

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

RECEIVED

JUL 15 2015

Case No: 2014-CP-26-1684

SC Court of Appeals

Archie Howell,..... Respondent.

v.

Christopher Chabot, d/b/a Autoworks, Appellant.

RESPONDENT'S MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL

The Respondent, Archie Howell, pursuant to Rule 260, SCACR, moves the Court for an Order dismissing the appeal filed by the Appellant. In support of the motion, the Respondent shows the following to the Court: The appeal is not within the Court's jurisdiction because of the following reason: Appellant failed to mail or deliver a copy of the Notice of Appeal to counsel for the Respondent as required by Rule 203(b), SCACR.

In the Notice of Appeal filed by Appellant, a copy of which is attached hereto as Exhibit "A," Appellant acknowledges he received written notice of the entry of the lower court's order on **May 11, 2015**. In the Proof of Service filed by Appellant, a copy of which is attached hereto as Exhibit "B," Appellant states he served the Notice of Appeal on Respondent on **June 19, 2015**. Accordingly by his own admission, Appellant did not timely serve Notice of Appeal within thirty days as required by Rule 203(b), SCACR.

In USAA Property and Casualty Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008), the Supreme Court determined that an appellant's failure to serve notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment will divest the Appellate Court of subject-matter jurisdiction and results in the dismissal of the appeal. The Court provided:

“Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal.” Canal Ins. Co. v. Caldwell, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct.App.1999). “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.” Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). USAA Property and Casualty Ins. Co. v. Clegg, 377 S.C. 651, 661 S.E.2d 795.

WHEREFORE, the Respondent respectfully requests that the Notice of Appeal be dismissed and for such other and further relief as the Court deems just and appropriate.

[signature to follow]



Mark D. Neill, Esquire
The Neill Law Firm
P.O. Box 2810
Murrells Inlet, South Carolina 29576
(843) 651-8580
Attorney for Respondent Archie Howell

Dated: July 13, 2015
Murrells Inlet, SC 29576

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA

In The Court of Appeals
[In The Supreme Court]

APPEAL FROM HORRY COUNTY
COURT of COMMON PLEAS

LARRY B. HYMAN JR. Circuit Court Judge

Case No. 2014-CP-26-01684

Archie Howell,

Respondent,

v.

Christopher Chabot

Appellant,

DBA Autoworks,

NOTICE OF APPEAL

Christopher Chabot appeals the order [judgment] of the Honorable Larry B. Hyman dated May 07, 2015. Appellant received written notice of entry of this order [judgment] on May 11, 2015.

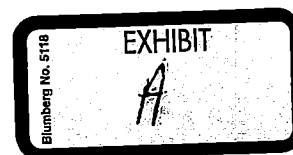
Christopher Chabot

May 26, 2015

Christopher Chabot, Pro Se

4878 ~~4784~~ Dahlia Court #204
Myrtle Beach SC 29577

Other Counsel of Record
Neill Law Firm, PA
P.O. Box 2810
Murrells Inlet, SC 29576
Attorney for the Respondent



PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM HORRY COUNTY
Court of Common Pleas

LARRY B. HYMAN JR, Circuit Court Judge

Case No. 2014-CP-26-01684

Archie Howell,

Respondent,

v.

Chris Chabot,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Archie Howell by depositing a copy of it in the United States Mail, postage prepaid, on June 19, 2015, addressed to his attorney of record, Neill Law Firm, PA, P.O. Box 2810, Murrells Inlet, SC 29576 [by personally delivering a copy of it to his attorney of record, Mark Neill, at his office at 671 Jamestowne Drive, Suite 207, Garden City, SC 29576, on June 19, 2015].

June 19, 2015


Christopher Chabot, Pro Se

4878 ~~4784~~ Dahlia Court #204
Myrtle Beach SC 29577

Blumberg No. 5118

EXHIBIT

B

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No: 2014-CP-26-1684

Archie Howell, Respondent.

v.

Christopher Chabot, d/b/a Autoworks, Appellant.

PROOF OF SERVICE

I certify that I have served a copy of Respondent's Motion to Dismiss Appeal and Respondent's Memorandum in Support of Motion to Dismiss Appeal, by depositing a copy of it in the United States Mail, postage prepaid, on July 13, 2015, addressed to pro se Appellant, Christopher Chabot, 4787 Dahlia Court, #204, Myrtle Beach, SC 29577.



Mark D. Neill, Esquire
The Neill Law Firm
P.O. Box 2810
Murrells Inlet, South Carolina 29576
(843) 651-8580
Attorney for Respondent Archie Howell

Dated: July 13, 2015
Murrells Inlet, SC 29576

NEILL LAW FIRM

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MURRELLS INLET, SC 29576

July 13, 2015

RECEIVED

JUL 15 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 29211

Re: Archie Howell vs. Christopher Chabot
Appellate Case No: 2015-001210

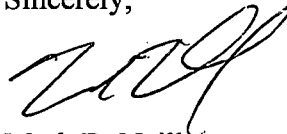
Dear Ms. Kitchings:

Enclosed herewith please find an original and seven copies of Respondent's Motion to Dismiss Appeal as well as Respondent's Memorandum of Support of Motion to Dismiss Appeal regarding the above referenced matter. Please file the originals with the Court and return the filed copies to me in the self-addressed, stamped envelope provided. By copy of this letter and along with a Certificate of Mailing we are serving pro se Christopher Chabot. I have also enclosed the filing fee of \$25.00.

Please do not hesitate to contact me should you have any questions.

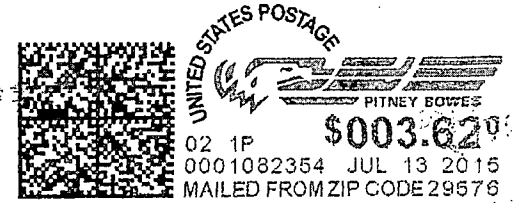
With kindest regards, I am,

Sincerely,



Mark D. Neill

MDN/lah
Enclosures (\$25.00)
Cc: Christopher Chabot (w/encl.)



NEILL
LAW FIRM

POST OFFICE BOX 2810
MURRELLS INLET, SC 29576

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
P.O. Box 11629
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SC Court of Appeals