

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

NOV 03 2016

M. Anderson Griffith, III, Master-In-Equity

SC Court of Appeals

Appellate Case No. 2016-002102

Canadian River Farms, Ltd., Colt Farms, Inc., BC Farms, Inc. n/k/a BC Farms
of South Carolina Inc., and Outback Farms, Ltd., Respondents-Appellants,

v.

Becky J. Gonshorowski, South Carolina Department of Transportation, and
Aiken County South Carolina, Defendants.

Ex Parte: Carolyn Barrett, Robert Barrett, and Save Windsor SC,
Proposed Intervenor.....Appellant-Respondent.

REPLY IN SUPPORT OF MOTION TO STRIKE AND DISMISS

Pursuant to Rule 240(f), SCACR, Respondents-Appellants (“the Farms”) hereby
reply to the Return filed by Appellant-Respondent in response to the Motion to Strike and
Dismiss the Appeal. This appeal has several problems and should be dismissed.

First, as explained in the Motion to Dismiss filed October 13, 2016, Appellant-
Respondent did not timely file the Notice of Appeal. Appellant-Respondent served a
Notice of Intent to Appeal on September 15, 2016, but did not file the Notice of Appeal
with this Court until October 7, 2016, twenty-two days later. Under the rules, the Notice
of Appeal must be filed within ten days of service of the Notice of Appeal. See Rule
203(d)(1)(B), SCACR. Additionally, the Notice of Appeal filed with this Court was not

filed with the lower court as required under Rule 203(d)(1)(B), SCACR, and did not reference or attach the order denying the motion to reconsider the June 27 road closure order.

Contrary to what Appellant-Respondent argues, the Motion to Dismiss filed October 13, 2016, is not moot. Nothing has happened in this case to moot the relief sought in the motion. The motion and the arguments contained therein are still pending before this Court, and Appellant-Respondent did not file a return to the motion. Appellant-Respondent's failure to file a return to the motion "may be deemed a consent by that party to the relief sought in the motion or petition." Rule 240(c), SCACR.

Moreover, the filing of an Amended Notice of Appeal does not change the fact that the first Notice of Appeal was filed late. A party cannot correct the lateness of one document by filing another document at any even later date. Additionally, like the first Notice of Appeal, the Amended Notice of Appeal was filed late. The Amended Notice of Appeal was filed on October 17, 2016, 32 days after Appellants-Respondents served the Notice of Intent to Appeal.

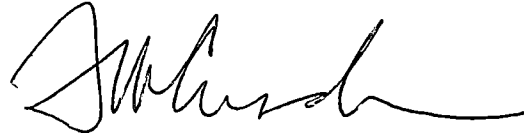
The Farms acknowledge that the Amended Notice of Appeal would have been timely filed and served under the rules had Appellants-Respondents not initiated the appellate process 32 days earlier by serving a Notice of Intent to Appeal, but that is not what happened in this case. Instead, Save Windsor (and not the Barretts) served a Notice of Intent to Appeal stating it was appealing the "judgment" dated September 15, 2016. (Mot. to Strike and Dismiss, Ex. F.) Twenty-two days later, Save Windsor and the Barretts filed a Notice of Appeal, but did not reference or attach the September 15, 2016 order denying the motion to reconsider the road closure order. (Mot. to Strike and

Dismiss, Ex. G.) Until the Amended Notice of Appeal was filed (after the deadline set forth by the Rules), the Farms had no notice that the order denying the motion to reconsider the road closure was being appealed. Accordingly, the Farms have proceeded as though the June 27 road closure order was the law of the case.

Second, it now appears based on the Amended Notice of Appeal that Carolyn Barrett and Robert Barrett are appealing the order denying the motion for reconsideration, and Save Windsor is appealing the order denying the motion to intervene. The Amended Notice of Appeal is defective given that the initial Notice of Appeal did not reference or attach the order denying the motion to reconsider, and neither Robert Barrett nor Save Windsor has standing to appeal that order. Robert Barrett chose not to testify at the hearing on the road closure, and Save Windsor did not even exist at the time the motion to reconsider was filed.

CONCLUSION

For these reasons (and those set forth in the motion to dismiss filed October 13, 2016, and the motion to strike and dismiss filed October 20, 2016), the Amended Notice of Appeal should be stricken and the appeal dismissed. If the appeal is not dismissed, the Farms request that the Court issue an order stating that the only order properly before the Court is the September 15, 2016 order denying the motion to intervene. This is the only order that has arguably been timely appealed and the only order that Save Windsor has standing to appeal.



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Columbia, South Carolina
November 3, 2016

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of South Carolina Inc., and Outback Farms, Ltd., Respondents-Appellants,

v.

Becky J. Gonshorowski, South Carolina Department of Transportation, and
Aiken County South Carolina, Defendants.

Ex Parte: Carolyn Barrett, Robert Barrett, and Save Windsor SC,
Proposed Intervenor.....Appellant-Respondent.

PROOF OF SERVICE

I, the undersigned, of the law offices of Sowell Gray Stepp & Laffitte, LLC,
attorneys for Respondents-Appellants, certify that I have served all counsel of record in
this action with a copy of the Reply in Support of Motion to Strike and Dismiss by U.S.
Mail and electronic mail, on November 3, 2016, to:

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Tina M. Cundari

November 3, 2016

By Hand Delivery

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

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SC Court of Appeals

Re: Canadian River Farms Ltd. et al. v. Becky J. Gonshorowski et al.
Appellate Case No. 2016-002102
Civil Action No. 2016-CP-02-00511
Our File No. 6928/1500

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter are the original and seven copies of a Reply in Support of the Motion to Strike and Dismiss filed by Respondent-Appellants, along with a Proof of Service. Please file the motion and return a filed copy to me through our courier.

By copy of this letter and as evidenced by the Proof of Service, I am serving all counsel of record with a copy of same.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,



Tina Cundari

TMC:cls
Enclosures

cc: Ms. Becky J. Gonshorowski (by U.S. mail)
Linda C. McDonald, Esq. (by U.S. mail and email)
Natalie Jean Moore, Esq. (by U.S. mail and email)
James M. Holly, Esq. (by U.S. mail and email)
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