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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

RECEIVED
OCT 29 2015
SC Court of Appeals

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Alexander Guice, Appellant,

v.

US Food Service, Inc., Employer, and
Ace American Insurance Company c/o
Gallagher Bassett Services, Inc., Respondents.

**MOTION TO STRIKE RESPONDENTS' REPLY
TO APPELLANT'S RETURN IN OPPOSITION TO MOTION
FOR CORRECTION AND/OR CLARIFICATION
OF APPELLANT'S DESIGNATION OF MATTER**

Please take notice, that Alexander Guice, the named and undersigned pro se Appellant, submits these pleadings in *propria persona*. See Haines v. Kerner, 92 Sct 594; also See Power 914 F2d 1459 (11th Cir 1990); also See Hulsey v. Ownes, 63 F3d 354 (5th Cir 1995). *Id.* Specifically, pursuant to Rule 269, SCACR; Rule 240(g), SCACR, and/or other applicable laws, appellant presents this Motion to Strike Respondents' Reply to Appellant's Return in Opposition to

Motion for Correction and/or Clarification of Appellant's Designation of Matter ("Motion to Strike") dated October 24, 2015 and filed in the above style caption by respondents', on grounds that said Reply was untimely filed. In support of this Motion to Strike, appellant would allege as follows:

ARGUMENT

1. **The respondents' "Reply to Appellant's Return in Opposition to Motion for Correction and/or Clarification of Appellant's Designation of Matter" ("Reply to Return in Opposition") was filed untimely.**

Appellant contends the 'Reply to Return in Opposition' dated October 24, 2015 and filed by respondents' in the above-entitled action was filed untimely based on several factors.

First, a review of appellant's "Return in Opposition to Motion for Correction and/or Clarification of Appellant's Designation of Matter" ("Return in Opposition") confirms that, 1) The 'Return in Opposition' was filed and served upon respondents' by appellant, via US Priority Mail on October 14, 2015; and 2) Respondents' were duly served with the aforementioned 'Return in Opposition' via US Priority Mail, with verifiable track and confirm, on **October 16, 2015**¹. See Proof of Service, Return in Opposition & USPS Tracking confirmation document verifying date of service, enclosed and incorporated herein as Exhibit "A".

Second, a review of respondents' Reply to Return in Opposition reflects the respondents' inaccurately stated said Return was "received on October 19, 2015" (Respondents' Reply, p. 1).

1 Appellant points out that the Court received appellant's filing of the Return in Opposition dated October 14, 2015 on October 16, 2015 as well.

Third, Rule 240(f), SCACR, **Reply**, provides in pertinent part, "The moving party **shall** have **five (5) days** from the date of service of a return to file an original and six (6) copies of a reply with the clerk and serve on all parties a copy of the reply. The provisions of Rule 240(c) apply to a reply." (Emphasis added). *Id.*

Fourth, Rule 240(g), SCACR, **Failure to Comply**, provides in part: "Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition." *Id.*

Finally, Rule 269, SCACR, **FRIVOLOUS APPEALS, PETITIONS, MOTIONS, OR RETURNS**, provides in part: "Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, **or is not in compliance with these Rules**, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require. This Rule does not apply to any matters where counsel is required by law to pursue an appeal or petition for writ of certiorari even though the matter may be frivolous." (Emphasis added). *Id.*

Here, the record reflects the proper date of service of appellant's Return in Opposition upon respondents' was October 16, 2015, not October 19, 2015 as inaccurately stated in respondents' Reply. As such, the five (5) day tolling of computation of time for respondents' to file and serve their Reply to Return in Opposition, as set forth in Rule 240(f), SCACR, began on **October 17, 2015**, the day after confirmed service of same, and expired on **October 21, 2015**.

Furthermore, the automatic five day exception afforded to a party to receive pleadings and other papers via USPS regular mail did not apply, based on the fact appellant filed and served the Return in Opposition via USPS Priority Mail, which provided verifiable tracking and confirmation as to when the Return in Opposition was mailed to respondents', as well as the approximate date and time said Return in Opposition was served upon respondents', and in the instant case, service was perfected upon respondents' on October 16, 2015 at 10:24 a.m. See Exhibit "A".

Still further, appellant contends whether or not respondents', through retained counsel, decided not to check their official mailing address of record between October 16, 2015 and October 19, 2015 should not serve in any way or manner to stay or hold in abeyance the 5 day tolling and computation of time to file and serve their Reply to Return in Opposition subsequent the October 21, 2015 deadline².

Because respondents' failed to file and serve their Reply to Return in Opposition prior to October 21, 2015, after confirmed service that the Return in Opposition was perfected on October 16, 2015 at 10:24 a.m., in noncompliance with Rule 240(f), SCACR, appellant contends the Court should consider deeming respondents' Reply in Return to Opposition "abandoned" per Rule 240(g), SCACR, and/or consider striking the same from the record as an appropriate

² Appellant contends the October 19, 2015 date advanced by respondents' as receipt of service for the aforementioned Return in Opposition is fictitious in nature, and actually reflects the date respondents' counsel apparently decided to check their official mailing address of record for incoming mail, not the USPS Priority Mail verified October 16, 2015 date of service upon respondents' of the aforementioned Return in Opposition.

sanction per Rule 269, SCACR. *Id.* See *City of Columbia v. ACLU of S.C., Inc.*, 323 S.C. 384, 387, 475 S.E.2d 747, 749 (1996) (“Where the terms of the statute are clear, the court must apply those terms according to their literal meaning.”); also see *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). “The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation”. *Id.*


CONCLUSION

Accordingly, based on the foregoing reasons, appellant moves the Court for an Order deeming respondents’ “Reply to Appellant’s Return in Opposition to Motion for Correction and/or Clarification of Appellant’s Designation of Matter” as “abandoned” or in latter, that the same be stricken from the record due to respondents’ noncompliance with Rule 240(f), SCACR, as a matter of law.

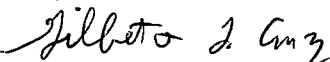
VERIFICATION

I, **Alexander Guice**, the named and undersigned self-represented appellant in this matter, do hereby swear, under penalty of perjury, that I prepared, read and reviewed the information contained herein and believe it to be true and correct to the best of my knowledge and ability.

Respectfully submitted,

By: 
Alexander Guice
Post Office Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, Pro Se

Sworn to before me this
27 day of October, 2015


Notary Public of Florida
My commission expires 1/30/18

October 27, 2015



GILBERTO L. CRUZ
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF088018
Expires 1/30/2018

EXHIBIT "A"

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PROOF OF SERVICE

I hereby certify that the Respondents, through counsel, were provided a true copy of a cover letter to the Clerk; a Return in opposition to Motion for Correction and/or Clarification of Appellant's Designation of Matter and a proof of service, by depositing the same in the US Postal Service, via Priority Mail, and addressed to: **Erin L. Hantske, Esq., P.O. Box 650007 Mt. Pleasant, SC 29465** on this **14th** day of October, 2015.



Alexander Guice
P.O. Box 13281
Tampa, FL 33681
(813) 562-0547
Appellant, Pro Se

October 14, 2015

TAMPA MAIN PO
Tampa, Florida
336305010
1189290600-0085
10/14/2015 (813)877-0609 12:33:15 PM

Sales Receipt

Product Description	Sale Unit Qty	Price	Final Price
@@ ** COLUMBIA SC 29211-1629 Zone-4 Priority Mail 2-Day By Weight 2 lb. 15.30 oz. Expected Delivery: Fri 10/16/15 Includes up to \$50 insurance			\$8.85

USPS Tracking #:
9505 5110 6028 5287 4512 71

Issue Postage: \$8.85

→ @@ ** MOUNT PLEASANT SC 29465-6507 Zone-4
Priority Mail 3-Day
Flat Rate Env
7.90 oz.
Expected Delivery: Sat 10/17/15
Includes up to \$50 insurance ←

USPS Tracking #:
9505 5110 6028 5287 4515 78

Issue Postage: \$5.75

Total: \$14.60

Paid by:
VISA \$14.60
Account #: XXXXXXXXXXXX5195
Approval #: 014556
Transaction #: 87
23903570745

@@ For tracking or inquiries go to
USPS.com or call 1-800-222-1811.

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Tracking Number: 9505511060285287451578

Updated Delivery Day: Friday, October 16, 2015

Product & Tracking Information

Postal Product:
Priority Mail 3-Day™

Features:
USPS Tracking™

Up to \$50 insurance included
Restrictions Apply

Available Actions

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
October 16, 2015 , 10:24 am	Delivered, PO Box	MOUNT PLEASANT, SC 29465
Your item has been delivered and is available at a PO Box at 10:24 am on October 16, 2015 in MOUNT PLEASANT, SC 29465.		
October 16, 2015 , 8:50 am	Out for Delivery	MOUNT PLEASANT, SC 29465
October 16, 2015 , 8:40 am	Sorting Complete	MOUNT PLEASANT, SC 29465
October 16, 2015 , 4:47 am	Arrived at Post Office	MOUNT PLEASANT, SC 29464
October 15, 2015 , 1:00 am	Arrived at USPS Origin Facility	TAMPA, FL 33605
October 14, 2015 , 10:54 pm	Departed Post Office	TAMPA, FL 33630
October 14, 2015 , 12:32 pm	Acceptance	TAMPA, FL 33630

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Appellant, Pro Se

October 27, 2015