

8/409

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
OCT 28 2016
SC Court of Appeals

The Honorable Mikell R. Scarborough, Master in Equity

2016-CP-10-1143

Palmetto Construction Group, LLC Respondent,

v.

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

RESPONDENT'S 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. 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 on March 14, 2016; Appellants failed to 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 all purposes, including a determination of damages.

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 Court, after considering affidavits and hearing argument, found in its discretion that there was no good to lift the default and set a default damages hearing for October 4, 2016 at 2:00pm. The order 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. Appellants requested that the motions be heard in advance of the damages hearing. The Court elected to keep the hearings as originally scheduled. Appellants have not timely noticed an appeal of the July 18, 2016 interlocutory order, and the motion to reconsider remains pending.

On September 30, 2016, the Respondent was served with a notice of appeal. (Exhibit A). Respondent immediately drafted, served, and filed a motion to dismiss the appeal and sought expedited review of the motion in order that the October 4 damages hearing proceed. (Exhibit B). The parties appeared before the lower court on October 4, though the damages hearing did not proceed. Instead, the Court asked that the parties make a record of their positions as the procedural posture of the case was unusual considering there was no timely appeal of the interlocutory order denying the motion to lift the default and the Rule 59 motions remained pending. Briefs were filed by both sides with regard to Appellants' Rule 59 motion.

On October 5, Palmetto's counsel received a letter from this Court returning its motion to dismiss as the Court had no record of such an appeal. (Exhibit C). Also on October 5, Palmetto's counsel was served by facsimile with a copy of another notice of appeal, different than the one previously served. (Exhibit D). On October 6, 2016, Palmetto's counsel was served by facsimile with yet another version of the notice of appeal. (Exhibit E). On October 13, 2016, Palmetto received a copy of a letter from the Court of Appeals, which returned Appellants' October 6 notice of appeal together with the portions of the transcripts that Appellants attached to the notice as "transcripts are not part of a notice of appeal." (Exhibit F).

SUMMARY OF ARGUMENT

The appeal must be dismissed as it is: (1) defective on the face of the notice of appeal as there is no final appealable order attached to the notice; (2) untimely; (3) interlocutory; and (4) without merit and filed solely for the purpose of delay.

ARGUMENT

None of the three notices of appeal attach an order appealed from as required by Rule 203 SCRAP. As there is no appealable order, all three notices are defective and the appeal must be dismissed.

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 (or maybe even as late as October 6, 2016), more than seventy-five days after the interlocutory 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.

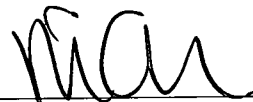
CONCLUSION

For the reasons above, Palmetto respectfully requests that the appeal be dismissed. Palmetto further seeks expedited review of this matter in order to mitigate its damages.

Respectfully Submitted by:

ANDREW K. EPTING, JR., LLC

BY:



Andrew K. Epting, Jr.
Michelle N. Endemann
46a State Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 27th 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.

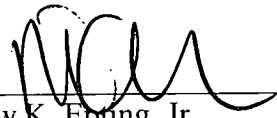
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward. (Appellants).

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 27, 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 
Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street, Charleston, SC 29401
Phone: 843-377-1871; Fax: 843-377-1310

Attorneys For Respondent

RECEIVED

OCT 28 2016

SC Court of Appeals

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariailaaw.com

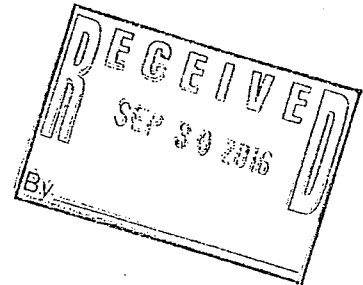
A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

September 30, 2016

VIA HAND DELIVERY

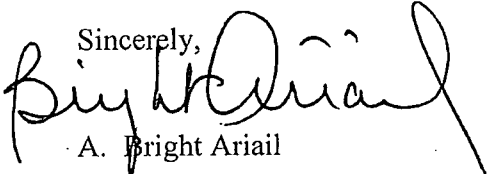
Andrew K. Epting, Jr.
Michelle N. Endemann
ANDREW K. EPTING, JR., LLC
46a State Street
Charleston, SC 29401



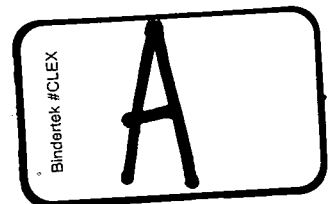
RE: Palmetto Construction Group v. Restoration Specialists, LLC,
Reuben Mark Ward, and Lynette Pennington Ward
Case No. 2016-CP-10-1143

Dear Drew and Michelle:

Enclosed for service upon you please find a Notice of Appeal, together with proof of service, in the above-referenced case.

Sincerely,

A. Bright Ariail

Enclosure: (Notice of Appeal/Proof of Service)



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

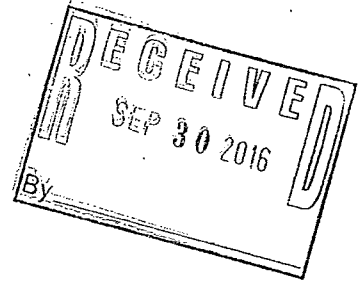
Appellants.

NOTICE OF APPEAL

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward appeal the Bench and Formal Orders of the Honorable Mikell R. Scarborough dated July 14, 2016. The Court's orders: (a): Denied Appellant's Motion to Lift Entry of Default for lack of good cause; (b): Denied Appellant's Motion to Stay and Compel Arbitration on the basis of default; and (c): Set a damages hearing for October 4, 2016. Appellants received written notice of entry of these orders on July 18, 2016.

Appellants filed a Motion to Reconsider and to Alter and Amend the Court's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. The Court scheduled the hearing on Appellants' motion for October 11, 2016. On September 7, 2016, standing on their rights to arbitration, the Appellants requested the Court to schedule the hearing on Appellants' motion prior to the October 4, 2016 damages hearing.

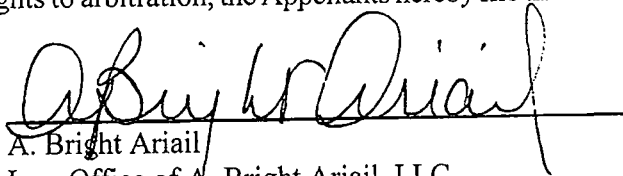
On September, 7, 2016, the Court replied to Appellants' request and made the decision to switch the hearing dates, with the motions hearing to be held on October 4, 2016 and, if necessary, the damages hearing to be held on October 11, 2016. The Court asked the parties to advise if this plan was acceptable. The Appellants informed the Court that this plan was acceptable. The Respondent notified the Court that it would defer to the Court, but preferred the damages hearing to be held on October 4, 2016 and the motions hearing to be held on October 11, 2016.



After further consideration, the Court then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would be held on October 4, 2016 and the motions hearing would be held October 11, 2016. Appellants received written notice of the Court's decision on September 12, 2016.

The Court's decision to proceed with the damages hearing and not hear the Appellant's Rule 59(e) prior thereto effectively denies this motion and proceeding with the damages hearing under these circumstances would severely prejudice Appellants' rights to arbitration. Therefore, subject to, without waiving, and fully preserving their rights to arbitration, the Appellants hereby file the instant appeal in this matter.

September 29, 2016



A. Bright Ariail
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
(843) 814-8805
Attorney for Appellants

Other Counsel of Record:

Andrew K. Epting, Jr.
Michelle N. Endemann
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, S.C. 29401
(843) 377-1871
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

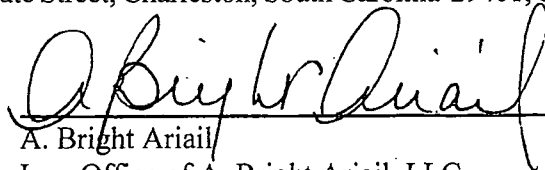
v.

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

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Construction Group by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2016, addressed to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401 and by delivering a copy of it to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, at their office at 46A State Street, Charleston, South Carolina 29401, on September 30, 2016.

September 30, 2016



A. Bright Ariail
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
(843) 814-8805
Attorney for Appellants

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

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.¹

CONCLUSION

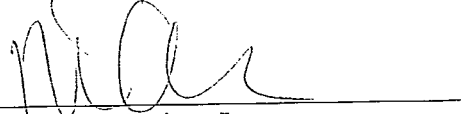
For the reasons above, Palmetto respectfully requests that the appeal be dismissed. Palmetto further seeks expedited review of this matter so that the appeal may be resolved in advance of the default damages hearing in order that it proceed as scheduled on October 4, 2016.

[signature on following page]

¹ 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:



Andrew K. Epting, Jr.

Michelle N. Endemann

46a State Street, Charleston, SC 29401

P: 843-377-1871

F: 843-377-1310

ake@epting-law.com; mne@epting-law.com

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).

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 

Andrew K. Epting, Jr.

Michelle N. Endemann

46A State Street, Charleston, SC 29401

Phone: 843-377-1871; Fax: 843-377-1310

Attorneys For Respondent



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 4, 2016

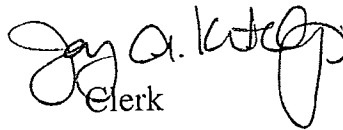
Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46 A State Street
Charleston, SC 29401

In Re: Palmetto Construction Group v. Restoration Specialists
Motion to Dismiss

Dear Counsel:

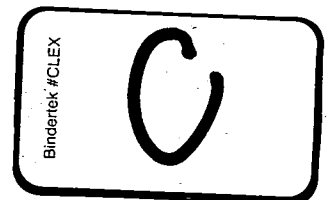
We have received your motion to dismiss for the above referenced matter. However, no notice of appeal has been filed under that name or lower court case number. Since no appeal is pending in this Court, we will not accept or take action on your motion to dismiss. We are returning your original documents to you, along with your filing fee, check #4184, in the amount of \$50.00.

Very truly yours,


Clerk

cc:

A. Bright Ariail, Esq.



LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125-E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412

(843) 814-8805 (TELEPHONE)
(843) 266-0538 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

TO: THE HONORABLE JENNY ABBOTT KITCHINGS	FROM: A. BRIGHT ARIAIL, ESQ
FAX NUMBER (803)-734-1839	DATE: OCTOBER 5, 2016
PHONE NUMBER (803) 734-1890	TOTAL NO. OF PAGES INCLUDING COVER: 12
YOUR REFERENCE: Appeal - Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No; 2016-CP-10-1143	
CASE NAME/CASE NUMBER: .Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY

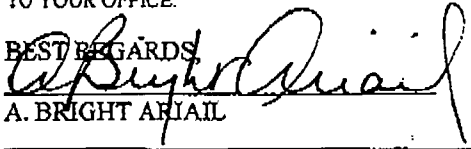
NOTES/COMMENTS:

DEAR MS. KITCHINGS:

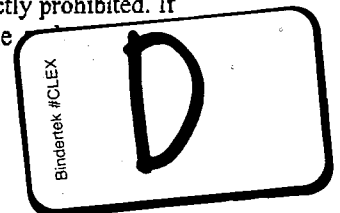
ENCLOSED PLEASE FIND AN ELECTRONICALLY TRANSMITTED FACSIMILE COPY OF THE FOLLOWING DOCUMENTS IN CONNECTION WITH THE ABOVE-REFERENCED APPEAL:

- (1) COVER LETTER FILING NOTICE OF APPEAL OF APPELLANTS RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, AND LYNNETTE PENNINGTON WARD ("NOTICE OF APPEAL");
- (2) NOTICE OF APPEAL;
- (3) PROOF OF SERVICE OF THE NOTICE OF APPEAL ON THE RESPONDENT;
- (4) THE ORDER(S) WHICH ARE TO BE CHALLENGED ON APPEAL;
- (5) THE FILING FEE CHECK OF \$100.00.

THE ORIGINALS OF THESE DOCUMENTS AND THE FILING FEE CHECK WILL BE IMMEDIATELY SENT BY U.S. MAIL TO YOUR OFFICE.

BEST REGARDS

A. BRIGHT ARIAIL

The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have read this communication in error, please notify us immediately by telephone original message to us at the above address via the U. S. Postal Service. Thank you.



LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125E WAPPOO CREEK DRIVE, SUITE 202

CHARLESTON, SC 29412

bright@brightariailaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805

Facsimile: (843) 266-0538

October 5, 2016

VIA FACSIMILE (803) 734-1839 & US MAIL

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

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

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent.
- (2) A copy of the order(s) which are to be challenged on appeal.
- (3) A filing fee of \$100.00.

Please file the Notice of Appeal and return the clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

Sincerely,



A. Bright Ariail
Attorney for Appellants

Enclosures

cc: Andrew K. Epting, Jr.,
Michelle N. Endemann
Andrew K Epting, Jr., LLC
46A State Street
Charleston, S.C. 29401
(843) 377-1871
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group,

Respondent,

v.

Restoration Specialists, LLC,
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Lynnette Pennington Ward

Appellants.

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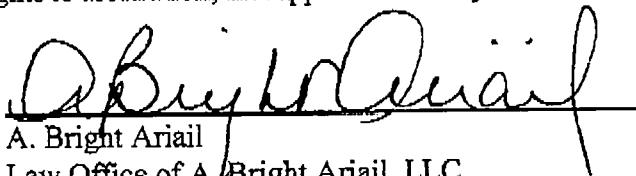
Appellants filed a Motion to Reconsider and to Alter and Amend the Court's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. The Court scheduled the hearing on Appellants' motion for October 11, 2016. On September 7, 2016, standing on their rights to arbitration, the Appellants requested the Court to schedule the hearing on Appellants' motion prior to the October 4, 2016 damages hearing.

On September, 7, 2016, the Court replied to Appellants' request and made the decision to switch the hearing dates, with the motions hearing to be held on October 4, 2016 and, if necessary, the damages hearing to be held on October 11, 2016. The Court asked the parties to advise if this plan was acceptable. The Appellants informed the Court that this plan was acceptable. The Respondent notified the Court that it would defer to the Court, but preferred the damages hearing to be held on October 4, 2016 and the motions hearing to be held on October 11, 2016.

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September 29, 2016



A. Bright Ariail
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
(843) 814-8805
Attorney for Appellants

Other Counsel of Record:
Andrew K. Epting, Jr.
Michelle N. Endemann
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, S.C. 29401
(843) 377-1871
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
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Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group,

Respondent,

v.

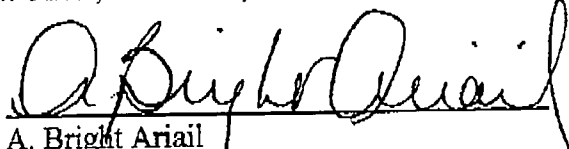
Restoration Specialists, LLC,
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Appellants.

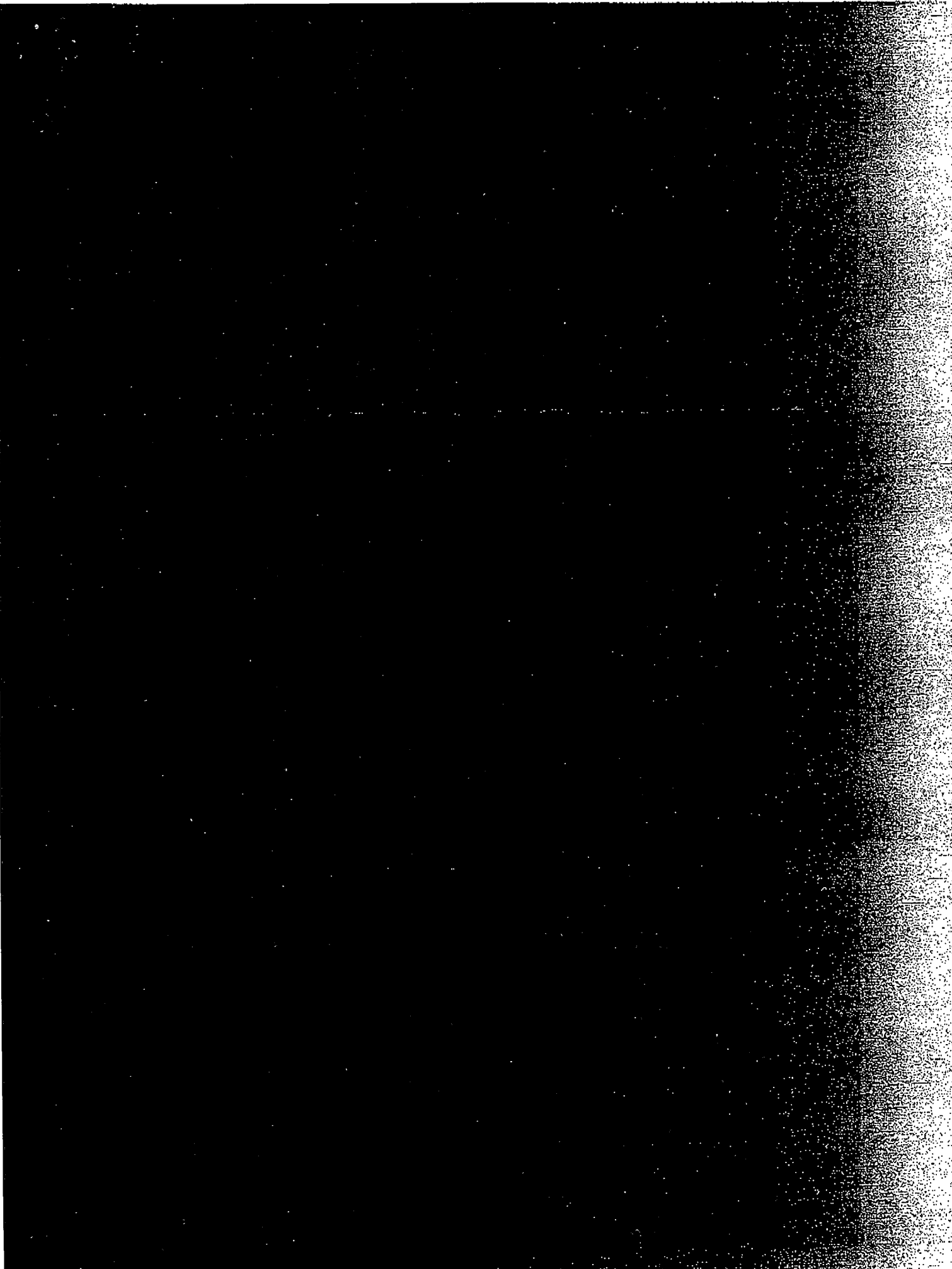
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Construction Group by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2016, addressed to Palmetto Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401 and by delivering a copy of it to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, at their office at 46A State Street, Charleston, South Carolina 29401, on September 30, 2016.

September 30, 2016



A. Bright Ariail
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
(843) 814-8805
Attorney for Appellants



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

PALMETTO CONSTRUCTION GROUP,
LLC

CASE NO. 2016-CP-10-1143

Plaintiff,

vs.

ORDER

RESTORATION SPECIALISTS, LLC,
REUBEN MARK WARD, and LYNNETTE
PENNINGTON WARD

Defendants.

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

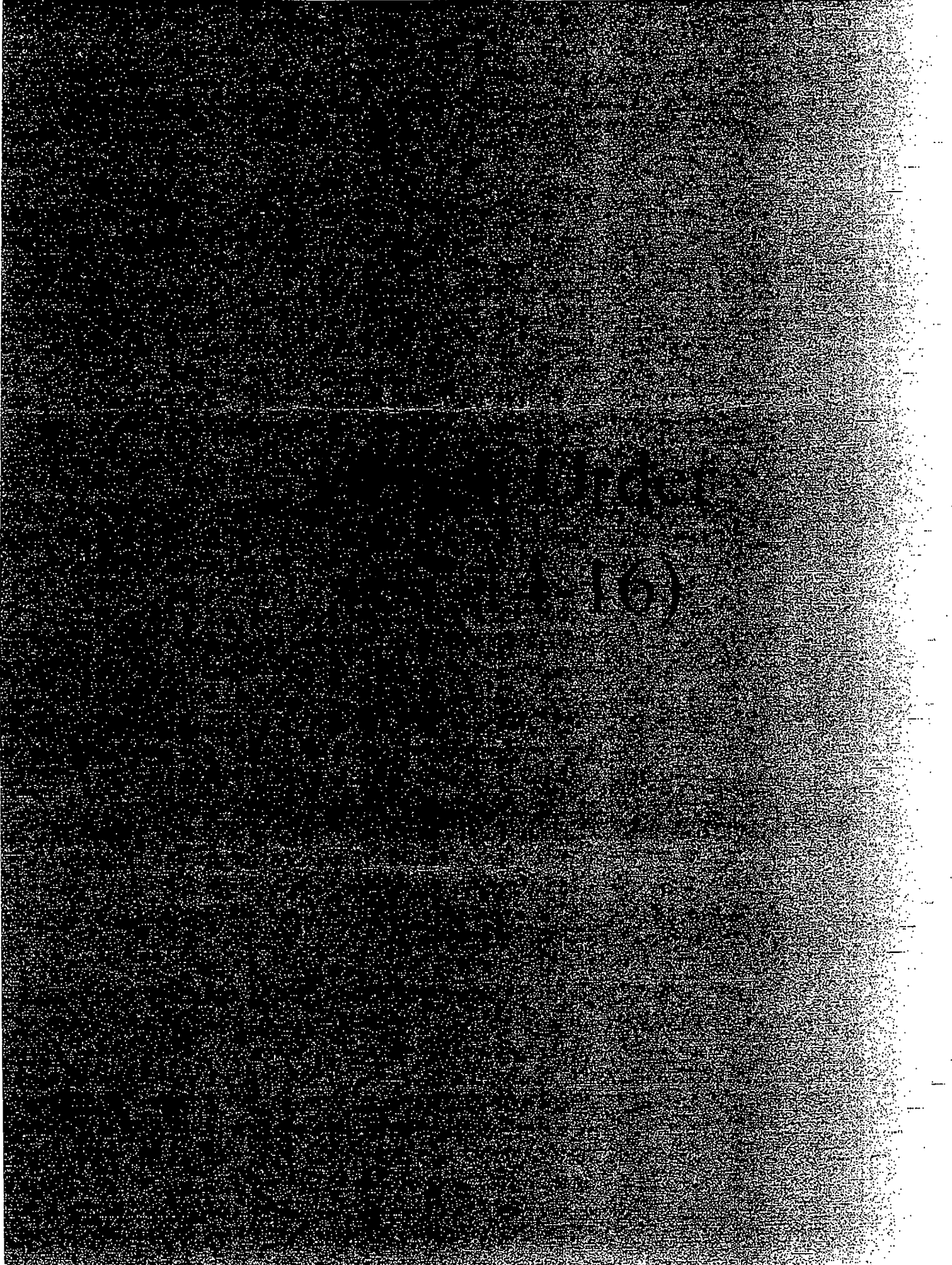
IT IS ORDERED THAT:

- 1) Defendants' motion to be relieved from default is DENIED;
- 2) A damages hearing is set for October 4, 2016 at 2:00pm; and
- 3) ~~No ruling is made~~ on Defendants' motion to stay and to compel arbitration

is denied as Δ is in default. RS

[Signature]
The Honorable Mikel R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC



1 STATE OF SOUTH CAROLINA
 2 COUNTY OF CHARLESTON
 3 Palmetto Construction Group,
 4 Plaintiff,
 5 vs. CASE NO. 2016-CP-10-1143
 6 Restoration Specialists, LLC,
 7 Acuben Mark Ward, and Lynnette
 8 Pennington Ward,
 9 Defendants.

10
 11
 12 Hearing before the Honorable Mikell R.
 13 Scarborough, reported by Christine A. Smith, Court
 14 Reporter and Notary Public, at 10:57 a.m. on July
 15 14, 2016 at 100 Broad Street, Charleston,
 16 South Carolina.

17
 18
 19
 20
 21 Christine A. Smith, Court Reporter
 22 Charleston, South Carolina 29407
 23 (843) 377-1871
 24 christina@csreporting.com
 25

PROCEEDINGS

1
 2
 3 THE COURT: Palmetto Construction Group versus
 4 Restoration Specialists, LLC. For the Plaintiffs is
 5 Mr. Drew Epting and Ms. Michelle Endemann. For the
 6 Defendants is Ms. Bright Ariail. Good morning,
 7 Ms. Ariail. I believe we are here on your motion,
 8 are we? Is that what got us here?

9 MS. ENDEMANN: Judge, I think we are here on a
 10 couple of different things that were noticed. I
 11 think you set it for sort of a general status after
 12 we were here before you about a month ago. Also,
 13 there is a Motion to be Relieved from Default that
 14 Ms. Ariail has filed, as well as a Motion to Compel
 15 Arbitration.

16 I can give you a little bit of an overview of
 17 sort of where we are from last time. I think it
 18 would be helpful.

19 THE COURT: Sure.

20 MS, ENDEMANN: If you recall, Judge, this is a
 21 case where my client, Palmetto Construction has sued
 22 a business associate of theirs on a project for the
 23 V.A. The agreement between Restoration Specialist
 24 and the other Defendants which are the principals of
 25 that company and Palmetto was essentially that they

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2 ATTORNEYS FOR THE PLAINTIFF:

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 4 Michelle Endemann, Esq.
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8 ATTORNEYS FOR THE DEFENDANT:

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 11 125-E Wappoo Creek Drive
 12 Suite 202
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1 would work together on a job with the V.A.
 2 Restoration was to be the general contractor.
 3 Palmetto was to aid Restoration in this job, provide
 4 their expertise on a job of this size, provide the
 5 bonds that were required in order to complete the
 6 project. There would be a split of the profits, and
 7 Mr. Ward was the one who had the contracts with the
 8 V.A., and then all the subcontractors below.

9 Unfortunately what happened is Mr. Ward
 10 stopped paying his subcontractors. He stopped paying
 11 them it looks like all together. We started
 12 receiving bond claims coming in toward the end of the
 13 job. We didn't know what was going on because we
 14 weren't a party to those agreements. We weren't the
 15 ones that were paying them. We weren't the ones that
 16 were receiving money from the V.A.

17 So Mr. Ward is getting money from the V.A.
 18 He's diverting the funds. His subcontractors filed
 19 claims on the bond for which Palmetto was liable, and
 20 personally liable, all of its principals, their
 21 wives, and now Hanover, the bonding company with
 22 surety is looking to us to pay over a million dollars
 23 in bond claims.

24 We were here before you last time for a
 25 damages hearing because we had served discovery with

1 our Complaint and the Complaint went unanswered.
2 We're here for a damages hearing. We served Mr. Ward
3 with notice of that hearing pursuant to the Rules,
4 and it was then that he had hired Ms. Ariail.

5 She came and actually had a vacation planned,
6 so we kind of came to an agreement. She was able to
7 get us some of the documents that were owed. The
8 discovery is not complete. In particular we're
9 missing some pretty important things like the
10 payments from the V.A. to Mr. Ward and then where
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13 appears that the project was pretty profitable with
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16 we're left looking at records that show there should
17 be a surplus of funds.

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19 us and saying, Hey, you owe us over a million
20 dollars. The other problem that my client has is
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22 that says, You owe us over a million dollars. Nobody
23 wants to bond any projects. So time is really,
24 really of the essence here because we can't get work.
25 If we can't get work our business goes under, and all

1 with the facts, but I think the thing that disturbs
2 me the most is the statement that we haven't provided
3 payments from the V.A. We have provided
4 documentation of the amount of payments that have
5 been made.

6 When we were in front of you a month or so ago
7 there was a — and there still is a standing Motion
8 for Compelling Arbitration by the Plaintiff. They
9 actually filed that. The contract requires it, and
10 there is a motion that has not been heard that was
11 filed by the Plaintiff for compelling arbitration.

12 In the meantime, despite the requirement for
13 mediation and arbitration, and based on direction
14 from the Court at the last hearing, we have complied
15 with discovery. We have answered discovery. We have
16 been continuously providing documents as we've
17 compiled them, and at my direction my client has
18 concentrated on the financial records rather than the
19 voluminous information that is compiled on a
20 two-or-three-year construction project.

21 That being said, I think it's proper to hear
22 the Motion to Compel Mediation and Arbitration today.
23 We merely joined what the Plaintiff's have already
24 filed. For that reason I would ask that you go ahead
25 and hear that motion.

1 of our people don't have jobs, so we're really sort
2 of in dire straits here.

3 THE COURT: Okay.

4 MS. ENDEMANN: We were served with this Motion
5 to Compel Arbitration this week, and Your Honor has
6 set it probably for expediency today. We don't
7 think, Your Honor, that we can go forward on that
8 motion. First, we don't think that he can bring the
9 motion, period, because he's in default; and second,
10 it's not properly before this Court as we only got
11 notice of it a couple of days ago.

12 We think that the tapat here might be to try
13 to get relief from default, get this motion heard,
14 and get it appealed if Your Honor does not rule in
15 their favor and ties this up for several years. If
16 that happens, again, my client's out of business.

17 What we would like to see happen here today is
18 have a damages hearing set because Mr. Ward is in
19 default. He's not provided the Court with any
20 reasonable explanation for being in default and is
21 not entitled to make this Motion for Arbitration
22 since he is in default. Thank you, Your Honor.

23 THE COURT: Ms. Ariail, let me hear from you
24 on that one.

25 MS. ARIAIL: Your Honor, I don't totally agree

1 THE COURT: You want to get out of Default
2 first, don't you? I didn't rule on that last time I
3 don't think?

4 MS. ARIAIL: You did not.

5 THE COURT: You're right. Mr. Epting and
6 Ms. Endemann, it looks like there was a motion filed
7 back in March to Compel. Is it mediation or
8 arbitration? Is it contract specific?

9 MS. ENDEMANN: Your Honor, it's a standard
10 Form AIA contract, so there is a provision in there
11 having to do with mediation and arbitration. We did
12 file that motion assuming that we were going to get a
13 responsive pleading and that we would send it to
14 arbitration. That's not what happened in this case.
15 Instead we set aside that motion and asked for an
16 order referring this case to you for a damages
17 hearing which was granted by the Circuit Court.

18 THE COURT: I've got it. This was filed
19 March 7th. That motion was with those -- that was as
20 a result of the matter to referral. Mr. Ward was
21 served on the 14th of March. The Motion to Set Aside
22 the Entry was there. I recall we had a quick meeting
23 and then you-all did some discovery and I haven't
24 been able to resolve anything. Basically, it's a
25 Motion for a Continuance which we granted. And then

1 Mr. Ward's affidavit. All right. That rings a bell.
 2 Well, Ms. Ariail, I think the first thing you
 3 have to do is get out of default before you can bring
 4 affirmative relief. It does appear that the matter
 5 was referred over here. I think that took care of
 6 the -- the clerk closed out the Motion to Compel the
 7 Arbitration because of the fact that it was referred
 8 over here. So that based some adjudication on that
 9 motion is how the Court considers that.

10 I think what we were wrestling with last time
 11 was whether or not you-all could resolve it. That
 12 doesn't look like it's been done. I find that
 13 because it was not shown by Mr. Ward in his
 14 affidavits that that supported why he was in default
 15 I find the Defendant in default and I so order.

16 So this will be a question of a damages
 17 hearing to be set. How much time do you-all want?

18 MS. ENDEMANN: Your Honor, we probably need
 19 about an hour to two hours for the hearing, and we
 20 can hear it whenever the Court is available.

21 THE COURT: Okay.

22 MS. ARIAIL: Your Honor, I would ask since I
 23 have in good faith participated in discovery that I
 24 at least be allowed to serve some form of discovery
 25 related to damages so that I can prepare properly for

1 I've seen nothing they have. They have discussed an
 2 indemnity agreement in the Complaint. I don't have
 3 that. My client doesn't have that.

4 THE COURT: Well, it may expedite the matter
 5 to move forward so everybody's talking with the same
 6 thing. We don't have to read documents when we're
 7 here. I would ask that you-all share what you can in
 8 that regard. I'm not going to mandate it because I
 9 don't think that's proper. If we don't get it worked
 10 out we'll have a hearing in the next, what, 60 days
 11 or so?

12 MS. BECK: I didn't know if this might be
 13 something you might want to put on the trial term as
 14 a possibility. If not, we've got some time the first
 15 week in October.

16 THE COURT: I can bring you-all back -- I've
 17 got some trials coming up. I've been squeezing stuff
 18 in there. I've got a trial term in August and one in
 19 September. The last week of September?

20 MS. BECK: Yes, sir, or if they prefer a date
 21 certain we can do the first week of October.

22 MS. ARIAIL: Your Honor, I have a
 23 Court-ordered mediation the last week of September,
 24 so if we could move it to the first week of October
 25 that would be helpful.

1 the damages hearing.

2 THE COURT: Ms. Endemann?

3 MS. ENDEMANN: I don't think we're in a
 4 position, Your Honor, to consent to that. Ms. Ariail
 5 can certainly Cross the Plaintiff on any damages that
 6 we present at the hearing as is allowed by the Rules,
 7 but she isn't allowed to present her own evidence in
 8 any event.

9 We're happy to try to -- most of the documents
 10 that we would use in support of our case are her
 11 clients and also Hanover's, which are the bond claims
 12 spreadsheets and everything, which Hanover is sending
 13 directly to her client and which we're happy to
 14 provide if that's not happening. I think she has
 15 everything that she would need. It would just be the
 16 testimony, and of course, she's entitled to Cross
 17 under the Rules.

18 THE COURT: All right. I think that's the
 19 case. All right? I'm assuming you've got what
 20 you've got. You're entitled to participate in a
 21 damages hearing. There's no doubt about that by
 22 Cross-Examination but not by putting forth in
 23 evidence.

24 MS. ARIAIL: Right, Your Honor, but to
 25 properly prepare to Cross-Examine their witnesses,

1 THE COURT: Okay.

2 MS. BECK: The afternoon of the 5th, after
 3 those allocation hearings that you set, we can do the
 4 rest in the afternoon.

5 THE COURT: What's going on on the 4th?

6 MS. BECK: Nothing. That would be fine, too.

7 THE COURT: Why don't we set this for October
 8 4th at 2:00 p.m. Let's just set it up. That's a
 9 Tuesday afternoon the first week of October. Okay?

10 MS. ENDEMANN: Thank you, Judge.

11 MR. EPTING: Thank you, Judge.

12 THE COURT: Very good. I'm just going to do a
 13 Form 4, and I'll put that in there. If you-all want
 14 to follow up with an order you can. 2:00 p.m.

15 MS. ENDEMANN: Thank you.

16 (The proceedings were concluded at 11:11 a.m.)
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 21
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 24
 25

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125-E WAPPOO CREEK DRIVE, SUITE 202

CHARLESTON, SC 29412

(843) 814-8805 (TELEPHONE)

(843) 266-0538 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

TO: THE HONORABLE JENNY ABBOTT KITCHINGS FROM: A. BRIGHT ARIAIL, ESQ

FAX NUMBER: (803)-734-1839 DATE: OCTOBER 6, 2016

PHONE NUMBER: (803) 734-1890 TOTAL NO. OF PAGES INCLUDING COVER: 13

YOUR REFERENCE: Appeal - Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143

CASE NAME/CASE NUMBER: Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY

NOTES/COMMENTS:

DEAR MS. KITCHINGS:

ENCLOSED PLEASE FIND AN ELECTRONICALLY TRANSMITTED FACSIMILE COPY OF THE FOLLOWING DOCUMENTS IN CONNECTION WITH THE ABOVE-REFERENCED APPEAL:

- (1) COVER LETTER FILING NOTICE OF APPEAL OF APPELLANTS RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, AND LYNNETTE PENNINGTON WARD ("NOTICE OF APPEAL");
- (2) NOTICE OF APPEAL;
- (3) PROOF OF SERVICE OF THE NOTICE OF APPEAL ON THE RESPONDENT;
- (4) THE ORDER(S) WHICH ARE TO BE CHALLENGED ON APPEAL;
- (5) THE FILING FEE CHECK OF \$100.00.

WE ARE REFILEING THESE DOCUMENTS AS THE COURT REPORTER'S CERTIFICATION OF THE JULY 14, 2016 BENCH ORDER WAS INADVERTANTLY OMITTED FROM OUR OCTOBER 5, 2016 FILING WITH THE COURT OF APPEALS. THE ORIGINALS OF THESE DOCUMENTS AND THE FILING FEE CHECK WILL BE IMMEDIATELY SENT BY U.S. MAIL TO YOUR OFFICE.

BEST REGARDS,
A. Bright Ariail
A. BRIGHT ARIAIL

The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have read this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U. S. Postal Service. Thank you.



LAW OFFICE OF A. BRIGHT ARIAIL, LLC

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CHARLESTON, SC 29412

bright@brightariailaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805

Facsimile: (843) 266-0538

October 6, 2016

VIA FACSIMILE (803) 734-1839 & US MAIL

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

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

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent.
- (2) A copy of the order(s) which are to be challenged on appeal.
- (3) A filing fee of \$100.00.

Please file the Notice of Appeal and return the clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

Sincerely,



A. Bright Ariail

Attorney for Appellants

Enclosures

cc: Andrew K. Epting, Jr.,
Michelle N. Endemann
Andrew K Epting, Jr., LLC
46A State Street
Charleston, S.C. 29401
(843) 377-1871
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

v.

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

NOTICE OF APPEAL

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward appeal the Bench and Formal Orders of the Honorable Mikell R. Scarborough dated July 14, 2016. The Court's orders: (a): Denied Appellant's Motion to Lift Entry of Default for lack of good cause; (b): Denied Appellant's Motion to Stay and Compel Arbitration on the basis of default; and (c): Set a damages hearing for October 4, 2016. Appellants received written notice of entry of these orders on July 18, 2016.

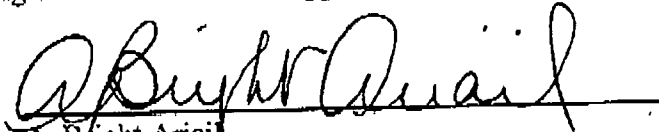
Appellants filed a Motion to Reconsider and to Alter and Amend the Court's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. The Court scheduled the hearing on Appellants' motion for October 11, 2016. On September 7, 2016, standing on their rights to arbitration, the Appellants requested the Court to schedule the hearing on Appellants' motion prior to the October 4, 2016 damages hearing.

On September, 7, 2016, the Court replied to Appellants' request and made the decision to switch the hearing dates, with the motions hearing to be held on October 4, 2016 and, if necessary, the damages hearing to be held on October 11, 2016. The Court asked the parties to advise if this plan was acceptable. The Appellants informed the Court that this plan was acceptable. The Respondent notified the Court that it would defer to the Court, but preferred the damages hearing to be held on October 4, 2016 and the motions hearing to be held on October 11, 2016.

After further consideration, the Court then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would be held on October 4, 2016 and the motions hearing would be held October 11, 2016. Appellants received written notice of the Court's decision on September 12, 2016.

The Court's decision to proceed with the damages hearing and not hear the Appellant's Rule 59(e) prior thereto effectively denies this motion and proceeding with the damages hearing under these circumstances would severely prejudice Appellants' rights to arbitration. Therefore, subject to, without waiving, and fully preserving their rights to arbitration, the Appellants hereby file the instant appeal in this matter.

September 29, 2016



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(843) 814-8805
Attorney for Appellants

Other Counsel of Record:
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Michelle N. Endemann
Andrew K. Epting, Jr., LLC
46A State Street
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(843) 377-1871
Attorneys for Respondent

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In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Case No. 2016-CP-10-1143

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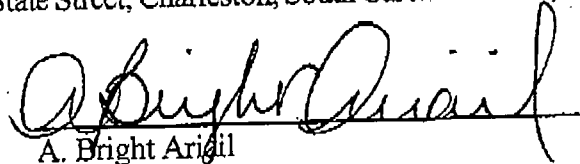
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September 30, 2016



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Attorney for Appellants

Final Order

(07-14-16)

PROCEEDINGS

1 STATE OF SOUTH CAROLINA
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 21 Christine A. Smith, Court Reporter
 22 Myrtle City
 23 P.O. Box 9090
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 25 (843) 848-2070
 csmith@charlestoncourtreporter.com

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 9 Ake@epting-law.com
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8 ATTORNEYS FOR THE DEFENDANT:

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4 documentation of the amount of payments that have
5 been made.

6 When we were in front of you a month or so ago
7 there was a -- and there still is a standing Motion
8 for Compelling Arbitration by the Plaintiff. They
9 actually filed that. The contract requires it, and
10 there is a motion that has not been heard that was
11 filed by the Plaintiff for compelling arbitration.

12 In the meantime, despite the requirement for
13 mediation and arbitration, and based on direction
14 from the Court at the last hearing, we have complied
15 with discovery. We have answered discovery. We have
16 been continuously providing documents as we've
17 compiled them, and at my direction my client has
18 concentrated on the financial records rather than the
19 voluminous information that is compiled on a
20 two-or-three-year construction project.

21 That being said, I think it's proper to hear
22 the Motion to Compel Mediation and Arbitration today.
23 We merely joined what the Plaintiff's have already
24 filed. For that reason I would ask that you go ahead
25 and hear that motion.

1 of our people don't have jobs, so we're really sort
2 of in dire straits here.

3 THE COURT: Okay.

4 MS. ENDEMANN: We were served with this Motion
5 to Compel Arbitration this week, and Your Honor has
6 set it probably for expediency today. We don't
7 think, Your Honor, that we can go forward on that
8 motion. First, we don't think that he can bring the
9 motion, period, because he's in default; and second,
10 it's not properly before this Court as we only got
11 notice of it a couple of days ago.

12 We think that the tapat here might be to try
13 to get relief from default, get this motion heard,
14 and get it appealed if Your Honor does not rule in
15 their favor and ties this up for several years. If
16 that happens, again, my client's out of business.

17 What we would like to see happen here today is
18 have a damages hearing set because Mr. Ward is in
19 default. He's not provided the Court with any
20 reasonable explanation for being in default and is
21 not entitled to make this Motion for Arbitration
22 since he is in default. Thank you, Your Honor.

23 THE COURT: Ms. Ariail, let me hear from you
24 on that one.

25 MS. ARIAIL: Your Honor, I don't totally agree

1 THE COURT: You want to get out of Default
2 first, don't you? I didn't rule on that last time I
3 don't think?

4 MS. ARIAIL: You did not.

5 THE COURT: You're right. Mr. Epting and
6 Ms. Endemann, it looks like there was a motion filed
7 back in March to Compel. Is it mediation or
8 arbitration? Is it contract specific?

9 MS. ENDEMANN: Your Honor, it's a standard
10 Form AIA contract, so there is a provision in there
11 having to do with mediation and arbitration. We did
12 file that motion assuming that we were going to get a
13 responsive pleading and that we would send it to
14 arbitration. That's not what happened in this case.
15 Instead we set aside that motion and asked for an
16 order referring this case to you for a damages
17 hearing which was granted by the Circuit Court.

18 THE COURT: I've got it. This was filed
19 March 7th. That motion was with those -- that was as
20 a result of the matter to referral. Mr. Ward was
21 served on the 14th of March. The Motion to Set Aside
22 the Entry was there. I recall we had a quick meeting
23 and then you-all did some discovery and I haven't
24 been able to resolve anything. Basically, it's a
25 Motion for a Continuance which we granted. And then

1 Mr. Ward's affidavit. All right. That rings a bell.
 2 Well, Ms. Ariail, I think the first thing you
 3 have to do is get out of default before you can bring
 4 affirmative relief. It does appear that the matter
 5 was referred over here. I think that took care of
 6 the -- the clerk closed out the Motion to Compel the
 7 Arbitration because of the fact that it was referred
 8 over here. So that based some adjudication on that
 9 motion is how the Court considers that.

10 I think what we were wrestling with last time
 11 was whether or not you-all could resolve it. That
 12 doesn't look like it's been done. I find that
 13 because it was not shown by Mr. Ward in his
 14 affidavits that that supported why he was in default
 15 I find the Defendant in default and I so order.

16 So this will be a question of a damages
 17 hearing to be set. How much time do you-all want?

18 MS. ENDEMANN: Your Honor, we probably need
 19 about an hour to two hours for the hearing, and we
 20 can hear it whenever the Court is available.

21 THE COURT: Okay.

22 MS. ARIAIL: Your Honor, I would ask since I
 23 have in good faith participated in discovery that I
 24 at least be allowed to serve some form of discovery
 25 related to damages so that I can prepare properly for

1 I've seen nothing they have. They have discussed an
 2 indemnity agreement in the Complaint. I don't have
 3 that. My client doesn't have that.
 4 THE COURT: Well, it may expedite the matter
 5 to move forward so everybody's talking with the same
 6 thing. We don't have to read documents when we're
 7 here. I would ask that you-all share what you can in
 8 that regard. I'm not going to mandate it because I
 9 don't think that's proper. If we don't get it worked
 10 out we'll have a hearing in the next, what, 60 days
 11 or so?

12 MS. BECK: I didn't know if this might be
 13 something you might want to put on the trial term as
 14 a possibility. If not, we've got some time the first
 15 week in October.

16 THE COURT: I can bring you-all back -- I've
 17 got some trials coming up. I've been squeezing stuff
 18 in there. I've got a trial term in August and one in
 19 September. The last week of September?

20 MS. BECK: Yes, sir, or if they prefer a date
 21 certain we can do the first week of October.

22 MS. ARIAIL: Your Honor, I have a
 23 Court-ordered mediation the last week of September,
 24 so if we could move it to the first week of October
 25 that would be helpful.

1 the damages hearing.

2 THE COURT: Ms. Endemann?

3 MS. ENDEMANN: I don't think we're in a
 4 position, Your Honor, to consent to that. Ms. Ariail
 5 can certainly Cross the Plaintiff on any damages that
 6 we present at the hearing as is allowed by the Rules,
 7 but she isn't allowed to present her own evidence in
 8 any event.

9 We're happy to try to -- most of the documents
 10 that we would use in support of our case are her
 11 clients and also Hanover's, which are the bond claims
 12 spreadsheets and everything, which Hanover is sending
 13 directly to her client and which we're happy to
 14 provide if that's not happening. I think she has
 15 everything that she would need. It would just be the
 16 testimony, and of course, she's entitled to Cross
 17 under the Rules.

18 THE COURT: All right. I think that's the
 19 case. All right? I'm assuming you've got what
 20 you've got. You're entitled to participate in a
 21 damages hearing. There's no doubt about that by
 22 Cross-Examination but not by putting forth in
 23 evidence.

24 MS. ARIAIL: Right, Your Honor, but to
 25 properly prepare to Cross-Examine their witnesses,

1 THE COURT: Okay.

2 MS. BECK: The afternoon of the 5th, after
 3 those allocation hearings that you set, we can do the
 4 rest in the afternoon.

5 THE COURT: What's going on on the 4th?

6 MS. BECK: Nothing. That would be fine, too.

7 THE COURT: Why don't we set this for October
 8 4th at 2:00 p.m. Let's just set it up. That's a
 9 Tuesday afternoon the first week of October. Okay?

10 MS. ENDEMANN: Thank you, Judge.

11 MR. EPTING: Thank you, Judge.

12 THE COURT: Very good. I'm just going to do a
 13 Form 4, and I'll put that in there. If you-all want
 14 to follow up with an order you can. 2:00 p.m.

15 MS. ENDEMANN: Thank you.

16 (The proceedings were concluded at 11:11 a.m.)
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 18
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 25

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E

3
4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 26th day of July, 2016 at
13 Charleston, Charleston County, South Carolina.

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Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

ARIAL LAW FIRM
8432660538

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

PALMETTO CONSTRUCTION GROUP,
LLC

CASE NO. 2016-CP-10-1143

Plaintiff,

vs.

ORDER

RESTORATION SPECIALISTS, LLC,
REUBEN MARK WARD, and LYNNETTE
PENNINGTON WARD

Defendants.

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

- 1) Defendants' motion to be relieved from default is DENIED;
- 2) A damages hearing is set for October 4, 2016 at 2:00pm; and
- 3) ~~No ruling is made~~ on Defendants' motion to stay and to compel arbitration

*is denied RS
as Δ is in default.*

[Signature]
The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC



The South Carolina Court of Appeals

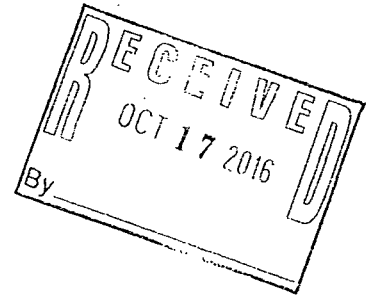
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October 13, 2016

Ms. A. Bright Ariail, Esquire
125E Wappoo Creek Drive
Suite 202
Charleston SC 29412



Re: Palmetto Construction Group, LLC v. Restoration Specialists, LLC
Appellate Case No. 2016-002096

Dear Counsel:

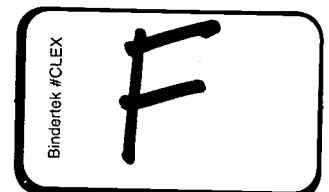
We are returning the second notice of appeal filed with this Court regarding circuit court case no. 2016CP1001143, that includes a cover letter dated October 6, 2016, as it appears to be a duplicate of the notice of appeal filed with this Court with a cover letter dated October 5, 2016. The second notice of appeal filing fee (paid by your check no. 1386) will also be returned to you.

We are also returning copies of the transcript filed with both notices of appeal as they are not a part of a notice of appeal. As the transcript has already been received, the appellants' initial brief and designation of matter are due October 31, 2016.

Very truly yours,

V. Claire Allen, Deputy

CLERK



cc: Andrew K. Epting, Jr., Esquire
Michelle Nicole Endemann, Esquire