

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE JASPER COUNTY
Court of Common Pleas

Darrell Thomas Johnson, Special Referee

RECEIVED
FEB 13 2017
SC Court of Appeals

Appellate Case No.: 2016-000042

C.E. Lowther, Jr., Clayton Clark Lowther,
Mitchell S. Lowther and Effie Sandra Turpin,

Respondents

v.

E. Legrand Lowther,

Appellant.

MOTION TO ESTABLISH
BRIEFING SCHEDULE

PLEASE TAKE NOTICE that the Appellant, E. Legrand Lowther, through his undersigned attorneys, hereby moves before the South Carolina Court of Appeals for an Order establishing a briefing schedule requiring the Appellant's Initial Brief to be filed no later than March 10, 2017, the subsequent filings to be in accordance with the South Carolina Rules of Appellate Procedure, or as the Court may otherwise direct.

In support of this motion, the Appellant respectfully shows as follows:

1. On July 25, 2016 the South Carolina Court of Appeals granted the Appellant's Motion to Remand this action to the Jasper County Court of Common Pleas for the purpose of reconstructing the lower court file in this case. A copy of this Order is attached hereto as Exhibit

A.

2. As a result of hearings held before the Honorable Darrell T. Johnson, Esquire, Special Referee, on September 20, 2016, September 27, 2016 and October 21, 2016 the parties were able to reconstruct the record and an Order establishing the record was executed on October 26, 2016 and filed on October 31, 2016. A copy of this Order, without attachments, is attached as Exhibit B.

3. Although Appellant's counsel was aware of this Order, there is no record of ever receiving a filed copy of the Order, and accordingly the Appellant's Brief was never docketed.

4. Upon receiving correspondence from the Clerk of the South Carolina Court of Appeals dated January 31, 2017, requesting a status update, Appellant's counsel inquired into the status of the filing of the Order Reconstructing the Record and on this date, February 10, 2017, obtained a copy of the filed Order directly from the Office of the Clerk of Court for the Jasper County Court of Common Pleas.

It is accordingly respectfully requested that the Court establish a briefing schedule in order that the Appellant's Initial Brief be due no later than March 10, 2017, with subsequent filings to be recorded with the South Carolina Rules of Appellate Court Procedure, or such other timeline as the Court may deem to be just and proper.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 - facsimile

Beaufort, South Carolina
February 10, 2017

Attorneys for Appellate

The South Carolina Court of Appeals

C.E. Lowther, Jr., Clayton Clark Lowther, Mitchell S.
Lowther and
Effie Sandra Turpin, Respondents,

v.

E. Legrand Lowther, Appellant.

Appellate Case No. 2016-000042

FILED
2016 JUL 25 AM 9:00
CLERK OF COURT
JASPER COUNTY

ORDER

Appellant has filed a motion to remand to the Court of Common Pleas for reconstruction of the lower court file in this case. The motion is granted and this case is remanded to the Jasper County Court of Common Pleas. Counsel for Appellant is ordered to contact counsel for Respondent and the circuit court within ten days of this order to schedule such hearings as the circuit court deems appropriate. Counsel for Appellant shall provide an update to the clerk of this court no later than fifteen days from the date of this order, with a copy to counsel for Respondent.

FOR THE COURT

Columbia, South Carolina

cc:
R. Thayer Rivers, Jr., Esquire
H. Fred Kuhn, Jr., Esquire

FILED

July 21, 2016

EXHIBIT A

FILED

2016 OCT 31 AM 10:54
SOUTH CAROLINA COURT
JASPER COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
C.E LOWTHER, JR., CLAYTON)
CLARK LOWTHER, MITCHELL S.)
LOWTHER AND EFFIE SANDRA)
TURPIN,)
)
Plaintiff (s))
)
vs.)
)
E. LEGRAND LOWTHER)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

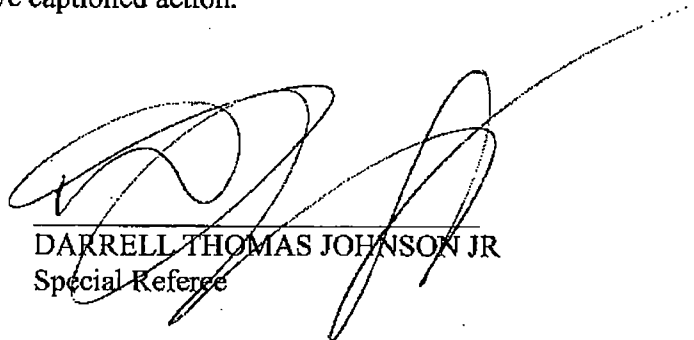
CASE NO.: 2008-CP-27-151

**ORDER RECONSTRUCTING
LOWER CASE FILE**

Pursuant to the Order of the South Carolina Court of Appeals file in this action on June 25, 2016m and with the consent of the parties on the record.

IT IS THEREFORE, ORDERED that for the purposes of the appeal currently pending before the South Carolina Court of Appeals the attached documents constitute the file of the Jasper County Court of Common Pleas in the above captioned action.

IT IS SO ORDERED.



DARRELL THOMAS JOHNSON JR
Special Referee

Hardeeville, South Carolina

October 26, 2016

EXHIBIT B

LAW OFFICES

MOSS, KUHN, FLEMING & SMITH, P.A.

JAMES H. MOSS
H. FRED KUHN, JR.
CORY H. FLEMING*
KIMBERLY L. SMITH

1501 North Street P.O. Drawer 507~Beaufort, South Carolina 29901-0507
TELEPHONE 843-524-3373
FAX 843-524-1302

*ALSO MEMBER OF GA BAR

February 10, 2017

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
FEB 18 2017
SC Court of Appeals

RE: C.E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Lowther
v. E. Legrand Lowther
Appellate Case No.: 2016-000042

Dear Mrs. Kitchings:

I am writing in response to your letter of January 31, 2017, a copy of which I have enclosed for ease of reference, requesting a status update. The record in the lower Court has been reconstructed. An Order to that effect was entered by the Special Referee on October 31, 2016. Although I was aware of the unfiled Order, I have no record of ever receiving the filed Order, and accordingly the Appellant's Initial Brief was never docketed on my calendar. I discovered this when, after receiving your letter, I checked the Court file to see if the Order had been filed. I have, accordingly, contemporaneously with this correspondence filed a Motion to Establish a Briefing Schedule requesting that the Appellant's Initial Brief be due no later than March 20, 2017.

I certainly do appreciate your attention to this matter and I hope this letter finds you doing well.

With kindest regards, I am

Very truly yours,

MOSS, KUHN & FLEMING, P.A.

H. Fred Kuhn, Jr.
HFKjr:sr

cc: R. Thayer Rivers, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 31, 2017

Mr. H. Fred Kuhn, Jr., Esquire
PO Drawer 507
Beaufort SC 29901

Re: C.E. Lowther, Jr. v. E Legrand Lowther
Appellate Case No. 2016-000042

Dear Counsel:

The Court issued an order on July 21, 2016, remanding this matter to circuit court and requesting status updates from counsel. This Court received an update from you in September, 2016. You must provide an update regarding the status of this appeal within ten days of this letter or the Court will dismiss this appeal.

Very truly yours,

A handwritten signature in cursive script that reads "Jay A. Kitchings".

CLERK

cc: R. Thayer Rivers, Jr., Esquire

CERTIFICATE OF SERVICE

Undersigned certifies that the Motion to Establish Briefing Schedule to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

R. Thayer Rivers, Jr., Esquire
Post Office Box 668
Ridgeland, SC 29936

in a post office or official depository under the exclusive care and custody of the United States Postal Service, February 10, 2017.

MOSS, KUHN & FLEMING, P.A.

By: 
Sue Radford

RECEIVED

FEB 13 2017

SC Court of Appeals

LAW OFFICES

MOSS, KUHN, FLEMING & SMITH, P.A.

JAMES H. MOSS
H. FRED KUHN, JR.
CORY H. FLEMING
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RE: C.E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Lowther
v. E. Legrand Lowther
Appellate Case No.: 2016-000042

Dear Mrs. Kitchings:

Enclosed please find the original and seven (7) copies of the Appellant's Motion to Establish Briefing Schedule regarding the above-referenced matter along with my firm's check in the amount of \$25.00 for the filing of the same. I would appreciate your returning one (1) filed copy to me in the enclosed self-addressed stamped envelope. By copy of this letter I am serving a copy of the motion on R. Thayer Rivers, Jr., Esquire, attorney for the Respondents.

With kindest regards, I am

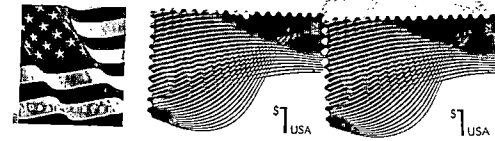
Very truly yours,

MOSS, KUHN & FLEMING, P.A.


H. Fred Kuhn, Jr.

HFkjrsr
Enclosures

cc: R. Thayer Rivers, Jr., Esquire (w/enclosure)



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FEB 13 2017
SC Court of Appeals

MOSS, KUHN & FLEMING, P.A.

HK
ATTORNEYS AT LAW
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(843) 524-3373

Lawther

To:

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Clerk, South Carolina Court of Appeals
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