

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable S. Jackson Kimball

Appellate Case No.: 2015-001150

**RECEIVED**

JUN 14 2016

SC Court of Appeals

R&J Restaurants, LLC d/b/a Steve's Bar & Grille, LLC  
.....Plaintiff

v.

Sotirios Mantekas and Kelman, Inc. ....Defendants

J&S Real Estate Holdings, LLC,.....Cross-claim Plaintiff

v.

Sotirios Mantekas and Kelman, Inc.....Cross-claim Defendants

Sotirios Mantekas and Kelman, Inc.....Cross-claim Plaintiffs

v.

J&S Real Estate Holdings, LLC and John Sherwood .....Cross-claim Defendants

Of Whom J&S Real Estate Holdings, LLC is the Appellant and Sotirios Mantekas  
is the Respondent.

APPELLANTS' RETURN TO MOTION  
TO DISMISS APPEAL

William E. Hopkins, Jr.  
Post Office Box 1885  
Pawleys Island, South Carolina 29585  
T: (843) 314-4202

June 10, 2016

ATTORNEY FOR APPELLANTS

Appellants J&S Real Estate Holdings, LLC and John Sherwood, by and through undersigned counsel, respectfully submit this return in opposition to Respondent Sotirios Mantekas' motion to dismiss the appeal.

Appellant does not have any significant disagreement or objection to Respondent's statement or recitation of background facts set forth under the heading "Parties". This case did indeed arise from the lease of certain real property located in Tega Cay, bordering Lake Wylie, in York County, South Carolina. Claims were brought by a tenant, R&J, against its landlord, Appellant J&S, who filed counterclaims as well as cross-claims against its original tenant Kelman and Respondent Mantekas (principal of Kelman), who in turn filed counterclaims against J&S and Sherwood.

After a four (4) day trial before Judge Kimball, he issued an Order on December 11, 2014. Post-trial motions ensued and Judge Kimball issued an Order on those motions on March 4, 2015. Further post-trial motions were then filed in regard to that Order and Judge Kimball filed an Order addressing those motions on April 21, 2015.<sup>1</sup>

Appellants timely filed and served their Notice of Appeal on May 26, 2015. The Notice of Appeal was served on D. Bradley Jordan, Esquire, counsel of record for R&J. On June 30, 2015, counsel received an email from counsel for Kelman and Mantekas, Lucy L. McDow and Charles B. Burnette, advising they were

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<sup>1</sup>Undersigned counsel did not represent Appellants in the underlying trial.

counsel for these parties and had not received or been served with the Notice of Appeal. Undersigned counsel responded the same evening and the following day the Notice of Appeal was sent to counsel via electronic mail. (See Exhibit A, attached hereto). After personally speaking with the Clerk's office, undersigned counsel filed and served an Amended Proof of Service on August 4, 2015 indicating the Notice of Appeal had been served upon counselors McDow and Burnette on July 1, 2015 via electronic mail. The Amended Proof of Service had an incorrect address for Mrs. McDow but a correct address for Mr. Burnette. Six (6) days later, after learning of the incorrect address for Mrs. McDow, a Second Amended Proof of Service was prepared listing Mrs. McDow's correct address and the same address for Mr. Burnette.<sup>2</sup> Neither the Amended Proof of Service nor the Second Amended Proof of Service to Mrs. McDow were returned and she indicated she received them. (See Exhibit B, attached hereto.)

On February 22, 2016, Mrs. McDow wrote the Court and indicated that neither she nor Mr. Burnette had "ever been served with a Notice of Appeal". (See Exhibit C, attached hereto). This appears to be in conflict with the email sent to her on July 1, 2015 as well as her letter of August 13, 2015 indicating that, despite the incorrect address, she received the Second Amended Proof of Service. While Respondent's counsel may disagree with whether service was proper, there appears

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<sup>2</sup>Inexplicably, the Certificate of Service for the Second Amended Proof of Service still contained the previous incorrect address for Mrs. McDow.

to be no doubt they were aware of the Notice of Appeal and received it nearly one year ago.

A different court reporter appeared for each of the four (4) days of trial. One of the transcripts for one day of trial still has not been received by undersigned counsel, although the court reporter has indicated it should arrive in the near future.<sup>3</sup> Therefore, no briefing has occurred in the appeal.

**A. Substantial compliance with the rule was made and accomplished.**

Appellant does not dispute the language of South Carolina Appellate Court Rule 203. Appellant also does not dispute the Mantekas' counsel was not served with the Notice of Appeal prior to May 26, 2015. Counsel for Appellant served counsel for the other party (R&J) in the underlying case rather than Kelman and Mantekas. The Rules should be interpreted so as to promote the interests of justice. As now Justice Few stated in his dissent in *Limehouse v. Hulsey*, 397 S.C. 49, 723 S.E.2d 211 (Ct.App. 2011):

“The fact that the lawyer was trying to correctly follow the rules is particularly relevant to “the interests of justice”. Many of our appellate decisions have state the principle that a lawyer’s negligence in failing to file an answer is imputable to the defaulting litigant, and thus weighs heavily against granting relief from default (citation omitted). In each of the cases citing this principle, the negligence was in *failing to attempt* to answer the complaint, not in *failing at an attempt* to serve a timely answer. (emphasis in original.) This distinction is important to the interests of justice. Justice should not relieve a lawyer or litigant who makes no attempt to comply with the rules, or who negligently fails to comply with a rule that is clear. However, the interests of justice should protect a lawyer who attempts to comply with the rules . . . . “

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<sup>3</sup> Court Administration was informed and has contacted the reporter, who is no longer employed by the State and has apparently had serious health issues.

In fact, the South Carolina Supreme Court, following then Judge Few's analysis, reversed the Court of Appeal's decision upholding the default and remanded to the circuit court for new proceedings. *Hulsey v. Limehouse*, 404 S.C. 93, 744 S.E.2d 566 (2013). Likewise, in the case at bar, Appellant's counsel did not simply miss a deadline or cavalierly fail to attempt to comply with the rules. While an error was made, the Notice of Appeal was timely filed AND served in accord with the Rule, just not upon correct counsel. Substantial compliance was achieved.

Undersigned counsel is well aware of the case law cited by Respondent and other cases holding the appellate courts of this State will not "rescue a delinquent party by extending or ignoring the deadline for service of the notice". Appellant submits these cases are distinguishable. Appellant was not "delinquent" and did not "ignore" the deadline for service of the notice. The notice was timely filed and served, albeit on incorrect counsel. Appellant is not asking the Court to "extend" the deadline for service, only to allow an amended service of a timely original service.

While undersigned counsel understands prejudice is ordinarily not a part of the consideration as to whether an appeal is timely, it would be submitted this factor also weighs heavily in the interests of justice to allow the appeal to proceed. The trial transcript has not even been received yet, much less any briefing submitted.

**CONCLUSION**

Based on the foregoing, Appellants respectfully request Respondent's motion to dismiss the appeal be denied.

**HOPKINS LAW FIRM, LLC**



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Pawleys Island, South Carolina 29585  
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[bill@hopkinsfirm.com](mailto:bill@hopkinsfirm.com)

ATTORNEY FOR APPELLANTS

# **EXHIBIT A**



**HOPKINS** 15  
LAW FIRM  
PRINCIPLED. PRACTICAL. PERSONAL.

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**Sent:** Colleen Zaharakes  
Wednesday, July 01, 2015 9:10 AM  
**To:** Lucy McDow  
**Cc:** Charlie Burnette (cburnette@burnettelaw.net); Bill Hopkins  
**Subject:** RE: R&J v J&S, Sherwood, Kelman, and Mantekas (2012-CP-46-472)  
**Attachments:** 150527 Notice of Appeal.pdf

Good Morning Mr. Burnette and Ms. McDow,.

Per Mr. Hopkins' request, attached please find the Notice of Appeal in the above referenced matter. We apologize for the oversight.

Please let me know if you should need any additional information.

Very sincerely,

Colleen A. Zaharakes  
Paralegal to William E. Hopkins, Jr.  
**HOPKINS LAW FIRM, LLC**

**From:** Bill Hopkins  
**Sent:** Tuesday, June 30, 2015 7:55 PM  
**To:** Lucy McDow  
**Cc:** Charlie Burnette (cburnette@burnettelaw.net); Colleen Zaharakes  
**Subject:** RE: R&J v J&S, Sherwood, Kelman, and Mantekas (2012-CP-46-472)

Hi Lucy and Charlie, and thank you for the email. I also learned for the first time today that you were counsel for Kelman, Inc. and Steve Mantekas. I was under the mistaken impression that Brad Jordan was but now understand he represented R&J Restaurants. I will be traveling to Greenville for a deposition tomorrow but my paralegal Colleen Zaharakes will forward you a filed copy of the Notice of Appeal first thing tomorrow. The only thing that has transpired at this point is that I have requested copies of the transcripts of the trial and have heard back from 3 of the 4 court reporters. I am mailing them their required deposits and understand the transcripts will be available 60 days after receipt of the deposit.

I apologize for my misunderstanding and look forward to working with you.

Bill

William E. Hopkins, Jr.  
**HOPKINS LAW FIRM, LLC**  
12019 Ocean Highway  
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Telephone: (843) 314-4202  
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[bill@hopkinsfirm.com](mailto:bill@hopkinsfirm.com)

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**From:** Lucy McDow [<mailto:lucylmcdow@mcdowlaw.com>]  
**Sent:** Tuesday, June 30, 2015 3:38 PM  
**To:** Bill Hopkins  
**Cc:** Charlie Burnette ([cburnette@burnettelaw.net](mailto:cburnette@burnettelaw.net))  
**Subject:** R&J v J&S, Sherwood, Kelman, and Mantekas (2012-CP-46-472)

Mr. Hopkins,

Charlie Burnette and I are counsel for Kelman, Inc., and Steve Mantekas in this case. Neither of us has ever received a notice of appeal or anything from you indicating that you're now counsel of record for J&S and Sherwood. Tracy James had indicated informally at one point that you were taking over for her and she would be asking you to contact us.

I checked with the Court of Appeals today and learned that an appeal has been pending in your name since May 27. Since we haven't gotten anything, would you let me know what's going on and make sure we get an e-mailed copy right away of anything you've submitted to the Court of Appeals.

Thank you.

Lucy McDow

**Lucy L. McDow, Attorney**  
**P.O. Box 767**  
**514 Oakland Avenue, 2<sup>nd</sup> Floor**  
**Rock Hill SC 29731-6767**

**Telephone: (803) 327-1700**  
**Fax: (803) 327-4200**  
**E-mail: [LucyLMcDow@mcdowlaw.com](mailto:LucyLMcDow@mcdowlaw.com)**

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# **EXHIBIT B**

Lucy L. McDow  
Attorney  
P.O. Box 767, 514 Oakland Avenue, 2<sup>nd</sup> Floor  
Rock Hill, SC 29731  
Telephone: (803) 327-1700 Fax: (803) 327-4200  
E-mail: [LucyLMcDow@mcdowlaw.com](mailto:LucyLMcDow@mcdowlaw.com)

August 6, 2015

William E. Hopkins, Jr.  
P.O. Box 1885  
Pawleys Island SC 29585

RE: R&J Restaurants, LLC vs. Sotirios Mantekas et al.  
Appellate Case No. 2015-001150

Dear Mr. Hopkins:

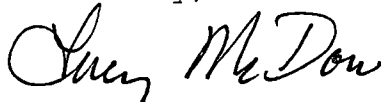
I received your document labeled "amended proof of service" with your certificate of service in today's mail. Please be aware that we cannot agree that your appeal is timely or properly perfected and we have to reserve the right to respond accordingly if there are further proceedings.

Please also note that you have my firm name and address wrong. The correct information is shown above. The correct e-mail address for Charles Burnette is [burnettelaw@comporium.net](mailto:burnettelaw@comporium.net).

We have not seen any of your correspondence with the Court of Appeals nor have we received anything from the Court, so it would be good if you would make sure they do not adopt the wrong information from your filing.

Thank you.

Sincerely,



Lucy L. McDow

cc: Charles B. Burnette, III

RECEIVED  
8/10/15

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable S. Jackson Kimball

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Case No.: 2012-CP-46-00472

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R&J Restaurants, LLC d/b/a Steve's Bar & Grille, LLC  
.....Plaintiff

v.

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Sotirios Mantekas and Kelman, Inc.....Cross-claim Plaintiffs

v.

J&S Real Estate Holdings, LLC and John Sherwood .....Cross-claim Defendants

Of Whom J&S Real Estate Holdings, LLC is the Appellant and Sotirios Mantekas  
is the Respondents.

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**PROOF OF SERVICE**


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The undersigned certifies that a copy of the foregoing **Return to Motion to Dismiss Appeal** has been served upon counsel of record by depositing a copy of the same, postage prepaid, with the United State Post Office, on this 10th day of June, 2016, to the address shown below.

Lucy L. McDow  
Post Office Box 767  
Rock Hill, South Carolina 29731-6767

Charles B. Burnette, III  
Payne and Burnette, P.A.  
414 East Main Street  
Rock Hill, South Carolina 29730

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WILLIAM E. HOPKINS JR. \*†  
J. CLAY HOPKINS

\*ALSO ADMITTED IN  
DISTRICT OF COLUMBIA

†SOUTH CAROLINA  
CERTIFIED MEDIATOR

June 10, 2016

VIA FACSIMILE AND REGULAR U.S. MAIL

South Carolina Court of Appeals  
Attn: Jenny Abbott Kitchings, Clerk  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**

JUN 14 2016

**SC Court of Appeals**

RE: R&J Restaurants v. J&S Real Estate  
Appellate Case No.: 2015-001150


Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Appellant's Return to Motion to Dismiss Appeal in the above-referenced matter.

Per Mr. Hopkins' request, please file the original and six copies in the Court's file and return a clocked copy to us in the enclosed self-addressed, stamped envelope.

Thank you for your assistance and please feel free to call me should you have any questions.

Sincerely,



Deborah A. Brown  
Paralegal to William E. Hopkins, Jr.

/dab

Enclosures

cc: Charles B. Burnette, III, Esq.  
Lucy L. McDow, Esq.

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