

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

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S.C. Supreme Court

Appellate Case No. 2015-000157 (S.C. Ct. App. filed August 26, 2015)

Wells Fargo Bank, N.A.,
successor-by-merger to
Wachovia Bank, N.A.,

Respondent,

v.

Fallon Properties South
Carolina, LLC, Timothy R.
Fallon, Susan C. Fallon,
Fallon Luminous Products
Corporation, G. E. Business
Capital Corporation, formerly
Transamerica Business Capital
Corporation, FSD Repurchase
Solutions, LLC and South
Carolina Department of
Revenue,

Defendants,

Of Whom Fallon Properties
South Carolina, LLC, Timothy
R. Fallon, Susan C. Fallon are
the,

Petitioners.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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September 24, 2015



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The South Carolina Court of Appeals

Wells Fargo Bank, N.A., successor-by-merger to
Wachovia Bank, N.A., Respondent,

v.

Fallon Properties South Carolina, LLC, Timothy R.
Fallon, Susan C. Fallon, Fallon Luminous Products
Corporation, GE Business Capital Corporation, formerly
Transamerica Business Capital Corporation, FSD
Repurchase Solutions, LLC, and South Carolina
Department of Revenue, Defendants,

Of Whom Fallon Properties South Carolina, LLC,
Timothy R. Fallon, and Susan C. Fallon are the
Appellants.

Appellate Case No. 2015-000157

ORDER

PER CURIAM: In this appeal from the court of common pleas, we find that an e-mail from the office of the master-in-equity with the order on appeal as an attachment constitutes written notice of entry of the order under Rule 203(b)(1) of the South Carolina Rules of Appellate Procedure. Because Appellants served their notice of appeal more than thirty days after receipt of the email, we find the appeal is untimely and deny the petition to rehear the dismissal of this appeal.

This appeal arises out of a foreclosure action. After the foreclosure sale, Appellants filed a petition for an order of appraisal pursuant to section 29-3-680 of the South Carolina Code (2007). On December 15, 2014, the master filed an order denying the petition. The same day, the administrative assistant to the master sent attorneys for both sides an e-mail stating, "Please see attached copy of signed and clocked Form 4 and Order. I have also mailed a copy to all listed on the Form 4."

The "signed and clocked" copies of the Form 4 and order were attached to the e-mail. The court¹ sent the parties a printed copy of the order through the United States Postal Service, which Appellants received on December 18, 2014.

On January 15, 2015, Appellants served Respondent with the notice of appeal from the December 15 order. The notice was served thirty-one days after Appellants received the email, but only twenty-eight days after they received the printed copy of the order. Respondent moved to dismiss the appeal as untimely. In an order signed by a single judge, we granted the motion and dismissed the appeal. The Appellants filed a petition for rehearing. We deny the petition.

Pursuant to Rule 203(b)(1), SCACR, a party wishing to appeal an order from the court of common pleas must serve the notice of appeal on the respondents "within thirty . . . days after receipt of written notice of entry of the order." Since the adoption of Rule 203 in 1990, the only limitation ever expressed on how notice must be received is that it must be "written notice." For the reasons set forth below, this court finds the e-mail constitutes written notice.

The circumstances in this case are analogous to those in *Canal Insurance Co. v. Caldwell*, 338 S.C. 1, 5-6, 524 S.E.2d 416, 418 (Ct. App. 1999), in which this court held a fax constituted written notice under Rule 203(b)(1). In *Canal*, the trial court issued its order on March 17, 1997; however, counsel for the appellants apparently did not receive a copy. 338 S.C. at 4, 524 S.E.2d at 417. Counsel contacted the respondent in June 1997 to inquire about the status of the order. *Id.* On July 8, 1997, counsel for the respondent "responded via fax and mail," stating the order "had been entered on March 19 as Judgment Roll Number 211763." *Id.* Counsel for the appellants waited a month to request a copy of the order from the clerk of court and did not serve the notice of appeal until March 17, 1998. 338 S.C. at 5, 524 S.E.2d at 417-18. This court dismissed the appeal due to the appellants' failure to timely serve the notice of appeal, noting "there is no question that [counsel for the appellants] received written notice of the entry of the judgment . . . on July 8, 1997." 338 S.C. at 5-6, 524 S.E.2d at 418. July 8, 1997, is the date counsel for the appellants received the fax from opposing counsel. 338 S.C. at 4, 524 S.E.2d at 417.

Respondent's argument in this case that the e-mail was "written notice of entry of the judgment" is more persuasive than the argument we adopted in *Canal* that the

¹ This court's file does not indicate whether the printed copy was sent by the master or the clerk of court.

fax was written notice. First, the e-mail in this case was sent from the court itself, rather than an opposing party. Second, the e-mail included a copy of the signed and clocked order, whereas the fax in *Canal* did not.² See 338 S.C. at 4, 524 S.E.2d at 417. Finally, although neither the rules of civil nor appellate procedure specifically authorized service by fax, e-mail has actually been contemplated by the rules. See, e.g., Rule 410(e), SCACR (providing that both "[t]he mailing and e-mail address shown in the AIS [Attorney Information System] shall be used for the purpose of notifying and serving" an attorney).³ Counsel for Appellants was notified of entry of the order through the e-mail address he kept on file with the AIS.

Appellants rely on *White v. South Carolina Department of Health and Environmental Control*, 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011). In *White*, this court interpreted Rule 203(b)(6), SCACR, which governs appeals to this court from the administrative law court (ALC) and provides the notice of appeal must be served on all parties of record within thirty days after "receipt of the decision." 392 S.C. at 252-55, 708 S.E.2d at 814-16. In *White*, the appellant received an e-mail on January 28, 2009, containing a signed and filed copy of the decision. 392 S.C. at 252, 708 S.E.2d at 814-15. This court held Rule 203(b)(6) contemplates receipt of the decision through proper service by mail or hand delivery; accordingly, the time for serving the notice of appeal "did not commence on the day that counsel received the decision via e-mail." 392 S.C. at 253, 708 S.E.2d at 815.

White is distinguishable from this case for two reasons. First, this appeal falls under Rule 203(b)(1), rather than 203(b)(6). The court in *White* stressed that service of the ALC decision via the Postal Service was imperative because Rule 203(b)(6) requires actual "receipt of the decision," noting this is a different requirement than "receipt of written notice of entry of the order" as provided in

² In *Canal*, the court stated that the fax from the respondent's counsel merely "express[ed] surprise that opposing counsel had not been notified of the judgment and stat[ed] that it had been entered on March 19 as Judgment Roll Number 211763." 338 S.C. at 4, 524 S.E.2d at 417. The court noted the appellants waited over a month to request a copy of the order. 338 S.C. at 6, 524 S.E.2d at 418.

³ Attorneys practicing in South Carolina have been required since November 18, 2011 to keep a valid e-mail address on file with the AIS. Order RE: Attorney Information System Amendments and Requirements, No. 2011-10-17-01 (S.C. Sup. Ct. Order filed Oct. 17, 2011).

Rule 203(b)(1). 392 S.C. at 254-55, 708 S.E.2d at 815-16. Here, because this is an appeal from the court of common pleas, the time for initiating the appeal began to run from "receipt of written notice of entry of the order," not "receipt of the decision." See Rule 203(b)(1); Rule 203(b)(6).

Second, the due process concerns addressed by the court in *White* are not present in this case. The court in *White* reasoned that due process would not allow it to recognize an e-mail as "receipt of the decision" under Rule 203(b)(6) because there is nothing "that authorizes service of a decision of the ALC by electronic mail." 392 S.C. at 254, 708 S.E.2d at 815. The court explained that in a prior case, we declined to hold a fax of an agency's decision sufficient to initiate the time for serving a notice of appeal under Rule 203(b)(6); and thus, due process would not allow the court to then recognize service by electronic mail when "there was no official written rule or notice about the binding effect of the service of an order by electronic mail." 392 S.C. at 253-54, 708 S.E.2d at 815 (citing *Trowell v. S.C. Dep't of Pub. Safety*, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009)). Conversely, in an appeal from the court of common pleas, the parties are on notice that a fax is written notice for initiating the time for serving a notice of appeal under Rule 203(b)(1). See *Canal*, 338 S.C. at 5-6, 524 S.E.2d at 417-18.

Receipt of written notice is the critical event under Rule 203(b)(1), and Appellants received written notice on December 15, 2014—the date of the e-mail. Appellants failed to timely serve the notice of appeal "within thirty . . . days after receipt of written notice." Rule 203(b)(1). Therefore, this court lacks appellate jurisdiction, and we were required to dismiss the appeal. See Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time 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."); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) ("The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, 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."); *Canal*, 338 S.C. at 5, 524 S.E.2d at 418 (providing that the failure of a party to serve the notice of appeal within thirty days after receiving written notice of the entry of the order divests this court of jurisdiction and requires the dismissal of the appeal). For these reasons, the petition for rehearing is denied.

s/John Cannon Few C.J.

s/Thomas E. Huff J.

s/Paul E. Short, Jr. J.

Columbia, South Carolina
August 26, 2015

cc: Alexander Hray, Jr., Esquire
Rodney F. Pillsbury, Esquire
Weyman C. Carter, Esquire
Robert L. Widener, Esquire
The Honorable Gordon G. Cooper

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July 7, 2015

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Honorable Jenny Abbott Kitchings
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Re: Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC, et al.,
Of Whom Fallon Properties South Carolina, LLC; Timothy R. Fallon,
Susan C. Fallon are Appellants
Appellate Case No. 2015-000157

Dear Madam Clerk:

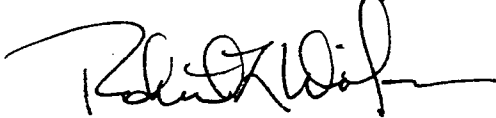
We have received the Appellants' Petition for Rehearing in the above-referenced matter. The Petition is virtually identical to the Appellants' previously filed Return in opposition to the motion to dismiss, to which Respondent has already responded in its Reply. Accordingly, pursuant to Rule 240(e), SCACR, Respondent will not be filing a Return to the Petition for Rehearing "unless requested by the court."

By copy of this letter to opposing counsel, we are advising Appellants that Respondent will not be filing a Return to the Petition for Rehearing.

Thank you for your assistance in this matter.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as

cc: Alexander Hray Jr., Esq. ✓

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Appellate Case Number 2015-000157

Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A.,
successor-by-merger to
Wachovia Bank, N.A.,

Respondent,

v.

Fallon Properties South
Carolina, LLC, Timothy R.
Fallon, Susan C. Fallon,
Fallon Luminous Products
Corporation, G. E. Business
Capital Corporation, formerly
Transamerica Business
Capital Corporation, FSD
Repurchase Solutions, LLC
and South Carolina
Department of Revenue,

Defendants,

Of Whom Fallon Properties
South Carolina, LLC, Timothy
R. Fallon, Susan C. Fallon are
the,

Appellants.

APPELLANTS' MOTION FOR REHEARING

Appellants respectfully move for a rehearing of this Court's order of June 15, 2015, on the basis that the Court erred as a matter of law in holding Appellants' Notice of Intent to Appeal was untimely based upon the novel application of notice via email. The notice of appeal (Notice) was timely filed and served because the transmission of an email from the trial court, or the receipt of the same, does not constitute written notice of the entry of an order as required by Rule 203 SCACR.

Pursuant to the requirements of Rule 203 (b) (1) SCACR service of a notice of appeal shall be served within thirty (30) days after receipt of written notice of entry of the order or judgment. The time in which to serve notice is based upon the date of the receipt of the order, not the date the order is mailed or transmitted. In this case the order was received by Appellants' trial counsel Rodney F. Pillsbury (Pillsbury) on December 18, 2014 (Tab #1, 6 and 7). Based upon the receipt of the order on that date Pillsbury correctly calculated the last day upon which the notice of appeal (Notice) could be served as January 19, 2015 (Tab #1, 7). The Notice was served on January 15, 2015 within the time frame required (see Tab B to the Respondent's Motion). (Footnote 1)

By email dated December 19, 2014 from Pillsbury to Appellants and appellate counsel, Alexander Hray, Jr. (Hray), Pillsbury notified them that the order had been received by him and last day to serve a Notice was January 19, 2015 and the Notice was served on January 15, 2015 (Tab #1, Ex. B and Tab #2, Ex. A). Based on the date that Pillsbury had calculated the due date to serve the

¹ At the time the Notice was served, Hray understood that Pillsbury had received the order on December 19, 2014 and it was later realized that the Pillsbury received the order on December 18, 2014; however, if the order was received by Pillsbury on either of these two days the last date to serve the notice of appeal would nevertheless fall on January 19, 2015. Rule 203(e)(1)(C) of the SCACR provides "**if appropriate** for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken" shall be included in the notice of appeal. (Emphasis supplied). The dispute regarding the timeliness of the service of the Notice was not known by Hray until after the Notice had been served.

Notice the Notice was served four (4) days prior to the last date such was required. After service of the Notice the issue of the timeliness of the service of the Notice was raised by Respondent's trial counsel, Weyman C. Carter (Carter), by phone call to Hray and by email to Hray on January 30, 2015 (Tab #2, Ex. B).

The rules of both civil and appellate procedure adopted by our supreme court anticipate the transmission of notices and pleadings by way of hand delivery or use of the United States Postal Service (USPS). Rule 5 SCRCP and Rule 233(b) SCRAP are, in pertinent part, identical with respect to how legal process is to be effected. Both provide that "service upon the attorney or upon a party shall be made by delivering a copy to him or by **mailing** it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this Rule means: **handing** it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein . . ." (Emphasis added).

Respectfully, in its order the Court erred in applying the rules of service by e-filing as found in the recent amendment to Rule 77 SCRCP. On April 16, 2014, the South Carolina Supreme Court amended Rule 77 of the South Carolina Rules of Civil Procedure to incorporate service by email:

(i)mmediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by **first class mail** upon every party affected thereby . . . and shall make a note in the case file or docket sheet of the **mailing**. For parties proceeding in the SCE-File electronic filing system, the clerk shall serve a notice of the entry by electronically transmitting a Notice of Electronic Filing to all parties. Such mailing or electronic transmission shall not be necessary to parties who have already received notice. Such mailing or electronic transmission is sufficient notice for all purposes for which notice of the entry of an order or judgment is required by these rules;

SCRCivP Rule 77(d)

There is no dispute that the case within the lower court was not proceeding under the SCE-File electronic system.²

In this action the parties were not proceeding in the SCE-File system. Additionally, the electron transmission giving rise to the Respondent's motion was made by an employ of the master's office and not from the clerk of court. As such, portion of Rule 77(d) is inapplicable to the case at bar.

Appellants agree with Respondent that there is no South Carolina precedent with respect to the effectiveness of notice of the entry of an order by an email transmission under Rule 203(b)(1). Only one case has addressed the specific issue of whether transmission of an order via email triggered the time requirements under Rule 203: *White v South Carolina Dep't of Health & Envtl. Control*, 708 S.E.2nd 812 (SC App. 2011). There, the Court held that email did not trigger the time deadlines under Rule 203 SCRAP.

Respectfully, in its order granting Respondent's motion to dismiss, the Court erred as a matter of law in relying upon the *dicta* of the *Canal Ins. Co. v. Caldwell*, 524 S.E.2d 416 (S.C. App. 1999) and *Ackerman v. 3-V Chemical, Inc.*, 562 S.E.2nd 613 (2002) to find otherwise. In *Canal* an extensive amount of time had elapsed from the time that the order was rendered to when the Appellant in that case served its notice of appeal. In that case the order was dated March 17, 1997 and a form judgment entered on March 19, 1997 in which was indicated that copies had been sent to

² As the various counties adopt and implement the SCE-File electronic filing system, issues like the case at bar will become moot, because service is specifically provided by email. Knowing that email was not service, it was completely reasonable for Appellants' counsel to rely upon receiving the clocked in order via US mail as the trigger date for filing the notice of intent to appeal.

all parties. The trial counsel for that appellant wrote to opposing counsel by letter dated June 24, 1997 and inquired about the status of the final order. (*Canal* 417).

In *Canal* the attorney for the Respondent “responded via fax and **mail** on July 8, expressing surprise that opposing counsel had not been notified of the judgment and stating that it had been entered on March 19 as Judgment Roll Number 211763” (Emphasis added) (*Canal* at 417). In that case the court noted that the letter of opposing counsel, in addition to being faxed, had also been mailed. In this case, the Appellate Court respectfully erred as a matter of law in relying upon the *dicta* of *Canal Ins. Co.* to find that *Canal* stands for the legal proposition that receiving a fax constitutes valid written notice for purposes of calculating the time for appeal under Rule 203(b)(1).

In *Canal Ins. Co.*, the focus of the inquiry was not the **means** by which the appellant received notice of the judgment (i.e., via telefax versus regular mail). Rather, the Court in *Canal Ins. Co.* took issue with the fact that after receiving written notice of the judgment from opposing counsel both via telefax and via US mail, the Appellant waited almost a month to contact the clerk’s office to request a written order. The appellant in *Canal Ins. Co.* did not serve the notice of intent to appeal until over eight (8) months later.

In the case at bar, the time differential between when the Respondent contends the Notice should have been served and when it was served is **one (1) day**. The court in *Canal* held that there was no question that he (appellant’s attorney) received written notice of entry of the judgment, including the judgment roll number, from opposing counsel on July 8, 1997 (*Canal* at 418). The court in *Canal* however did not specifically rule that service by fax constituted receipt by the attorney on the date of transmission.

The facts as recited by the court in *Canal* do not provide a full explanation and leaves to conjecture regarding other facts may have been involved; it is not stated one way or the other by the court in *Canal* whether the appellant's attorney disputed (1) whether he in fact had received the faxed letter or, if he had received it, (2) its effectiveness as receipt of notice of entry of an order. The *Canal* court didn't explicitly state that a fax transmittal constituted the receipt by counsel of the notice of entry of an order of filing as required by Rule 203 SCACR and certainly that holding should not be extrapolated to be construed that a transmission of an order or notice of entry of order via email to counsel of record meets that requirements of Rule 203 SCACR. [Ultimately the *Canal* case was determined on its merits and not with regards to the timeliness of the appeal.]

Similarly, respectfully, the Court erred in its reliance upon *Ackerman v. 3-V Chemical, Inc.*, 562 S.E.2nd 613 (2002). The issue before *Ackerman* was not the **means** by which the appellant received the appealed order. Rather, the *Ackerman* court hinged upon the distinction between receiving a Form 4 order of judgment versus receiving the detailed order signed by the Court. In *Ackerman*, neither the Court nor the parties were concerned about receiving the order via email, via telefax, via hand-delivery or via US Mail. The sole focus of inquiry was whether the receipt (presumably via US Mail) of the Form 4 order triggered the ten (10) day time requirement for filing a Motion to Reconsider under Rule 59 SCRCvP as opposed to receipt (presumably via US Mail) of the signed order.

The *Ackerman* court answered the question in the affirmative and held that, for purposes of Rule 59 SCRCvP, the receipt of the Form 4 was written notice of entry of the order which commenced the running of the time in which to file a motion to reconsider. Appellants concede that the mere receipt of a Form 4, not accompanied by a signed order, is sufficient to commence the

running of the thirty (30) days in which to serve the Notice; but the issues raised by the Respondent's motion and this return has to do with the method of how the notice of filing given and what constitutes receipt as prescribed by the Rules not whether a Form 4 or a copy of the signed order has to be supplied. In this case the date of receipt by Pillsbury of the Form 4 and the order occurred simultaneously. (Attachment #1) The *Ackerman* case did not address receipt by a certain method of transmission rather what is to be transmitted as the notice of entry.

In the case of *White v South Carolina Dep't of Health & Envtl. Control*, 708 S.E.2nd 812 (SC App. 2011) the appellate counsel undeniably received an email copy of the decision of the ALC but the counsel maintained that Rule 203(b)(6) contemplates receipt of the decision through proper service by mail or hand delivery and that the applicable rules do not authorize service of the decision by email. (*White* at 815) Accordingly, the thirty-day period in which to file a notice of appeal did not commence on the day that counsel received the decision via e-mail. Respondent in its motion attempts to make a distinction in this case as opposed to the *White* case in that the *White* case fell under rule 203 (b) (6) requiring the receipt of the administrative law decision rather than receipt of a written notice of entry of an order. However, that distinction is invalid.

The issue in this case is, as in *White*, whether receipt of the decision by counsel via email was met the requirement of the rule. In *White* under the ALR the decision was to be transmitted to trigger the running of the time to serve a notice of appeal, and in that case it was undisputed that the decision actually was provided by email prior to its mailing, as in this case. Nevertheless, the court in *White* held that such a notice was not in compliance with the Rules and held that the appeal was timely.

Thus, *White* is the only case to date that has **specifically** examined the question of whether transmission via email (as opposed to receipt of the written order via other means) satisfies the requirements under Rule 203(b). In that circumstance, the Court has found that it does not. As such, Appellants respectfully argue that the Court of Appeals erroneously relied upon the *dicta* of *Canal Ins. Co.* and *Ackerman* to find otherwise.

If the Supreme Court wished to permit other methods, such as email, to be utilized to constitute receipt then the Supreme Court could adopt rules specifically making that method allowable, but it has not. As noted previously (*see, n.2, supra*), with the implementation of the SCE-File system, service by email is accounted for by those counties adopting the E-file system.

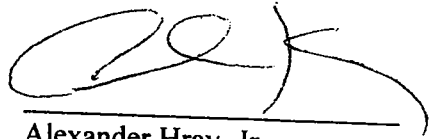
CONCLUSION

The court rules contemplate that legal process is to be handled in basically one of two ways, either via the United States Postal Service or hand delivery. The *Canal* case does not directly address the effectiveness of receipt via fax and the facts of that case, especially with the length of delay in serving the notice of appeal, lie in sharp contrast to the facts of this case. Likewise the issue in the *Ackerman* is not applicable to the issues in this case in that that case dealt with what type

document was received by counsel and not how it was transmitted. The *White* is the only case specifically addressing whether the means of electronic transmission satisfies the requirements of Rule 203, and, there, albeit under Rule 203(b)(3), the Court held that it did not.

For these reasons, Appellants respectfully urge the Court to grant their motion for a rehearing, and to DENY Respondent's motion to dismiss the appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alex Hray, Jr.', written over a horizontal line.

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Attorney for Appellants

June 29, 2015

The South Carolina Court of Appeals

Wells Fargo Bank, N.A., successor-by-merger to
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Fallon Properties South Carolina, LLC, Timothy R.
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Transamerica Business Capital Corporation, FSD
Repurchase Solutions, LLC, and South Carolina
Department of Revenue, Defendants,

Of Whom Fallon Properties South Carolina, LLC,
Timothy R. Fallon, and Susan C. Fallon are the
Appellants.

Appellate Case No. 2015-000157

ORDER

Appellants have served and filed a notice of appeal from the circuit court's order denying a petition for appraisal. On December 15, 2014, the master-in-equity¹ sent attorneys for both parties an email that stated, "Please see attached copy of signed and clocked Form 4 and Order. I have also mailed a copy to all listed on the Form 4." The "signed and clocked" copies of the Form 4 and order were attached to the email. The court² sent the parties a printed copy of the order through the US mail, which Appellants received on December 18, 2014. Appellants served the notice of appeal on January 15, 2015. Respondent has filed a motion to dismiss, contending the service of the notice of appeal was untimely because Appellants served Respondent thirty-one days after receiving the December 15, 2014 email.

¹ The email was from Sharon Winstead, the administrative assistant to the master.

² This court's file does not indicate whether the printed copy was sent by the master or the clerk of court.

Pursuant to Rule 203(b)(1), SCACR, the notice of appeal must have been served on Respondent within thirty days "after receipt of written notice of entry of the order." Since the adoption of Rule 203 in 1990, the only limitation ever expressed on how notice can be received is that it must be "written notice." For the reasons set forth below, this court finds the December 15, 2014 email constitutes "receipt of written notice of entry of the order" by Appellants.

The circumstances in this case are analogous to those in *Canal Insurance Company v. Caldwell*, 338 S.C. 1, 5-6, 524 S.E.2d 416, 418 (Ct. App. 1999), in which this court held a fax constituted written notice under Rule 203(b)(1). In *Canal*, the trial court issued its order on March 17, 1997; however, counsel for the appellants apparently never received a copy of the order, and they contacted counsel for the respondent in June 1997 to inquire about the status of the order. 338 S.C. at 4, 524 S.E.2d at 417. On July 8, 1997, counsel for the respondent "responded via fax and mail," stating the order "had been entered on March 19 as Judgment Roll Number 211763." *Id.* Counsel for the appellants waited a month to request a copy of the order from the clerk of court and did not serve the notice of appeal until March 17, 1998. 338 S.C. at 5, 524 S.E.2d at 417-18. This court held it did not have subject matter jurisdiction due to the appellants' failure to timely serve the notice of appeal, noting "there is no question that [counsel for the appellants] received written notice of the entry of the judgment . . . on July 8, 1997." 338 S.C. at 5, 524 S.E.2d at 418. July 8, 1997 is the date counsel for the appellants received the fax from opposing counsel. *See* 338 S.C. at 4, 524 S.E.2d at 417.

Respondent's argument in this case that the email is "written notice of entry of the judgment" is more persuasive than the argument we adopted in *Canal* that the fax is written notice. First, the email in this case was sent from the court itself, rather than an opposing party. Second, the email included a copy of the signed and clocked order, whereas the fax in *Canal* did not.³ *See* 338 S.C. at 4, 524 S.E.2d at 417. Finally, although neither the rules of civil or appellate procedure specifically authorized service by fax, email has actually been contemplated by the rules. *See, e.g.*, Rule 410, SCACR; Rule 77, SCRCR. Attorneys practicing in South Carolina have been required, since November 18, 2011, to keep a valid e-

³ In *Canal*, the court states that the fax from the respondent's counsel merely "express[ed] surprise that opposing counsel had not been notified of the judgment and stat[ed] that it had been entered on March 19 as Judgment Roll Number 211763." 338 S.C. at 4, 524 S.E.2d at 417. The court notes the appellants waited over a month to request a copy of the order. 338 S.C. at 6, 524 S.E.2d at 418.

mail address on file with the Attorney Information System (AIS). *RE: Attorney Information System Amendments and Requirements*, S.C. Sup. Ct. Order dated Oct. 17, 2011. Rule 410(e), SCACR, allows "[t]he mailing and e-mail address shown in the AIS [to] be used for the purpose of notifying and serving the [bar] member." Here, counsel for Appellants was notified of entry of the order presumably through the e-mail address he was required to keep on file with the AIS. Accordingly, following the precedent set in *Canal*, the December 15, 2014 email was sufficient to constitute "written notice of entry of the order."

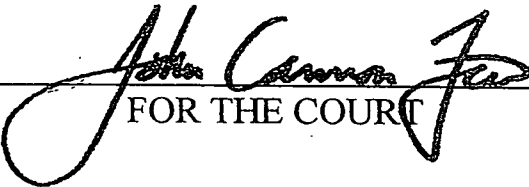
Appellants contend *White v. South Carolina Department of Health and Environmental Control*, 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011) is controlling. In *White*, this court interpreted Rule 203(b)(6), SCACR, which governs appeals to this court from the Administrative Law Court (ALC) and provides the notice of appeal must be served on all parties of record within thirty days after "receipt of the decision." *See* 392 S.C. at 252, 708 S.E.2d at 814-16. In *White*, the appellant received an email on January 28, 2009, containing a signed and filed copy of the decision. 392 S.C. at 252, 708 S.E.2d at 814. This court held Rule 203(b)(6) contemplates receipt of the decision through proper service by mail or hand delivery; accordingly, the time for serving the notice of appeal "did not commence on the day that counsel received the decision via e-mail." 392 S.C. at 253, 708 S.E.2d at 815.

White is distinguishable from this case for two reasons. First, this appeal falls under Rule 203(b)(1), rather than 203(b)(6). The court in *White* stressed that service of the ALC decision via the United States Postal Service was imperative because Rule 203(b)(6) requires actual "receipt of the decision," noting this is a different requirement than "receipt of notice of entry of the order" as provided in Rule 203(b)(1). 392 S.C. at 254-55, 708 S.E.2d at 815-16. Here, because this is an appeal from the court of common pleas, the time for initiating the appeal began to run from "written receipt of notice of entry of the order," not "receipt of the decision." *See* Rule 203(b)(1); Rule 203(b)(6).

Second, the due process concerns addressed by the court in *White* are not present in this case. The court in *White* reasoned that due process would not allow it to recognize an email as sufficient "receipt of the decision" under Rule 203(b)(6) because there is nothing "that authorizes service of a decision of the ALC by electronic mail." 392 S.C. at 254, 708 S.E.2d at 815. The court explained that in a prior case, we declined to hold a fax of an agency's decision sufficient to initiate the time for serving a notice of appeal under Rule 203(b)(6); and accordingly, due process would not allow the court to then recognize service by electronic mail

when "there was no official written rule or notice about the binding effect of the service of an order by electronic mail." 392 S.C. at 253-54, 708 S.E.2d at 815 (citing *Trowell v. S.C. Dep't of Pub. Safety*, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009)). Conversely, in an appeal from the court of common pleas, the parties are on notice that a fax is sufficient for initiating the time for serving a notice of appeal under Rule 203(b)(1). *See Canal*, 338 S.C. at 5-6, 524 S.E.2d at 418.

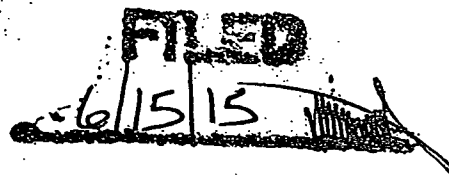
Receipt of written notice is the critical event under Rule 203(b)(1), and this court finds Appellants received written notice of the entry of the order on December 15, 2014, the date of the email. Accordingly, Appellants should have served the notice of appeal by January 14, 2015. Because Appellants failed to timely serve the notice of appeal, Respondent's motion to dismiss is granted. *See* Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time 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."); *Canal*, 338 S.C. at 5, 524 S.E.2d at 418 ("Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal."). Remittitur will be sent down as provided by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:

Alexander Hray, Jr., Esquire
Rodney F. Pillsbury, Esquire
Weyman C. Carter, Esquire



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Appellate Case No. 2015-000157

Lower Court Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A., successor-by-merger to
Wachovia Bank, N.A., Respondent, ... Respondent,

v.

Fallon Properties South Carolina, LLC, Timothy R. Fallon,
Susan C. Fallon, Fallon Luminous Products Corporation,
G. E. Business Capital Corporation, formerly Transamerica
Business Capital Corporation, FSD Repurchase Solutions, LLC,
and South Carolina Department of Revenue, ... Defendants,

OF WHOM Fallon Properties South Carolina, LLC,
Timothy R. Fallon, and Susan C. Fallon are Appellants.

REPLY TO RETURN TO
MOTION TO DISMISS APPEAL

The Appellants' Return to the Respondent's Motion to Dismiss Appeal suffers from three fatal flaws. First, the Appellants mistakenly describe the issue as being "the date of the receipt of the order, not the date the order is mailed or transmitted." (Ret. at 2, ¶ 2). The issue, however, is the date of receipt of written notice of the entry of the order, not the receipt of the order itself. Second, the Appellants misread this Court's opinion in *Canal, infra*, in which this Court, contrary

to the Appellants' assertion, clearly and expressly held that the receipt of a fax from opposing counsel commenced the 30 day period for serving the notice of appeal under Rule 203(b)(1), SCACR. Third, the Appellants misread the Respondent's argument under this Court's opinion in *White, infra*, in which this Court held that receipt of an ALC decision from the ALC commences the time to appeal under Rule 203(b)(6), SCACR. Contrary to the Appellants' argument under *White*, the Respondent's argument that receipt of the order under Rule 203(b)(6) is distinguishable from receipt of the notice of entry of the order under Rule 203(b)(1) is not a distinction created by the Respondent. Rather, it is the distinction used by this Court in *White* to reach a different conclusion than this Court reached in *Canal*. As demonstrated in the Respondent's Motion to Dismiss and herein, this Court's decision in *Canal* controls here and requires dismissal.

I. The Appellants have misstated the issue.

The Appellants open their argument with the following statement: "The time in which to serve the notice [of appeal] is based upon the date of the *receipt of the order*" (Ret. at 2, ¶ 2) (emphasis added). This is simply wrong. Under Rule 203(b)(1), SCACR, which controls here, the time to appeal commences upon "receipt of written notice of entry of the order," not receipt of the order.¹ Indeed, this was one of the fundamental rulings by this Court in *White, infra*:

The analyses in both *Ackerman* [the Form 4 case] and *Canal* [the fax case] explicitly distinguished the receipt of notice of the entry of an order [under Rule 203(b)(1), SCACR] from receipt of the order itself. *Receipt of notice was the critical event in Ackerman and Canal*, whereas receipt of the order itself is the critical event under Rule 203(b)(6), SCACR, in the present [*White*] case.

White v. South Carolina Dep't of Health & Env'tl. Control, 708 S.E.2d 812, 815 (S.C. App) (underlining in original) (italics added).

¹ Here, the appeal is from an order by a master-in-equity under Rule 203(b)(4), SCACR, which provides in full as follows: "The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1)." Thus, Rule 203(b)(1) controls here.

II. The Appellants misread this Court's opinion in *Canal Ins. Co. v. Caldwell*, 524 S.E.2d 416 (S.C. App. 1999)

Throughout their Return, the Appellants make the following mistaken assertions about this Court's opinion in *Canal*:

- a. "The court in *Canal* however did not specifically rule that service by fax constituted receipt by the attorney on the date of transmission." (Ret. at 5).
- b. This Court's opinion in *Canal* is unclear on "whether the appellant's attorney disputed (1) whether he in fact had received the faxed letter or, if he had received it, (2) its effectiveness as receipt of notice of entry of an order." (Ret. at 5).
- c. This Court "didn't explicitly state that a fax transmittal constituted the receipt by counsel of the notice of entry of an order of filing as required by Rule 203 SCACR" (Ret. at 5).
- d. "The *Canal* case does not directly address the effectiveness of receipt via fax" (Ret. at 6).

In reality, this Court expressly noted that, on July 8, opposing counsel had faxed and mailed the letter advising that the order had been entered. 524 S.E.2d at 417. The Court expressly stated there was "no question that [appellant's counsel] received written notice of entry ... from opposing counsel on July 8." *Id.* at 418. This Court thus concluded that the appellant "should have served notice on or before August 7." *Id.* It is therefore obvious that this Court held that receipt of the fax on July 8 triggered the time to appeal. August 7 is 30 days after July 8, and the appellant obviously did not receive the mailed copy of the letter on the date that it was mailed, *i.e.*, July 8.² Thus, the receipt of the fax on July 8 triggered the time to appeal.³

² As a matter of common knowledge and therefore judicial notice, mail is not delivered on the same date that it is placed in the U.S. Mail. *E.g.*, *Moss v. Aetna Life Ins. Co.*, 228 S.E.2d 108, 112 (S.C. 1976) (courts may take judicial notice of "matters of common and general knowledge"); *South Carolina Dep't of Soc. Servs. v. Janice C.*, 678 S.E.2d 463, 467 (S.C. App. 2009) (same). Moreover, even a cursory reading of *Canal* demonstrates that this Court was relying on receipt of the fax, not receipt of the letter in the U.S. Mail.

³ The Appellants note that the appellant in *Canal* did not serve the notice of appeal until several months after the August 7 deadline but that they missed the deadline by only one day. (Ret. at 4). This difference is meaningless. Timely service of the notice of appeal is an absolute jurisdictional requirement that cannot be extended by the appellate courts, even if it missed by only one day. See *Southbridge Props., Inc. v. Jones*, 355 S.E.2d 535, 536 (S.C. 1987) (appeal dismissed when notice of appeal served three days late), *applying Mears v. Mears*, 337 S.E.2d 206 (S.C. 1985).

Here, there is no meaningful difference between the email in this case and the fax in *Canal*. Both gave the appellant notice that the order had been entered, and that it is all that is required to commence the time to appeal under Rule 203(b)(1), SCACR as this Court held in *Canal*. Accordingly, the instant appeal must be dismissed for lack of jurisdiction.⁴

III. The Appellants misread the Respondent's argument under and this Court's holding in *White v. South Carolina Dep't of Health & Env'tl. Control*, 708 S.E.2d 812 (S.C. App. 2011).

The Appellants mistakenly believe that the Respondent created the distinction between the triggering events under Rule 203(b)(1), SCACR (receipt of written notice of entry) and Rule 203(b)(6), SCACR (receipt of ALC's decision):

Respondent in its motion attempts to make a distinction in this case as opposed to the *White* case in that the *White* case fell under [R]ule 203(b)(6) requiring the receipt of the administrative law decision rather than receipt of a written notice of entry of an order. *However, that distinction is invalid.*

(Ret. at 6) (emphasis added). This distinction, however, was made by this Court in *White* to hold that the ruling in *Canal* (which controls here) did not control in *White*, i.e., that *Canal* arose under Rule 203(b)(1), SCACR and *White* arose under Rule 203(b)(6), SCACR. For a fuller discussion of this Court's distinction in *White*, see Resp. Motion to Dismiss at pp. 3-5.

The Appellants also rely on *White* to argue that "receipt of written notice of entry" under Rule 203(b)(1), SCACR must be based on notice received from the court or opposing party in compliance with the "service" rules under the SCRCP and the SCACR. (See Ret. at 3, 6). In *White*,

⁴ The Appellants never deny receiving the December 15 email on December 15, and they never argue that their trial counsel did not receive this email on December 15. (Ret., *passim*). In his affidavit, their trial counsel admits receiving the email but states he has no "independent recollection of when this email was received on my computer or on what date I had opened this email." (Ret. at Exh. 1, p. 2, ¶ 3). As demonstrated in Exhibit A hereto, the Respondent's counsel received this email within minutes of it being sent at 2:48 p.m. There is no reason to believe that the Appellants' counsel would not have received it in the same time frame, particularly in the absence of any such showing by the Appellants. His lack of memory as to when he opened the email is meaningless. One cannot avoid notice by avoiding the instrument giving notice. To hold otherwise would allow an appellant to say the following even with respect to the U.S. Mail: "I received the envelope containing the notice on Day 1, but I did not open it until Day 2, so the time to appeal did not begin until Day 2."

this Court relied on such rules because of the distinction between Rule 203(b)(1) and Rule 203(b)(6), to-wit: since Rule 203(b)(6) required receipt of the ALC decision, and since the ALC rules required the ALC to serve that decision by U.S. Mail, the triggering event for an appeal under Rule 203(b)(6) was receipt of the decision via the U.S. Mail from the ALC. (See discussion of *White* in Resp. Motion to Dismiss at 3-5). Here, however, the triggering event is receipt of written notice of the entry of the order. Neither the SCRCR nor the SCACR prescribes the manner for giving or receiving this written notice and, therefore, the ruling in *White* does not apply here. Moreover, this Court rejected any such argument in *Canal, supra*, when it held that the time to appeal commenced upon receiving a faxed letter from opposing counsel, which would not constitute "service" under the SCRCR or the SCACR.

CONCLUSION

For the reasons set forth above, and for the reasons set forth in the Respondent's Motion to Dismiss Appeal, it is respectfully submitted that this appeal must be dismissed for lack of jurisdiction.

Respectfully Submitted,



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ATTORNEYS FOR RESPONDENT

April 6, 2015
Columbia, SC

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Appellate Case No. 2015-000157
Lower Court Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A., successor-by-merger to
Wachovia Bank, N.A., Respondent, ...Respondent,

v.

Fallon Properties South Carolina, LLC, Timothy R. Fallon,
Susan C. Fallon, Fallon Luminous Products Corporation,
G. E. Business Capital Corporation, formerly Transamerica
Business Capital Corporation, FSD Repurchase Solutions, LLC,
and South Carolina Department of Revenue, ... Defendants,

OF WHOM Fallon Properties South Carolina, LLC,
Timothy R. Fallon, and Susan C. Fallon are Appellants.

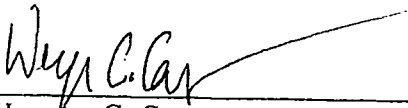
AFFIDAVIT OF WEYMAN C. CARTER

PERSONALLY APPEARED BEFORE ME, Weyman C. Carter, who first being duly sworn, does
depose and state as follows:

1. The email message that I received from Sharon Winstead of the Spartanburg County Equity
Court transmitting copies of the signed, filed Order and Form 4 shows that it was sent on
December 15, 2014 at 2:48 p.m. Opposing counsel Mr. Pillsbury was copied on the
message.

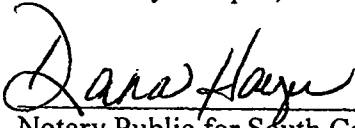
2. I was at my desk when the message arrived. I opened and read the message promptly upon receiving it.
3. I sent a "reply to all" response to the message to acknowledge receipt; the text of my response read simply "Thank you", followed by my signature block.
4. My reply was dated December 15, 2014 at 2:56 p.m., which was less than ten minutes after Ms. Winstead sent her message to trial counsel.
5. A copy of my reply, which also reflects the transmittal message from court staff and the previous messages in the string, is attached to this Affidavit.

FURTHER AFFIANT SAYETH NOT.



Weyman C. Carter

Sworn to and subscribed before me
this 6th day of April, 2015.



Notary Public for South Carolina (Seal)
My Commission Expires: 1/20/20

Widener, Robert

From: Carter, Weyman
Sent: Monday, December 15, 2014 2:56 PM
To: Winstead, Sharon
Cc: Rodney Pillsbury
Subject: RE: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

Thank you.

MCNAIR
ATTORNEYS

Weyman C. Carter
Shareholder
wcarter@mcnair.net

McNair Law Firm, P.A.
Greenville Office Poinsett Plaza, 104 South Main Street | Suite 700 | Greenville, SC 29601
864 271 4940 Main | 864 271 4015 Fax
Mailing Post Office Box 447 | Greenville, SC 29602
VCard | Bio URL | Web site

From: Winstead, Sharon [mailto:swinstead@spartanburgcounty.org]
Sent: Monday, December 15, 2014 2:48 PM
To: Carter, Weyman
Cc: Rodney Pillsbury
Subject: RE: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

Gentlemen,

Please see attached copy of signed and clocked Form 4 and Order. I have also mailed a copy to all listed on the Form 4.
Thanks,
Sharon

From: Carter, Weyman [mailto:WCarter@mcnair.net]
Sent: Friday, December 12, 2014 4:05 PM
To: Winstead, Sharon
Cc: Rodney Pillsbury; 'Alexander Hray, Jr.'
Subject: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

I have attached a proposed order and a Form 4 from the hearing held yesterday. The proposed order includes additional language that Judge Cooper requested. I and Mr. Pillsbury agree on the form and content of the proposed order.



Weyman C. Carter
Shareholder
wcarter@mcnair.net

McNair Law Firm, P.A.
Greenville Office Poinsett Plaza, 104 South Main Street | Suite 700 | Greenville, SC 29601
864 271 4940 Main | 864 271 4015 Fax
Mailing Post Office Box 447 | Greenville, SC 29602

2025 RELEASE UNDER E.O. 14176

VCard | Bio URL | Web site

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Appellate Case Number 2015-000157

Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A.,
successor-by-merger to
Wachovia Bank, N.A.,

Respondent,

v.

Fallon Properties South
Carolina, LLC, Timothy R.
Fallon, Susan C. Fallon,
Fallon Luminous Products
Corporation, G. E. Business
Capital Corporation, formerly
Transamerica Business Capital
Corporation, FSD Repurchase
Solutions, LLC and South
Carolina Department of
Revenue,

Defendants,

Of Whom Fallon Properties
South Carolina, LLC, Timothy
R. Fallon, Susan C. Fallon are
the,

Appellants.

RETURN TO MOTION TO DISMISS

Appellants respectfully oppose the Respondent's Motion to Dismiss. This return is based on the arguments set forth herein and upon the exhibits attached. Appellants assert that the notice of appeal (Notice) was served and filed timely and that the transmission of an email from the trial court, or the receipt of the same, does not constitute written notice of the entry of an order as required by Rule 203 SCACR.

Pursuant to the requirements of Rule 203 (b) (1) SCACR service of a notice of appeal shall be served within thirty (30) days after receipt of written notice of entry of the order or judgment. The time in which to serve notice is based upon the date of the receipt of the order, not the date the order is mailed or transmitted. In this case the order was received by Appellants' trial counsel Rodney F. Pillsbury (Pillsbury) on December 18, 2014 (Tab #1, 6 and 7). Based upon the receipt of the order on that date Pillsbury correctly calculated the last day upon which the notice of appeal (Notice) could be served as January 19, 2015 (Tab #1, 7). The Notice was served on January 15, 2015 within the time frame required (see Tab B to the Respondent's Motion). (Footnote 1)

By email dated December 19, 2014 from Pillsbury to Appellants and appellate counsel, Alexander Hray, Jr. (Hray), Pillsbury notified them that the order had been received by him and last day to serve a Notice was January 19, 2015 and the Notice was served on January 15, 2015 (Tab #1, Ex. B and Tab #2, Ex. A). Based on the date that Pillsbury had calculated the due date to serve the

1 At the time the Notice was served, Hray understood that Pillsbury had received the order on December 19, 2014 and it was later realized that the Pillsbury received the order on December 18, 2014; however, if the order was received by Pillsbury on either of these two days the last date to serve the notice of appeal would nevertheless fall on January 19, 2015. Rule 203(e)(1)(C) of the SCACR provides "**if appropriate** for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken" shall be included in the notice of appeal. (Emphasis supplied). The dispute regarding the timeliness of the service of the Notice was not known by Hray until

Notice the Notice was served four (4) days prior to the last date such was required. After service of the Notice the issue of the timeliness of the service of the Notice was raised by Respondent's trial counsel, Weyman C. Carter (Carter), by phone call to Hray and by email to Hray on January 30, 2015 (Tab #2, Ex. B).

The rules of both civil and appellate procedure adopted by our supreme court anticipate the transmission of notices and pleadings by way of hand delivery or use of the United States Postal Service (USPS). Rule 5 SCRCF and Rule 262 (b) SCRAP are, in pertinent part, identical with respect to how legal process is to be effected. Both provide that "service upon the attorney or upon a party shall be made by delivering a copy to him or by **mailing** it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this Rule means: **handing** it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein . . ." (Emphasis added).

Furthermore, Rule 77 SCRCF provides that "(i)mmediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by **first class mail** upon every party affected thereby . . . and shall make a note in the case file or docket sheet of the **mailing**. For parties proceeding in the SCE-File electronic filing system, the clerk shall serve a notice of the entry by electronically transmitting a Notice of Electronic Filing to all parties. Such mailing or electronic transmission shall not be necessary to parties who have already received notice. Such mailing or electronic transmission is sufficient notice for all purposes for which notice of the entry of an order or judgment is required by these rules; . . ." In this action the parties were not proceeding in the

after the Notice had been served.

SCE-File system and in any event the electron transmission giving rise to the Respondent's motion was made by an employ of the master's office and not from the clerk of court; therefore, that portion of Rule 77 is inapplicable.

Appellants agree with Respondent that there is no South Carolina precedent with respect to the effectiveness of notice of the entry of an order by an email transmission. The Respondent relies heavily on the case of *Canal Ins. Co. v. Caldwell*, 524 S.E.2d 416 (S.C. App. 1999); however, Respondent places more weight on the holding in *Canal* to support its position than is merited. In *Canal* an extensive amount of time had elapsed from the time that the order was rendered to when the Appellant in that case served its notice of appeal. In that case the order was dated March 17, 1997 and a form judgment entered on March 19, 1997 in which was indicated that copies had been sent to all parties. The trial counsel for that appellant wrote to opposing counsel by letter dated June 24, 1997 and inquired about the status of the final order. (*Canal* 417).

In *Canal* the attorney for the Respondent "responded via fax and mail on July 8, expressing surprise that opposing counsel had not been notified of the judgment and stating that it had been entered on March 19 as Judgment Roll Number 211763" (Emphasis added) (*Canal* at 417). In that case the court noted that the letter of opposing counsel, in addition to being faxed, had also been mailed. Also in the *Canal* case there existed a very long period between the dates of rendering of the order and the service of the notice of appeal. The *Canal* court calculated that the date notice of appeal should have been served was August 1997 and one wasn't filed until March 17, 1998. In the present case the time differential between when the Respondent contends the Notice should have been served and when it was served is one (1) day. The court in *Canal* held that there was no question that he (appellant's attorney) received written notice of entry of the judgment, including the

judgment roll number, from opposing counsel on July 8, 1997 (Canal at 418). The court in *Canal* however did not specifically rule that service by fax constituted receipt by the attorney on the date of transmission. The facts as recited by the court in *Canal* do not provide a full explanation and leaves to conjecture regarding other facts may have been involved; it is not stated one way or the other by the court in *Canal* whether the appellant's attorney disputed (1) whether he in fact had received the faxed letter or, if he had received it, (2) its effectiveness as receipt of notice of entry of an order. The *Canal* court didn't explicitly state that a fax transmittal constituted the receipt by counsel of the notice of entry of an order of filing as required by Rule 203 SCACR and certainly that holding should not be extrapolated to be construed that a transmission of an order or notice of entry of order via email to counsel of record meets that requirements of Rule 203 SCACR. [Ultimately the *Canal* case was determined on its merits and not with regards to the timeliness of the appeal.]

Respondent cites *Ackerman v. 3-V Chemical, Inc.*, 562 S.E.2nd 613 (2002) in support of its motion. In *Ackerman* the court held that under Rule 59 SCRCR the receipt of the Form 4 was written notice of entry of the order which commenced the running of the time in which to file a motion to reconsider. Appellants concede that the mere receipt of a Form 4, not accompanied by a signed order, is sufficient to commence the running of the thirty (30) days in which to serve the Notice; but the issues raised by the Respondent's motion and this return has to do with the method of how the notice of filing given and what constitutes receipt a prescribed by the Rules not whether a Form 4 or a copy of the signed order has to be supplied. In this case the date of receipt by Pillsbury of the Form 4 and the order occurred simultaneously. (Attachment #1) The *Ackerman* case did not address receipt by a certain method of transmission rather what is to be transmitted as the notice of entry.

If the supreme court wished to permit other methods, such as email, to be utilized to

constitute receipt then the supreme court could adopt rules specifically making that method allowable, but it has not.

In the case of *White v South Carolina Dep't of Health & Env'tl. Control*, 708 S.E.2nd 812 (SC App. 2011) the appellate counsel undeniably received an email copy of the decision of the ALC but the counsel maintained that Rule 203(b)(6) contemplates receipt of the decision through proper service by mail or hand delivery and that the applicable rules do not authorize service of the decision by email. (*White* at 815) Accordingly, the thirty-day period in which to file a notice of appeal did not commence on the day that counsel received the decision via e-mail. Respondent in its motion attempts to make a distinction in this case as opposed to the *White* case in that the *White* case fell under rule 203 (b) (6) requiring the receipt of the administrative law decision rather than receipt of a written notice of entry of an order. However, that distinction is invalid. The issue in this case is, as in *White*, whether receipt of the decision by counsel via email was met the requirement of the rule. In *White* under the ALR the decision was to be transmitted to trigger the running of the time to serve a notice of appeal, and in that case it was undisputed that the decision actually was provided by email prior to its mailing, as in this case. Nevertheless, the court in *White* held that such a notice was not in compliance with the Rules and held that the appeal was timely.

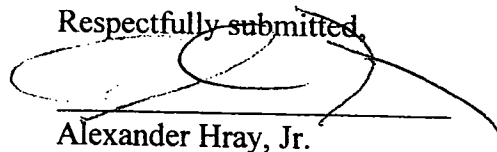
CONCLUSION

The court rules cited in this Return contemplate that legal process is to be handled in basically one of two ways, either via the United States Postal Service or hand delivery. The *Canal* case does not directly address the effectiveness of receipt via fax and the facts of that case, especially with the length of delay in serving the notice of appeal, lie in sharp contrast to the facts of this case. Likewise the issue in the *Ackerman* is not applicable to the issues in this case in that that case dealt

with what type document was received by counsel and not how it was transmitted. The *White* case cited by Respondent did involve the receipt of decision by way of an email transmission; however, the *White* case is, if anything, supportive of the Appellants' position that an email transmission is not effective as receipt of a notice of entry of order. For the reasons given, the Respondent's Motion to Dismiss the Appeal should be DENIED.

March 30, 2015

Respectfully submitted,



Alexander Hray, Jr.
389 E. Henry St., Suite 107
Spartanburg, South Carolina 29302
(864) 342-1111
Fax: (864) 342-1113
Attorney for Appellants

EXHIBIT 1

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Appellate Case Number 2015-000157

Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A.,
successor-by-merger to
Wachovia Bank, N.A.,

Respondent,

v.

Fallon Properties South
Carolina, LLC, Timothy R.
Fallon, Susan C. Fallon,
Fallon Luminous Products
Corporation, G. E. Business
Capital Corporation, formerly
Transamerica Business
Capital Corporation, FSD
Repurchase Solutions, LLC
and South Carolina
Department of Revenue,

Defendants,

Of Whom Fallon Properties
South Carolina, LLC, Timothy
R. Fallon, Susan C. Fallon are
the,

Appellants.

AFFIDAVIT OF RODNEY PILLSBURY

PERSONALLY APPEARED before me Rodney F. Pillsbury, who first being duly sworn,
does depose and state as follows:

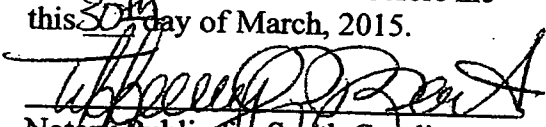
1. I was the trial attorney for the Appellants in the proceedings before the Master-in-Equity on December 11, 2014 at which the Master ruled in favor of the Respondent and directed the attorney for the Respondent, Weyman C. Carter ("Carter"), to revise the proposed order Carter had submitted at the time of the proceeding and to send the revised order to me.
2. The revised order was sent to me by Carter via email transmission for my review and approval.
3. As set forth in paragraph 4 of the Affidavit of Carter filed with Respondent's motion I did receive, as a copy recipient, an email from Sharon Winstead, administrative assistant to the master, the date of transmission shown thereon being December 15, 2014 at 2:48 P.M.; however, do not have an independent recollection of when this email was received on my computer or on what date I had opened this email.
4. My office policy is to open mail received from the United States Postal Service (USPS) upon its receipt in my office and to place a date stamp on the contents of the USPS mail.
5. The date stamped on the contents of mail received from the USPS corresponds with the date mail is received.
6. Attached as Exhibit A hereto is a true copy of the Form 4 (Form 4) and attached order I had received from the USPS with respect to this proceeding and on the bottom right hand corner is stamped "Received December 18, 2014" which is the stamp placed thereon by my office.
7. On December 19, 2014, the day after the receipt of this Form 4 from the USPS, I notified my Appellant, Timothy R. Fallon, and Appellants' appeal attorney, Alexander Hray, Jr., both by email, that I had received the order and indicated that the last day on which to file an

appeal in this proceeding was January 19, 2015, a true copy of this email being attached hereto as Exhibit B.

FURTHER AFFLIANT SAYETH NOT.


Rodney F. Pillsbury

Sworn to and subscribed before me
this 30th day of March, 2015.


Notary Public for South Carolina

My commission expires: 10/18/21

COPY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-42-4430

Wells Fargo Bank, N.A.

Fallon Properties South Carolina, LLC., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Weyman C. Carter

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Order Denying Petition for Appraisal

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : This is a foreclosure action

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Wells Fargo Bank, N.A.	Fallon Properties South Carolina, LLC, Timothy R. Fallon, and Susan C. Fallon	N/A-deficiency judgment already entered

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Master-in-Equity

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Weyman C. Carter
P.O. Box 447
Greenville, SC 29602

Rodney F. Pillsbury
Pillsbury & Read, P.A.
1204-A East Washington Street
Greenville, SC 29601

Attorney for Fallon Properties South
Carolina, LLC,
Timothy R. Fallon and Susan C. Fallon

Patrick Clisham
ENGELMAN BERGER, PC
3636 North Central Avenue
Suite 700
Phoenix, Arizona 85018
Attorney for Fallon Luminous Products
Corporation

Barry T. Mehlman
LOEB & LOEB LLP
345 Park Avenue
New York, NY 10154
Attorney for FSD Repurchase Solutions

GE Business Capital Corporation, formerly
Transamerica Business Capital Corporation
c/o CT Corporation, Registered Agent
2 Office Park Court, Suite 103
Columbia, SC 29223

Milton G. Kimpson
South Carolina Department of Revenue
Post Office Box 12265
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

PRO SE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

) IN THE COURT OF COMMON PLEAS
) C/A No. 2010-CP-42-4430

C/A No. 2010-CP-42-4430

[illegible]

**ORDER DENYING PETITION
FOR APPRAISAL**

1

1

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SPARTANBURG COUNTY
2014 DEC 15 PM 2:21
M. HOPE ELACHO

Defendants
221
timely filed

governed by

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M
(45)

(B) Except in any real estate foreclosure proceeding relating to a dwelling place, as defined in Section 12-37-250, or to a consumer credit transaction, as defined in Section 37-1-301(11), a defendant against whom a personal judgment may be taken on a real estate secured transaction may waive the appraisal rights as provided by this section if the debtors, makers, borrowers, and/or guarantors are notified in writing before the transaction that a waiver of appraisal rights will be required and upon signing a statement during the transaction similar to the following:

"The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY."

This waiver may be in any document relating to the transaction; however, the required language must be on a page containing the signature of the person making the waiver and the capitalized sentence must be underlined, in capital letters, or disclosed in another prominent manner.

S.C. Code Ann. § 29-3-680.

Wells Fargo relies upon a Waiver of Appraisal Rights dated February 15, 2007 bearing the signatures of Timothy R. Fallon as sole member and sole manager of the borrower/mortgagor Fallon Properties South Carolina, LLC and of the guarantors Timothy R. Fallon and Susan C. Fallon. The Waiver of Appraisal Rights meets the requirements of Section 29-3-680(B) in that the language contained therein is the same as the sample statement contained in the statute, including the capitalization of the waiver language, and the signatures of the borrower and guarantor appear on the same page as the required language.

The petition does not assert that the foreclosure action relates to a dwelling place or to a consumer credit transaction such that a waiver would not be allowed under the statute. The only

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SPARTANBURG COUNTY
2014 DEC 15 PM 2:21
M. HOPE ELACRE

#2

remaining issue is the requirement that the petitioners be "notified in writing before the transaction that a waiver of appraisal rights will be required...." Wells Fargo has provided ample evidence of such notice.

First, the Waiver of Appraisal Rights itself contains a statement whereby the borrower and guarantors "acknowledge[d] receipt of written notification before this transaction that signing of a waiver of appraisal rights would be required during this transaction". Second, Wells Fargo tendered the testimony of Ethan Burroughs, the Spartanburg Market President of Wells Fargo Bank, that Wachovia Bank's standard practice at the time was for the loan administration staff to generate a written notice that a waiver will be required, and to forward that notice to the loan officer who in turn sends the notice to the obligor. This notice is typically mailed to the borrower a week or so prior to closing. Mr. Burroughs testified that he did not have a specific recollection of sending the notice in connection with this loan, nor was there any document in the loan file confirming this. Mr. Burroughs testified that because the obligor is not required to sign this notice, Plaintiff does not retain a copy of it as part of the loan file. Tim Fallon testified that he did not receive any documents prior to receiving the loan closing package.

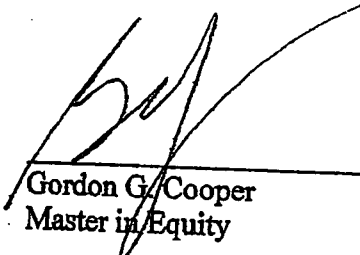
While there is a dispute in the testimony about whether pre-closing notice was given to the Petitioners in this case, the Court finds that documents provided in the loan closing package sent to Petitioners' attorney prior to closing fulfill the statutory requirement. In this transaction, the loan documents were prepared by Wachovia Bank and transmitted to the borrower's attorney by letter dated February 12, 2007 which was three days prior to the execution date of the documents. The Waiver of Appraisal Rights was one of the documents transmitted to the borrower's attorney. The delivery of the Waiver to the obligors' attorney was notice to the obligors that the waiver would be required as part of the mortgage loan transaction.

#3


(47)

Since Wells Fargo has demonstrated to the satisfaction of the court that it obtained a waiver of appraisal rights from the petitioners that comports with the requirements of the applicable statute, the court finds that the waiver should be given its effect and that the court must deny the Petition for Order of Appraisal.

It is therefore ORDERED, that the Petition for Order of Appraisal filed by the Defendants Timothy R. Fallon and Susan C. Fallon is denied.


Gordon G. Cooper
Master in Equity

2014 DEC 15 PM 2:21
M. HOPE BLACKLEY

CLERK OF COURT
SPARTANBURG COUNTY

December 15, 2014

#4


EXHIBIT B

Alexander Hray, Jr.

From: Rodney Pillsbury <RPillsbury@prlawpa.com>
Sent: Friday, December 19, 2014 10:05 AM
To: timfallon@ftwoutfitters.com; 'Alexander Hray, Jr.'
Cc: Tiffany Davenport
Subject: Order from Petition for Appraisal
Attachments: sharp@prlawpa.com_20141218_160359.pdf
Importance: High

I received the signed order denying our petition for appraisal.

If we are going to appeal, the notice must be filed within 30 days (i.e., on or before January 19, 2015).

I know we informally discussed options following the hearing. But we need to have a firm decision by the 1st week of January.

If you would like to do a conference call to discuss, I can arrange one.

Let me know.

I will not file an notice of intent to appeal unless we decide to proceed with the appeal.

Rodney F. Pillsbury, Esq.
Pillsbury & Read, P.A.
1204 E. Washington St.
Greenville, SC 29601
(w) 864-241-9828
(f) 864-241-9818
(e) rpillsbury@prlawpa.com

NOTICE:

The information transmitted is intended only for the person or entity to which it is addressed and contain confidential and/or legally privileged material. The Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, which governs this e-mail, prohibits unauthorized interception, unauthorized use, and unauthorized disclosure of an e-mail, of the contents of an e-mail, and of any attachments to the e-mail. 18 U.S.C. §§ 2510-2521. The Act provides for civil remedies, including an award of damages, in cases of unauthorized interception, unauthorized use, or unauthorized disclosure of an e-mail, of the contents of an e-mail, or of any attachments to the e-mail. Recipients who reasonably should know they were not intended to receive this electronic communication may be to the subject the penalties and provisions of this Act.

-----Original Message-----

From: sharp@prlawpa.com [<mailto:sharp@prlawpa.com>] On Behalf Of sharp@
Sent: Thursday, December 18, 2014 4:04 PM
To: Rodney Pillsbury
Subject: Scanned image from MX-M283N

Reply to: sharp@prlawpa.com <sharp@prlawpa.com> Device Name: Not Set Device Model: MX-M283N

Location: Not Set

File Format: PDF MH(G3)

Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.

Adobe(R)Reader(R) can be downloaded from the following URL:

Adobe, the Adobe logo, Acrobat, the Adobe PDF logo, and Reader are registered trademarks or trademarks of Adobe Systems Incorporated in the United States and other countries.

<http://www.adobe.com/>

EXHIBIT 2

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Appellate Case Number 2015-000157

Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A.,
successor-by-merger to
Wachovia Bank, N.A.,

Respondent,

v.

Fallon Properties South
Carolina, LLC, Timothy R.
Fallon, Susan C. Fallon,
Fallon Luminous Products
Corporation, G. E. Business
Capital Corporation, formerly
Transamerica Business
Capital Corporation, FSD
Repurchase Solutions, LLC
and South Carolina
Department of Revenue,

Defendants,

Of Whom Fallon Properties
South Carolina, LLC, Timothy
R. Fallon, Susan C. Fallon are
the,

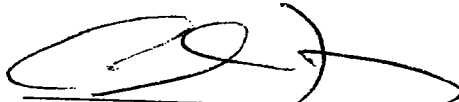
Appellants.

AFFIDAVIT OF ALEXANDER HRAY, JR.

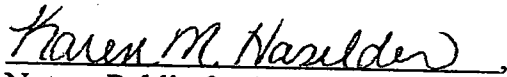
PERSONALLY APPEARED before me Alexander Hray, Jr., who first being duly sworn,
does depose and state as follows:

1. I am the Appellate attorney for the Appellants.
2. On December 19, 2014 I was copied on an email along with Timothy R. Fallon sent by Rodney F. Pillsbury (Pillsbury) in which Pillsbury noted that he had received the signed order and that the last day on which to file an appeal in this proceeding was January 19, 2015, a true copy of this email being attached hereto as Exhibit A.
3. I served the notice of appeal on January 15, 2015.
4. On January 30, 2015 I received a phone call from Weyman C. Carter (Carter), trial attorney for the Respondent, in which Carter informed me that the serve of the notice of appeal may not be timely and Carter followed up his phone call to me via email, the same being attached hereto as Exhibit B.

FURTHER AFFIANT SAYETH NOT.


Alexander Hray, Jr., Attorney

Sworn to and subscribed before me
This 30th day of March, 2015.



Notary Public for South Carolina

My commission expires: 11/24/2024

EXHIBIT A

Alexander Hray, Jr.

From: Rodney Pillsbury <RPillsbury@prlawpa.com>
Sent: Friday, December 19, 2014 10:05 AM
To: timfallon@ftwoutfitters.com; 'Alexander Hray, Jr.'
Cc: Tiffany Davenport
Subject: Order from Petition for Appraisal
Attachments: sharp@prlawpa.com_20141218_160359.pdf

Importance: High

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If you would like to do a conference call to discuss, I can arrange one.

Let me know.

I will not file an notice of intent to appeal unless we decide to proceed with the appeal.

Rodney F. Pillsbury, Esq.
Pillsbury & Read, P.A.
1204 E. Washington St.
Greenville, SC 29601
(w) 864-241-9828
(f) 864-241-9818
(e) rpillsbury@prlawpa.com

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-----Original Message-----

From: sharp@prlawpa.com [<mailto:sharp@prlawpa.com>] On Behalf Of sharp@
Sent: Thursday, December 18, 2014 4:04 PM
To: Rodney Pillsbury
Subject: Scanned image from MX-M283N

Reply to: sharp@prlawpa.com <sharp@prlawpa.com> Device Name: Not Set Device Model: MX-M283N

EXHIBIT B

Alexander Hray, Jr.

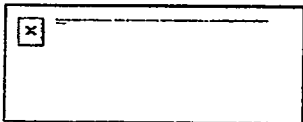
From: Carter, Weyman <WCarter@mcnair.net>
Sent: Friday, January 30, 2015 3:46 PM
To: Hray Alexander Jr. (lexhray@bellsouth.net)
Cc: Rodney Pillsbury; Widener, Robert
Subject: FW: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)
Attachments: image0006.pdf

Lex:

Thanks for returning my call. I am forwarding an email message from Judge Cooper's secretary on December 15, 2014 transmitting an image of the signed, filed order and Form 4 to me and to Mr. Pillsbury.

I marked January 14, 2015 (the 30th day from this message) on my calendar as the deadline for service of a Notice of Appeal. The Notice was served on the 15th, so it seemed to me that the email transmittal of the message raises an issue as to the timeliness of the appeal.

I am copying Robert Widener, an appellate practitioner in my Firm's Columbia office, on this message.



Weyman C. Carter
Shareholder
wcarter@mcnair.net

McNair Law Firm, P.A.
Greenville Office Poinsett Plaza, 104 South Main Street | Suite 700 | Greenville, SC 29601
864 271 4940 Main | 864 271 4015 Fax
Mailing Post Office Box 447 | Greenville, SC 29602
VCARD | **Bio URL** | **Web site**

From: Winstead, Sharon [mailto:swinstead@spartanburgcounty.org]
Sent: Monday, December 15, 2014 2:48 PM
To: Carter, Weyman
Cc: Rodney Pillsbury
Subject: RE: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

Gentlemen,

Please see attached copy of signed and clocked Form 4 and Order. I have also mailed a copy to all listed on the Form 4.

Thanks,
Sharon

From: Carter, Weyman [mailto:WCarter@mcnair.net]
Sent: Friday, December 12, 2014 4:05 PM
To: Winstead, Sharon
Cc: Rodney Pillsbury; 'Alexander Hray, Jr.'
Subject: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

I have attached a proposed order and a Form 4 from the hearing held yesterday. The proposed order includes additional language that Judge Cooper requested. I and Mr. Pillsbury agree on the form and content of the proposed order.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Appellate Case No. 2015-000157

Lower Court Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A., successor-by-merger to
Wachovia Bank, N.A., Respondent, ... Respondent,

v.

Fallon Properties South Carolina, LLC, Timothy R. Fallon,
Susan C. Fallon, Fallon Luminous Products Corporation,
G. E. Business Capital Corporation, formerly Transamerica
Business Capital Corporation, FSD Repurchase Solutions, LLC,
and South Carolina Department of Revenue, ... Defendants,

OF WHOM Fallon Properties South Carolina, LLC,
Timothy R. Fallon, and Susan C. Fallon are Appellants.

MOTION TO DISMISS APPEAL

Respondent respectfully moves to dismiss this appeal for failure to timely serve the Notice of Appeal within thirty (30) days after the receipt of written notice of the entry of the appealed order as required by Rule 203(b)(1) and (b)(4), SCACR. This motion is based upon the grounds set forth herein and upon the exhibits attached hereto. The critical inquiry is whether an email from the trial court is written notice of the entry of an order.

INTRODUCTION

This is a commercial mortgage foreclosure case. The master granted foreclosure and sold the mortgaged property. Thereafter, the Appellants timely petitioned for an order of appraisal under S.C. Code Ann. § 29-3-680 (Rev. 2007). Respondent opposed the petition upon the ground that the Appellants had waived their right to petition for an order of appraisal under the procedures set forth in § 29-3-680(B). The master held an evidentiary hearing on the petition and, on December 15, 2014, the master entered an order denying the petition, finding that the Appellants had waived any right to petition for an order of appraisal. (Tab A at 6-9).

The Appellants served their Notice of Appeal on January 15, 2015, which was thirty-one (31) days after the entry of the appealed order. (Tab B). As shown below, the Appellants received written notice of the entry of the appealed order on December 15, 2014. Thus, the Appellants were required to serve their Notice of Appeal no later than Wednesday, January 14, 2015.

FACTS

On December 15, 2014, the trial court emailed the trial attorneys for both parties, and this email stated in full:

Gentlemen:

Please see attached copy of *signed and clocked Form 4 and Order*.
I have also mailed a copy to all listed on the Form 4.

Thanks,
Sharon

(Tab A at 3)(emphasis added).¹ Signed and entered copies of the Form 4 and the appealed order were attached to the email. (Tab A at 4-5; 6-9). Weyman C. Carter, trial counsel for the Respondent, received this email on December 15, 2014. (Tab A at 2, ¶ 4). Rodney Pillsbury, trial

¹ "Sharon" is Sharon Winstead, the administrative assistant to the master who schedules hearings and handles submissions to the master, including proposed orders.

counsel for the Appellants, would have received the email on the same date. Thus, the controlling inquiry is whether the email from the trial court constitutes written notice of the entry of the appealed order. If so, the Appellants' appeal is untimely and must be dismissed.

ARGUMENT

The timely service of the notice of appeal is an absolute jurisdictional requirement and, upon the failure of an appellant to timely serve the notice, an appellate court must dismiss the appeal. *Elam v. South Carolina Dep't of Transp.*, 602 S.E.2d 772, 775 (S.C. 2004). Research reveals no case directly on point with the issue presented in this motion. The cases discussed below, however, compel the conclusion that the appeal must be dismissed.

In *Canal Ins. Co. v. Caldwell*, 524 S.E.2d 416 (S.C. App. 1999), this Court held that the time to serve a notice of appeal commenced on the date that the respondent's attorney faxed a letter to the appellant's counsel advising that the appealed order had been entered. *Id.* at 417-418. The appellant did not serve the notice of appeal on or before the thirtieth day after receipt of the fax and, therefore, this Court held it did not have jurisdiction over the appeal. *Id.* at 418.

In *Ackerman v 3-V Chemical, Inc.*, 562 S.E.2d 613, 615 (2002), the Supreme Court held that the time to make a post-trial motion commenced when the appellant's counsel received a Form 4 from the court stating that an order had been entered, even though the order was not attached to the Form 4. The Court held that receipt of the Form 4 was "written notice of the entry of the order" and, therefore, the appellant's post-trial motion was untimely. *Id.* Thus, the trial court did not have jurisdiction to issue an order on the motion. *Id.*

In *White v. South Carolina Dep't of Health & Envtl. Control*, 708 S.E.2d 812 (S.C. App. 2011), this Court held that the time to serve the notice of appeal from an ALC order did not

commence when the appellant's attorney received an email from a party with a copy of the filed order attached to the email. This Court distinguished *Canal* and *Ackerman*, both *supra*, as follows:

1. *Canal* and *Ackerman* involved appeals under Rule 203(b)(1), SCACR, which requires service of the notice of appeal within 30 days after receiving "written notice of the entry of the order." In contrast, *White* involved an appeal from an ALC order under Rule 203(b)(6), SCACR, which requires service of the notice of appeal within 30 days after "receipt of the decision." *Id.* at 815-816.
2. The ALC rules contemplated service of the ALC decision "by the ALC via the United States Postal Service and not by a party via electronic mail." *Id.* at 815 (underlining in original).

Based on these differences, this Court held that *Canal* and *Ackerman* did not control in *White*, and that the appellant timely served the notice of appeal within 30 days after receiving the decision from the ALC. *Id.* at 816.

Here, the appeal is from an order by a master-in-equity under Rule 203(b)(4), SCACR, which provides in full as follows: "The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1)." Thus, as with *Canal* and *Ackerman*, this appeal involves receipt of "written notice of the entry of the order" as opposed to "receipt of the decision" under Rule 203(b)(6). Moreover, and unlike *White*, the email in this appeal came from the trial court, not a party. Finally, the email from the trial court provided notice of the entry of the order in three separate ways:

1. The body of the email notified the appellant that the order had been entered as did the fax in *Canal*.

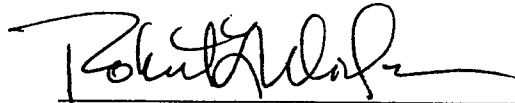
2. A signed and filed copy of the Form 4 was attached to the email and gave the same notice of entry of the order that the Supreme Court found sufficient in *Ackerman*.
3. Finally, a signed and filed copy of the order itself was also attached to the email.

In short, the Appellants received written notice of the entry of the order on December 15, 2014. Thus, they had to serve their notice of appeal on or before January 14, 2015. They failed to do so and, therefore, this appeal must be dismissed for lack of jurisdiction.

CONCLUSION

There is no meaningful difference between the email in this case and the fax relied upon by this Court in *Canal, supra*, except that the email in this case gave far more notice of entry than the fax in *Canal*. Here, like the fax in *Canal*, the body of the email gave notice that the appealed order had been entered. Here, unlike the fax in *Canal* and the email in *White*, the email came from the trial court, not a party. Here, unlike the fax in *Canal*, signed and filed copies of the Form 4 and the appealed order were attached to the email. For these reasons, and for the reasons set forth above, it is respectfully submitted that this appeal must be dismissed.

Respectfully Submitted,



Robert L. Widener
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Weyman C. Carter
McNAIR LAW FIRM
Post Office Box 447
Greenville, South Carolina 29602
(864) 271-4940

March 20, 2015
Columbia, SC

ATTORNEYS FOR RESPONDENT

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Appellate Case No. 2015-000157
Lower Court Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A., successor-by-merger to
Wachovia Bank, N.A., Respondent, ...Respondent,

v.

Fallon Properties South Carolina, LLC, Timothy R. Fallon,
Susan C. Fallon, Fallon Luminous Products Corporation,
G. E. Business Capital Corporation, formerly Transamerica
Business Capital Corporation, FSD Repurchase Solutions, LLC,
and South Carolina Department of Revenue, ... Defendants,

OF WHOM Fallon Properties South Carolina, LLC,
Timothy R. Fallon, and Susan C. Fallon are..... Appellants.

AFFIDAVIT OF WEYMAN C. CARTER

PERSONALLY APPEARED BEFORE ME, Weyman C. Carter, who first being duly sworn, does
depose and state as follows:

1. I was the trial attorney of record for the Respondent in the proceedings before the
Master-in-Equity on December 11, 2014. At this hearing, the master ruled in favor of the
Respondent and directed me to make certain changes to the proposed order that I had submitted
prior to the hearing, and to send the revised order to Appellants' trial counsel (Mr. Pillsbury).

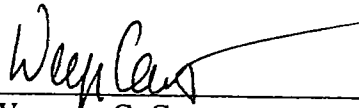
2. On December 11 and 12, 2014, I exchanged drafts and comments with Mr. Pillsbury via email. That exchange resulted in a revised proposed order acceptable to both of us.

3. On December 12, 2014, I emailed the final proposed order and proposed Form 4 to Sharon Winstead, the master's administrative assistant, copying Mr. Pillsbury on this email. (See email at p. 3, *infra*).

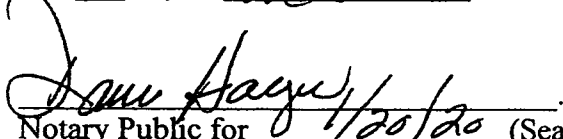
4. On December 15, 2014, I received Ms. Winstead's reply to all email to my December 12 email. Ms. Winstead's email advised that the Form 4 and Order had been signed and entered, and she attached signed and filed copies of the Form 4 and Order. Mr. Pillsbury was copied on this email. (See email at p. 3, *infra*; see print outs of the attached Form 4 and Order at pp. 4-9, *infra*).

5. On January 30, 2015, after receiving the Notice of Appeal by the Appellants, I emailed the Appellants' appellate counsel (Mr. Alexander) with a copy to Mr. Pillsbury. In this email, I forwarded the December 15, 2014 email from Ms. Winstead (together with copies of the Form 4 and Order) and raised the question about the timeliness of the Notice of Appeal. (See email at p. 10, *infra*). Mr. Pillsbury replied by email on January 30, attaching a copy of the signed order that he received in the U.S. Mail, asserting that he received this order on December 18, 2014, and asserting that the Notice of Appeal was timely. (See email at p. 10, *infra*).

FURTHER AFFIANT SAYETH NOT.


Weyman C. Carter

Sworn to and subscribed before me
this 17th day of March, 2015.


Notary Public for 1/20/20 (Seal)

Carter, Weyman

From: Winstead, Sharon <swinstead@spartanburgcounty.org>
Sent: Monday, December 15, 2014 2:48 PM
To: Carter, Weyman
Cc: Rodney Pillsbury
Subject: RE: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)
Attachments: image0006.pdf

Categories: DM, #322559 : 030193 : 00051 : WCARTER

Gentlemen,
Please see attached copy of signed and clocked Form 4 and Order. I have also mailed a copy to all listed on the Form 4.
Thanks,
Sharon

From: Carter, Weyman [mailto:WCarter@mcnair.net]
Sent: Friday, December 12, 2014 4:05 PM
To: Winstead, Sharon
Cc: Rodney Pillsbury; 'Alexander Hray, Jr.'
Subject: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

I have attached a proposed order and a Form 4 from the hearing held yesterday. The proposed order includes additional language that Judge Cooper requested. I and Mr. Pillsbury agree on the form and content of the proposed order.



Weyman C. Carter
Shareholder
wcarter@mcnair.net

McNair Law Firm, P.A.
Greenville Office Poinsett Plaza, 104 South Main Street | Suite 700 | Greenville, SC 29601
864 271 4940 Main | 864 271 4015 Fax
Mailing Post Office Box 447 | Greenville, SC 29602
VCard | Bio URL | Web site

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-42-4430

Wells Fargo Bank, N.A.

Fallon Properties South Carolina, LLC., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Weyman C. Carter

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Order Denying Petition for Appraisal

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : This is a foreclosure action

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Wells Fargo Bank, N.A.	Fallon Properties South Carolina, LLC, Timothy R. Fallon, and Susan C. Fallon	N/A-deficiency judgment already entered

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Master-in-Equity

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Weyman C. Carter
P.O. Box 447
Greenville, SC 29602

Rodney F. Pillsbury
Pillsbury & Read, P.A.
1204-A East Washington Street
Greenville, SC 29601

*Attorney for Fallon Properties South
Carolina, LLC,
Timothy R. Fallon and Susan C. Fallon*
Patrick Clisham
ENGELMAN BERGER, PC
3636 North Central Avenue
Suite 700
Phoenix, Arizona 85012
*Attorney for Fallon Luminous Products
Corporation*

Barry T. Mehlman
LOEB & LOEB LLP
345 Park Avenue
New York, NY 10154
Attorney for FSD Repurchase Solutions

GE Business Capital Corporation, formerly
Transamerica Business Capital Corporation
c/o CT Corporation, Registered Agent
2 Office Park Court, Suite 103
Columbia, SC 29223

Milton G. Kimpson
South Carolina Department of Revenue
Post Office Box 12265
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

PRO SE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

#1

(B) Except in any real estate foreclosure proceeding relating to a dwelling place, as defined in Section 12-37-250, or to a consumer credit transaction, as defined in Section 37-1-301(11), a defendant against whom a personal judgment may be taken on a real estate secured transaction may waive the appraisal rights as provided by this section if the debtors, makers, borrowers, and/or guarantors are notified in writing before the transaction that a waiver of appraisal rights will be required and upon signing a statement during the transaction similar to the following:

"The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY."

This waiver may be in any document relating to the transaction; however, the required language must be on a page containing the signature of the person making the waiver and the capitalized sentence must be underlined, in capital letters, or disclosed in another prominent manner.

S.C. Code Ann. § 29-3-680.

Wells Fargo relies upon a Waiver of Appraisal Rights dated February 15, 2007 bearing the signatures of Timothy R. Fallon as sole member and sole manager of the borrower/mortgagor Fallon Properties South Carolina, LLC and of the guarantors Timothy R. Fallon and Susan C. Fallon. The Waiver of Appraisal Rights meets the requirements of Section 29-3-680(B) in that the language contained therein is the same as the sample statement contained in the statute, including the capitalization of the waiver language, and the signatures of the borrower and guarantor appear on the same page as the required language.

The petition does not assert that the foreclosure action relates to a dwelling place or to a consumer credit transaction such that a waiver would not be allowed under the statute. The only

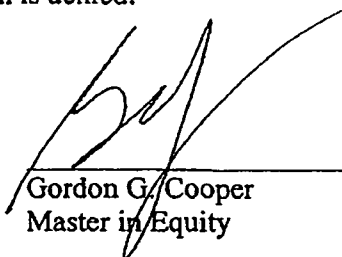
remaining issue is the requirement that the petitioners be "notified in writing before the transaction that a waiver of appraisal rights will be required...." Wells Fargo has provided ample evidence of such notice.

First, the Waiver of Appraisal Rights itself contains a statement whereby the borrower and guarantors "acknowledge[d] receipt of written notification before this transaction that signing of a waiver of appraisal rights would be required during this transaction". Second, Wells Fargo tendered the testimony of Ethan Burroughs, the Spartanburg Market President of Wells Fargo Bank, that Wachovia Bank's standard practice at the time was for the loan administration staff to generate a written notice that a waiver will be required, and to forward that notice to the loan officer who in turn sends the notice to the obligor. This notice is typically mailed to the borrower a week or so prior to closing. Mr. Burroughs testified that he did not have a specific recollection of sending the notice in connection with this loan, nor was there any document in the loan file confirming this. Mr. Burroughs testified that because the obligor is not required to sign this notice, Plaintiff does not retain a copy of it as part of the loan file. Tim Fallon testified that he did not receive any documents prior to receiving the loan closing package.

While there is a dispute in the testimony about whether pre-closing notice was given to the Petitioners in this case, the Court finds that documents provided in the loan closing package sent to Petitioners' attorney prior to closing fulfill the statutory requirement. In this transaction, the loan documents were prepared by Wachovia Bank and transmitted to the borrower's attorney by letter dated February 12, 2007 which was three days prior to the execution date of the documents. The Waiver of Appraisal Rights was one of the documents transmitted to the borrower's attorney. The delivery of the Waiver to the obligors' attorney was notice to the obligors that the waiver would be required as part of the mortgage loan transaction.

Since Wells Fargo has demonstrated to the satisfaction of the court that it obtained a waiver of appraisal rights from the petitioners that comports with the requirements of the applicable statute, the court finds that the waiver should be given its effect and that the court must deny the Petition for Order of Appraisal.

It is therefore ORDERED, that the Petition for Order of Appraisal filed by the Defendants Timothy R. Fallon and Susan C. Fallon is denied.


Gordon G. Cooper
Master in Equity

December ¹⁶5, 2014

2014 DEC 15 PM 2:21
CLERK OF COURT
CLERK OF COURT

Carter, Weyman

From: Rodney Pillsbury <RPillsbury@prlawpa.com>
Sent: Friday, January 30, 2015 4:41 PM
To: Carter, Weyman; Hray Alexander Jr. (lexhray@bellsouth.net)
Cc: Widener, Robert
Subject: RE: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)
Attachments: FILED - Order denying Petition for Appraisal - 12.15.14.pdf

Gentlemen –

I have attached the order I received which is the subject of the appeal. Please note that this order was received by my office on December 18, 2014. Pursuant to Rule 203(b)(1), the notice was timely if served on or before January 17, 2015.

Rodney F. Pillsbury, Esq.
Pillsbury & Read, P.A.
1204 E. Washington St.
Greenville, SC 29601
(w) 864-241-9828
(f) 864-241-9818
(e) rpillsbury@prlawpa.com

NOTICE:

The information transmitted is intended only for the person or entity to which it is addressed and contain confidential and/or legally privileged material. The Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, which governs this e-mail, prohibits unauthorized interception, unauthorized use, and unauthorized disclosure of an e-mail, of the contents of an e-mail, and of any attachments to the e-mail. 18 U.S.C. §§ 2510-2521. The Act provides for civil remedies, including an award of damages, in cases of unauthorized interception, unauthorized use, or unauthorized disclosure of an e-mail, of the contents of an e-mail, or of any attachments to the e-mail. Recipients who reasonably should know they were not intended to receive this electronic communication may be to the subject the penalties and provisions of this Act.

From: Carter, Weyman [mailto:WCarter@mcnair.net]
Sent: Friday, January 30, 2015 3:46 PM
To: Hray Alexander Jr. (lexhray@bellsouth.net)
Cc: Rodney Pillsbury; Widener, Robert
Subject: FW: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

Lex:

Thanks for returning my call. I am forwarding an email message from Judge Cooper's secretary on December 15, 2014 transmitting an image of the signed, filed order and Form 4 to me and to Mr. Pillsbury.

I marked January 14, 2015 (the 30th day from this message) on my calendar as the deadline for service of a Notice of Appeal. The Notice was served on the 15th, so it seemed to me that the email transmittal of the message raises an issue as to the timeliness of the appeal.

I am copying Robert Widener, an appellate practitioner in my Firm's Columbia office, on this message.



MENAIR
ATTORNEYS

Weyman C. Carter
Shareholder
wcarter@mcnair.net

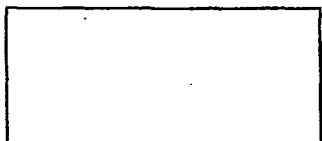
McNair Law Firm, P.A.
Greenville Office Poinsett Plaza, 104 South Main Street | Suite 700 | Greenville, SC 29601
864 271 4940 Main | 864 271 4015 Fax
Mailing Post Office Box 447 | Greenville, SC 29602
VCard | Bio URL | Web site

From: Winstead, Sharon [mailto:swinstead@spartanburgcounty.org]
Sent: Monday, December 15, 2014 2:48 PM
To: Carter, Weyman
Cc: Rodney Pillsbury
Subject: RE: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

Gentlemen,
Please see attached copy of signed and clocked Form 4 and Order. I have also mailed a copy to all listed on the Form 4.
Thanks,
Sharon

From: Carter, Weyman [mailto:WCarter@mcnair.net]
Sent: Friday, December 12, 2014 4:05 PM
To: Winstead, Sharon
Cc: Rodney Pillsbury; 'Alexander Hray, Jr.'
Subject: Proposed Order Denying Petition for Appraisal Rights (2010-CP-42-4430)

I have attached a proposed order and a Form 4 from the hearing held yesterday. The proposed order includes additional language that Judge Cooper requested. I and Mr. Pillsbury agree on the form and content of the proposed order.



Weyman C. Carter
Shareholder
wcarter@mcnair.net

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Mailing Post Office Box 447 | Greenville, SC 29602
VCard | Bio URL | Web site



EXHIBIT B

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper, Master in Equity

Case No. 2010-CP-42-4430

Wells Fargo Bank, N.A.
successor-by-merger to Wachovia
Bank, N.A.,

Respondent,

v.

Fallon Properties South Carolina,
LLC, Timothy R. Fallon, Susan
C. Fallon, Fallon Luminous
Products Corporation, G. E.
Business Capital Corporation,
formerly Transamerica Business
Capital Corporation, FSD
Repurchase Solutions, LLC and
South Carolina Department of
Revenue,

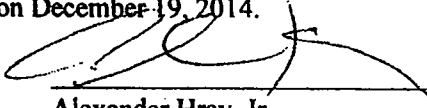
Appellants.

OF WHOM Fallon Properties
South Carolina, LLC, Timothy R.
Fallon, Susan C. Fallon are,

NOTICE OF APPEAL

Fallon Properties of South Carolina, LLC, Timothy R. Fallon and Susan C. Fallon appeal the order denying petition for appraisal of the Honorable Gordon G. Cooper dated December 15, 2014. Appellant received written notice of entry of this order on December 19, 2014.

January 15, 2015



Alexander Hray, Jr.
389 E. Henry St., Suite 107
Spartanburg, South Carolina 29302
(864) 342-1111
Fax: (864) 342-1113
Attorney for Appellants