

March 13, 2014

The Honorable J. Cordell Maddox, Jr.
Anderson County Courthouse
P.O. Box 8002
Anderson, South Carolina 29622

Re: *Apex Automotive, LLC, etc. vs. Earl J. Nash, et ux*
Case No.: 2013-CP-04-2001

Dear Judge Maddox:

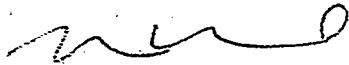
Pursuant to the Court's instructions, enclosed please find a proposed Order regarding the above-referenced matter that was heard before Your Honor regarding the Defendant's appeal from the Magistrate's Court.

By copy of this letter the undersigned has served a copy of the proposed Order upon Earl J. Nash at the address provided to the Court.

Should the Court have any questions, or if I may be of further assistance please do not hesitate to contact my office.

Respectfully submitted,

Krause, Moorhead and Draisen, P.A.


J. Kirkman Moorhead

JKM:tdc

Enclosure as Noted

cc: Mr. and Mrs. Earl J. Nash (w/enclosures)
209 Camson Rd., Anderson, SC 29625

LAW OFFICES
OF
KRAUSE,
MOORHEAD
AND
DRAISEN, P.A.

207 EAST CALHOUN ST.
ANDERSON, SC 29621

PHONE (864) 225-4000
FAX (864) 964-0788

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DANIEL L. DRAISEN
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ALSO A MEMBER OF
THE OKLAHOMA BAR

STEVEN B. LEFEVRE
slefevre@kmdlawyers.com

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-04-2001

APEX AUTOMOTIVE, LLC dba)
PIEDMONT CHRYSLER JEEP)
DODGE,)

PLAINTIFF)

v.)

EARL JAMISON NASH and)
MURNA LEE NASH,)

DEFENDANTS.)

ORDER ON APPEAL FROM THE
MAGISTRATE'S COURT

This matter came before me on an appeal from the Magistrate's Court. The Appellants were appearing *pro se* through Earl Jamison Nash. The Respondents appeared by and through their counsel, J. Kirkman Moorhead.

Mr. Nash filed an appeal on September 6, 2013 from a jury verdict rendered against him and Murna Lee Nash for \$5,000.00 in favor of the Respondents in magistrate's court dated August 22, 2013.

The underlying dispute arises from the sale of a vehicle by the Respondents to Mr. and Mrs. Nash. The evidence shows that the Appellants entered into an agreement to purchase a 2012 Chrysler 300 vehicle. As part of the transaction, Mr. and Mrs. Nash were to pay the sum of \$5,000.00 in cash. Evidence presented at trial by the Respondents, including a video of the transaction, support that Mr. and Mrs. Nash were allowed to take possession of the vehicle and finalize the other aspects of the transaction with the understanding that they would return within a day or two with the title to a vehicle they had traded in and the \$5,000.00 downpayment. Witnesses for the respondent testified that they were comfortable with this arrangement due to the high credit rating of Mr. and Mrs. Nash and the general demeanor of Mr. and Mrs. Nash. The respondent's witnesses testified that Mr. and Mrs. Nash did deliver the title to the trade-in, but failed to make the \$5,000.00 payment.

The respondent's witnesses testified that over the coming weeks, the payment by Mr. and Mrs Nash was not forthcoming. They testified that Mr. Nash initially communicated with them and at first claimed an anticipated tax refund had not come through. They testified that Mr. Nash then subsequently changed his story and argued that he had, in fact, paid the \$5,000.00, in cash to the respondents, although he could not relate to whom he paid the funds nor did he present a receipt. At trial, Mr. Nash was unable to identify to whom he had paid the purported \$5,000.00 payment and he testified he was not given a receipt by the unidentified individual. He further argued that because the documents evidencing the transaction have entries for "Cash Payment" of \$5,000.00 and that, essentially that because it is noted in the documents, it must have been paid. He contends that there can be no oral modifications to the contract documents and therefore the funds are not owed. Clearly, the presence of an entry indicating "Cash Payment" in the transaction documents constitutes a term of the sale and is not proof that he amount was actually paid, and, especially in light of the testimony of the respondent's witnesses and the video of the transaction, it is obvious that this is the case.

Mr. Nash then began to claim that the vehicle he came in to the dealership to purchase was not the vehicle he received, despite conceding that the vehicle he received was in fact the one identified on the paperwork. The video evidence, however, includes a discussion between Mr. and Mrs. Nash wherein the couple discusses the vehicle they were buying and identifies the vehicle by noting its color, engine size and model. The vehicle which was taken by Mr. and Mrs. Nash matched the paperwork in evidence and the vehicle described in the conversation between the Nashes on the video of the transaction in evidence.

Mr. Nash further contends that Apex Automotive, LLC cannot bring suit because "Apex is not a real person and cannot be cross examined." Apex Automotive, LLC is a duly formed Limited Liability Company organized in the State of South Carolina. Obviously, Apex's representatives appeared at trial and were available for, and in fact were, cross examined. This argument has no merit.

The overwhelming evidence provided support for the position that the \$5,000.00 was not paid by Mr. and Mrs. Nash to the respondent, and I affirm that finding of the jury and the magistrate. First, the

three representatives of Apex who had contact with Mr. and Mrs. Nash testified that the funds were not paid. Second, the videotape of the transaction confirms that the funds were not paid at the time of delivery of the vehicle. Third, Mr. Nash was unable to identify a source of funds for the \$5,000.00 he claims to have paid and has no receipt for the alleged payment. I find that the mere presence of an entries in the documents in support of the transaction indicating that a \$5,000.00 cash payment was a term of the transaction does not by itself prove the payment was made. To the contrary, the jury had ample evidence available to them to conclude that the \$5,000.00 was not paid and that therefore Mr. and Mrs. Nash owed the funds to the Plaintiff/Respondent.

I further find by the greater weight of the evidence that Mr. and Mrs. Nash in fact received the very vehicle that they bargained for and that there is no support for the contention that the respondent somehow cheated Mr. and Mrs. Nash by "baiting and switching" or otherwise surreptitiously substituting a vehicle into the transaction that was other than the very vehicle that the Nashes contemplated purchasing. This is supported by the description of the vehicle on the transaction documents and again by the video of the Nashes discussing the specifics of the vehicle they were purchasing contemporaneously with the execution of the documents requisite to the transaction.

NOW THEREFORE, IT IS ORDERED that the findings of fact of the Magistrate's Court, in addition to any findings of this Court to the extent they are supplementary, are hereby affirmed, together with the Judgment in favor of the Respondents and against the Appellants in the amount of \$5,000.00.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox Jr.

Anderson, South Carolina

Dated _____, 2014

The South Carolina Court of Appeals

Apex Automotive, LLC dba Piedmont Chrysler Jeep
Dodge, Respondent,

v.

Earl Jamison Nash and Murna Lee Nash, Defendants,

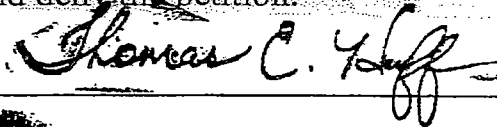
Of Whom Earl Jamison Nash is the Appellant.

Appellate Case No. 2014-000976

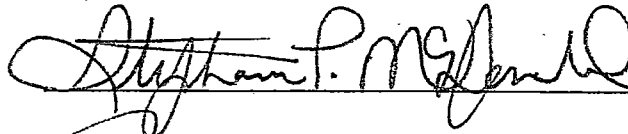
ORDER

Appellant has filed a motion to reinstate his appeal, which was dismissed due to Appellant's failure to serve and file his initial brief in compliance with Rules 208 and 209 of the South Carolina Appellate Court Rules. On January 8, 2015, this court ordered Appellant to serve and file an initial brief and designation of matter that comply with Rules 208 and 209, SCACR, and explained that the motion to reinstate would be considered upon the expiration of twenty days.

To date, Appellant has not served and filed his initial brief and designation of matter. Accordingly, we construe Appellant's motion to reinstate as a petition to rehear the dismissal of this appeal and deny the petition.¹



J.



J.



A.J.

¹ Because we deny Appellant's petition for rehearing, we need not address his requests set forth in his correspondence filed January 29, 2015.

FILED

2/10/15



March 13, 2014

LAW OFFICES
OF
KRAUSE,
MOORHEAD
AND
DRAISEN, P.A.

The Honorable J. Cordell Maddox, Jr.
Anderson County Courthouse
P.O. Box 8002
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skrause@kmdlawyers.com
CERTIFIED NATIONAL BOARD
OF TRIAL ADVOCACY

J. KIRKMAN MOORHEAD
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DANIEL L. DRAISEN
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ALSO A MEMBER OF
THE OKLAHOMA BAR

STEVEN B. LEFEVRE
slefevre@kmdlawyers.com

JKM:tdc

Enclosure as Noted

cc: ✓ Mr. and Mrs. Earl J. Nash (w/enclosures)
209 Camson Rd., Anderson, SC 29625

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
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APEX AUTOMOTIVE, LLC dba)
PIEDMONT CHRYSLER JEEP)
DODGE,)

PLAINTIFF)

v.)

EARL JAMISON NASH and)
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NOW THEREFORE, IT IS ORDERED that the findings of fact of the Magistrate's Court, in addition to any findings of this Court to the extent they are supplementary, are hereby affirmed, together with the Judgment in favor of the Respondents and against the Appellants in the amount of \$5,000.00.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox Jr.

Anderson, South Carolina

Dated _____, 2014

The South Carolina Court of Appeals

Apex Automotive, LLC dba Piedmont Chrysler Jeep
Dodge, Respondent,

v.

Earl Jamison Nash and Murna Lee Nash, Defendants,

Of Whom Earl Jamison Nash is the Appellant.

Appellate Case No. 2014-000976

ORDER

This appeal was dismissed due to Appellant's failure to pay the \$100 notice of appeal filing fee. Appellant has now filed several documents, which this Court construes together as a petition to rehear the dismissal of the appeal. Because the notice of appeal filing fee has been paid, Appellant's petition for rehearing is granted and this appeal is reinstated.

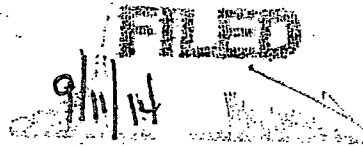

FOR THE COURT

Columbia, South Carolina

cc:

Earl Jamison Nash

John Kirkman Moorhead, Esquire





OFFICIAL CHECK

15101214-6

52-0133
112

RE: *STATE OF IOWA*

DATE: *05/24/2014*

PAY TO THE ORDER OF

State Terrence Court of Appeals

\$100.00

One Hundred AND 00/100

DRAWER: TD BANK, N.A.



Secure Features Detailed on Back.

The Bank will not stop payment on this Official Bank Check and reimburse the purchaser or issue a replacement until the purchaser or payee signs a Declaration of Loss and more than 90 days have passed since the date of issue.

John C. [Signature]
NON NEGOTIABLE
AUTHORIZED SIGNATURE

CUSTOMER COPY

MONEYGRAM PAYMENT SYSTEMS, INC. DRAWER
P.O. BOX 9476
MINNEAPOLIS, MN 55480

PLEASE READ REVERSE SIDE www.moneygram.com/moneyorder DATE/AMOUNT

RECEIPT
10554182005 11/20/2014
114 MN \$25.00
98100405760175
RECIBO 11

MoneyGram

EMPLOYEE
R105541820054
715 (12/12) 700/14000
M 70741-U

▲ DETACH HERE ▲

KEEP A COPY OF THIS STUB FOR YOUR RECORDS / MANTENGA UNA COPIA DE ESTE RECIBO PARA SUS ARCHIVOS

2014

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS
FILED-CLERK'S OFFICE TENTH JUDICIAL CIRCUIT
ANDERSON, SC

Earl J. Nash,
Petitioner/Defendant,

2014 MAR 17 } P 1:28

Case No. 2013-CP-04-2001

vs.

) COMMON PLEAS AND
GENERAL SESSIONS

) ORDER AFFIRMING THE RULING
OF THE MAGISTRATE COURT

Apex Automotive, LLC, d/b/a Piedmont Chrysler
Jeep Dodge.
Respondent/Plaintiff.


The Petitioner appeared before The Honorable J. Cordell Maddox, Jr., Circuit Court Judge, on December 19, 2013 on an appeal of a Summary Court verdict. Present at the hearing were both parties and Attorney Kirk Moorhead, on behalf of Respondent, Apex Automotive. The Court heard the arguments of both parties, and took the matter under advisement.

A jury trial was held before the Honorable Wynne D. Eubanks, on August 22, 2013. The jury returned a verdict for the Plaintiff in the amount of \$5,000.

Petitioner timely filed this appeal and now appears before this Court requesting the Magistrate ruling be overturned. The standard of review for the Court is whether an error of law or fact exists. S.C. Code Ann. § 18-7-170. This Court has determined that no error of law or fact exists, and accordingly,

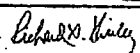
It is ORDERED that Petitioner's appeal is denied, and the ruling of the Magistrate is affirmed.

IT IS SO ORDERED.



J. Cordell Maddox, Jr.
Circuit Court Judge

3/14, 2014
Anderson, South Carolina

A TRUE COPY
JUL 29 2014

CLERK OF COURT

NOTICE OF MOTION SCHEDULING

December 06, 2013



Motion "MOFREE - Appeal Hearing" for Case: 2013CP0402001 - Earl J Nash VS Apex Automotive LLC , defendant, et al has been added to the following Motions Roster:

67 - Motions Dec 19 2013

This hearing of this motion has been scheduled for 12/19/2013 at 11:15 AM.

Please be advised a motion hearing has been scheduled in the above referenced case on the date and time listed in the subject line herein. The Honorable R. Lawton McIntosh will be presiding in Courtroom 4 Main. Failure of moving party to appear at the hearing may result in dismissal of the motion.

SEE IMPORTANT INFO AT THE ROSTER NEWS LINKS, located at publicindex.sccourts.org/anderson/courtrosters. Requests for continuances will only be accepted in the form of formal motions, accompanied by the \$25 filing fee and the required form. Hearings will not be continued except by granted motion and order. For questions, contact the court coordinator at jpruitt@andersoncountysc.org.

Mail Notice To:
Earl J Nash 209 Camson Rd Anderson, SC 29625

Court Info:
Common Pleas 100 South Main Street Po Box 8002 Anderson, SC 29622-9622

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(864)260-4053

Respectfully,

A handwritten signature in cursive script that reads "Richard A. Shirley".

Richard A. Shirley
Clerk of Court



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 11, 2014

Earl Jamison Nash
209 Camson Road
Anderson SC 29625

Re: Apex Automotive v. Earl Nash
Appellate Case No. 2014-000976

Dear Mr. Nash:

Please find the enclosed order of the Court. Since time for ordering and receiving the transcript has already passed, the appellant's initial brief and designation of matter must be served and filed no more than thirty (30) days from the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

25 Reasoning

The South Carolina Court of Appeals

Apex Automotive, LLC dba Piedmont Chrysler Jeep
Dodge, Respondent,

v.

Earl Jamison Nash and Murna Lee Nash, Defendants,

Of Whom Earl Jamison Nash is the Appellant.

Appellate Case No. 2014-000976

The Honorable J. Cordell Maddox, Jr.
Anderson County
Trial Court Case No. 2013CP0402001

ORDER

Appellant has failed to comply with Rules 208 and 209 of the South Carolina Appellate Court Rules, pursuant to this Court's letter of October 14, 2014. The Court received a filing from the appellant on October 28, 2014. The filing failed to comply with the requirements of Rules 208 and 209, SCACR. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

BY Thomas E. Huff J.

FOR THE COURT

FILED

11-6-14



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 19, 2015

The Honorable Richard A. Shirley
PO Box 8002
Anderson SC 29622-8002

REMITTITUR

Re: Apex Automotive v. Earl Nash
Lower Court Case No. 2013CP0402001
Appellate Case No. 2014-000976

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: Earl Jamison Nash
John Kirkman Moorhead, Esquire

The South Carolina Court of Appeals

Apex Automotive, LLC dba Piedmont Chrysler Jeep
Dodge, Respondent,

v.

Earl Jamison Nash and Murna Lee Nash, Defendants,

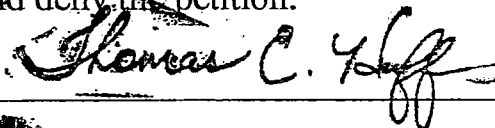
Of Whom Earl Jamison Nash is the Appellant.

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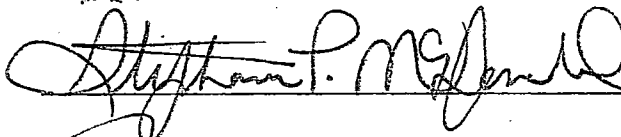
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Appellant has filed a motion to reinstate his appeal, which was dismissed due to Appellant's failure to serve and file his initial brief in compliance with Rules 208 and 209 of the South Carolina Appellate Court Rules. On January 8, 2015, this court ordered Appellant to serve and file an initial brief and designation of matter that comply with Rules 208 and 209, SCACR, and explained that the motion to reinstate would be considered upon the expiration of twenty days.

To date, Appellant has not served and filed his initial brief and designation of matter. Accordingly, we construe Appellant's motion to reinstate as a petition to rehear the dismissal of this appeal and deny the petition.¹



J.



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A.J.

¹ Because we deny Appellant's petition for rehearing, we need not address his requests set forth in his correspondence filed January 29, 2015.

FILED

2/10/15



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Dodge, Respondent,

v.

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Of Whom Earl Jamison Nash is the Appellant.

Appellate Case No. 2014-000976

The Honorable J. Cordell Maddox, Jr.
Anderson County
Trial Court Case No. 2013CP0402001

ORDER

Appellant has failed to serve and file an amended notice of appeal, and pay the initial filing fee of \$100 as required by Rules 203 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY

V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED
M-17-14
[Signature]