

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge

RECEIVED

DEC 20 2016

SC Court of Appeals

Civil Action No. 2016-CP-32-00474
Appellate Case No. 2016-002272

Palmetto Wastewater Reclamation, LLC
d/b/a Alpine Utilities..... Plaintiff/Respondent

v.

RBF Enterprises, LLC d/b/a McDonald's Defendant/Appellant

**RESPONDENT'S RETURN TO APPELLANT'S MOTION TO ORDER
TRANSCRIPT OUTSIDE OF FILING DEADLINE AND MEMORANDUM OF
AUTHORITIES**

Respondent Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities ("Alpine Utilities"), pursuant to Rule 240(e), SCACR, submits the within return and memorandum of authorities in response to the Motion to Order Transcript Outside of Filing Deadline ("Motion) filed on or about December 14, 2016 by Defendant/Appellant RBF Enterprises, LLC d/b/a McDonald's ("RBF").

As a threshold matter, Alpine Utilities opposes the motion because Rule 207 SCACR is clear: "[i]n appeals from the court of common pleas ... the transcript *must* be ordered within ten (10) days after the date of service of the notice of appeal." (emphasis added). A failure to follow Appellate Court rules is grounds for dismissal. See Rule 260,

SCACR. As this Court has already noted, RBF failed to order the transcript of the hearing below within the deadline set by Rule 207, SCACR. Its motion to do so beyond the required deadline should therefore be denied and its appeal dismissed.

Moreover, Alpine Utilities submits that RBF's Motion is deficient as it cites to no authority for the proposition that mere inadvertence to comply with the Rule 207, SCACR, is sufficient grounds to support its Motion. *See* Rule 240(c)(2), SCACR. Accordingly, the motion should be denied and the appeal dismissed for this reason, too.

Finally, denial of the motion and dismissal of the appeal is particularly appropriate given the undisputed background facts of this case, which demonstrate that there can no appealable issue from the circuit court's order granting summary judgment in **this** action for liquidated damages. This is so because RBF:

- (1) Failed to submit a verified answer in response to a verified complaint that established the amount of RBF's indebtedness to Alpine Utilities for unpaid sewer bills, such bills between being based upon a rate previously found by the Public Service Commission of South Carolina -- in a contested case proceeding between the same parties -- to be lawful and correct¹;
- (2) Failed to submit an affidavit in opposition to Alpine Utilities' Motion for Summary Judgment as permitted by Rule 56(c), SCRCPP;² and

¹ As the circuit court found, the Commission concluded (in a final order that was not appealed by RBF) that Alpine Utilities had billed its then-customer, RBF, for sewer services at the correct and lawful rate in *In re Robert B. Farmer – RBF Enterprises, LLC d/b/a McDonald's v. Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities*, Docket No. 2013-119-S, Order No. 2016-34, 2016 WL 127899 (S.C.P.S.C. Jan. 8, 2016). *See* circuit court order, September 26, 2016, at 4, copy attached to Notice of Appeal.

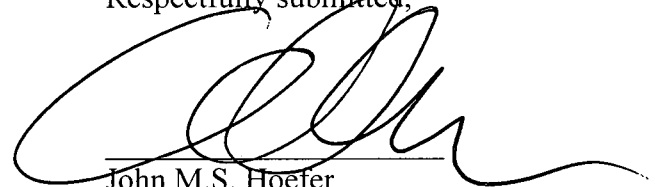
² *See* circuit court order at 1.

(3) Failed to submit any motion to alter or amend as permitted by Rule 59(e),
SCRPC.³

In view of the foregoing, Alpine Utilities submits that RBF cannot advance meritorious grounds for appeal, which further justifies a denial of the motion and dismissal of the appeal.

For the foregoing reasons, Alpine Utilities requests that RBF's Motion should be denied. Alpine Utilities further submits that the appeal should be dismissed pursuant to Rule 260, SCACR.

Respectfully submitted,



John M.S. Hoefler
Andrew J. D'Antoni
Willoughby & Hoefler, P.A.
P.O. Box 8416
Columbia, SC 29202-8416
(803) 252-3300
jhoefler@willoughbyhoefler.com
adantoni@willoughbyhoefler.com

Attorneys for Respondent

Columbia, South Carolina
December 20, 2016

³ See Notice of Appeal.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge

RECEIVED

DEC 20 2016

SC Court of Appeals

Civil Action No. 2016-CP-32-00474
Appellate Case No. 2016-002272

Palmetto Wastewater Reclamation, LLC
d/b/a Alpine Utilities..... Plaintiff/Respondent

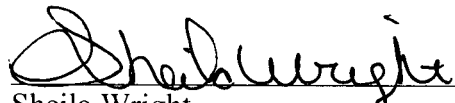
v.

RBF Enterprises, LLC d/b/a McDonald's Defendant/Appellant

PROOF OF SERVICE

I hereby certify that I have served **Respondent's Return and Memorandum of Authorities** in response to Appellant's motion to order transcript outside the filing deadline by causing a copy to be hand delivered to counsel for Appellant on December 20, 2016 at the address shown below:

D. Reece Williams, III
Kathleen M. McDaniel
Callison Tighe & Robinson, LLC
1812 Lincoln Street
Columbia, SC 29202


Sheila Wright

Columbia, South Carolina
December 20, 2016

WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN P. MUSTIAN**
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
CHAD N. JOHNSTON
JOHN W. ROBERTS
ANDREW J. D'ANTONI

ELIZABETH S. MABRY
JAMES PATRICK HUDSON
OF COUNSEL

JOSEPH H. FARRELL, III
SPECIAL COUNSEL

OFFICES:

COLUMBIA

930 RICHLAND STREET
P.O. BOX 8416
COLUMBIA, SC 29202-8416

CHARLESTON

151 MEETING STREET
SUITE 325
P.O. BOX 10
CHARLESTON, SC 29402

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

December 20, 2016

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN WASHINGTON, D.C.

VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
DEC 20 2016
SC Court of Appeals

RE: Palmetto Wastewater Reclamation, LLC, d/b/a Alpine Utilities,
Plaintiff/Respondent v. RBF Enterprises, LLC, d/b/a McDonald's,
Defendant/Appellant,

C/A No. 2016-CP-32-00474
Appellate Case No. 2016-002272


Dear Ms. Kitchings:

Enclosed for filing, please find one (1) original and seven (7) copies of **Respondent's Return and Memorandum of Authorities** in response to Appellant's motion to order transcript outside the filing deadline and our proof of service of same. Please date-stamp the extra copies and return same to me by bearer of this letter.

If you have any questions or if you need any additional information, please do not hesitate to contact me.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.


Andrew J. D'Antoni

AJD/sw
Enclosure

cc: Kathleen M. McDaniel, Esq. (via hand-delivery)