

THE STATE OF SOUTH CAROLINA  
In the South Carolina Court of Appeals

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APPEAL FROM COUNTY OF AIKEN

M. Anderson Griffith, Master-In-Equity

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Appellate Case No.: 2016-002102

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**RECEIVED**

NOV 03 2016

**SC Court of Appeals**

Canadian River Farms, Ltd., Colt Farms, Inc., B C Farms, Inc., n/k/a , B C Farms of South Carolina, Inc., and Outback Farms, Ltd.,

Respondents/Appellants

vs.

Beck J. Gonshonroski, The South Carolina Department of Transportation and Aiken County, a body politic and political subdivision of the State of South Carolina,

Respondents

Ex Parte: Carolyn Barrett, Robert Barrett and Save Windsor SC, Proposed Intervenor,

Appellant, Respondent.

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RETURN TO MOTION TO DISMISS

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This return is to the Respondents/Appellants' Motion to Dismiss filed on October 20, 2016, which appears to deal primarily with the Appellant/Respondent's Amended Notice of Appeal filed on October 17, 2016. Respondents/Appellants are hereinafter referred to collectively as the Farms, to simply the motion. The Farms clearly had notice of the intent to appeal early on, since the Farms previously filed a motion to dismiss which was mooted. The Farms continue to take exception to a few technical defaults from the initial filings, but ignore

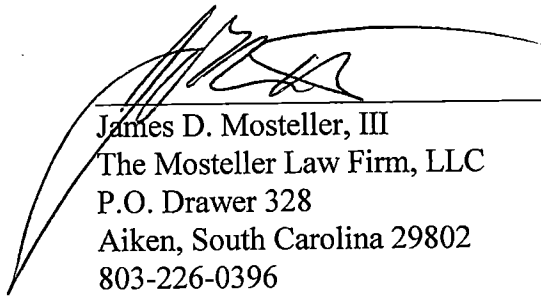
the actual due date of filing a Notice of Intent to Appeal.

The Amended Notice of Intent was filed on October 17, and the latest orders complained of which were a denial of Rule 59 SCRPC relief, and denial of a motion for intervention. When appealing the denial of Rule 59 relief, one is also entitled to appeal the underlying order from which Rule 59 relief was requested, especially here, where not all the issues that could have been raised to the trial judge were not raised prior to the solitary Rule 59 motion for reconsideration, partly because none of the litigants were represented at trial. "Our mandatory preservation requirements make it doubly important that litigants generally be freely allowed to file a first, written Rule 59(e) motion without concern a later appeal will be deemed untimely." Elam v. South Carolina Dept. Of Transp., 361 S.C. 9, 25 (S.C., 2004). No other Rule 59 has been filed, and thus the Amended Notice of Appeal, should be allowed to encompass the orders attached to it, including the lower court's initial order of June 27, 2016, from which the Rule 59(e) motion for reconsideration was timely filed. See also, Lucey v. Meyser, 401 S.C. 122 (S.C. App. 2012).

The Farms seem to discount that the Amended Notice of Appeal was timely filed and cured all defects complained of, other than providing the telephone numbers of counsel involved in the case. Even the failure initially, to include all three orders complained of does not prejudice the Farms since all three were attached to the final order within the 30 day time to appeal. See, State v. Cooper, 342 S.C. 389 (2000). The phone numbers of counsel are provided in the attached proof of service, as they appear at the South Carolina Bar Association Website or their lawfirm websites.

Mere technical defects, in light of the fact that they are not jurisdictional, should not prevent the litigants from having this Court review the matter before it, especially in this

instance, where at the court below the parties were unrepresented, given a status as being inactive after having filed a petition against the road closure, and where the Farms have taken it upon themselves to go ahead and close the road without seeking relief from the automatic stay on appeal - which is the subject of another motion to be filed with this court substantially contemporaneously with this Return.



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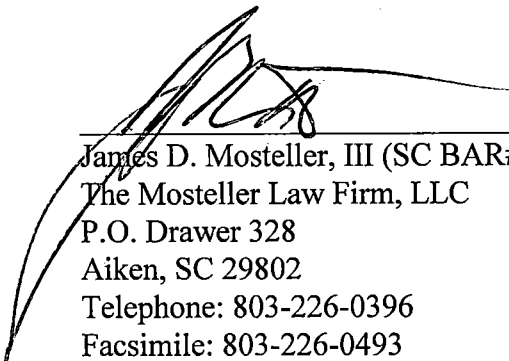
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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on Respondent(s) by depositing a copy of same in the United States mail, postage prepaid, on October 7, 2016, addressed to Respondents attorneys of record Mary Olivia Guynn, 210 Colony Pkwy, Aiken, SC 29803; J. Calhoun Watson, P.O. Box 11449, Columbia, SC 29211; Tina Marie Cundari, 1310 Gadsden Street, Columbia, SC 29201; James M. Holly, P.O. Box 5925, Aiken, SC 29804; Natalie Jean Moore, P.O. Box 191, Columbia, SC 29202.

October 31, 2016



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Attorney at Law

October 31, 2016

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SC Court of Appeals

Honorable Jenny Abott Kitchings  
Clerk of the SC Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Canadien River Farms, Ltd, Colt Farms et al.  
v. Becky J. Gonshorowski et al.  
Inactive Parties: Carolyn and Robert Barrett  
Intervenors listed in Notice of Appeal  
Appellate Case No. 2016-002102

Dear Ms. Kitchings:

Please find the original and seven copies of the Respondent/Appellant's Return to Motion to Dismiss and my Proof of Service. Please note that the proof of service sets forth the telephone numbers of each of opposing counsel, as set forth either on their websites, or the South Carolina Bar website. If the omission of their phone numbers on a prior filing inconvenienced you or your staff in any way, I do apologize for the minor oversight

Please clock in our extra copy, and return to us in the self addressed stamped envelope provided for your convenience.

If there is a better format to inform the Court of opposing counsel's telephone numbers, other than the proof of service attached hereto, please do not hesitate to let me know.

With Best Regards,

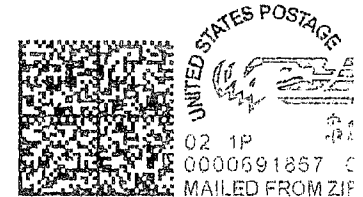
  
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Aiken  
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Physical Location:  
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Aiken, South Carolina 29801

cc: James Holly Esq  
Mary O. Guynn, Esq.  
Cal Watson, Esq.  
Natalie Jean Moore, Esq.  
Tina Marie Cundari, Esq.  
Bradford Owensby, Esq.

10/14/16  
PO Box 1832  
Barnwell, SC, 29812



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SC Court of Appeals

The Honorable Jenny Abbott Kitching  
Clerk of the S.C. Court of Appeals  
PO Box 11629  
Columbia, SC, 29211