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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Master in Equity Court

James O. Spence, Master-in-Equity

Case No. 2015-00350

RECEIVED

JUN 02 2016

SC Court of Appeals

Libby Corporation, Respondent,

v.

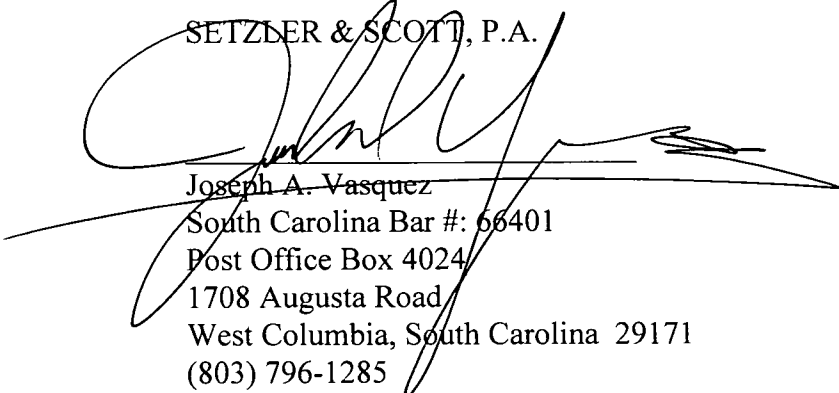
Haiyan Lin, Appellant.

MOTION TO DISMISS APPEAL OF APPELLANT HAIYAN LIN

The Respondent Libby Corporation, files this Motion to Dismiss Appeal of Haiyan Lin, which said Appeal was filed with the Court of Appeals of South Carolina on or about February 24, 2015. This motion is made and filed pursuant to Rule 240, SCACR.

June 2, 2016

SETZLER & SCOTT, P.A.



Joseph A. Vasquez

South Carolina Bar #: 66401

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Attorney for Respondent

Other Counsel of Record:

Haiyan Lin
Post Office Box 8776
Columbia, SC 29202
Self Represented Litigant

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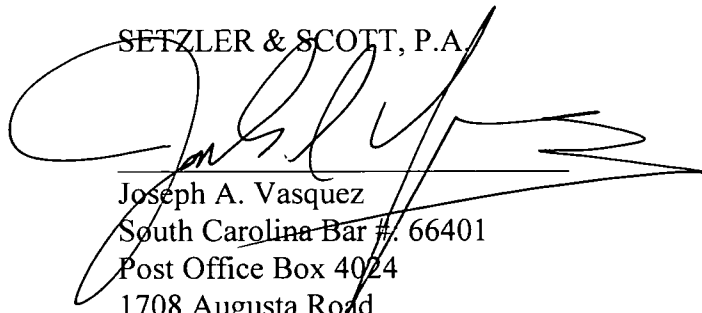
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the *Motion to Dismiss Appeal of Appellant Haiyan Lin* and *Memorandum in Support of Motion to Dismiss Appeal of Appellant Haiyan Lin* by depositing one copy of it in the United States mail, postage prepaid, and a second copy of it United States mail certified, return receipt requested, both on June 2, 2016, and both addressed to the self represented litigant Haiyan Lin, Post Office Box 8776, Columbia, SC 29202.

June 2, 2016

SETZLER & SCOTT, P.A.



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Attorneys At Law

Nikki G. Setzler
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Joseph A. Vasquez
Michelle M. Dickerson

June 2, 2016

Hillary J. Lovell

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
1220 Senate Street
Columbia, SC 29121

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SC Court of Appeals

RE: Libby Corp., Respondent v. Haiyan Lin, Appellant
Case No.: 2015-00350

Dear Ms. Kitchings:

Per Rule 240(c) SCACR enclosed for filing is the original and six (6) copies of the *Motion to Dismiss Appeal of Appellant Haiyan Lin*. Also enclosed are the following:

- (1) An original and six (6) copies of the *Proof of Service* reflecting date of service upon Haiyan Lin;
- (2) An original and six (6) copies *Memorandum in Support of Motion to Dismiss Appeal of Appellant Haiyan Lin*; and
- (3) A check payable to the South Carolina Court of Appeals in the amount of \$25.00 for the filing fee as set forth in Rule 240(d).

Please feel free to call if you have any questions.

SETZLER & SCOTT, P.A.

Joseph A. Vasquez

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cc: Haiyan Lin (by First Class Mail and Certified Mail)

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SC Court of Appeals

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL OF APPELLANT HAIYAN LIN

STATEMENT OF FACTS.

This Appeal involves a foreclosure action on a parcel of commercial property in Lexington County brought by the Respondent against the Appellant in 2013. The Respondent craves reference to its previous Motion to Dismiss Appeal of Appellant Haiyan Lin and Memorandum in Support of Motion to Dismiss Appeal of Appellant Haiyan Lin, filed with this Court on February 12, 2016, for a detailed history of the filing of documents by the Appellant and status of the appeal to that date. On April 27, 2016, this Court issued an Order denying the Respondent's Motion to Dismiss and striking the Appellant's Initial Brief and Designation of Matter for Record. Further, this Court stated, in part:

Within thirty days of the date of this order, Appellant shall serve and file and amended initial brief and amended designation of matter that complies with the appellate court rules. . . Failure to comply with this order may result in the dismissal of this appeal.

See Order, filed April 27, 2016. Thirty days from the Order have expired and the Appellant has not complied with the terms of the Order.

ARGUMENT AND ANALYSIS.

As previously stated and argued in the Respondent's prior Memorandum in Support of Motion to Dismiss, the Appellant has failed to timely prosecute her Appeal in this matter which has resulted in continued undue and unnecessary delay and damage to the Respondent. She has not been timely in any of her filings and often had to be prompted by the Clerk to make her filings and pay required fees.

The most recent Order of this Court, while denying the Respondent's Motion to Dismiss, struck the Appellant's Initial Brief and Designation of Matter for Record, required the Appellant to re-file documents in compliance with the South Carolina Appellate Court Rules within thirty days of the date of the Order, and cited the applicable provisions of the Rules for the Appellant. As of the date of the present Motion to Dismiss and Memorandum in Support of Motion to Dismiss, the Appellant has failed to serve and / or file an amended Initial Brief and Designation of Matter for Record as required by the Court's Order.

In computing time frames in appellate practice, Rule 263(a) of the South Carolina Appellate Court Rules states in part:

In computing any time period prescribed by these rules, **by order of the court**, or by any applicable statute, the day the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a state or federal holiday in which event the period runs until the next day which is neither a Saturday, Sunday nor such

holiday. . . .

(Emphasis added.) Further, Rule 263(b) states:

The time prescribed by these Rules for performing any act except for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.

The Order of this Court was filed on April 27, 2016. Thirty days from that Order was May 27, 2016. That date did not fall on a Saturday, Sunday or a state or federal holiday which would extend the time to a day which was not a Saturday, Sunday or a state or federal holiday. As of May 27, 2016, nothing had been received from the Appellant by close of business. The Respondent waited until June 1, 2016, an additional five days, to ensure the Appellant had not attempted service of the amended Initial Brief and Designation of Matter for Record by mail. See S. C. R. Civ. P. 6(e) (Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.). Still nothing had been received by the Respondent. Further, as of this date, the Respondent has not received a copy of any request from the Appellant to the Court for an extension of time to file the required documents. Thus, by the Appellant's failure to comply with the Court's Order, her appeal should be deemed abandoned and should be dismissed with prejudice.

As the Supreme Court stated in its Order in Henning v. Kaye:

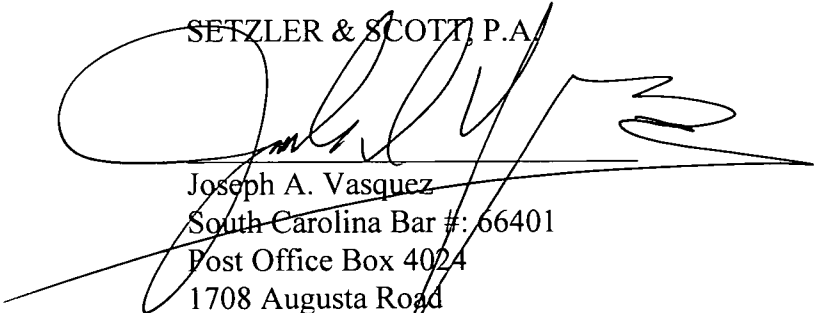
. . .the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and the Court with an orderly mechanism through which to guide appeals in this State. It is incumbent on counsel to provide material that complies with the Rules and facilitates appellate review.

See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794 (1992). As has been previously argued in the Respondent's original Memorandum in Support of Motion to Dismiss, the Appellant has willfully disregarded the South Carolina Appellate Court Rules by her consistent failure to follow the time frames as set forth in them. The Appellant has now failed to follow the Court's Order in this matter and serve and file an amended Initial Brief and Designation of Matter for Record by May 27, 2016.

Based upon the Court's Order of April 27, 2016, Rule 263(a) SCACR, and the supporting case law this Court should dismiss the Appellant's Appeal with prejudice.

June 2, 2016

SETZLER & SCOTT, P.A.



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