

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No. 2012-CP-10-1160

RECEIVED

AUG 28 2015

SC Court of Appeals

Daniel O. Myers and
Bethany A. Thies,

Respondents,

v.

John Melot,

Appellant.

**APPELLANT'S RETURN TO RESPONDENTS' MOTION TO
DISMISS**

Appellant submits this Return to Respondents' Motion to Dismiss. Respondents raise three issues with Appellant's appeal: (1) timely service of the Notice of Appeal, (2) timely filing of the Notice of Appeal, and (3) timely ordering of the transcript.

In response to Respondents' Motion to Dismiss, Appellant respectfully shows the following:

1. Rule 203(b)(1) of the South Carolina Rules of Appellate Practice require that the Notice of Appeal be "served on all respondents within thirty (30) days after receipt of written notice" of entry of judgment or of the denial of a motion to alter or amend the judgment.
 - a. On July 2, 2015, this office received written notice of the court's denial of Appellant's Motion to Alter or

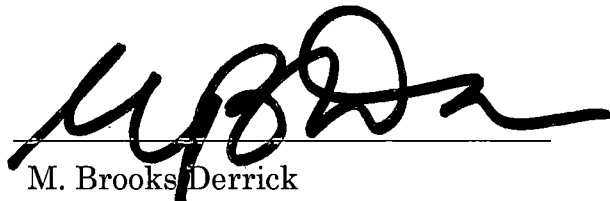
Amend its Judgment. (See Derrick Aff. ¶ 3.)

- b. On July 29, 2015, within 30 days from the receipt of written notice, Appellant served all respondents with the Notice of Appeal. (See Derrick Aff. ¶ 4.)
2. Rule 203(d)(1)(B) of the South Carolina Rules of Appellate Practice require that the Notice of Appeal be filed with the clerk of the lower court and the clerk of the appellate court within ten days after service of the Notice of Appeal.
 - a. On Monday, August 10, 2015, this office filed the Notice of Appeal with the clerk of the lower court and the clerk of the appellate court. (See Derrick Aff. ¶ 5.)
 - b. While on its face, filing of the Notice of Appeal appears untimely. However, Rule 263(a) of the South Carolina Rules of Appellate Practice provides that “[t]he last day of the period so computed is to be included, unless a Saturday, Sunday, or a state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor such holiday.”
 - c. Merely counting the days, the time to file the Notice of Appeal expired on August 8, 2015. However, August 8, 2015 is a Saturday, and as such the time to file the Notice of Appeal expired on the next day that was not a Saturday or a Sunday, which was Monday, August 10, 2015 (the day the Notice of Appeal was filed).
3. Rule 207(a)(1) of the South Carolina Rules of Appellate Practice require that the Appellant must order the transcript within 10 days after the service of the Notice of Appeal.
 - a. On Monday, August 10, 2015, this office ordered the transcript from the court reporter. (See Derrick Aff. ¶ 6.)

- b. While on its face, the ordering of the transcript appears untimely. However, Rule 263(a) of the South Carolina Rules of Appellate Practice provides that “[t]he last day of the period so computed is to be included, unless a Saturday, Sunday, or a state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor such holiday.”
- c. Merely counting the days, the time to order the transcript expired on August 8, 2015. However, August 8, 2015 is a Saturday, and as such the time to order the transcript expired on the next day that was not a Saturday or a Sunday, which was Monday, August 10, 2015 (the day the transcript was ordered).

Appellant did not fail to timely perfect his appeal of the above-captioned case. As demonstrated above, Appellant (1) timely served the Notice of Appeal in accordance with the rules, (2) timely filed the Notice of Appeal in accordance with the rules, and (3) timely requested the transcript from the court reporter in accordance with the rules. Therefore, Respondents’ Motion to Dismiss should be denied.

August ~~25~~ 25, 2015



M. Brooks Derrick
Law Office of M. Brooks Derrick
36 Broad Street
Charleston, South Carolina 29401
(843) 410-2545

Attorney for Appellant

Other Counsel of Record:
Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29464
(843) 971-6053
Attorney for Respondents

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John Melot,

Appellant.

AFFIDAVIT OF M. BROOKS DERRICK

I, Michael Brooks Derrick, first being duly sworn, depose and say that:

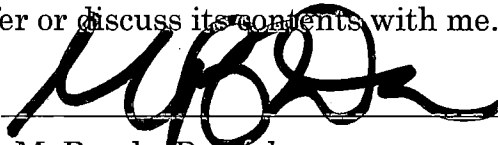
1. The contents of this statement are true and stated under the penalty of perjury.
2. I am the attorney of record for Appellant.
3. On July 2, 2015, this office received written notice of the court's denial of Appellant's Motion to Alter or Amend its Judgment. (See **Ex. 1.**)
4. On July 29, 2015, this office served all respondents with Appellant's Notice of Appeal. (See **Ex. 2.**) This office tracks all outgoing mail electronically, and I have attached the Log Entry for July 29, 2015 as **Exhibit 3.**

5. On Monday, August 10, 2015, this office filed the Notice of Appeal with the clerk of the lower court and the clerk of the appellate court by depositing it in the mail. (See Ex. 4.) I have also attached the Log Entries for those mailings as **Exhibit 5**.

6. Similarly, on Monday August 10, 2015, this office ordered the transcript of the court reporter by depositing in the mail to the court reporter and counsel for Respondents. (See Ex. 6.) I have also attached the Log Entries for those mailing as **Exhibit 7**.

7. Prior to the filing of Respondents' Motion, counsel for Respondents made no attempt to confer or discuss its contents with me.

August 25, 2015



M. Brooks Derrick
Attorney for Appellant

Sworn to and subscribed before me,
this 25 day of August 2015.



Notary Public for South Carolina
My Commission Expires: 6-30-25

Exhibit 1

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

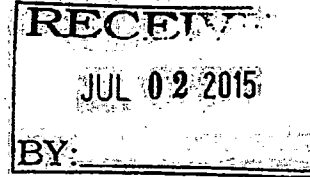


clerkofcourt.charlestoncounty.org

4



MICHAEL BROOKS DERRICK
36 BROAD ST
CHARLESTON SC 29401-3045



NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order Denying Defnts Motion to Alter or Amend Judgment

CASE NO: 2012CP1001160

Wells Fargo Bank N A as Trustee VS Daniel O Myers

This judgment was entered on the 23rd day of June, 2015, and notice mailed first class on Friday, June 26, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

Exhibit 2



LAW OFFICE OF M. BROOKS DERRICK
36 BROAD STREET CHARLESTON, SOUTH CAROLINA 29401
WWW.DERRICKLAWOFFICE.COM

July 29, 2015

Via U.S. Mail

Mary Leigh Arnold
MARY LEIGH ARNOLD PA
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29464

Re: Myers v. Melot, 2012-CP-10-1160

Dear Ms. Arnold:

Enclosed please find the Notice of Appeal regarding the above-referenced case. Should you have any questions, please do not hesitate to contact our office at (843) 410-2545.

With kind regards,

A handwritten signature in black ink, appearing to read 'Sally Boiter', written over a horizontal line.

Sally Boiter
Assistant to M. Brooks Derrick

Enclosure(s): as stated

M. BROOKS DERRICK, ATTORNEY & COUNSELOR AT LAW

BDERRICK@DERRICKLAWOFFICE.COM

843.723.5152 (PH) 843.410.5664 (FAX)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No. 2012-CP-10-1160

Daniel O. Myers and
Bethany A. Thies,

Respondents,

v.

John Melot,

Appellant.

NOTICE OF APPEAL

John Melot appeals the order of the Honorable Maité Murphy dated June 23, 2015. Appellant received written notice of entry of this order on July 2, 2015.

July ~~2~~²⁹, 2015



M. Brooks Derrick
Law Office of M. Brooks Derrick
36 Broad Street
Charleston, South Carolina 29401
(843) 410-2545

Attorney for Appellant

Other Counsel of Record:
Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29464
(843) 971-6053
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No. 2012-CP-10-1160

Daniel O. Myers and
Bethany A. Thies,

Respondents,

v.

John Melot,

Appellant.

PROOF OF SERVICE

I certify that I served the Notice of Appeal on Daniel O. Myers and Bethany A. Thies by depositing a copy in the United States Mail, postage prepaid, on July 29, 2015 addressed to their counsel of record, Mary Leigh Arnold, 749 Johnnie Dodds Blvd., Suite B, Mt. Pleasant, South Carolina 29464.

July 29, 2015



M. Brooks Derrick
Law Office of M. Brooks Derrick
36 Broad Street
Charleston, South Carolina 29401
(843) 410-2545

Attorney for Appellant

Other Counsel of Record:
Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29464
(843) 971-6053
Attorney for Respondent

Exhibit 3

Log Entry Details

IMb Tracing Number: 00040000745171740663

Print Date & Time: 07/29/15 04:28 PM
Ship Date: 07/29/15
Account: 748181
Type: Stamp
Postage Amount: \$0.485

Address: MARY LEIGH ARNOLD
MARY LEIGH ARNOLD PA
749 JOHNNIE DODDS BLVD STE B
MT PLEASANT SC 29464-3070

Piece Count: 2257
Postage Class: First-Class Mail
Mailpiece: Letter
Weight: 1 oz
Balance: \$22.435
Description:
Insurance: None
Reference Number:

Exhibit 4



LAW OFFICE OF M. BROOKS DERRICK
36 BROAD STREET CHARLESTON, SOUTH CAROLINA 29401
WWW.DERRICKLAWOFFICE.COM

August 10, 2015

Via U.S. Mail

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Myers v. Melot, 2012-CP-10-1160*

Dear Ms. Armstrong:

Enclosed please find the original and one copy of the Notice of Appeal and the Proof of Service regarding the above-referenced case. Please file the original and return the clocked copy to our office in the self-addressed stamped envelope provided.

Should you have any questions or concerns, please do not hesitate to contact me at (843) 410-2545 or via email (sboiter@derricklawoffice.com).

With kind regards,

A handwritten signature in black ink, appearing to read 'Sally Boiter', written over a large, circular scribble or flourish.

Sally Boiter
Assistant to M. Brooks Derrick

Enclosure(s): as stated
Copy to: Mary Leigh Arnold

M. BROOKS DERRICK, ATTORNEY & COUNSELOR AT LAW

BDERRICK@DERRICKLAWOFFICE.COM

843.723.5152 (PH) 843.410.5664 (FAX)



LAW OFFICE OF M. BROOKS DERRICK
36 BROAD STREET CHARLESTON, SOUTH CAROLINA 29401
WWW.DERRICKLAWOFFICE.COM

August 10, 2015

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Myers v. Melot, 2012-CP-10-1160

Dear Ms. Kitchings:

Please find enclosed herewith the Notice of Appeal in the above-referenced matter. I have also enclosed a Proof of Service of the Notice of Appeal on the respondent, a copy of the Order which is to be challenged on appeal, and a check in the amount of \$100.00 to cover the cost of filing the appeal.

Should you have any questions or require any additional information, please do not hesitate to contact me at (843) 410-2545 or via email (sboiter@derricklawoffice.com).

With kind regards,

Sally Boiter
Assistant to M. Brooks Derrick

Enclosure(s): as stated
Copy to: Mary Leigh Arnold

M. BROOKS DERRICK, ATTORNEY & COUNSELOR AT LAW

BDERRICK@DERRICKLAWOFFICE.COM

843.723.5152 (PH) 843.410.5664 (FAX)

Exhibit 5

Log Entry Details

IMb Tracing Number: 00040000745172749219

Print Date & Time: 08/10/15 06:17 PM

Ship Date: 08/10/15

Account: 748181

Type: Stamp

Postage Amount: \$1.86

Address: THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK, SOUTH CAROLINA COURT OF APPEALS
PO BOX 11629
COLUMBIA SC 29211-1629

Piece Count: 2280

Postage Class: First-Class Mail

Mailpiece: Large Envelope

Weight: 5 oz

Balance: \$0.075

Description:

Insurance: None

Reference Number:

Log Entry Details

IMb Tracing Number: 00040000745172749461

Print Date & Time: 08/10/15 06:20 PM

Ship Date: 08/10/15

Account: 748181

Type: Stamp

Postage Amount: \$1.20

Address: THE HONORABLE JULIE J. ARMSTRONG
CHARLESTON COUNTY CLERK OF COURT
100 BROAD ST STE 106
CHARLESTON SC 29401-2210

Piece Count: 2281

Postage Class: First-Class Mail

Mailpiece: Large Envelope

Weight: 2 oz

Balance: \$48.875

Description:

Insurance: None

Reference Number:

Exhibit 6



LAW OFFICE OF M. BROOKS DERRICK
36 BROAD STREET CHARLESTON, SOUTH CAROLINA 29401
WWW.DERRICKLAWOFFICE.COM

August 10, 2015

Via U.S. Mail

Phyllis Norton
363 Longpoint Road
Unit G74
Mt. Pleasant, SC 29464

Re: *Myers v. Melot, 2012-CP-10-1160*

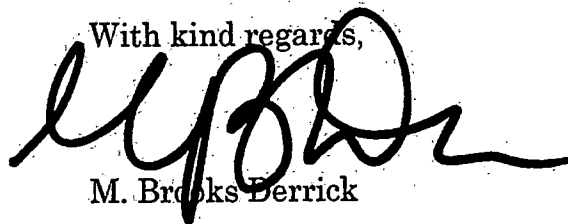
Dear Ms. Norton:

On November 19, 2014, the above case was tried before the Honorable Maite Murphy, Circuit Court Judge, in Dorchester County. My records indicate that you were the court reporter for this hearing. I have attached the first page of the Judge's Order for easy reference.

Please allow this letter to serve as a request for the transcript of the proceedings. I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Should you have any questions or concerns, please do not hesitate to contact me at (843) 410-2545 or via email (bderrick@derricklawoffice.com).

With kind regards,



M. Brooks Derrick

Enclosure(s): as stated
Copy to: Mary Leigh Arnold

M. BROOKS DERRICK, ATTORNEY & COUNSELOR AT LAW

BDERRICK@DERRICKLAWOFFICE.COM

843.723.5152 (PH) 843.410.5664 (FAX)

Exhibit 7

Log Entry Details

IMb Tracing Number: 00040000745172749067

Print Date & Time: 08/10/15 06:15 PM

Ship Date: 08/10/15

Account: 748181

Type: Stamp

Postage Amount: \$0.485

Address: MARY LEIGH ARNOLD
MARY LEIGH ARNOLD PA
749 JOHNNIE DODDS BLVD STE B
MT PLEASANT SC 29464-3070

Piece Count: 2279

Postage Class: First-Class Mail

Mailpiece: Letter

Weight: 1 oz

Balance: \$1.935

Description:

Insurance: None

Reference Number:

Log Entry Details

IMb Tracing Number: 00040000745172748880

Print Date & Time: 08/10/15 06:12 PM

Ship Date: 08/10/15

Account: 748181

Type: Stamp

Postage Amount: \$0.485

Address: PHYLLIS NORTON
363 LONGPOINT ROAD
UNIT G74
MT PLEASANT SC 29464

Piece Count: 2278

Postage Class: First-Class Mail

Mailpiece: Letter

Weight: 1 oz

Balance: \$2.42

Description:

Insurance: None

Reference Number:



LAW OFFICE OF M. BROOKS DERRICK
36 BROAD STREET CHARLESTON, SOUTH CAROLINA 29401
WWW.DERRICKLAWOFFICE.COM

August 25, 2015

Via U.S. Mail

RECEIVED

AUG 28 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Myers v. Melot, 2012-CP-10-1160

Dear Ms. Kitchings:

Please find enclosed herewith the Appellant's Return to Respondents' Motion to Dismiss, as well as the Affidavit of M. Brooks Derrick regarding the above-referenced matter. I have also enclosed six copies of both the Motion and the Affidavit.

Should you have any questions or require any additional information, please do not hesitate to contact me at (843) 410-2545 or via email (sboiter@derricklawoffice.com).

With kind regards,

Sally Boiter

Assistant to M. Brooks Derrick

Enclosure(s): as stated

cc: Mary Leigh Arnold (via Email and U.S. Mail)

M. BROOKS DERRICK, ATTORNEY & COUNSELOR AT LAW

BDERRICK@DERRICKLAWOFFICE.COM

843.723.5152 (PH) 843.410.5664 (FAX)


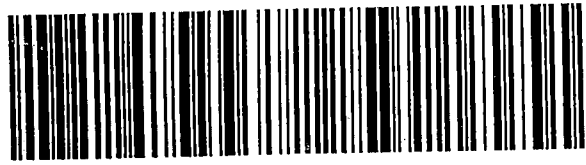
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1-DAY SERVICE

Additional Use

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n/Int'lps

E	US POSTAGE AND FEES PAID PM EXPRESS Aug 25 2015 Mailed from ZIP 29401 2 lb Priority Mail Express Rate Zone 2 CommercialBasePrice	 endicia.com 071M00748181
PRIORITY MAIL EXPRESS 1-DAY		
<p>M. DERRICK 36 BROAD ST CHARLESTON SC 29401-3045</p> <p>RECEIVED B012 0007 AUG 28 2015 SC Court of Appeals</p> <p>NO SUNDAY OR HOLIDAY DELIVERY WAIVER OF SIGNATURE REQUESTED</p> <p>SHIP TO: THE HONORABLE JENNY ABBOTT KITCHINGS CLERK, SOUTH CAROLINA COURT OF APPEALS PO BOX 11629 COLUMBIA SC 29211-1629</p>		
<p>USPS TRACKING #</p>  9470 1102 0082 9715 3136 54		



PRIORITY MAIL
POSTAGE R