

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe
Master-in-Equity, Fifteenth Judicial Circuit

Case No.: 2009-CP-26-620

RECEIVED
OCT 13 2016
SC Court of Appeals

Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation.....Plaintiffs,

vs.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust,.....Defendants,

AND

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc.,.....Third-Party Plaintiffs,

vs.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually,.....Third-Party Defendants,

Of whom Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur Wayne Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, and 29th Place Developers, In. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & C Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

RESPONDENT'S REPLY TO PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, the Respondent respectfully submits this Reply to the Appellants Petition for Rehearing and Suggestion for rehearing en banc.

- 1. The Appellants failed to timely file their Rule 59 motion as required by the South Carolina Rules of Civil Procedure and failed to timely file their Notice of Appeal as required by the Rules of this Court.**

Rule 59(b), SCRCPP, states that a motion for a new trial shall be made "not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered." A motion to alter or amend a judgment under Rule 59(e) "shall be served not later than 10 days after receipt of written notice of the entry of the Order." Rule 59 does not require service of the actual order or judgment, but written notice of the entry of the Order. Date stamped Notices of the filing of the final orders of the Lower Court were sent to the Appellants' attorney by email from the Court on March 24, 2015 and on March 25, 2015, which is the same date as the date of the filing of the Orders with the Clerk of Court for Horry County. The two Form 4s and Orders were also served according to the SCRCPP by letter from Respondent's attorney, as indicated in the Respondent's Return and discussed in Judge Howe's "Order Disposing of Post Trial Motions" dated and filed April 25, 2016. The amended Form 4, signed by Judge Howe, provides that a judgment against each of the Appellants for \$4,226,383.90 and states that "This order ends the case."

The Appellants did not timely file a motion for rehearing within ten days of the date of the service letter sent from the Court by email (or by April 3, 2015) or by April 13, 2015, using the date of service as the date of the service letter from Respondent's attorney, which contained the Amended Form 4 and Nunc Pro Tunc Order. Rule 59(f), SCRCPP, provides that the "time for

appeal for all parties shall be stayed by a timely motion under this Rule.” Pursuant to Rule 203(b)(1), SCACR, “a notice of appeal shall be served on all respondents within 30 days after receipt of written notice of entry of the order or judgment” and provides for a stay if the Appellant timely files a motion for reconsideration under Rule 59, SCRCP. The Appellants’ Notice of Appeal was filed thirteen months after the notice of entry of judgment against the Appellants was received by the Appellants.

Contrary to the assertions of the Appellants in their motion for rehearing, the first and second Orders granted judgment against all Appellants, jointly and severally, finding that the Appellants conspired together to convert and steal the assets of the Respondent as outlined in the Court’s 42 page Order. Missing page 37 of the Court’s Order was contained in the March 24th filing with the Clerk of Court and was available for inspection and copying at any time by the Appellants at the office of the Clerk of Court. Once the second Form 4 was received, Appellants’ attorney was aware that a judgment exceeding four million dollars had been rendered against each Appellant, jointly and severally, and that a motion for rehearing must be filed within 10 days of that date.

2. Since the motion of the Appellants was not timely filed, the Lower Court was without jurisdiction to hear the motion.

In Ackerman v. 3-V Chem., Inc., 349 S.C. 212, 215, 562 S.E.2d 613, 615 (2009), the Supreme Court held that an Appellant had 10 days to file a motion for reconsideration from the date when a Form 4 is served indicating that a written Order has been filed in the case. The Court held that Rule 59, SCRCP, required that the Appellant file their Rule 59 motion within 10 days of the receipt of written notice of the entry of the Order and specifically rejected the contention that the time period began when the actual Order is received. The Court rejected the Appellant’s due process claims and stated:

“The short and simple answer to this contention is that upon receiving written notice of the **entry of an order or judgment**, an attorney may immediately call and request a copy of the order.there is no reason Petitioners could not have requested a copy of the order filed on the date they received the written notice of the entry of judgmentAccordingly, their motion for reconsideration, filed more than 30 days after the receipt of written notice of entry of judgment was untimely. As such, the trial judge was without authority to act upon it. See Leviner v. Sonoco Products Company, 339 S.C. 492, 530 S.E.2d 127 (2000) (when no timely Rule 59 motion is made, trial judge loses jurisdiction over the matter).

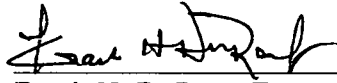
The Appellants have acknowledged receipt of the Court’s emails and attachments and the letters of service from Respondent’s attorneys, containing the Form 4s and Orders. The Appellants have failed to state any reason why they did not request or obtain a complete copy of the filed Order from the Clerk of Court within the 10 day time period for filing the motion. There can be no surprise when notice of the filing of the judgment was received on two separate occasions by Appellants’ attorney. Accordingly, the motion was untimely filed and should be dismissed. Since the motion was untimely filed, the time period for filing the Notice of Appeal was not stayed. The Appellants were required to file the Notice of Appeal within 30 days of the date of notice of the filing of the challenged Order. The Notice of Appeal of the Appellants was not served until May 19, 2016, more than 30 days after receiving written notice the judgment had been entered. If a party misses this deadline, this Court has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for the service of the Notice of Appeal. USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008).

CONCLUSION

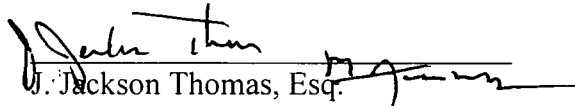
For the foregoing reasons, this Court should deny the Appellants’ Motion for reconsideration.

Respectfully submitted,

Dated: October 12, 2016



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Attorney for Respondents E. Smith & Sons,
LLC, EES Construction and Consulting,
LLC and Ellis E. Smith

THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
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AND

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vs.

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Of whom Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur Wayne Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, and 29th Place Developers, In. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & C Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

CERTIFICATE OF SERVICE

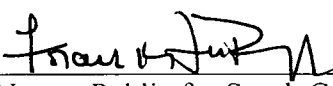
Lauren Massimino certifies that she is an employee of the law firm of DuRant & Martin, attorneys for the Respondents, Ellis E. Smith, individually and on behalf of A & C Constructors and Consultants, Inc., a South Carolina Corporation, and that she mailed the document(s) listed below in the above entitled action to the addressee(s) below on October 12, 2016 and proper postage was attached thereto.

DOCUMENT(S): RESPONDENT'S REPLY TO PETITION FOR REHEARING

ADDRESSEE(S): Henrietta U. Golding, Esq.
James K. Gilliam, Esq.
McNair Law Firm, P.A.
P.O. Box 336
Myrtle Beach, SC 29578
Attorney for Appellants Arthur Wayne Vereen, Individually and as Trustee of the Arthur W. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen, Individually and as Trustee of the Linda C. Vereen Residence Trust


Lauren Massimino

SWORN to before me this 12th
day of October, 2016


Notary Public for South Carolina
My Commission Expires: 5-24-26

DuRant & Martin
ATTORNEYS AND COUNSELORS AT LAW
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
2107 FARLOW STREET
POST OFFICE BOX 960
MYRTLE BEACH, SOUTH CAROLINA 29578-0960

FRANK H. DURANT, P.A.
DAVID E. MARTIN, P.A.

TELEPHONE: (843) 448-1541
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October 12, 2016

VIA FEDERAL EXPRESS OVERNIGHT

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

OCT 13 2016

SC Court of Appeals

Re: A & E Constructors and Consultants, Inc., et al. vs. Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, et al.
Civil Action No.: 2009-CP-26-00620
Appellate Case No.: 2016-001075

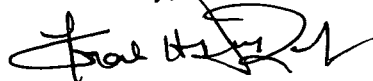
Dear Ms. Kitchings:

Enclosed herewith please find the Original and seven (7) copies of the Respondents' Reply to Petition for Rehearing and Certificate of Service for filing in regard to the above referenced matter. Please file the originals and return the clocked copies to my office in the self-addressed stamped envelope provided.

By copy of this letter, I am serving the Appellants' Attorneys, Henrietta U. Golding and James K. Gilliam of McNair Law Firm, P.A., with a copy of the Reply of Respondents and Certificate of Service.

If you have any questions or concerns regarding this matter please feel free to contact my office.

Sincerely,



Frank H. DuRant
Attorney for Respondents

FHD/lm
Encl.: as stated

cc: Client
Henrietta U. Golding, Esq. (via US Mail - P.O. Box 336, Myrtle Beach, SC 29578)
James K. Gilliam, Esq. (via US Mail - P.O. Box 336, Myrtle Beach, SC 29578)
J. Jackson Thomas, Esq. (via US Mail - 1314 Professional Drive, Myrtle Beach, SC 29577)

ORIGIN ID:MYRA (843) 448-1541
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MYRTLE BEACH, SC 29577
UNITED STATES US

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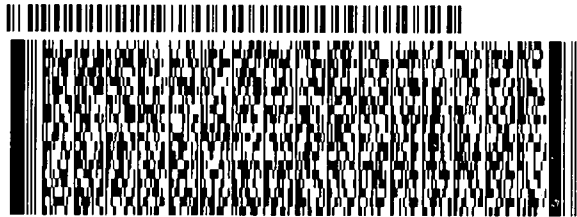
TO HONORABLE JENNY ABBOT KITCHINGS
CLERK, SC COURT OF APPEALS
1220 SENATE STREET

COLUMBIA SC 29201

(843) 448-1541
INV.
PO:

REF: FHD - A&E V VEREN, ET AL.

DEPT:



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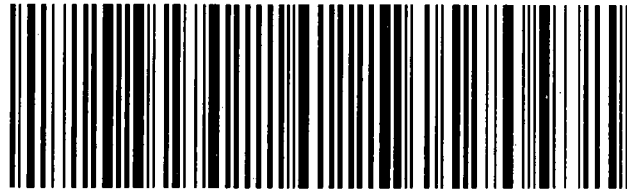
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SC Court of Appeals

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