

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-001266

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SEP 26 2016

SC Court of Appeals

PERSONAL CARE, INC.,..... Appellant,

vs.

Jerry N. Theos; URICCHIO, HOWE, KRELL,
JOHNSON, TOPOREK THEOS & KEITH, PA;
Cheryl D. Shoun; and TAYLOR, SHOUN,
BOWLEY & BYRD, LLC,..... Respondents.

**APPELLANT'S RETURN TO
JOINT MOTION TO FILE ORIGINAL PROOF OF SERVICE LATE AND
MOTION FOR 15-DAY EXTENSION OF TIME TO FILE A JOINT RETURN
TO APPELLANT'S MOTION TO AMEND APPEAL**

Thomas A. Pendarvis, J.D.
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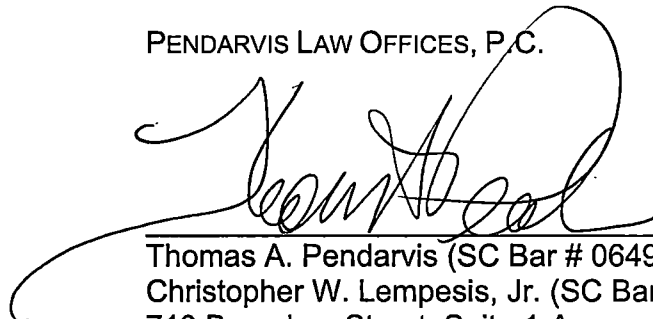
On either August 15 or 16 of 2016, Respondents filed a Motion to Dismiss the present Appeal arguing that an unannounced trial order of no consequence to the Appeal should have been included in the initial Notice of Appeal. When filing said Motion to Dismiss, Respondents did not abide the mandatory provisions of Rule 240(c)(1), SCACR, that requires a Proof of Service be filed with any motion. Appellants filed a Return to the Motion to Dismiss, arguing, among other points, that the Motion to Dismiss should be denied for Respondents' failure to include a necessary affidavit or certificate of service per Rule 240(c)(1). Along with that Return Appellants also filed a Motion for Leave to Amend the Notice of Appeal filed in this matter to address the concerns raised in Respondents' Motion to Dismiss. While this is a Return to Respondents' motion for a late-filing of a proof of service, it is important to note that Appellant's Motion for Leave to Amend is before the Court, and should be granted prior to denying Respondents' motion for late filing of the Proof of Service, which would moot Respondents' motion and allow the appeal to proceed on the merits. Such action would be in keeping with the long standing policy of the Courts of South Carolina to adjudicate issues on the merits and not technicalities. See *Micronics, Inc. v. S. Carolina Dep't of Revenue*, 345 S.C. 506, 548 S.E.2d 223, 226 (Ct. App. 2001).

If the Court is not inclined to resolve these matters as discussed above, Appellants oppose the Motion to File Original Proof of Service Late on the grounds that Respondents have failed to comply with the mandatory requirements of Rule 240(c)(1), SCACR, and have not provided a basis nor explanation for the inadvertence of Respondents referenced in the present Motion [to file late]. Without a basis or explanation of the

inadvertence that Respondents have asserted, Appellants do not have enough information to meaningfully respond to the present Motion [to file late]. Additionally, Respondents have not provided a justification founded in precedent of this Court nor the South Carolina Supreme Court that demonstrates that "inadvertence" is a basis to move for or to be granted the requested relief. Without citation for a basis in the law, the present Motion [to file late] is merely a conclusory statement without citation to authority and should, just as any conclusory statement without citation presented to this Court, be considered abandoned by this Court, with the result being that the present Motion [to file late] should be denied. See *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) (holding an issue is abandoned where the issue is not argued in the body of the brief but is presented as a short, conclusory statement without citation to authority).

Respectfully submitted,

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Beaufort, South Carolina

September 23, 2016

NTHE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2013-CP-10-1396

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SC Court of Appeals

PERSONAL CARE, INC. Appellant,

vs.

Jerry N. Theos; URICCHIO, HOWE, KRELL,
JOHNSON, TOPOREK THEOS & KEITH, PA;
Cheryl D. Shoun; and TAYLOR, SHOUN,
BOWLEY & BYRD, LLC, Respondents.

PROOF OF SERVICE

I, Thomas A. Pendarvis, certify that I have served one (1) copy of APPELLANT'S RETURN TO JOINT MOTION TO FILE ORIGINAL PROOF OF SERVICE LATE AND MOTION FOR 15-DAY EXTENSION OF TIME TO FILE A JOINT RETURN TO APPELLANT'S MOTION TO AMEND APPEAL, by depositing a copy of the same in the United States Mail, postage prepaid, on the 23th day of September, 2016 addressed to:

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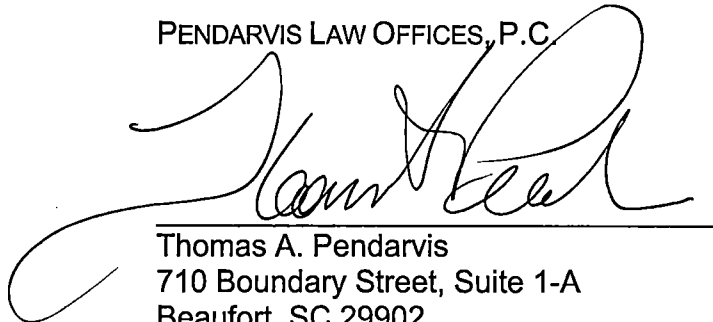
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Respectfully submitted,

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September 23, 2016

PENDARVIS LAW OFFICES, PC



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SC Court of Appeals

Jenny Abbott Kitchings, Clerk of Court
COURT OF APPEALS FOR THE STATE OF SOUTH CAROLINA
PO Box 11629
Columbia, SC 29211

**Re: PERSONAL CARE, INC., Appellant v. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC, Respondents
Appellate Case No. 2016-001266**

Dear Ms. Kitchings:

Enclosed for filing please find an original and seven copies of APPELLANT'S RETURN TO JOINT MOTION TO FILE ORIGINAL PROOF OF SERVICE LATE AND MOTION FOR 15-DAY EXTENSION OF TIME TO FILE A JOINT RETURN TO APPELLANT'S MOTION TO AMEND APPEAL along with PROOF OF SERVICE. Please file the original and six copies, and please return clocked copy to me in the enclosed postage prepaid, self addressed envelope.

By copy of this letter I am serving counsel with same. If you have any questions or would like to discuss this, please feel free to call or e-mail me.

Thank you in advance for your attention to this matter.

With kind regards, I remain

Sincerely,

Sara E. Wood

/sew

Enclosures

cc w/encls: M. Dawes Cooke, Jr., J.D.
Phillip S. Ferderigos, J.D.
George J. Kefalos, J.D.
Oana D. Johnson, J.D.
Richard A. Farrier, Jr., J.D.

ec w/encls: Bernard Cignavitch

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The Honorable Jenny Abbott Kitchings
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