods, the person who brought the appeal from the magistrate court to the circuit court.

6. Along with Brackett's "notice" to the circuit court, a blank court order was furnished for the court to sign, as if there had already been a hearing, or agreement among the parties, where in fact, neither had happened.

7. Mr. Brackett, the attorney for the respondents is not in a position to "notify" an appeals court that motions are pending, and to therefore dismiss an appeal. The procedure he is talking about is usually in the Court of Appeals, and the procedure dates from Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986) where it was ruled that it is the APPELLANT'S responsibility to notify the

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clerk, and Hudson never gave the duty or standing to the respondent to do anything about getting an appeal dismissed.

8. The proceedings in this case are similar to LaSalle Bank v. Davidson, 386 S.C. 276, 688 S.E.2d 121 (2009), a foreclosure case in which the master in equity judge failed to attend the scheduled foreclosure hearing. However, missing a judge in LaSalle did not stop the hearing, which was conducted by the plaintiff attorney without the judge being present and this defect was fixed when the plaintiff attorney had the judge "rubber stamp" a court order which referred to the hearing without a judge and awarded attorney fees also. And on top of all of that the bogus court order was filed with the clerk of court. LaSalle was appealed and the South Carolina Supreme Court took up the case and ruled that the absence of a judge at a court hearing and the subsequent filing of a make-believe court order is a structural defect, and not at all harmless error.

9. The South Carolina Supreme Court based its ruling in LaSalle, cited above, on procedural due process grounds [a substantial right] and cited the South Carolina case of State v. Brown, 178 S.C. 294, 182 S.E. 838 (1935) which reminded everyone that "[d]ue process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property."

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10. So, it is the same in this case, the Record shows that the motion or "notice" was on file for a total of 6 hours before the court issued a judgment in the case. Not any six days, or sixty days, and certainly not the ten days required by Rule 6(d) SCRCP. All that the court heard was the information supplied by the adverse party before "rubber-stamping" the ex parte order supplied by Michael Brackett, the respondent attorney.

11. The Record is attached, and it consists of the Chester County Sixth Judicial Circuit Public Index, published by the Supreme Court of South Carolina. The blue X-marks show when the "notice" was filed [on May 01] with the case then being dismissed six hours later, [also on May 01]. At no time during these six hours, or at any other time, was appellant Mell Woods heard by the Chester County Court of Common Pleas in reference to the "notice" or motion filed by Brackett.

Based on all of the above, appellant respectfully asks that the respondent motion be denied.

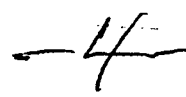
This 28 day of May, 2015.

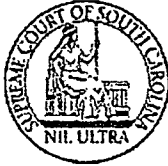


Mell Woods
P.O. Box 2603
Lancaster, SC 29721

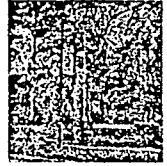
[Certificate of Service is placed last, after the exhibits]

EXHIBIT TO
PETITION FOR REHEARING





Chester County Sixth Judicial Circuit Public Index



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[SC.GOV Home Page](#)

Robert Breakfield VS Mel Woods					
Case Number:	2015CP1200179	Court Agency:	Common Pleas	Filed Date:	04/16/2015
Case Type:	Common Pleas	Case Sub Type:	Magistrate Civil 910	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court.		
Disposition:	Dismissed per Rule 41(a)	Disposition Date:	05/01/2015	Disposition Judge:	Gibbons, Brian M
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

[Case Parties](#)
[Judgments](#)
[Tax Map Information](#)
[Associated Cases](#)
[Actions](#)
[Financials](#)

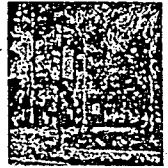
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Woods, Mel	Service/Certificate Of Service	Filing		05/19/2015-11:36		
Woods, Mel	Amended/Amended Notice of Appeal Amendment No. 1	Filing		05/19/2015-11:29		
Woods, Mel	Notice/Notice	Filing		05/19/2015-11:28		
Brackett, B. Michael	Letter/Letter	Filing		05/12/2015-08:45		
Woods, Mel	Service/Certificate Of Service	Filing		05/04/2015-16:40		
Woods, Mel	Notice/Notice of Appeal Amendment #1	Filing		05/04/2015-16:40		
Woods, Mel	Service/Certificate Of Service	Filing		05/01/2015-16:54		
Woods, Mel	Notice/Notice of Appeal	Filing		05/01/2015-16:54		
Breakfield, Robert	Service/Certificate Of Service	Filing		05/01/2015-15:04	05/01/2015-15:04	
Breakfield, Robert	Order/Dismissing Appeal Without Prejudice	Order		05/01/2015-15:03	05/01/2015-15:03	
Brackett, B. Michael	Service/Certificate Of Service	Filing		05/01/2015-09:22	05/01/2015-09:22	
Brackett, B. Michael	Notice to Circuit Court Sitting as an Appellate Court	Filing		05/01/2015-09:21	05/01/2015-09:21	
Breakfield, Robert	Appeal/Notice of Civil Appeal	Action		04/26/2015-16:43	05/01/2015-16:43	

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Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties						
Click the <input checked="" type="checkbox"/> icon to show associated parties.						
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status Last Updated
<input checked="" type="checkbox"/> Brackett, B. Michael	PO Box 100261 Columbia SC 29202				Plaintiff Attorney	05/01/2015
<input checked="" type="checkbox"/> Breakfield, Robert					Plaintiff	05/01/2015
Woods, Mel	P O Box 2603 Lancaster SC 29721				Defendant	04/16/2015

Actions						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Woods, Mel	Service/Certificate Of Service	Filing		05/19/2015-11:36		
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Woods, Mel	Notice/Notice of Appeal	Filing		05/01/2015-16:54		

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PETITION FOR REHEARING

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Breakfield, Robert	Motion/Appeal	Motion		04/16/2015-16:43	05/01/2015-16:43

Financials

Summary

Fine/Costs:	\$150.00	Total Paid for fine/costs:	\$150.00	Balance Due:	\$0.00
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Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Civil Filing Fee State 56%	CVFFST	\$56.00		\$56.00
Civil Filing Fee County 44%/100%	CVFFCN	\$44.00		\$44.00
SCJD Filing Fee Proviso \$50 / \$25	SCJDPV	\$50.00		\$50.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
04/16/2015	16865	c12datkins	PY	\$150.00

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PETITION FOR REHEARING

RECEIVED

MAY 28 2015

SOUTH CAROLINA COURT OF APPEALS
Case Number 2015-001036

Breakfield v. Mell Woods

SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that I have served the respondents
with a true copy of the within and foregoing

*Return to the Respondent Motion to Dismiss the Appeal brought
by Appellant Mell Woods*

by placing a copy of the same in the U.S. Mail with postage
prepaid addressed to:

Moses and Brackett, PC
c/o B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

This 28 day of May, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS
Case Number 2015-001036

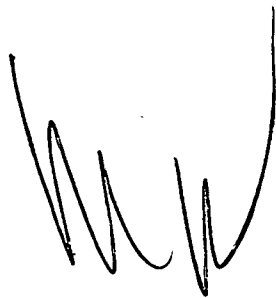
Breakfield v. Mell Woods

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with a true copy of the within and foregoing
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by placing a copy of the same in the U.S. Mail with postage
prepaid addressed to:

Moses and Brackett, PC
c/o B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

This 10 day of July, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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