

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

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The Honorable Cynthia Graham Howe  
Master-in-Equity, Fifteenth Judicial Circuit

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Case No.: 2009-CP-26-620

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**RECEIVED**

AUG 02 2016

SC Court of Appeals

Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation.....Plaintiffs,

v.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust.....Defendants,

AND

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29<sup>th</sup> Place Developers, Inc.,.....Third-Party Plaintiffs,

v.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually,.....Third-Party Defendants,

Of whom Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur Wayne Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, and 29<sup>th</sup> Place Developers, In. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & C Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

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REPLY OF RESPONDENTS

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The Respondents submit this Reply in response to the Appellants' Return to Respondents' Motion to Dismiss.

1. The Respondents submit that the Appellants were duly and properly served with the Form 4 and Judgment dated March 23, 2015 and the Form 4 and Nunc Pro Tunc Order dated March 25, 2015 on March 24, 2015 and on March 25, 2015 by direct communications from the Court to the parties. The Appellants were again served with the Form 4 and Judgment dated March 23, 2015 by letter dated and mailed March 25, 2015 from Respondents' attorney and the Form 4 and Nunc Pro Tunc Order by letter from the Respondents' attorneys dated and mailed on March 27, 2015.

Cook, Appellants' attorney, admits in her affidavit in Paragraph 5 on Exhibit 6 to Appellants' Return that Judge Howe's law clerk... "emailed all counsel of record a copy of Judge Howe's written Order" even though Page 37 was missing. Cook furthermore acknowledged that the written Order was mailed to her by letter dated March 25, 2015. Cook stated in Appellants' motion for reconsideration that she received the Nunc Pro Tunc order on March 30, 2015. Cook did not address, in her affidavit, the receipt of the service letter from DuRant dated March 27, 2015 and she did not state why she did not request a copy of Page 37 from the Clerk of Court's office or from Respondents' attorneys when she had received the Orders on March 24 and March 25. Cook did not explain why she waited 13 days to request the missing page by a letter to the Trial Judge when the Appellants had only 10 days to file post trial motions.

Appellants reliance upon Ackerman v. 3-V Chem., 349 S.C. 212, 562 S.C.2d 613 (2002) is misplaced. In that case, Appellant alleged that it had timely filed its motion to reconsider,

when the motion was filed within 10 days from the receipt of the Order versus 10 days from the receipt of the written notice of entry of the Order. The Supreme Court held that the 10 day period to file post trial motions began from the receipt of the notice of the entry of the Order, as the rule does not require service of the actual Order upon the Appellant. The Court rejected the Appellant's due process argument in requiring an appeal to be filed before actually receiving a copy of the Order, versus the notice of filing. The Court stated:

The short and simple answer to this contention is that upon receiving written notice of the entry of an order or judgment, an attorney may immediately call and request a copy of the order. In this day of automation, virtually every court in this state has access to a fax machine via which an order may be immediately forwarded. To accept Petitioner's contention that they have 10 days from the receipt of the written order itself would mean that a party could effectively control the time in which to file a Rule 59 motion, simply by delaying a request for a copy of the order.....there is no reason Petitioners could not have requested a copy of the order filed on the date they received the written notice of entry of judgment."

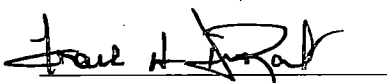
The Court held that since the motion was untimely filed, the trial court was without jurisdiction to act upon it. Appellants filed their motion to reconsider on April 20, 2015, 27 days after the Appellants acknowledged receipt of the Form 4 and Judgment from the Court and 24 days after the last mailing of the Form 4 and Nunc Pro Tunc Order by the Respondents' attorney. Appellants could and should have requested the missing Page 37 from the Clerk of Court on the date it received the Form 4 and March 23, 2015 Order and have offered no explanation why they did not.

2. The Appellants argue and imply that the Lower Court, in its Post Trial Order, "clearly recognized that the First Order does not dispose of all the Defendants and....clearly recognized that the First Order was not a final Judgment." The Lower Court, in its Post Trial Order, examined the service of the Form 4s and Orders and found that the two Form 4s and Orders were sent to Appellants' attorneys by email from the Court and by written letter from the Respondents' attorney DuRant, the last on March 27, 2015. The Lower Court held that the

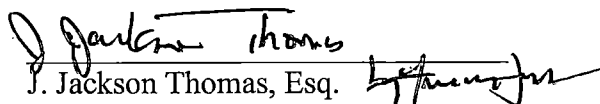
Appellants did not timely file their motion for reconsideration, if the last date of March 27, 2015 for service of the second Form 4 and the Nunc Pro Tunc Order was used. This Lower Court gave the Appellants every benefit of the doubt on the timeliness of the Appellants' motion to reconsider. The Lower Court discussed the application of the Rules concerning service of Orders and in conclusion, Judge Howe found that the motion was not timely filed. See Page 5 of such Order. The March 24, 2015 Nunc Pro Tunc Order and Form 4 made two corrections to the March 23, 2015 Judgment: it corrected the amount of pre-judgment interest because of a mathematical error and corrected the Form 4 to include a judgment against Parkway Offices, LLC. The written Judgment dated March 23, 2015 included a judgment against Parkway Offices, LLC for such amount.

#### CONCLUSION

For the foregoing reasons, the Court should grant the Respondents Motion to Dismiss the Appeal as being untimely filed.



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LLC, EES Construction and Consulting,  
LLC and Ellis E. Smith

Myrtle Beach, South Carolina  
August 1, 2016

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

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The Honorable Cynthia Graham Howe  
Master-in-Equity, Fifteenth Judicial Circuit

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Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation.....Plaintiffs,

v.

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AND

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29<sup>th</sup> Place Developers, Inc.,.....Third-Party Plaintiffs,

v.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually,.....Third-Party Defendants,

Of whom Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur Wayne Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, and 29<sup>th</sup> Place Developers, Inc. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & C Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

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CERTIFICATE OF SERVICE  
\_\_\_\_\_

Lauren Massimino certifies that she is an employee of the law firm DuRant & Martin, attorney for the Respondents Smith and A & E Constructors and Consultants, LLC, and that she mailed the document(s) listed below in the above entitled action to the addressee(s) below on August 1, 2016 and proper postage was attached thereto.

DOCUMENT(S): Reply of Respondents

ADDRESSEE(S): Henrietta U. Golding, Esq.  
James K. Gilliam, Esq.  
McNair Law Firm, P.A.  
P.O. Box 336  
Myrtle Beach, SC 29578

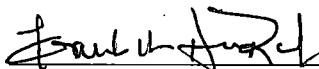
*Attorney for Appellants Arthur Wayne Vereen, Individually and as Trustee of the Arthur W. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen, Individually and as Trustee of the Linda C. Vereen Residence Trust*

J. Jackson Thomas, Esq.  
Thompson & Henry, PA  
1314 Professional Dr,  
Myrtle Beach, SC 29577

*Attorney for Respondents E. Smith & Sons, LLC, EES Construction and Consulting, LLC and Ellis E. Smith*

  
\_\_\_\_\_  
Lauren Massimino

SWORN to before me this 1<sup>st</sup>  
day of August, 2016

  
\_\_\_\_\_  
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FRANK H. DURANT, P.A.  
DAVID E. MARTIN, P.A.

TELEPHONE: (843) 448-1541  
TELECOPIER: (843) 626-7431

August 1, 2016

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AUG 02 2016

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

SC Court of Appeals

Re: A & E Constructors and Consultants, Inc., et al. vs. Arthur Wayne Vereen, Park  
Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, et al.  
Civil Action No.: 2009-CP-26-00620  
Appellate Case No.: 2016-001075


Dear Ms. Kitchings:

Enclosed herewith please find the Original and seven (7) copies of the Reply of Respondents and Certificate of Service for filing in regard to the above referenced matter. Please file the originals and return the clocked copies to my office in the self-addressed stamped envelope provided.

By copy of this letter, I am serving the Appellants' Attorneys, Henrietta U. Golding and James K. Gilliam of McNair Law Firm, P.A., with a copy of the Reply of Respondents and Certificate of Service.

If you have any questions or concerns regarding this matter please feel free to contact my office.

Sincerely,



Frank H. DuRant  
Attorney for Respondents

FHD/lm  
Encl.: as stated

cc: Client  
Henrietta U. Golding, Esq. (via US Mail - P.O. Box 336, Myrtle Beach, SC 29578)  
James K. Gilliam, Esq. (via US Mail - P.O. Box 336, Myrtle Beach, SC 29578)  
J. Jackson Thomas, Esq. (via US Mail - 1314 Professional Drive, Myrtle Beach, SC 29577)

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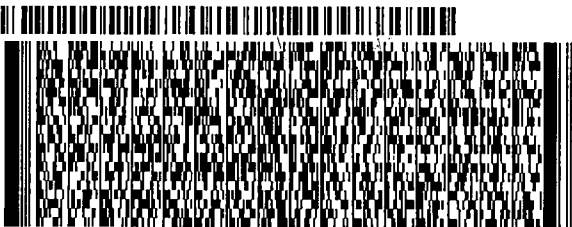
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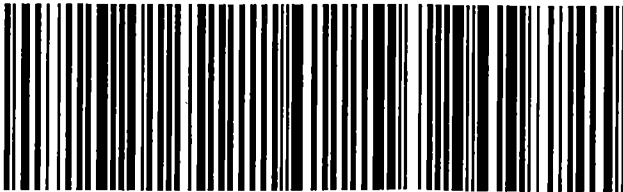
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