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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Thomas A. Russo, Circuit Court Judge

Case No.: 2015-001216

RECEIVED

DEC 09 2015

SC Court of Appeals

Bernice Britt, as Personal Representative
of the Estate of Lonnie William Britt and Bernice
Britt.....Appellant,

v.

Marshall's Marine,
Inc.,.....Respondent.

MOTION TO DISMISS

A. Lori Jones
The Jones Law Firm
600 Foxtail Drive
Longs, SC 29568
(843) 602-2340
Attorney for Appellant

Matthew N. Tyler
Aiken Bridges, P.A.
181 E. Evans
Suite 409
Florence, SC 29506
(843) 669-8787
Attorney for Respondent

The Respondent hereby moves to dismiss the attempted appeal by the Appellants for failure of the Appellants to comply with Rules 208 and 209 SCACR, and thus in accordance with Rule 240 and 260 SCACR, dismissal is warranted.

Specifically, on or about October 23, 2015 the Appellant attempted to file their

Initial Brief but failed to include the “Designation of Matter to be included in the Record on Appeal” as required under Rules 208(b)(4) and Rule 209 SCACR. On October 28, 2015 correspondence was issued from the South Carolina Court of Appeals, signed by Jenny A. Kitchings, informing Appellant’s counsel of the deficiency and requiring such deficiency to be corrected within ten (10) days of the letter and such letter being provided to Appellant counsel at P.O. Box 71207, Myrtle Beach, South Carolina 29572 with this being the same address provided by Appellant’s counsel upon submission of the attempted Appeal.

The letter from the South Carolina Court of Appeals to the office of Appellant’s counsel required a correction of the deficiency within ten (10) days of the date of this letter, but as of this Motion to Dismiss, the deficiency has not been corrected and there has been no Designation of Matter to be included in the Record on Appeal as required by the South Carolina Appellate Court Rules. Further, consistent with Rule 267 SCACR a proper address for counsel submitting the document to the Court of Appeals is required (in addition to certain caption compliance).

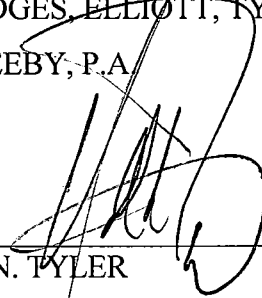
This Respondent, in support of the Motion, notes that Rule 209 SCACR states “at the same time a party serves his Initial Brief(s) under Rule 208, to include a Reply Brief, he shall also serve on all parties to the Appeal a Designation of Matter to be included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, Orders, Exhibits or other materials which he proposes to include in the Record on Appeal. One copy of this Designation with proof of service shall immediately be filed with the Clerk of the Appellate Court.” SCACR Rule 209(a). In the present action, the Respondent previously filed a Motion to Dismiss (filed June 11, 2015) based upon the Appeal not being filed in a timely manner and thus the Court respectfully lacking subject

matter jurisdiction, the Court later resolving this in favor of the Appellants based upon counsel for the Appellant indicating written notice of entry of the Order was not received until May 13, 2015.¹ On June 8, 2015 correspondence was issued to Appellant's counsel from V. Claire Allen, Deputy Clerk, informing Appellant's counsel that deficiencies existed which must be corrected within ten (10) days. This correspondence included the fact that the Notice of Appeal was not accompanied by the Order for judgments being challenged on appeal as well as deficiencies with the proof of service and the filing fee not having been submitted. On June 15, 2015 Appellant counsel provided, upon information and belief, a corrected Certificate of Service "as well as a copy of the Judgment argued on Appeal", and although Respondent counsel was copied on the letter, no such documentation was attached/provided to Respondent counsel. Thereafter, on August 5, 2015, V. Claire Allen informed counsel for the Appellant of the need to pursue ordering a transcript. The significance of this is that the Court's letters of June 8th and August 5th outlining deficiencies and actions that needed to be taken by the Appellants were provided to Appellant counsel at the same address indicated on the Appellant's Brief, such also being the same address providing notice to counsel for the Appellant dated October 28, 2015 of the need to correct additional deficiencies, mainly failure to include the Designation of Matter to be included on the Record on Appeal as required under Rules 208 and 209. Accordingly, this Respondent is unable to address the Appeal filed by the Appellant without such proper compliance of the Court Rules and respectfully moves to dismiss this action, such being supported by an Affidavit as required under Rule 240(c)(3) SCACR and with this Respondent understanding that under the Rules such Motion to Dismiss the Appeal automatically staying the time limit for perfecting the Appeal until the Motion is decided as set forth in Rule 240(b) SCACR.

¹ Thus allowing the Appeal within thirty (30) days of that date.

Respectfully submitted,

AIKEN, BRIDGES, ELLIOTT, TYLER
& SALEEBY, P.A.



MATTHEW N. TYLER
SUITE 409
181 EAST EVANS STREET
PO DRAWER 1931
FLORENCE, SC 29503
(843) 669-8787

Florence, South Carolina

December 3, 2015

ATTORNEY FOR THE RESPONDENT

CERTIFICATE OF SERVICE

I, the undersigned employee of Aiken, Bridges, Elliott, Saleeby & Tyler, P.A., do hereby certify that the foregoing *Motion to Dismiss* has this day been served by mailing copies thereof, postage prepaid, to the following person(s), this 8th day of December, 2015.

A. Lori Jones
The Jones Law Firm
600 Foxtail Drive
Longs, SC 29568



Bridgette Godbold

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Bernice Britt, as Personal Representative
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AFFIDAVIT OF COUNSEL

1. I am Matthew N. Tyler. I am a licensed attorney in the State of South Carolina, and I am in good standing with the South Carolina Bar.

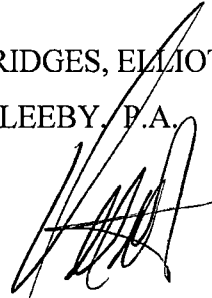
2. On or about October 23, 2015, the Appellant filed their Initial Brief to this action. This Brief contains certain deficiencies, included in which was a failure to designate matter to be included in the Record on Appeal as required by Rules 208 and 209 SCACR.3.

3. On October 28, 2015, the South Carolina Court of Appeals wrote to counsel for the Appellant advising them of the need to correct the deficiency within ten (10) days.

4. I have never received any correction of deficiency nor any Designation of Matter to be included in the Record on Appeal as required under our Rules of Court, and thus file this Motion to Dismiss for failure of the Appellant to comply with Rules 203, 208, 209, 262, 263 as well as Rule 6(b) SCRCR. This Respondent thus respectfully request that the Court issue an Order of Dismissal of this action pursuant to Rule 260 SCACR.

Respectfully submitted,

AIKEN, BRIDGES, ELLIOTT, TYLER
& SALEEBY, P.A.



MATTHEW N. TYLER
SUITE 409
181 EAST EVANS STREET
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(843) 669-8787

Florence, South Carolina

December 8, 2015

ATTORNEY FOR THE RESPONDENT

J. Boone Aiken, III •
Saunders M. Bridges, Jr. •+
E. Glenn Elliott •
Matthew N. Tyler •
James M. Saleeby, Jr.
J. David Banner
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John G. Hofler, III

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Alvin A. Coleman (1930-1995)

December 8, 2015

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SC Court of Appeals

•Certified Mediator/Arbitrator
+Also Admitted District of Columbia

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: *Lonnie William Britt and Bernice Britt v. Marshall's Marine, Inc.*
Court of Appeals Case No.:2015-001216
AB Case No.: 30426

Dear Ms. Kitchings:

Enclosed with this letter please find the original and six (6) copies of a Motion to Dismiss, as well as Certificate of Service and Affidavit of Counsel in support of such motion. We are also enclosing our filing fee of \$25.00.

I will look forward to receiving filed copies back from your office in the near future, and if anything further is needed, please advise.

With kind regards, I am

Sincerely yours,


MATTHEW N. TYLER

MNT/bdg
Enclosure

Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.

181 East Evans St. Suite 409
Florence, South Carolina 29506

www.aikenbridges.com

Post Office Drawer 1931
Florence, South Carolina 29503

Aiken
Bridges
Attorneys at Law

December 8, 2015

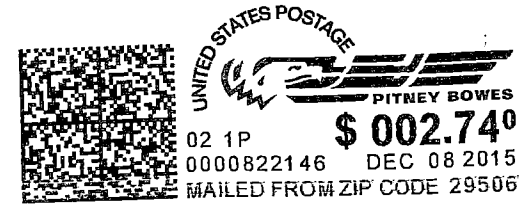
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cc:

A. Lori Jones, Esquire
600 Foxtail Drive
Longs, SC 29568

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First Class Mail

**Aiken
Bridges**
Attorneys at Law
P.O. DRAWER 1931
FLORENCE, SC 29503

To:
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201