

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable Thomas A. Russo

Appellate Case No: 2016-000505

RECEIVED

SEP 28 2016

SC Court of Appeals

Tracy Fulmore Appellant,

v.

Julie Smith Respondent.

RETURN TO MOTION TO DISMISS THE APPEAL

This matter is before the Court by way of Respondent's Motion to Dismiss the Appeal with prejudice based on the Appellant's alleged failure to timely perfect the appeal. Appellant requests this honorable court to dismiss the Motion to Dismiss the Appeal and proceed with appellate review of this matter based on the merits.

The underlining case in this matter was filed by Appellant in Magistrate Court on July 3, 2014, for damages relating to a breach of a commercial lease agreement. Respondent filed an answer and counterclaim on July 15, 2014. Appellant responded to the counterclaim on July 28, 2014. A trial was held on the matter on August 27, 2014. At the conclusion of the trial, Magistrate Judge Andy Surles announced that he was awarding Respondent her requested damages of \$7,500 (seven thousand five hundred dollars) minus \$2,200 (two thousand two hundred dollars) already paid by Appellant, plus cost of \$10 (ten dollars) for the filing of Respondent's counterclaim.

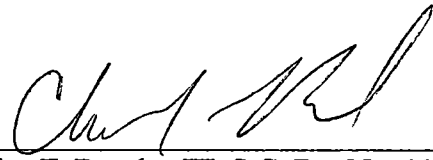
Appellant sought help with the appeal of this matter after the trial. Based on a request by the attorney for Appellant, the Magistrate Court reduced the ruling to writing and sent the judgment to Appellant's attorney's office on September 16, 2014. Based on the entry of the written order, the appeal was perfected for Appellant with a Notice of Civil Appeal filed on September 29, 2014. Respondent was served the Notice of Civil Appeal on October 2, 2014.

Respondent argues S.C. Code Ann. Sec. 18-7-20 provides that if the judgment is announced at the trial in the presence of the appellant or his attorney, then no written notice is necessary for the appeal. S.C. Code Ann. Sec. 18-7-20 (2014). Respondent further argues that Rule 18 of the South Carolina Magistrates Court Rules dictates the same. SC R MAG CT Rule 18(a).

The question here is whether the time to perfect the appeal runs from the written notice of judgment once the Magistrate Court also reduced the judgment to writing. Here, there was not just the oral recitation of the judgment. Rather the judgment was also reduced to writing. Appellant respectfully argues that the time for appeal runs from the time of delivery of the written judgment. Both S.C. Code Ann. Sec. 18-7-20 and Magistrate Court Rule 18 provide that within thirty days of the written notice of judgment, the notice of appeal should be filed.

Based on the date the written judgement was received from the Magistrate Court, the Appellant's appeal is timely.

Based on the argument set out above, Appellant respectfully requests this honorable court to dismiss Respondent's Motion to Dismiss the Appeal and proceed with the appellate review of the merits of this case.



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September 26, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable Thomas A. Russo

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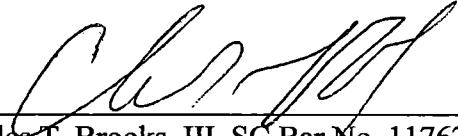
v.

Julie Smith Respondent.

PROOF OF SERVICE

I do hereby certify that I have this 26th day of September 2016, served a copy of the **RETURN TO THE MOTION TO DISMISS THE APPEAL**, and a **PROOF OF SERVICE**, by depositing a copy of the same in the United States mail, with first class postage affixed thereto, addressed as follows:

Mariel D. Norton
Attorney at Law
BAKER, RAVENEL & BENDER, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202



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September 26, 2016

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September 26, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

RE: Fulmore vs. Smith
Case No.: 2016-000505

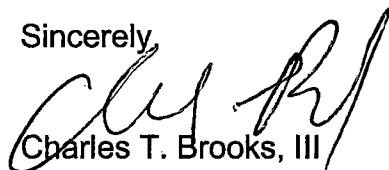
Dear Ms. Kitchings:

Enclosed, please find for filing the **Return to Motion to Dismiss the Appeal**, and a **Certificate of Counsel**, along with the appropriate copies, as well as the related Proof of Service.

If you need any additional information, please do not hesitate to contact me.

Thank you for your attention to this matter.

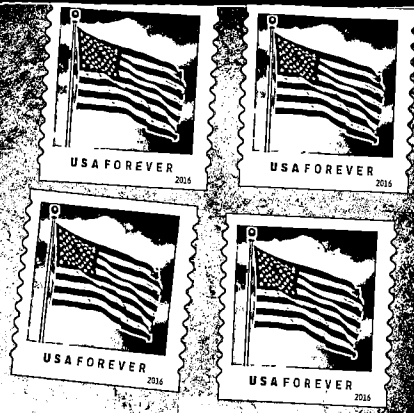
Sincerely,



Charles T. Brooks, III
Attorney for Appellant
THE BROOKS LAW OFFICE, LLC

Enclosures as stated above

cc: Mariel D. Norton
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