

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

Libby Corporation, Respondent,

v.

Haiyan Lin, Appellant.

RECEIVED

JUN 06 2016

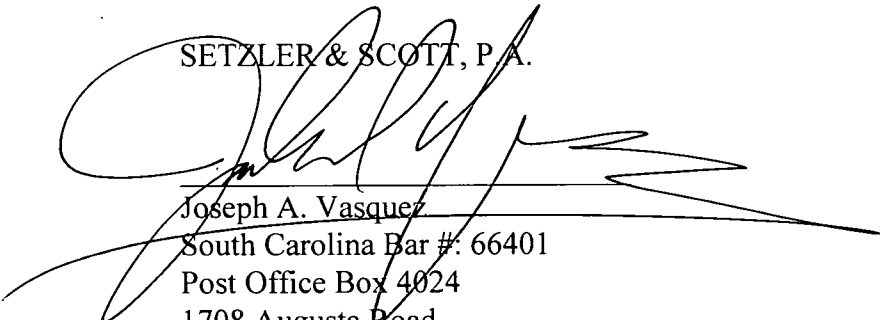
SC Court of Appeals

AMENDED MOTION TO DISMISS APPEAL OF APPELLANT HAIYAN LIN

The Respondent Libby Corporation, files this Amended 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 6, 2016

SETZLER & SCOTT, P.A.



Joseph A. Vasquez

South Carolina Bar #: 66401

Post Office Box 4024

1708 Augusta Road

West Columbia, South Carolina 29171

(803) 796-1285

South Carolina Bar #: 66401

Attorney for Respondent

Other Counsel of Record:

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

15

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 06 2016

SC Court of Appeals

Libby Corporation, Respondent,

v.

Haiyan Lin, Appellant.

AMENDED 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 an 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 (emphasis added). Thirty days from the Order have expired and the Appellant did not comply 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 Amended Motion to Dismiss and Amended Memorandum in Support of Motion to Dismiss, the Appellant failed to timely 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 close of business on June 1, 2016, an additional five days after the date set by the Order (the “mail box rule”) to ensure the Appellant had not mailed the amended Initial Brief and Designation of Matter for Record on May 27, 2016, and it simply had not yet been delivered to counsel for the Respondent but the United States Postal Service. 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 June 1, 2016, 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. On June 2, 2016, the Respondent filed its Motion to Dismiss and Memorandum in Support of Motion to Dismiss.

On June 3, 2016, the Respondent received the Amended Initial Brief and Designation of Matter for Record by mail. The Respondent noted that the Appellant's Proof of Delivery indicated that it was mailed on May 30, 2016, which is three days after the expiration of the time frame as set forth in the Order. See Exhibit 1, as attached. It is further noted the postage on the envelope indicated that it was mailed June 1, 2016, which is five days after the expiration of the time frame as set forth in the Order. See Exhibit 2, as attached.

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 and continues to willfully disregarded the South Carolina Appellate Court Rules and this Court 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 6, 2016

SETZLER & SCOTT, P.A.



Joseph A. Vasquez

South Carolina Bar #: 66401

Post Office Box 4024

1708 Augusta Road

West Columbia, South Carolina 29171

(803) 796-1285

Attorneys for Respondent

Other Counsel of Record:

Haiyan Lin

Post Office Box 8776

Columbia, SC 29202

Self Represented Litigant

Exhibit 1

South Carolina Court of Appeal
Libby Corporation, Respondent
Haiyan Lin^{V.}, Appellant
Appellate No. 2015-000350

Proof of Service

I certify that I have served a copy of Appellant's Initial Brief (Amended) and Designation of Matters To Be Included in the Record on Appeal on attorney for the respondent on May 30, 2016 by US mail to Joseph A. Vasquez
P.O. Box 4024
W. Columbia SC 29171

May 30, 2016

Haiyan Lin
P.O. Box 8776
Columbia, SC 29202
803-504-3604

Exhibit 2

FROM:

Haiyan Lin
P.O. Box 8776
Columbia
SC 29202



1000



29171

U.S. POSTAGE
PAID
MANNING, SC
29102
JUN 01 16
AMOUNT

\$2.20
R2305K140351-10

TO:

Joseph A. Vasquez
P.O. Box 4024
W. Columbia
SC 29171

Utility Mailer
10 1/2" x 16"

Ready **Post**

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 06 2016

SC Court of Appeals

Libby Corporation, Respondent,

v.

Haiyan Lin, Appellant.

PROOF OF SERVICE

I certify that I have served the *Amended Motion to Dismiss Appeal of Appellant Haiyan Lin* and *Amended 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 6, 2016, and both addressed to the self represented litigant Haiyan Lin, Post Office Box 8776, Columbia, SC 29202.

June 6, 2016

SETZLER & SCOTT, P.A.



Joseph A. Vasquez

South Carolina Bar #: 66401

Post Office Box 4024

1708 Augusta Road

West Columbia, South Carolina 29171

(803) 796-1285

Attorney for Respondent



Setzler & Scott, P.A.
Attorneys At Law

Nikki G. Setzler
E. Danny Scott
Joseph A. Vasquez
Michelle M. Dickerson

June 6, 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

RECEIVED

JUN 06 2016

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 *Amended 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 *Amended 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

/jav

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

P.O. Box 4024 ♦ 1708 Augusta Road ♦ West Columbia SC 29171-4024 ♦ 803/796-1285 ♦ FAX 803/791-7560

Real Estate Department Paralegals ♦ 803/796-1108 ♦ FAX 803/791-7560

www.setzler-scott.com