

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

JAN 11 2017

SC Court of Appeals

Appeal from Charleston County  
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

Appellate Case No. 2014-000824  
Trial Court Case No. 2011-CP-10-7166

Otha Delaney,

Appellant,

v.

First Financial of Charleston, Inc.,

Respondent.

RESPONDENT'S RETURN  
TO APPELLANT'S PETITION FOR REHEARING

YOUNG CLEMENT RIVERS, LLP  
Stephen L. Brown (SC Bar No. 66468)  
Russell G. Hines (SC Bar No. 72100)  
Perry M. Buckner, IV (SC Bar No. 100031)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488

*Counsel for Respondent*  
*First Financial of Charleston, Inc.*

By and through its undersigned counsel, Respondent First Financial of Charleston, Inc. (“First Financial”), makes this return to the petition for rehearing submitted by Appellant Otha Delaney (“Mr. Delaney”).

1. **Assuming, *arguendo*, it is proper to consider the petition on the merits, the petition should be denied because the majority did not overlook or misapprehend any material point and correctly affirmed the trial court’s dismissal of Mr. Delaney’s complaint as time barred.**

As the Court is, of course, aware, a return to a petition for rehearing is not required unless requested by the Court. Rule 240(e), SCACR. The Court did not request this return, and indeed, in the absence of the jurisdictional issue addressed below, it would not be submitted.

The majority did not overlook or misapprehend any material point in affirming the trial court’s dismissal of Mr. Delaney’s complaint as time barred; rather, as its opinion reflects, its holding was the product of careful—and correct—legal analysis. In this regard, First Financial would note especially the support for its decision that the majority rightfully found in the Official Comments to S.C. Code Ann. §§ 36-9-611 and 36-9-625(c)(2). All of the points Mr. Delaney raises in his petition about legislative intent are belied by the express legislative commentary that § 36-9-611 “requires a secured party who *wishes* to dispose of collateral under Section 9-610 to send ‘a reasonable authenticated notification of

disposition' to specified interested persons . . . ,"<sup>1</sup> and that § 36-9-625(c)(2) "is designed to ensure that every noncompliance with the requirements of Part 6 in a consumer-goods transaction results in liability, regardless of any injury that may have resulted." Comment 4.

Accordingly, assuming, *arguendo*, it is proper to consider the petition on the merits, there is no cause to grant it; the majority did not overlook or misapprehend any material point and correctly affirmed the trial court's dismissal of Mr. Delaney's complaint as time barred.<sup>2</sup>

---

<sup>1</sup> Comment 2 (emphasis added).

<sup>2</sup> Further regarding the merits, in the interest of brevity, First Financial simply incorporates herein by reference the analysis already presented in its brief. Of course, in considering Mr. Delaney's petition, if the Court wishes to hear more from First Financial in this regard, it will gladly submit a return or such other additional substantive briefing directed to the merits as the Court may direct.

2. **Most respectfully, the Court properly sent the remittitur to the trial court on October 19, 2016, at which point the appeal was decided with finality (in accordance with the majority's September 28, 2016, decision affirming the trial court's dismissal of Mr. Delaney's complaint as time barred) and the Court no longer had appellate jurisdiction; it was error for the Court to issue its orders recalling the remittitur and extending the time for Mr. Delaney to petition for rehearing; and the Court should now confirm that the remittitur was not properly recalled or re-remitt the case to the trial court or take such other procedurally appropriate step(s) as may be required to reflect that this appeal has been decided with finality in accordance with the majority's September 28<sup>th</sup> decision and that there is no longer appellate jurisdiction to alter the trial court's dismissal of Mr. Delaney's complaint.**

The Court finally decided this appeal by opinion filed Wednesday, September 28, 2016. Under Rule 221(a), SCACR, "Petitions for rehearing must be *actually received* by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court." (emphasis added). Therefore, the initial deadline for the Court to "actually receive[]"<sup>3</sup> a petition for rehearing from Mr. Delaney was Thursday, October 13, 2016, i.e., the 15<sup>th</sup> day after the opinion was filed, as computed under Rule 263(a), SCACR.<sup>4</sup>

---

<sup>3</sup> Generally, under Rule 262(a)(2), SCACR, documents may be filed with the appellate court by mail, with the date of filing deemed to be the date of mailing; however, Rule 262(a) makes two express exceptions to this rule: petitions for rehearing and motions for reinstatement.

<sup>4</sup> Rule 263(a) states,

In computing any period of time prescribed or allowed by these Rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be

This initial deadline was, however, altered by order of our state Supreme Court; specifically, Order No. 2016-10-10-01 (“Re: Hurricane Matthew”), filed October 10, 2016 (the “Hurricane Matthew Order”). The Hurricane Matthew Order provided as follows:

On October 4, 2016, the Governor of South Carolina directed the closure of State, County and Municipal Government Offices in twenty-six counties in South Carolina from October 5 through October 7, 2016. This action was taken to facilitate the planned evacuations necessary due to Hurricane Matthew. As the administrative head of the Unified Judicial System in South Carolina, the Chief Justice directed all levels of the Judicial System to comply with this closure.

Subsequently, the Governor issued Executive Orders providing for evacuations in Jasper, Beaufort, Colleton, Charleston, Dorchester, Berkeley, Georgetown and Horry Counties. Several hundred thousand South Carolina citizens evacuated these areas, and the impacts of these evacuations were felt in counties which were not subject to any closure or evacuation. Further, Hurricane Matthew caused significant damage in South Carolina, and this will adversely affect the ability of many lawyers and litigants to comply with deadlines in court proceedings through the end of this week.

Accordingly, this Court finds it appropriate to declare the days of Wednesday, October 5, 2016, though Friday, October 14, 2016, to be statewide “holidays” for the purposes of computing time under Rule 263 of the South Carolina Appellate Court Rules, Rule 6 of the South

---

included, unless it is a Saturday, Sunday or a state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday.

Carolina Rules Civil Procedure, Rule 35 of the South Carolina Rules of Criminal Procedure, and Rule 3 of the South Carolina Rules of Magistrates Court.

(footnotes omitted.) The initial deadline for Mr. Delaney's petition for rehearing, Thursday, October 13, 2016, was thus declared "to be [a] statewide 'holiday[]' for the purpose[] of computing time under Rule 263 of the South Carolina Appellate Court Rules . . . ." For that matter, so was Friday, October 14, 2016, and the two days thereafter, the 15<sup>th</sup> and the 16<sup>th</sup>, were Saturday and Sunday, respectively. Accordingly, computing time in accordance with Rule 263 and the Hurricane Matthew Order, the time period in which any petition for rehearing by Mr. Delaney had to be "actually received" ran until the end Monday, October 17, 2016, i.e., the end of the next day which is neither a Saturday, Sunday nor holiday.

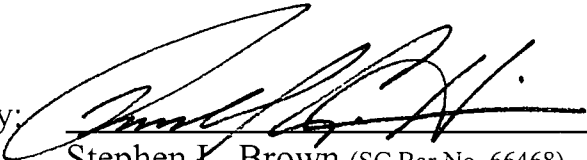
Having not "actually received" a petition for rehearing by Mr. Delaney, the Court remitted the case to the trial court on Wednesday, October 19, 2016. On October 20, 2016, the Court received from Mr. Delaney a Motion for Extension of Time to File Motion for Rehearing, which had been mailed on October 18, 2016. On November 2, 2016, the Court filed an order directing the trial court to return the remittitur. On November 3, 2016, the Court filed an order extending the time for Mr. Delaney to petition for rehearing until November 18, 2016. Thereafter, the Court received Mr. Delaney's petition for rehearing on November 18, 2016.

“When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. *The only exception* to this rule is when the remittitur is sent down by mistake, error or inadvertence *of the Court.*” Wise v. S.C. Dep’t of Corrections, 372 S.C. 173, 174, 642 S.E.2d 551 (2007) (emphasis added) (internal citations omitted). There was no error “of the Court” in sending down the remittitur on October 19, 2016, and no such error was cited in the Court’s November 2, 2016, order recalling the remittitur, which order, like the Court’s November 3, 2016, order extending the deadline for Mr. Delaney to petition for rehearing until November 18, 2016, was erroneously issued without jurisdiction.

Accordingly, and certainly most respectfully, the Court properly sent the remittitur to the trial court on October 19, 2016, at which point the appeal was decided with finality (in accordance with the majority’s September 28, 2016, decision affirming the trial court’s dismissal of Mr. Delaney’s complaint as time barred), and the Court no longer had appellate jurisdiction; it was error for the Court to issue its orders recalling the remittitur and extending the time for Mr. Delaney to petition for rehearing; and the Court should now confirm that the remittitur was not properly recalled or re-remit the case to the trial court or take such other procedurally appropriate step(s) as may be required to reflect that this appeal has been decided with finality in accordance with the majority’s September

28<sup>th</sup> decision and that there is no longer appellate jurisdiction to alter the trial court's dismissal of Mr. Delaney's complaint.

Respectfully submitted,  
YOUNG CLEMENT RIVERS, LLP

By:   
Stephen L. Brown (SC Bar No. 66468)  
Russell G. Hines (SC Bar No. 72100)  
Perry M. Buckner, IV (SC Bar No. 100031)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488

***Counsel for Respondent  
First Financial of Charleston, Inc.***

Charleston, South Carolina

Dated: 1/9/17

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Charleston County  
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

---

Appellate Case No. 2014-000824  
Trial Court Case No. 2011-CP-10-7166

---

Otha Delaney,

Appellant,

v.

First Financial of Charleston, Inc.,

Respondent.

---

**PROOF OF SERVICE**

---

YOUNG CLEMENT RIVERS, LLP  
Stephen L. Brown (SC Bar No. 66468)  
Russell G. Hines (SC Bar No. 72100)  
Perry M. Buckner, IV (SC Bar No. 100031)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488

*Counsel for Respondent*  
*First Financial of Charleston, Inc.*

**RECEIVED**

JAN 11 2017

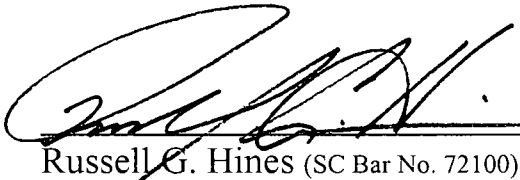
**SC Court of Appeals**

I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for Respondent First Financial of Charleston, Inc., hereby certify that the **RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING** was served on all other parties to this matter by depositing a copy of same in the U.S. Mail on January 9, 2017, properly posted for delivery to the following addressees:

Philip L. Fairbanks, Esquire  
1214 King Street  
Beaufort, SC 29902

*Counsel for Appellant Otha Delaney*

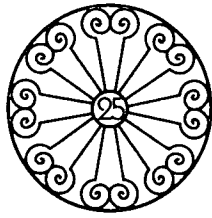
Respectfully submitted,  
YOUNG CLEMENT RIVERS, LLP

By:   
Russell G. Hines (SC Bar No. 72100)

*Counsel for Respondent  
First Financial of Charleston, Inc.*

Charleston, South Carolina

Dated: 1/9/17



YCR LAW

Kathleen B. Barnes  
Secretary

Direct Dial: (843) 720-5488  
Direct Fax: (843) 579-1369  
E-mail: kbarnes@ycrlaw.com

January 9, 2017

Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RECEIVED  
JAN 11 2017  
SC Court of Appeals

Re: Otha Delaney v. First Financial of Charleston  
Appellate Case No.: 2014-000824  
Case No.: 2011-CP-10-7166  
YCR File: 14768-20110934

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter please find the original and seven (7) copies of Respondent's Return to Appellant's Petition for Rehearing and the original and two (2) copies of a Proof of Service regarding the same.

Kindly return one (1) stamped copy to us in the envelope provided. With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Kathleen B. Barnes  
Secretary

Enclosures

(via US Mail and email)

cc: Philip L. Fairbanks, Esquire (via U.S. Mail and email)