

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2014-001264

RECEIVED

NOV 30 2015

SC Court of Appeals

Frank M. Adams, Appellant,

v.

The City of Tega Cay, Dennis P. Pieper, Municipal Clerk, Katie Poulsen,
Respondents.

**MEMORANDUM IN SUPPORT OF MOTION TO RECALL
REMITTITUR AND REINSTATE CASE ON APPEAL**

The Appellant, Frank M. Adams, hereby moves this Court for an Order, reinstating his case against the above-captioned Respondents, pursuant to Rule 240, SCACR, and Rule 260, SCACR,

Rule 43 (k), SCRCR for an order reinstating his case, which was dismissed by **AGREEMENT FOR DISMISSAL OF APPEAL**, dated, February 17th, 2015, and **SETTLEMENT AGREEMENT**, dated, February 19th, 2015.

1. There was a dispute as to the execution and subsequent implementation of the settlement agreement.
2. This case was previously disposed of due to a Settlement Agreement signed by the

Appellant on February 9th, 2015, in the opposing Counsel's offices of Spencer and Spencer. No one from the City of Tega Cay was present at this time. An Agreement For Dismissal of Appeal was signed by Appellant, and opposing Counsel on February 17th, 2015. The party representing the Respondent, The City of Tega Cay signed the Settlement Agreement on February 19th, 2015, but was sent via e-mail, which was unknown to the Appellant until April of 2015. From a strict timeline assessment, the case was dismissed before a settlement agreement was executed.

3. The Appellant has never received a copy of the signed Settlement Agreement by U.S. Mail, nor a Certificate of Service.

Rule 43(k) of the SCRPC provides:

No agreement between counsel affecting proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered into the record, or unless made in open court and noted upon the record; or reduced to writing and signed by the parties and their counsel. Settlements shall be handled in accordance with Rule 41.1, SCRPC.

4. None of the criteria for meeting Rule 43(k) has been met in this Settlement Agreement, specifically the required signature of counsel as seen in a recently e-mailed copy to Appellant by opposing counsel of the Settlement Agreement (*see* Exhibit "A").

5. Appellant subsequently filed a notice of revocation of the settlement agreement with the Respondents on May 4th, 2015 (*see* Exhibit "B").

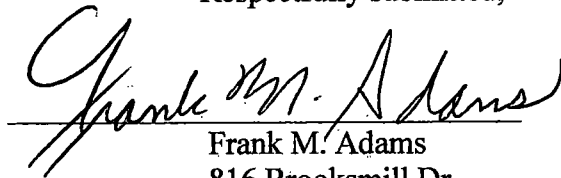
6. "Rule 43 (k) is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation." Ashfort Corp. v. Palmetto Constr. Group, Inc. 318 S.C. 492,493-94, 458 S.E. 2d 533, 534 (1995).

7. Rule 43 (k), SCRCPC applies to settlement agreements. Ashfort Corp., 318 S.C. at 494, 458 S.E. 2d at 534.

8. Rule 43 (k), SCRCPC applies to all settlement agreements and "In interpreting the meaning of the South Carolina Rules of Civil Procedure, the court applies the same rules of construction used to interpret statutes." Maxwell v. Genez, 356 S.C. 617, 620, 591 S.E. 2d 26, 27 (2003).

November 30th, 2015

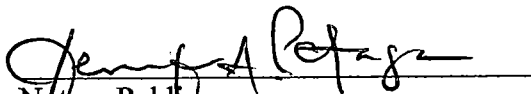
Respectfully submitted,



Frank M. Adams
816 Brooksmill Dr.
Tega Cay, SC 29708
Tel. (904) 923-5325
Pro Se Appellant

SWORN TO and subscribed before me this

30 day of November 2015


Notary Public

Commission Expires March 14, 2017

Other Counsel of Record:
W. Mark White
226 East Main St.
Post Office Box 790
Rock Hill, South Carolina 29731
Attorney for Respondent
(803) 327-7191

Jennifer A. Petagna
Notary Public for SC
Commission Expires
March 14, 2017

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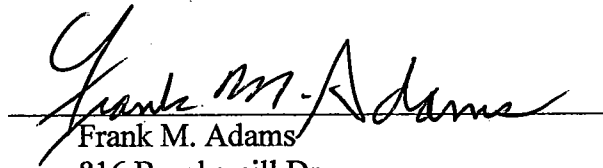
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CERTIFICATE OF SERVICE

I certify that I have served the Notice of and Motion To Recall The Remittitur And Reinstate Case On Appeal, Memorandum In Support Of Motion For Reinstatement Of Appeal, Affidavit In Support Of Appellants Motion For Reinstatement Of Appeal, and letter to the Honorable David Hamilton, York County Clerk of Court on The City of Tega Cay, Dennis P. Pieper, Municipal Clerk, Katie Poulsen by depositing a copy of it in the United States Mail, postage prepaid, on August 7th, 2015, addressed to their attorney of record, W. Mark White, 226 East Main St. Post Office Box 790 Rock Hill, South Carolina 29731.

November 30th, 2015



Frank M. Adams
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(904)923-5325
Pro Se litigant/ Appellant

Other Counsel of Record:

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