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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
In the Court of Common Pleas

RECEIVED

The Honorable L. Casey Manning, Circuit Court Judge FEB 01 2016

SC Court of Appeals

Case No. 2013-CP-28-727

Moore Beauston & Woodham, L.L.P.....Respondent,

v.

Marc A. Quigley.....Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL

The Respondent, Moore, Beauston, Woodham, L.L.P., pursuant to Rule 260, SCACR, moves the Court for an Order dismissing the appeal filed by the Appellant. In support of the motion, the Respondent shows the following:

1. The appeal is not within the court's jurisdiction for the following reasons:
 - (a) The Appellant failed to timely serve a Notice of Appeal within 30 days after entry receipt of written notice of the Order as required by Rule 203(b), SCACR.
2. The appeal has not been pursued in conformity with applicable court rules for the following reasons:
 - (a) The Appellant failed to timely mail or deliver a copy of the Notice of Appeal to counsel for the Respondent as required by Rule 203(b), SCACR;
3. Public policy favors arbitration.

WHEREFORE, the respondent respectfully requests that the Notice of Appeal be dismissed and for such other and further relief as the court deems just and appropriate.

Respectfully submitted,

Charleston, South Carolina

January 29, 2016

DUGGAN LAW FIRM, LLC

By: 

J. James Duggan, Esquire
44 Markfield Drive, Suite E
Charleston, South Carolina 29407
(843) 414-7730
(843) 414-7738 (fax)
Email: duggan@dugganlawgroup.net

ATTORNEY FOR RESPONDENT

Other Counsel of Record:

Jeffrey L. Payne, Esquire
319 S. Irby Street
Post Office Box 5478 (29502)
Florence, South Carolina 29501

ATTORNEY FOR APPELLANT

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MEMORANDUM IN SUPPORT OF RESPONDENT’S MOTION TO DISMISS

On January 29, 2016, Respondent Moore Beauston & Woodham, LLP, by and through its undersigned counsel, and pursuant to Rule 260, SCACR, respectfully moved this Honorable Court for an Order dismissing the appeal filed by Appellant on the grounds that the appeal is not within the court’s jurisdiction and the appeal has not been pursued in conformity with applicable court rules. This memorandum is filed in support of that motion.

FACTS

On March 14, 2013, Respondent, Moore Beauston & Woodham, L.L.P., filed suit against Appellant, Marc A. Quigley, for Breach of Partnership Agreement and Breach of Fiduciary Duty. Following a hearing on October 14, 2013, the Court executed an Order dated December 1, 2015 granting Respondent’s Motion to Compel Arbitration. On December 10, 2015, the Clerk of

Court entered said Order by placing the original Order in the Court's file and mailing a copy to all interested parties not in default. This is the standard practice used by the Court to enter an Order. The Clerk of Court mailed a certified true copy with a raised seal to all counsel of record on the same day, December 10, 2015. Counsel for Respondent, Attorneys Duggan and Malloy, each received the certified true copy of the Order on December 14, 2015. (See Exhibit A). Despite the fact the Order was mailed to all parties on the same day, and Attorneys Duggan and Malloy each received written notice on December 14, 2015, Appellants allege they did not receive written notice of the Order until December 16, 2015. No supporting documentation was included in or with Appellant's Notice of Appeal. Respondent's counsel was served with Notice of Appeal on January 15, 2016 (See Exhibit B).

LEGAL ANALYSIS

I. THIS COURT LACKS JURISDICTION TO HEAR THIS UNTIMELY APPEAL.

When appealing from a decision of the Court of Common Pleas, the South Carolina Appellate Court Rules provide that "notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the Order or judgment." Rule 203(a), SCACR. Furthermore, the "[s]ervice of the notice of intent to appeal is a jurisdictional requirement." Mason v. Mason, 412 S.C. 28, 59, 770 S.E.2d 405, 421 (Ct. App. 2015). As such, when the Notice of Appeal is untimely the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008).

In the instant case, the time period for filing a notice of appeal ran on January 13, 2016, thirty (30) days from Appellant's written notice of the Order to Compel Arbitration, which we

contend was received on December 14, 2015. Since the Notice of Appeal was not mailed to Respondent until January 15, 2016, it is untimely. As a result, this Court lacks jurisdiction to decide this matter and this matter should be dismissed.

II. BECAUSE APPELLANT FAILED TO COMPLY WITH THE REQUIREMENTS OF THE SOUTH CAROLINA APPELLATE COURT RULES, THIS APPEAL SHOULD BE DISMISSED.

Whenever it appears that an appellant has failed to comply with the requirements of the SCACR, an Order of dismissal shall be issued. Rule 231(a), SCACR. Appellant did not comply with the South Carolina Appellate Court Rules by his failure to timely serve upon Respondent the Notice of Appeal. As discussed above, such failure is not in compliance with SCACR 203. As a result of Appellant's failure to comply with the appropriate rules, this appeal should be dismissed in accordance with SCACR 231(a).

III. PUBLIC POLICY FAVORS ARBITRATION.

"There is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d. 663, 668 (2007). See also *Carlson v. South Carolina State Plastering, LLC*, 404 S.C. 250, 743 S.E.2d 868 (Ct. App. 2013); *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999); *Heffner v. Destiny, Inc.*, 321 S.C. 536, 471 S.E.2d 135 (1995). Because public policy favors arbitration over litigation, this Appeal should be dismissed and the parties should move forward with arbitration.

Additionally, by virtue of the final judgment rule, public policy also favors "combin[ing] in one review all stages of the proceeding that effectively may be reviewed and corrected if and when final judgment results." *Cohen v. Beneficial Indus. Loan. Corp.* 337 U.S. 541, 546, 69 S.

Ct. 1221, 93 L. Ed. 1528 (1949). Allowing an appeal to be had before the claims are arbitrated could lead to multiple reviews of the proceedings, which goes against the public policy favoring one review of all stages of the proceedings. Accordingly, this Appeal should be dismissed and the parties should move forward with arbitration.

CONCLUSION

For the foregoing reasons, this Court should dismiss Appellant's Notice of Appeal.

Respectfully submitted,

Charleston, South Carolina

DUGGAN LAW FIRM, LLC

January 29, 2016

By: 

J. James Duggan, Esquire
44 Markfield Drive, Suite E
Charleston, South Carolina 29407
(843) 414-7730
(843) 414-7738 (fax)
Email: duggan@dugganlawgroup.net

ATTORNEY FOR RESPONDENT

Exhibit A

PLEADINGS SIGN IN FOR HAND DELIVERED or MAILED DOCUMENTS

Date	Time	Case and Document	Person who signed for documents	Person Document was given to	On Calendar/ Date Due
12-8-15		[REDACTED]	Am	CDJ	
		[REDACTED]	Am	CDJ	
		[REDACTED]	Am	CDJ	
12-14-15		Brandon + Wolkow L.L.P. v. Quicelery Filed Order to compel Arbitration	pm	CDJ	will forward to lawyer.
12-16-15		[REDACTED]	pm	CDJ	BDA FD calendar orders.
12-28-15		[REDACTED]	JTP	CDW	received + filed.
		[REDACTED]	JTP	JTP	?
1-2-16		[REDACTED]	pm	CDJ	MDJAD help
1-9-16		[REDACTED]	pm	CDJ	MDJAD needed.

Exhibit B

Turner Padgett

P.O. Box 5478, Florence, SC 29502

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FIRST-CLASS MAIL

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US POSTAGE

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John James Duggan, Esquire
Duggan Law Firm, LLC
44 Markfield Avenue, Suite E
Charleston, SC 29407

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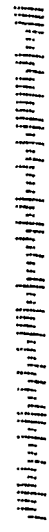


Exhibit B

Turner | Padget

REPLY TO:

Jeffrey L. Payne

E-Mail: JPayne@TurnerPadget.com
Writer's Direct Dial: (843) 656-4432
Writer's Direct Fax: (843) 413-5825

January 15, 2016

Ms. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Marc A. Quigley v. Moore Beauston & Woodham, L.L.P.,
Civil Action No.: 2013-CP-28-727
TPGL File No.: 12086.101

Dear Ms. Kitchings:

Enclosed for filing are the original and one (1) copy of the Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) The original and one (1) copy of the Proof of Service of the Notice of Appeal on Respondent;
- (2) A filing fee of \$100.00; and
- (3) A copy of the trial court Order.

I would kindly request that you file the original documents and return filed copies to me in the enclosed self-addressed, stamped envelope provided for your convenience. By copy of this letter to counsel for Respondent and the Clerk of the trial Court, I am simultaneously serving this Notice of Appeal and submitting it to the trial court for filing. Thank you for your kind assistance in this matter.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

Jeffrey L. Payne

JLP:vlb

Cc: Marc Quigley (w/enclosures)
John James Duggan, Esquire (w/enclosures)
Hon. Joyce McDonald, Kershaw County Clerk of Court (w/enclosures)

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v.

Marc A. Quigley.....Appellant.

PROOF OF SERVICE

I certify that I have served a copy of Respondent's Motion to Dismiss and the Memorandum In Support of Respondent's Motion to Dismiss on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on January 29, 2016, addressed to his attorney of record at the following address:

Jeffrey L. Payne, Esquire
319 S. Irby Street
Post Office Box 5478 (29502)
Florence, South Carolina 29501



J. James Duggan, Esquire
44 Markfield Drive, Suite E
Charleston, South Carolina 29407
(843) 414-7730
(843) 414-7738 (fax)
Email: duggan@dugganlawgroup.net

ATTORNEY FOR RESPONDENT



Duggan Law Firm, LLC

Attorneys and Counselors at Law

J. James Duggan
Owner/Member
Taxation Law
Admitted in SC

January 29, 2016

Ms. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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FEB 01 2016

Re: Marc A. Quigley v. Moore Beauston & Woodham, L.L.P.
Civil Action No.: 2013-CP-28-727

SC Court of Appeals

Dear Ms. Kitchings:

By letter dated January 21, 2016, the Court requested a memorandum addressing the issue of appealability in the above-referenced matter. Enclosed for filing are the original and six (6) copies of Respondent's Memorandum in Opposition to Appellant's Notice of Appeal. Also enclosed are the following:

- (1) The original and six (6) copies of the Proof of Service of Respondent's Memorandum in Opposition to Appellant's Notice of Appeal;
- (2) The original and six (6) copies of Respondent's Motion to Dismiss and Memorandum in Support of Respondent's Motion to Dismiss in the above-referenced case.
- (3) The original and six (6) copies of the Proof of Service of Respondent's Motion to Dismiss and Memorandum in Support of Respondent's Motion to Dismiss on Appellant; and
- (4) The filing fee of \$25.00.

Kindly file the originals in the Court file and return a date-stamped copy of each to the undersigned. A self-addressed, postage prepaid envelope is provided herein for your convenience. By copy of this letter to counsel for Appellant, I am simultaneously serving Respondent's Memorandum in Opposition to Appellant's Notice of Appeal, Respondent's Motion to Dismiss, and Memorandum in Support of Respondent's Motion to Dismiss. Thank you for your kind assistance in this matter.

Sincerely,

J. James Duggan, Esquire

JJD/jtp

Cc: Jeffrey L. Payne, Esquire (w/enclosures)