

**IN THE STATE OF SOUTH CAROLINA**  
In The Court of Appeals

**APPEAL FROM CHARLESTON COUNTY**  
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

2016-CP-10-1143

**RECEIVED**  
OCT 03 2016  
**SC Court of Appeals**

Palmetto Construction Group, LLC

Respondent,

v.

Restoration Specialists, LLC,  
Reuben Mark Ward, and  
Lynnette Pennington Ward,

Appellants.

**RESPONDENTS' EMERGENCY MOTION TO DISMISS APPEAL  
AND FOR EXPEDITED REVIEW**

COMES NOW the Respondent, Palmetto Construction Group, LLC ("Palmetto"), by and through its undersigned attorneys, and hereby moves, pursuant to Rules 240, 203(b)(1) and 269 SCRAP, for an order dismissing the appeal. Palmetto further moves for expedited review of this motion in order to attempt to mitigate its damages. In support of this motion, Palmetto states as follows:

**BACKGROUND**

This matter arises out of Palmetto's suit against the Appellants alleging, *inter alia*, that Appellants misappropriated funds from a government construction project, failed to pay its subcontractors and suppliers, and defaulted on its agreements with Palmetto, leaving Palmetto

responsible for over \$1,400,000.00 to the surety in claims on the payment bond issued for the project.

Palmetto personally served its complaint on the Appellants, but the Appellants failed to file an answer or otherwise respond. An affidavit of default was filed on April 18, 2016 and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to the Master in Equity for a default damages hearing and for all other matters.

A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Appellants and filed a motion to lift the default and compel arbitration. The motions were heard, and the Court, after considering affidavits and hearing argument, found in its discretion that there was no good cause shown such that the default should be lifted. The order set a default damages hearing for October 4, 2016 at 2:00pm and was served on all parties by the Court on July 18, 2016.

Appellants filed a motion to reconsider pursuant to Rule 59 SCRPC on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Respondents wrote the Court on September 7, asking that the motions be heard in advance of the damages hearing. After some consideration, the Court elected to keep the hearing as originally scheduled with the damages hearing on October 4 and the motion to reconsider be heard on October 11. Appellants never timely noticed an appeal of the July 18, 2016 order, which is interlocutory, and the motion to reconsider is pending.

#### **ARGUMENT**

The July 18, 2016 order is not immediately appealable in the first instance as an order denying a motion to be relieved from default is interlocutory and therefore not appealable until after the entry of default judgment. *Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct.

App. 1987) (“an order refusing to grant relief from the entry of default is not appealable until after final judgment.”). Further, Appellants did not notice their appeal until September 30, 2016, some seventy-four days after the order was received; therefore, the appeal is untimely and must be dismissed. See Rule 203(b)(1) SCRAP (requiring that a notice of appeal be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment).

Appellants argue that declining to move the previously scheduled damages hearing to a date after the motion to reconsider “effectively denies” the motion, though it remains pending before the Court. As the Court has not yet heard the motion to reconsider, there is no order to appeal. See, e.g., *Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987)(discussing appealable orders in the context of motions to lift default); see also Rule 201 SCRAP.

The appeal must be dismissed.<sup>1</sup>

### CONCLUSION

For the reasons above, Palmetto respectfully requests that the appeal be dismissed. Palmetto further seeks expedited review of this matter so that the appeal may be resolved in advance of the default damages hearing in order that it proceed as scheduled on October 4, 2016.

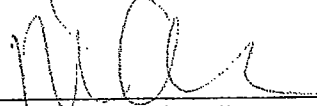
[signature on following page]

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<sup>1</sup> Palmetto’s motion is truncated in an effort to mitigate its damages by filing this appeal in the hopes that it may be dismissed in advance of the damages hearing scheduled for October 4, 2016 so that it may proceed.

ANDREW K. EPTING, JR., LLC

BY:



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ATTORNEYS FOR PLAINTIFF

On this 3rd day of October, 2016  
Charleston, South Carolina

**THE STATE OF SOUTH CAROLINA**  
In the Court of Appeals

**APPEAL FROM CHARLESTON COUNTY**  
Court of Common Pleas for the Ninth Circuit

Mikell R. Scarborough, Master-In-Equity

CASE NO. 2016-CP-10-1143

Palmetto Construction Group, (Respondent)

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward. (Appellants).

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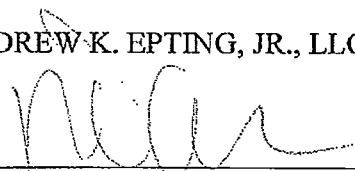
**SC Court of Appeals**

**PROOF OF SERVICE**

I certify that I have served the Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review on all counsel of record by depositing a copy in the United States Mail, Postage prepaid, on October 3, 2016, addressed as follows:

**A. Bright Ariail, Esquire**  
**Law Office of A. Bright Ariail, LLC**  
**125 E Wappoo Creek Drive, Suite 202**  
**Charleston, SC 29412**

ANDREW-K. EPTING, JR., LLC

By   
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*Attorneys For Respondent*

ANDREW K. EPTING, JR., L.L.C.  
ATTORNEYS AT LAW

October 3, 2016

**VIA FEDERAL EXPRESS**

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

**RECEIVED**  
OCT 03 2016  
**SC Court of Appeals**


RE: *Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward*  
Case No.: 2016-CP-10-1143

Dear Ms. Kitchings:

Enclosed for filing the original and seven (7) copies of Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review together with a Proof of Service and the \$50.00 motion fee in the above-referenced matter. I would greatly appreciate your filing the originals and returning a file-stamped copy to me in the self-addressed, stamped envelope provided.

With kind regards,

ANDREW K. EPTING, JR., LLC

  
Andrew K. Epting, Jr.  
AKE/agg

Enclosures – as stated

cc: A.Bright Ariail, Esquire

**FAX COVER SHEET**

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**TO**

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**COMPANY**

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**FAXNUMBER** 18037341839

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**FROM** Andrew K Epting

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**DATE** 2016-10-03 19:12:42 GMT

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**RE** Palmetto Construction Group v. Restoration Specialists, et al.

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**COVER MESSAGE**

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Dear Ms. Abbott-Kitchings:

Enclosed please find Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review in the above-referenced matter. The original will follow by FedEx. Please note I have copied counsel for Appellants.

Angela

Angela Gross  
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And Michelle N. Endemann, Esquire  
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