

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

RECEIVED

SEP 27 2016

Marvin H. Dukes, III, Master-in-Equity

SC Court of Appeals

Case No. 2011-CP-07-2994

The Edgewater on Broad Creek
Owners Association, Inc. Respondent,

v.

Ephesian Ventures, LLC Appellant.

**MOTION TO DISMISS
FOR LACK OF JURISDICTION**

Pursuant to Rules 203(b)(1), 262 and 263(a) and (b), S.C. Appellate Court Rules, and other applicable South Carolina law made and decided, the Respondent requests that this Court order that it does not have jurisdiction to consider and rule upon the appeal of Appellant Ephesian Ventures, LLC because the Appellant did not serve and file its Notice of Appeal within thirty (30) days after receipt of written notice of entry of the order to which it seeks its appeal. Respondent's motion is further based upon the following.

1. An Order of Master-in-Equity Marvin H. Dukes, III, set forth on a "Form 4," denying Appellant's Motion to Alter or Amend Judgment Pursuant to SCRCP 59(e), was entered on Tuesday, July 12, 2016. That same day, July 12, 2016 at 2:37 p.m.,

written notice of entry of the Master-in-Equity's Order denying Appellant's Motion, accompanied by a copy of the file-stamped Form 4 Order of Master-in-Equity Dukes, upon which Appellant seeks to appeal, was transmitted by email to Appellant's Counsel of Record. A true copy of the email with Form 4 is attached hereto and incorporated herein as Exhibit 1.

2. Master-in-Equity Dukes' email of July 12, 2016 was addressed to Ward Borden; Robyn Kruse; Michael Mogil; Dawes Cooke (at two email addresses); Karen Jessee for M. Dawes Cooke, Jr. and Stephen A. Spitz. M. Dawes Cooke, Jr., Esquire is one Counsel of Record for Appellant, and, Stephen A. Spitz, Esquire is also identified as counsel to the Appellant in the Beaufort County Common Pleas Public Index.

3. The email of Master-in-Equity Dukes' office on July 12, 2016, provided notice of entry of the Order pursuant to Rule 203(b)(1), SCACR.

4. On the specific point of whether email notice from the Master-in-Equity accompanied by a copy of the Order to be appealed from constitutes providing notice of entry of the Order pursuant to Rule 203(b)(1), SCACR for purposes of starting the running of the 30 days in which an appellant has to serve a Notice of Appeal from a Court of Common Pleas action, Wells Fargo Bank, N.A., successor-by-merger to Wachovia Bank, N.A. v. Fallon Properties South Carolina, LLC, et al., 413 S.C. 642, 776 S.E.2d 575 (Ct.App. 2015) states in part the following:

“[W]e 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.”

5. The Wells Fargo Bank, N.A. case continues, essentially, that receipt of written notice is the critical event under Rule 203(b)(1), SCACR and Appellants received written notice on December 15, 2014—the date of the email. Appellants failed to timely serve the notice of appeal “within thirty ... days after receipt of written notice.” Rule 203(b)(1), SCACR. Therefore, the appellate court lacked appellate jurisdiction and was required to dismiss the appeal. Wells Fargo Bank, N.A., 413 S.C. at ___, 776 S.E.2d at 577.

6. The attempted appeal here by Appellant Ephesian Ventures, LLC is similar to the Wells Fargo Bank, N.A. case in the material particulars. The Master-in-Equity’s office on July 12, 2016 transmitted to Appellant’s Counsel of Record an email giving notice of entry of an Order by the Master-in-Equity denying Appellant’s Motion to Alter or Amend Judgment Pursuant to SCRCP 59(e), and the notice included as an attachment a copy of the Master-in-Equity’s Order. It is this referenced Order which the Appellant has sought to appeal. The face of Appellant’s Proof of Service accompanying its untimely Notice of Appeal, reflects that Appellant did not serve its Notice of Appeal in this case until the forty-first day following the giving of notice of entry of the Order from which Appellant sought to appeal. The Notice of Appeal was sent to the Clerk, S.C. Court of Appeals under a cover letter dated the forty-third day following notice of entry of the Order from which appeal was taken.

WHEREFORE, Respondent The Edgewater on Broad Creek Owners Association, Inc., by counsel, respectfully requests that the South Carolina Court of Appeals dismiss Appellant’s appeal on the basis that Appellant’s Notice of Appeal was untimely served

and filed, and the South Carolina Court of Appeals lacks jurisdiction to consider the appeal.

Respectfully submitted,

September 26, 2016



Wm. Weston J. Newton, S.C. Bar # 66502
F. Ward Borden, S.C. Bar # 10117
JONES, SIMPSON & NEWTON, P.A.
Post Office Box 1938
Bluffton, South Carolina 29910
(843) 706-6111

Attorney for the Respondent



Ward Borden

From: McLeod, Heather <hmcLeod@bcgov.net>
Sent: Tuesday, July 12, 2016 2:37 PM
To: Ward Borden; Robyn Kruse; Michael Mogil (mmogil@mogillaw.com); Dawes Cook (mdc@barnwell-whaley.com); Dawes Cooke (mmason@barnwell-whaley.com); Karen Jessee for M. Dawes Cooke Jr. (kjesssee@barnwell-whaley.com); Stephen A. Spitz (sc.spitz@prodigy.net)
Subject: Edgewater on Broad Creek Owners Association Inc. vs. Ephesian entures, LLC; 11-2994
Attachments: 11-2994.pdf

Importance: High

To Whom it May Concern:

Please see attached copy of signed/filed Order, in regards to above case. Please note that this office does not serve any documents on any party. The appropriate party pursuant to SCRCP 5(a) should serve copies of this Order:

- (a) **Service: When Required. Unless otherwise ordered by the court because of numerous defendants or other reasons, all (1) written orders (&)... other similar papers shall be served upon each of the parties of record. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default.**

Also see <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2015-08-26-01>

Please contact us immediately if you are waiting on a ruling and it has been more than 30 days.

If you have a motion older than 30 days, needing a hearing, please email me a filed copy and I will work with you on scheduling. Please note, there may be jurisdiction or conflict issues resulting in Judge Dukes' inability to hear a motion.

Thanking You in Advance,

Heather R. H. McLeod,
 Judicial Assistant to
 Hon. Marvin H. Dukes, III
 Beaufort County Master In Equity
 And Special Circuit Court Judge
 P. (843) 255-5710
 F. (843) 255-9505
hmcLeod@bcgov.net

Beaufort County Courthouse
 Post Office Drawer 1228
 Beaufort, SC 29901

102 Ribaut Road, 2nd Floor
(across the hall from the Clerk of Court)
Beaufort, SC 29902

Disclaimer: Neither this office, nor its staff gives legal, financial or other advice. Any information obtained from this office or its staff, regardless of form, should not be taken as legal or financial advice. Persons seeking to purchase properties from foreclosures or other sales should obtain independent advice as to value, sufficiency of title, tax consequences, other liens, and all other matters related to said purchase. Persons involved in litigation should obtain counsel and may not rely on any information obtained from this office as legal advice. Do not rely on this office for legal advice- always obtain independent legal advice.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-02994

EDGEWATER ON BROAD CREEK OWNERS ASSOCIATION INC.,
 ET AL.

EPHESIAN VENTURES, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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

2016 JUL 12 12 23 33
 BEAUFORT COUNTY SC
 CLERK OF COURT

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:

THIS CASE BEFORE ME ON DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT, FILED 3/8/2016. AFTER HEARING FROM PARTIES, I HEREBY DENY THE MOTION.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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)
N/A	N/A	\$N/A
		\$
		\$
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.

Circuit Court Judge

3069
Judge Code

7/12/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

F. WARD BORDEN
MICHAEL W. MOGIL

ATTORNEY(S) FOR THE PLAINTIFF(S)

M. DAWES COOKE, JR.
STEPHEN A. SPITZ

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Case No. 2011-CP-07-2994

RECEIVED

SEP 27 2016

SC Court of Appeals

The Edgewater on Broad Creek
Owners Association, Inc. Respondent,

v.

Ephesian Ventures, LLC Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, he served counsel for the Appellant with a copy of the *Motion to Dismiss for Lack of Jurisdiction* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

K. Michael Barfield, Esquire
M. Dawes Cooke, Jr., Esquire
D. Summers Clarke, II, Esquire
BARNWELL, WHALEY, PATTERSON & HELMS, LLC
P.O. Drawer H
Charleston, SC 29402

Stephen A. Spitz, Esquire
STEVENS & LEE
151 Meeting Street, Suite 350
Charleston, SC 29401

Michael W. Mogil, Esquire
LAW OFFICES OF MICHAEL W. MOGIL, P.A.
2 Corpus Christie Place, Suite 303
Hilton Head Island, SC 29928



September 26, 2016
Bluffton, South Carolina

Wm. Weston J. Newton, Esquire S.C. Bar # 66502
F. Ward Borden, Esquire S.C. Bar # 10117
JONES, SIMPSON & NEWTON, P.A.
P.O. Box 1938
Bluffton, South Carolina 29910
(843) 706-6111

LAW OFFICES

JONES, SIMPSON & NEWTON, P.A.

WILLIAM W. JONES, JR.
MARK S. SIMPSON
WM. WESTON JONES NEWTON

7 PLANTATION PARK DRIVE, SUITE 3
P.O. BOX 1938
BLUFFTON, SC 29910
TELEPHONE (843) 706-6111
FAX (843) 706-5667
E-MAIL jsplaw@jsplaw.net

SAMUEL L. KIRKLAND (SC & OH)
F. WARD BORDEN (SC, VA & DC)
DEAN S. HASKELL (SC & CT)
KATHRYN A. SNELGROVE
DAVID P. GEIS (OF COUNSEL) (SC & NY)

Direct Dial: (843) 706-8880
Writer's E-Mail: wnewton@jsplaw.net

September 26, 2016

RECEIVED

SEP 27 2016

SC Court of Appeals

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

Re: **The Edgewater on Broad Creek Owners Association, Inc. v. Ephesian Ventures, LLC;**
Case Tracking No.: 2016-001789

Dear Ms. Kitchings:

I am writing on behalf of the Respondent in the above-referenced matter, The Edgewater on Broad Creek Owners Association, Inc. Please find enclosed an original and seven copies of Respondent's Motion to Dismiss for Lack of Jurisdiction, and of a Proof of Service, plus a check for \$25.00 payable to the Clerk, S.C. Court of Appeals for filing this motion, and a self-addressed envelope with postage thereon to be used to return to us one file-stamped copy of Respondent's Motion and Proof of Service.

If there are any questions, please contact me. In advance, thank you for your assistance.

Sincerely,
JONES, SIMPSON & NEWTON, P.A.



Wm. Weston J. Newton

WWJN/bsp
Enclosures

cc: M. Dawes Cooke, Esq. (w/encl.)
Michael Barfield, Esq. (w/encl.)
D. Summers Clarke, Esq. (w/encl.)
Stephen A. Spitz, Esq. (w/encl.)
Michael W. Mogil, Esq. (w/encl.)

LAW OFFICES
JONES, SIMPSON & NEWTON
PROFESSIONAL ASSOCIATION
P. O. BOX 1938
BLUFFTON, SC 29910

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

Hasler

PRIORITY MAIL

09/26/2016

US POSTAGE \$006.45⁰



ZIP 29910
011D10645283

RECEIVED
SEP 27 2016
SC Court of Appeals

76