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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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NOV 28 2016  
SC 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

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

v.

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 29<sup>th</sup> Place Developers, Inc.,.....Third-Party Plaintiffs,

v.

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 29<sup>th</sup> Place Developers, In. are the Appellants,

And

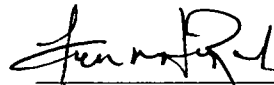
Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

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MOTION TO RECONSIDER

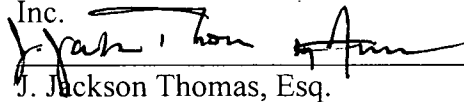
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By Order dated November 16, 2016, the Honorable James E. Lockemy, for the Court, issued an Order holding the Appellants' Motion for Reconsideration in this case in abeyance, pending the Supreme Court's final decision in the case of Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC, 413 S.C. 642, 776 S.E.2d 575 (Ct. App. 2015). The Respondent moves before the Court to Reconsider the Order holding the Motion to Reconsider in abeyance because the decision in the Wells Fargo case should not change the outcome in this case as the Appellant failed to timely file their Motion to Reconsider even if the email notice is ineffective as a matter of law. The Motion of the Respondents is based upon the case and statutory law, the South Carolina Rules of Civil Procedure, the South Carolina Appellant Court Rules and as specifically stated in the attached memorandum.



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SC Bar No.: 1802  
Attorney for the Respondents Smith  
and A & E Constructors and Consultants,  
Inc.



---

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

Myrtle Beach, South Carolina  
November 23, 2016

THE STATE OF SOUTH CAROLINA

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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 & E 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.

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MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO RECONSIDER

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On March 24, 2015 the Lower Court filed and granted judgment against the Appellants, jointly and severally, in the amount of \$2,968,790.68. On March 25, 2015, the Lower Court issued and filed a nunc pro tunc Order, which amended the Judgment to increase it to \$4,226,383.90 because of an accounting error and which added an additional Defendant's name to the Form 4C previously filed.

The law clerk for the Master's office sent to the attorneys for the parties two emails which contained the clocked and dated stamped Judgment, the nunc pro tunc Order, and the two form 4Cs as attachments, on March 24, 2015 and on March 25, 2015. The Respondents' attorney, Frank H. DuRant, then served the Judgment, the nunc pro tunc Order and the two form 4Cs by letters dated March 25<sup>th</sup> and March 27, 2015 and filed affidavits of service by mail with the office of the Clerk of Court.

On April 20, 2016, the Appellants filed and served their Motion for Reconsideration of the Lower Court's Order, which is 24 days after the date of last mailing date of the Orders to Appellants' attorneys and 26 days after the last email sent by the Master's office, which contained the Orders and Form 4Cs as attachments. The Respondents' Motion to Dismiss the Appeal was premised upon the failure of the Appellants to timely file their motion for reconsideration within 10 days after receipt of written notice of the entry of the judgment of the Master. In this case, the Appellants failed to timely file their Motion for Reconsideration, whether the beginning calculation date is the date of the last email notice by the Court or the last written notice sent to the Appellants by the Respondents' attorneys.

In Wells Fargo, supra, the email service date and the mail notice service date were material in that the Appellant met the time deadline for filing a Notice of Appeal using the mail service date and did not timely file their Notice of Appeal using the email service as the notice date. Since the Appellants' Motion for Reconsideration filed with the Lower Court was not timely filed using either time deadline as the notice date, the Appellants' Motion for Reconsideration was not timely filed and Rule 203(b)(1), SCACR, required that Appellants' Notice of Appeal be served on all Respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. The Appellants' Notice of Appeal was filed on April 20, 2016, almost a year after the deadline.

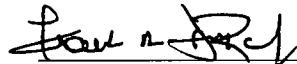
Judge Howe found in her "Order Disposing of Post Trial Motions" dated April 25, 2016 that the Appellants Motion to Reconsider was untimely filed and should be dismissed and she calculated the time beginning with the last service date of the nunc pro tunc Order from DuRant to opposing counsel, which was the latest date of service. In Wells Fargo, supra, this Court dismissed the Appeal of the Appellant because the Appellant failed to timely file its Notice of Appeal based upon the date of email notice of an Order from the Master in Equity of Spartanburg County. In Wells Fargo, the Appellant served their Notice of Appeal thirty one days after receiving the written notice of the entry of the judgment from the Master in Spartanburg by email, but that Appellants' Notice of Appeal was timely filed using the date of the service letter to that Appellant by the Respondent's attorney, which contained a copy of the Order appealed and the Form 4C entry of the appealed Order. Appellant Fallon would meet the time deadline for filing the Notice of Appeal based upon the date of service of the Notice and Order by mail, but failed by one day to timely file the motion based upon the email notice date from the Master. If the Supreme Court in Wells decides that the email notice from the Master in Equity is not effective written notice of the filing of the Order, the Appellant in Wells Fargo timely filed its

Notice of Appeal. If this Court disregards the notice of filing accomplished by the Master's email in this case and uses only the written notice by mail, the Appellants filed an untimely Motion for Reconsideration and an untimely Notice of Appeal. Such was the finding by the Master in its Order. Since the failure to timely file the Notice of Appeal is jurisdictional, the Court has no discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice. Mears v. Mears, 287 S.C. 168, 337 S.E.2d 1985.

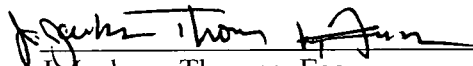
CONCLUSION

The Respondents respectfully request that this Court reconsider its decision to hold the Appellants' Motion for Reconsideration in abeyance, as the issues to be determined in the Wells Fargo would not rescue the Appellants from their late filings. Respondents submit that the Appellants' Motion for Reconsideration should be denied for the reasons stated.

Respectfully submitted.



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SC Bar No.: 1802  
Attorney for the Respondents Smith  
and A & E Constructors and Consultants,  
LLC



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SC Bar No.: 5527  
Attorney for Respondents E. Smith & Sons,  
LLC, EES Construction and Consulting,  
LLC and Ellis E. Smith

Myrtle Beach, South Carolina  
November 23, 2016

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AND

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

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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 29<sup>th</sup> Place Developers, In. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & E 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 DuRant & Martin, attorney for the Respondents Smith and A & E Constructors and Consultants, LLC, and that she mailed the document(s) listed below in the above entitled action to the addressee(s) below on November 23, 2016 and proper postage was attached thereto.

DOCUMENT(S): Respondents' Motion to Reconsider and Memorandum in Support of Respondents' Motion to Reconsider

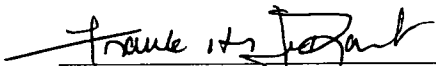
ADDRESSEE(S): Henrietta U. Golding, Esq.  
James K. Gilliam, Esq.  
McNair Law Firm, P.A.  
P.O. Box 336  
Myrtle Beach, SC 29578  
*Attorney for Appellants Arthur Wayne Vereen, Individually and as Trustee of the Arthur W. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices,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

J. Jackson Thomas, Esq.  
Thompson & Henry, PA  
1314 Professional Dr,  
Myrtle Beach, SC 29577  
*Attorney for Respondents E. Smith & Sons, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually*



Lauren Massimino

SWORN to before me this 23<sup>rd</sup>  
day of November, 2016

  
Notary Public for South Carolina  
My Commission Expires: 5-24-21

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  
TELECOPIER: (843) 626-7431

November 23, 2016

VIA FEDERAL EXPRESS OVERNIGHT

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

**RECEIVED**

NOV 28 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

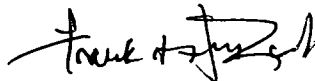
Dear Ms. Kitchings:

Enclosed herewith please find the Original and seven (7) copies of the Respondents' Motion to Reconsider, Memorandum in Support of Respondents' Motion to Reconsider, 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 Respondents' Motion to Reconsider and Memorandum in Support of Respondents' Motion to Reconsider, 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  
LAUREN MASSIMINO  
DURANT AND MARTIN  
2107 FARLOW STREET

SHIP DATE: 23NOV16  
ACTWGT: 1.00 LB  
CAD: 8214431/NET3790

MYRTLE BEACH, SC 29577  
UNITED STATES US

BILL SENDER

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

544.D/CBBI/14EB

COLUMBIA SC 29201

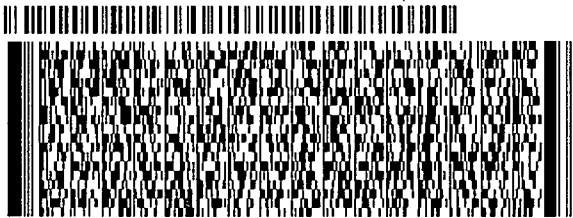
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REF FHD - A&E V VEREN, ET AL

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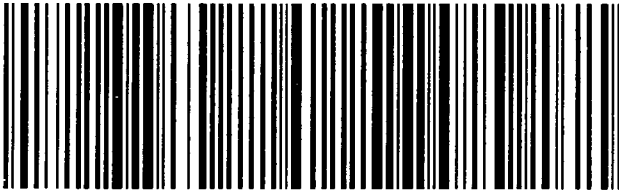
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