

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2015-CP-26-8179
Appellate Case No. 2016-002175

RECEIVED

JAN 19 2017

SC Court of Appeals
Appellant,

Robert DeCiero,.....

v.

Horry County, State of South Carolina,..... Respondent.

RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR EXTENSION OF TIME

NOW COMES Respondent and makes its Return to Appellant's Motion for Extension of Time.

Appellant purports to seek a "30-day extension of time...in which to file Appellant's Initial Brief and Designation of Matter." (Motion, at 1.) His motion is out-of-time and should be denied. Appellant was required to serve and file a copy of the Initial Brief "[w]ithin thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal." Rule 208(a)(1) SCACR.

Appellant served Notice of Appeal October 24, 2016, along with a copy of a transcript request dated October 20, 2016.¹ (EX. A.) Although the deadline for filing an Initial Brief where no transcript is ordered would have been 30 days from October 24, 2016, Appellant did order a transcript October 20th (see fn. 1.) This arguably extended his Initial Brief due date to 30 days from receipt of the transcript. (Rule 208(a)(1) SCACR). By letter to the Court dated November 22, 2016, Appellant requested a 30-day extension of time to file his Initial Brief and Designation of Matter to be Included in the Record on Appeal.² (EX. B). Respondent was not notified of a Motion or related Order from the Court of Appeals, but did not oppose the request and proceeded under Appellant's requested "new deadline December 23, 2016." (see EX. B). On January 17, 2017, Respondent was served with the instant Motion for Extension of Time. (EX.C)

The Motion is time-barred and the appeal should be dismissed. "Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal..." Rule 208(a)4) SCACR. The Initial Brief was not filed or served within 30 days of *any* of the following: the filed Notice, the receipt of the transcript, or the 30-day extension requested November 22. The Rule states "appellant *shall* serve one copy of his brief..." within the 30 days required (emphasis added.) Rule 208(a)(1) SCACR. The deadline for the 30-day extension sought and unopposed in November (until December 23, 2016) has long passed and is 27 days overdue as of the

¹ The order appealed was decided without a hearing. (09-22-16 Order.) The transcript requested was of a hearing on another motion; An unappealed order issued.

² Transcript received by November 22, based on Appellant's calculation of the 30-day extension requested.

date of this Return to the instant motion served January 17, 2017. No motion for another extension was filed prior to December 23, 2016.

The Appellate Court Rules "are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992.) "The right to an appeal may be lost through a variety of actions by an appellant, such as: ...failure to serve and file an initial brief and designation of matter under Rule 208(a)(4) SCACR." State v. Serrette, 375 S.C. 650, 654 S.E.2d 554, (Ct.App. 2007)

For the reasons stated above, Respondent requests that this Court deny Appellant's Motion for Extension of Time as untimely filed.

Respectfully submitted,



Elise F. Crosby S.C. Bar # 7077
CROSBY LAW FIRM, LLC
405 Dozier Street
Georgetown, South Carolina 29440
(843) 546-3103
Attorney for Respondent

Date: January 18, 2017
Georgetown, South Carolina



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10/20/15

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2015-CP-26-8179

Robert DeCiero, a resident of Long Bay Estates Subdivision,
Myrtle Beach, South CarolinaAppellant,

v.

Horry County, State of South Carolina.....Respondent.

NOTICE OF APPEAL

Robert DeCiero appeals the Order Denying Motion to Reconsider Order granting Defendant's Motion to Dismiss of the Honorable Benjamin H. Culbertson dated September 16, 2016. Appellant received written notice of entry of this Order on October 14, 2016.

October 18, 2015

Thomas C. Brittain, Esq.
The Brittain Law Firm, P.A.
4614 Oleander Drive
Myrtle Beach, South Carolina 29577
843-449-8562
Attorney for Appellant

Other Counsel of Record:
Elise F. Crosby, Esquire
Crosby Law Firm, LLC
405 Dozier Street
Georgetown, SC 29440
843-546-3103
Attorney for Respondent

Robert Deciero
PLAINTIFF(S)

Horry County, State of South Carolina
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(b); SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
16 SEP 22 PM 1:11
COURT CLERK

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider Order of Dismissal is DENIED.
(This motion is decided without oral arguments.)

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

Sept. 16, 2016
Date

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10-14-16

THE BRITAIN LAW FIRM, P.A.

ATTORNEYS AT LAW
4614 OLEANDER DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577

THOMAS C. BRITAIN
MARY MADISON BRITAIN LANGWAY
A. PRESTON BRITAIN
T. CASE BRITAIN, JR.

843-449-8562
FAX 843-497-6124
www.brittainlawfirm.com

October 20, 2016

Grace L. Hurley
P.O. Box 30878
Myrtle Beach, SC 29588

Re: Robert DeCiero, a resident of Long Bay Estates Subdivision, Myrtle Beach, South Carolina v. Horry County, State of South Carolina
CA No: 15-CP-26-8179

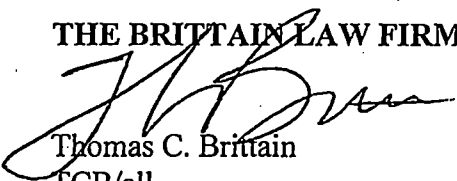
Dear Ms. Hurley:

Please provide me with a complete copy of the transcript from the Motion to Dismiss/Motion for Summary Judgment heard in the above-referenced matter before the Honorable Benjamin H. Culbertson on June 1, 2016 in the Horry County Court of Common Pleas during the 9:30 a.m. roster meeting.

With kindest regards, I am,

Yours truly,

THE BRITAIN LAW FIRM, P.A.


Thomas C. Britain
TCB/all

THE BRITAIN LAW FIRM, P.A.

ATTORNEYS AT LAW
4614 OLEANDER DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577

THOMAS C. BRITAIN
MARY MADISON BRITAIN LANGWAY
A. PRESTON BRITAIN
T. CASE BRITAIN, JR.

843-449-8562
FAX 843-497-6124
www.britainlawfirm.com

November 22, 2016

Via Fed Ex

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

Re: Robert DeCiero, a resident of Long Bay Estates Subdivision, Myrtle Beach, South Carolina v. Horry County, State of South Carolina
Appellate Case No: 2016-002175

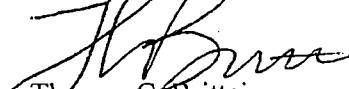
Dear Ms. Kitchings:

At this time, counsel for the Appellant respectfully requests a 30-day extension of time with which to file and serve the Initial Brief and Designation of Matter to be Included in the Record on Appeal, making the new deadline December 23, 2016. I am enclosing at this time a check in the amount of \$25.00 in connection with this request for extension.

I would appreciate your confirming with our firm, at your earliest convenience, that this request for extension has been granted and the new deadline to file and serve Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal is December 23, 2016.

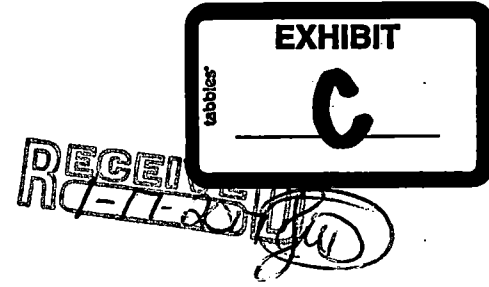
With warm regards, I am
Yours truly,

THE BRITAIN LAW FIRM, P.A.


Thomas C. Britain
TCB/all

cc: Elise F. Crosby, Esquire (via email)

THE BRITTAIN LAW FIRM, P.A.
ATTORNEYS AT LAW
4614 OLEANDER DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577



THOMAS C. BRITTAIN
MARY MADISON BRITTAIN LANGWAY
A. PRESTON BRITTAIN
T. CASE BRITTAIN, JR.

843-449-8562
FAX 843-497-6124
www.brittainlawfirm.com

January 12, 2017

Via Fed Ex

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

Re: Robert DeGiero, a resident of Long Bay Estates Subdivision, Myrtle Beach, South Carolina v. Horry County, State of South Carolina
Appellate Case No: 2016-002175


Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Motion for Extension of Time to file and serve Appellant's Initial Brief and Designation of Matter together with the Proof of Service and filing fee of \$25.00.

Please return one clocked-in copy of the Motion and Proof of Service to our office in the enclosed self-addressed stamped envelope.

With warm regards, I am
Yours truly,

THE BRITTAIN LAW FIRM, P.A.


Thomas C. Brittain
TCB/all

cc: Elise F. Crosby, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2015-CP-26-8179
Appellate Case No. 2016-002175

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JAN 19 2017
SC Court of Appeals

Roberts DeCiero,.....Appellant,

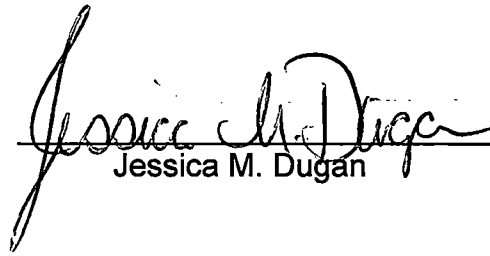
v.

Horry County, State of South Carolina,.....Respondent.

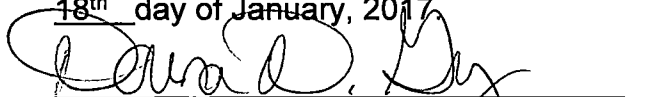
PROOF OF SERVICE

I, Jessica M. Dugan do hereby certify that I am an employee of THE CROSBY LAW FIRM, LLC, attorney for the Respondent in the above-referenced action, do hereby certify that I did this 18th day of January, 2017, by first class mail, postage prepaid, serve a copy of **Respondent's Return to Appellant's Motion for Extension of Time** to the following Attorney, addressed as follows:

Thomas C. Brittain, Esquire
The Brittain Law Firm, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577


Jessica M. Dugan

Sworn to before me this
18th day of January, 2017


Notary Public for South Carolina
My Commission Expires: 1/23/22



JOE M. CROSBY
jcroby@crosbyfirm.com

CROSBY LAW FIRM, LLC
405 DOZIER STREET
GEORGETOWN, S. C. 29440
TEL: (843) 546-3103 FAX: (843) 546-0747
www.crosbyfirm.com

ELISE F. CROSBY*
ecrosby@crosbyfirm.com
*Certified Family Court Mediator

January 18, 2017

VIA FED EX

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

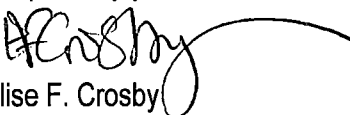
RE: *Robert DeCiero, a resident of Long Bay Estates Subdivision, Myrtle Beach, South Carolina*
vs. Horry County, State of South Carolina Appellate Case No.: 2016-002175

Dear Ms. Kitchings:

Enclosed please find for filing in regards to the above-referenced case the original and six (6) copies of Respondent's Return to Appellant's Motion for Extension of Time, along with the Proof of Service.

With kindest regards,

Respectfully yours,


Elise F. Crosby

EFC/jmd
Enc

cc: Thomas C. Brittain, Esquire (via US Mail) ✓

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JAN 19 2017

SC Court of Appeals

32
52

FedEx US Airbill

Express

FedEx Tracking Number **8754 2378 1027**

Form ID No. **0215** Recipient's Copy

RECIPIENT: PEEL HERE

1 From This portion can be removed for Recipient's records.

Date 1-18-2017 FedEx Tracking Number 875423781027

Sender's Name _____ Phone 843 546-3103

Company CROSBY LAW FIRM LLC

Address 405 DOZIER ST Dept/Floor/Suite/Room _____

City GEORGETOWN State SC ZIP 29524

2 Your Internal Billing Reference

3 To Recipient's Name Honorable Jerry Abbott Kitting Phone _____

Company Clerk, South Carolina Court of Appeals

Address 1220 Senate Street

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address _____

Use this line for the HOLD location address or for continuation of your shipping address.

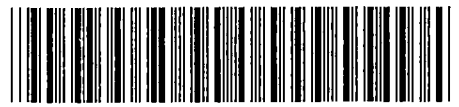
City Columbia State SC ZIP 29201

435750550

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JAN 19 2017

SC Court of Appeals



8754 2378 1027

4a Express Package Service *To most locations. Packages up to 150 lbs.

FedEx Priority Overnight Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Standard Overnight Next business afternoon.* Saturday Delivery NOT available.

FedEx First Overnight Earliest next business morning delivery to select locations.*

FedEx 2Day Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Express Saver Third business day.* Saturday Delivery NOT available.

4b Express Freight Service **To most locations. Packages over 150 lbs.

FedEx 1Day Freight Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected. FedEx 1Day Freight Booking No. _____

FedEx 2Day Freight Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx 3Day Freight Third business day.** Saturday Delivery NOT available.

5 Packaging *Declared value limit \$500.

FedEx Envelope* FedEx Pak* Includes FedEx Small Pak and FedEx Large Pak. FedEx Box FedEx Tube Other

6 Special Handling and Delivery Signature Options

SATURDAY Delivery NOT available for FedEx Standard Overnight, FedEx Express Saver, or FedEx 3Day Freight.

No Signature Required Package may be left without obtaining a signature for delivery.

Direct Signature Someone at recipient's address may sign for delivery. **Fee applies.**

Indirect Signature If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. **Fee applies.**

Does this shipment contain dangerous goods?

One box must be checked.

No Yes As per attached Shipper's Declaration. Yes Shipper's Declaration not required. Dry Ice Dry Ice, 9 UN 1845 _____ x _____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box. Cargo Aircraft Only

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below. Obtain recip. Acct. No.

Sender Acct. No. is Section 1 (will be billed). Recipient Third Party Credit Card Cash/Check

Total Packages _____ Total Weight _____ lbs. Credit Card Auth. _____

Your liability is limited to \$100 unless you declare a higher value. See the current FedEx Service Guide for details.

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