

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel D. Hall, Circuit Judge  
S. Jackson Kimball, III, Special Circuit Court Judge

**RECEIVED**

FEB 27 2017

**SC Court of Appeals**

Case No. 2017-000261

Preferred Restoration & Construction, Inc. .... Appellant,  
v.  
Lori Bechtler, ..... Respondent.

RESPONDENT'S MOTION TO DISMISS APPEAL

Respondent Lori Bechtler ("Bechtler") moves to dismiss this appeal based upon Appellant's failure to serve its Notice of Appeal within thirty (30) days following receipt of written notice of entry of the appealed final order as required by Rule 203(b)(1) S.C.A.C.R.<sup>1</sup>

INTRODUCTION

This action arises from a contract dispute between Appellant, a restoration contractor, and Bechtler. Bechtler hired Appellant in April 2014 to perform mold remediation and related restoration work in a mobile home that Bechtler owned. Bechtler fired Appellant in or about October 2014. Following Appellant's termination, Appellant prepared and sent a "final" invoice, which Bechtler refused to pay.

<sup>1</sup> Appellant has also appealed the court's September 21, 2015 order. That order dissolved Appellant's mechanic's lien, granted partial summary judgment to Bechtler and awarded fees and costs to Bechtler as the "prevailing party" of Appellant's mechanic's lien foreclosure. Appellant was entitled to await final judgment before appealing that order. S.C. Code Ann. § 14-3-330(1)(Law. Co-op. 2015).

On December 30, 2014, Appellant filed a mechanic's lien covering the real property where Bechtler's mobile home was located. On April 15, 2015, Appellant filed this action to foreclose its lien. Appellant's complaint also included causes of action for breach of contract and quantum meruit. Bechtler timely answered, asserting several affirmative defenses and counterclaims. Bechtler contemporaneously moved to dissolve Appellant's mechanic's lien, and for summary judgment as to Appellant's lien foreclosure cause of action.

Bechtler's motion was granted following a hearing on July 23, 2015. *See* Appealed Order of 9/21/15 at 1. At that hearing, the court also determined that Bechtler was entitled to recover fees and costs as the prevailing party of Appellant's mechanic's lien claim. *Id.* However, the court did not immediately enter a written order, instead giving Appellant an opportunity to review Bechtler's attorney fee petition. *Id.* Appellant objected to Bechtler's fee petition, and also filed a motion for reconsideration of the circuit court's (then, unwritten) order. *Id.* Following a second hearing on August 31, 2015, the circuit judge issued a written order, denying Appellant's motion for reconsideration, dissolving Appellant's lien, granting partial summary judgment to Bechtler, and approving Bechtler's fee petition. *Id.* at 5.

On October 26, 2016, Appellant's remaining causes of action were called for trial before circuit judge Daniel D. Hall and a jury in York County. At the close of Appellant's case, Bechtler moved for a directed verdict as to Appellant's remaining causes of action. Judge Hall granted Bechtler's motion. *See* Form 4, filed October 31, 2016. (Exhibit A). Appellant timely moved for reconsideration of that order, and for a new trial.

On November 9, 2016, Judge Hall's law clerk sent the following email message to counsel for both parties:

Gentlemen:

After reviewing Preferred Restoration's [post-trial] Motion, Judge Hall denies petitioner's request for New Trial.

I have copied [York County Civil Court Coordinator] Lynn Strait on this email notifying her of Judge Hall's ruling.

*See* Exhibit B. Appellant's Counsel received that email message, and on November 10, 2016 responded, "Mr. Hirsch: To be obvious, I assume we will be sent a Form 4?" Id.

On November 17, 2016, York County Civil Court Coordinator Strait sent an email to counsel of record, forwarding the court's filed Form 4 Order, along with the following message: "I have attached the Form 4 Order regarding the motion for a new trial in the Preferred Restoration v. Lori Bechtler case." Exhibit C. Bechtler's Counsel received that email on November 17, 2016. It is virtually certain that Appellant's Counsel also received Ms. Strait's email on or about that date, because the email addresses used by Ms. Strait were identical to the ones (successfully) used by Judge Hall's law clerk a week earlier.

On January 9, 2017, Bechtler's attorney sent an email to Appellant's Counsel, confirming that the deadline to appeal had passed and inquiring whether Appellant would voluntarily satisfy Bechtler's judgment in the case. *See* Exhibit D. Appellant's Counsel received that message, and responded within an hour: "I have not yet been served with the Judge's Order on my motion. I will look into this." Id. On February 10, 2017, thirty-one (31) days after Appellant's Counsel announced his intention to "look into" the final disposition of Appellant's post-trial motions, Appellant finally served its Notice of Appeal. Appellant's Notice of Appeal certifies that "Appellant received written notice of entry of [the order denying Appellant's post-trial motions] on January 31, 2017." *See* Notice of Appeal.

## ARGUMENT

Appellant's entire appeal is untimely, and this court lacks jurisdiction to consider the appeal.

Timely service of an appellant's notice of appeal is an absolute jurisdictional requirement. Elam v. South Carolina Dep't. of Transp., 602 S.E.2d 772, 775 (S.C. 2004). Unless an appellant serves its notice of appeal within thirty days "after receipt of written notice of entry of the order or judgment" the appellant intends to appeal, this court must dismiss. Id.; Rule 203(B)(1) S.C.A.C.R. Unlike other time limits imposed by the Appellate Rules, the deadline to serve a notice of appeal cannot be altered. *See* Rule 263 S.C.A.C.R. ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court. . . ."). Of course, when a party moves for reconsideration of an order, the time to appeal that order is stayed until "receipt of written notice" that the motion for reconsideration has also been decided. Rule 203(b)(1) S.C.A.C.R.

Several reported opinions have addressed what "written notice" is sufficient to trigger an appellant's obligation to serve its notice of appeal pursuant to Rule 203. In Wells Fargo Bank, N.A., Fallon Properties, LLC, this court held that an email from the master in equity's administrative assistant was sufficient written notice where the email attached a copy of the master's signed order and a copy of the file-stamped Form 4. 413 S.C. 642, 646, 776 S.E.2d 575, 577 (Ct. App. 2015), *certiorari pending*. In Canal Ins. Co. v. Caldwell, this court determined that a faxed letter from opposing counsel was sufficient to place the appellant on "written notice" that its time to appeal was running, even though the letter only *referenced* the order. 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999), *certiorari denied*. Finally, in Ackerman v. 3-V Chemical, Inc., the South Carolina Supreme Court held that the time to file a post-trial motion

commenced when the appellant's attorney received written notice that an order had been entered, not when the appellant's attorney received the written order. 349 S.C. 212, 215, 562 S.E.2d 613, 615 (2002). Read together, these cases make clear that an appellant's time to appeal begins to run as soon as the appellant receives any form of "written notice" that an order has been entered. Measured by this standard, there can be no doubt that Appellant failed to perfect its appeal within the time required by Rule 203.

Appellant initially received written notice that its motion for a new trial was denied when Judge Hall's law clerk sent an email to the parties on November 9, 2016 (ninety-two days before Appellant served its notice of appeal). *See* Exhibit B. Appellant next received written notice of the court's order when Lynn Strait, York County's civil court coordinator, emailed a copy of the signed and filed Form 4 on November 17, 2016 (eighty-five days before Appellant served its notice of appeal). *See* Exhibit C. As evidenced by the Clerk's certificate of mailing, a copy of the Form 4 Order was also mailed to counsel for both parties on that date. Id. (Clerk's certificate of service). Finally, Appellant received a third written notice of the court's order when Bechtler's attorney sent an email on January 9, 2017, expressing relief that Appellant "decided not to appeal the final judgment in this case." *See* Exhibit D. Even that written notice was received more than thirty days (31 to be exact) before Appellant finally served its notice of appeal.

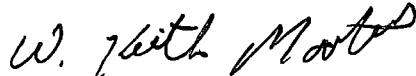
While there is no definitive evidence that Appellant's Counsel received the Clerk's November 17, 2016 mail and email transmittals, there is evidence that Appellant's Counsel received both the law clerk's November 9, 2016 email and Counsel's January 9, 2017 email. In fact, Appellant's Counsel affirmatively responded to both of those transmittals. Thus, there can be no doubt that Appellant had "written notice" that its motion for a new trial had been denied

more than thirty days before Appellant served its notice of appeal. Appellant's appeal is too late, and it must be dismissed.

### CONCLUSION

Appellant cannot dispute that it received written notice that Appellant's motion for new trial had been denied more than thirty days prior to the date on which Appellant commenced this appeal. This appeal was not commenced within the time limitations of Rule 203 S.C.A.C.R., and the court does not have jurisdiction to consider it. Bechtler is entitled to have the appeal dismissed.

February 23, 2017



---

W. Keith Martens  
S.C. Bar Number 8645  
HAMILTON MARTENS, LLC  
P.O. Box 10940  
Rock Hill, South Carolina 29731  
(803) 329-7672  
[keith.martens@hiltonmartens.com](mailto:keith.martens@hiltonmartens.com)

ATTORNEYS FOR RESPONDENT

Other Counsel of Record:

John Martin Foster  
P.O. Box 106  
Rock Hill, South Carolina 29731-6106

ATTORNEY FOR APPELLANT

Exhibit "A"

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2015CP4601155

Preferred Restoration & Construction Inc		Lori Bechtler	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <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(a), 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: \_\_\_\_\_

FILED-RECEIVED  
 2015 OCT 31 AM 9:12  
 DAVID HAMILTON  
 C.C. P. & GS  
 YORK COUNTY, SC

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

This order  ends  does not end the case.

Additional Information for the Clerk: **DEFENDANT'S MOTION FOR DIRECTED VERDICT IS GRANTED AS TO PLAINTIFF'S CLAIM.**

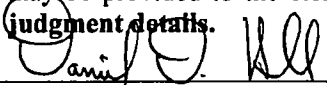
INFORMATION FOR THE JUDGMENT INDEX

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)

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.

  
 Daniel D. Hall  
 Circuit Court Judge

2753  
Judge Code

10-28-16  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on **October 31, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **October 31, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

**John Martin Foster** PO Box 106 Rock Hill, SC 29731-6106

**Walter Keith Martens** 130 E. Main Street Rock Hill, SC 29731

---

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

David Hamilton

**Court Reporter: Hollie Jenkins / Wanda Nelson**

**David Hamilton - Clerk of Court**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Exhibit "B"

**Keith Martens**

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**From:** John Martin Foster <jmfoster@comporium.net>  
**Sent:** Thursday, November 10, 2016 11:23 AM  
**To:** Hall, Daniel D. Law Clerk (Michael Hirsch); Keith Martens  
**Cc:** Strait, Lynn  
**Subject:** Re: Preferred Restoration v. Lori Bechtler

Mr. Hirsch:

To be obvious, I assume we will be sent a Form 4?

On 11/09/2016 03:28 PM, Hall, Daniel D. Law Clerk (Michael Hirsch) wrote:

Gentlemen:

After reviewing Preferred Restoration's Motion, Judge Hall denies petitioner's request for New Trial.

I have copied Lynn Strait onto this email notifying her of Judge Hall's ruling.

Sincerely,

Michael E. Hirsch

**Law Clerk to the Honorable Daniel D. Hall**  
Resident Judge for the Sixteenth Judicial Circuit  
Moss Justice Center  
1675-1J York Highway  
York, SC 29745  
(o) 803-628-3048  
(f) 803-628-3139

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Martin Foster

JMFOSTER@COMPORIUM.NET

THE GUARDIAN BUILDING 223 EAST MAIN STREET SUITE 520 ROCK HILL, SC 29730

P.O. BOX 106 ROCK HILL, SC 29731-6106

803 324-8100 803 324-8109: FAX

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Exhibit "C"

**Keith Martens**

---

**From:** Strait, Lynn <Lynn.Strait@yorkcountygov.com>  
**Sent:** Thursday, November 17, 2016 2:20 PM  
**To:** John Martin Foster; Keith Martens  
**Cc:** Melia Sweatt  
**Subject:** Form 4 Order  
**Attachments:** 2015CP4601155\_OFORM4\_748776.pdf

All,

I have attached the Form 4 Order regarding the motion for a new trial in the Preferred Restoration v. Lori Bechtler case.

Lynn

**Lynn Strait**

Court Coordinator

Common Pleas

*Clerk of Court*

*York County Government*

---

[Lynn.Strait@yorkcountygov.com](mailto:Lynn.Strait@yorkcountygov.com)

Phone: 803-684-8507



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STATE OF SOUTH CAROLINA  
 COUNTY OF YORK  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2015CP4601155

Preferred Restoration &  
 Construction Inc

FILED-RECEIVED  
 2016 NOV 17 PM 12:08  
 DAVID HAMILTON  
 C.C.P. & GS  
 YORK COUNTY, SC

Lori Bechtler

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 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(a), 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.

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

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: **PLAINTIFF'S MOTION FOR A NEW TRIAL WAS FILED ON NOVEMBER 7, 2016. AFTER REVIEW, THIS MOTION IS DENIED BY THE COURT, IT IS SO ORDERED.**

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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
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|                                              |                                          |                                                          |

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.  


Daniel D. Hall  
 Circuit Court Judge

2753

Judge Code

11-15-16

Date

**For Clerk of Court Office Use Only**

This judgment was entered on November 17, 2016, and a copy mailed first class or placed in the appropriate attorney's box on November 17, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

**John Martin Foster** PO Box 106 Rock Hill, SC 29731-6106

**Walter Keith Martens** 130 E. Main Street Rock Hill, SC 29731

---

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

David Hamilton

**Court Reporter**

**David Hamilton - Clerk of Court**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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# Exhibit "D"

## Keith Martens

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**From:** John Martin Foster <jmfoster@comporium.net>  
**Sent:** Monday, January 09, 2017 11:21 AM  
**To:** Keith Martens  
**Subject:** Re: Preferred Restoration v. Bechtler

Keith:

I have not yet been served with the Judge's Order on my motion. I will look into this.

On 01/09/2017 10:41 AM, Keith Martens wrote:

Martin,

I was glad to learn that your client decided not to appeal the final judgment in this case. I think that is an appropriate, and merciful, conclusion to this litigation.

Now that the case is over, I wanted to follow up with you concerning satisfaction of my client's judgment for attorney fees and costs. As you know, that judgment has been outstanding since September 21, 2015. If my calculations are correct, the amount needed to satisfy the judgment is currently \$3693.09. Interest will continue to accrue at the statutory rate.

Please let me know if your client will voluntarily satisfy the judgment. As you may be aware, failure to satisfy a judgment can be grounds for denial of a contractor's license.

I look forward to hearing from you.

### W. Keith Martens

**Hamilton Martens, LLC**  
ATTORNEYS AT LAW  
130 EAST MAIN STREET (29730)  
POST OFFICE BOX 10940 (29731)  
ROCK HILL, SOUTH CAROLINA  
DIRECT DIAL: 803.329.7662  
FACSIMILE: 803.329.7678

[WWW.HAMILTONMARTENS.COM](http://WWW.HAMILTONMARTENS.COM)

[keith.martens@hamiltonmartens.com](mailto:keith.martens@hamiltonmartens.com)

This message is intended solely for the addressees and may contain confidential and privileged information. If you have received this message in error, please notify me immediately by electronic mail or telephone.

--  
  
Martin Foster

JMFOSTER@COMPORIUM.NET

THE GUARDIAN BUILDING 223 EAST MAIN STREET SUITE 520 ROCK HILL, SC 29730

P.O. BOX 106 ROCK HILL, SC 29731-6106

803 324-8100 803 324-8109: FAX

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IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any US federal tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code Section 6662(d) or (ii) promoting, marketing or recommending to another party any transaction or matter that is contained in this document.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel D. Hall, Circuit Judge  
S. Jackson Kimball, III, Special Circuit Court Judge

**RECEIVED**  
FEB 27 2017  
SC Court of Appeals

Case No. 2017-000261

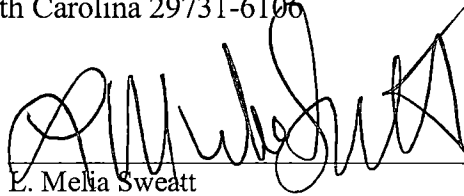
Preferred Restoration & Construction, Inc. .... Appellant,  
v.  
Lori Bechtler, ..... Respondent.

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens, LLC certifies that the Respondent's Motion to Dismiss Appeal was served upon other counsel of record by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

John Martin Foster  
P.O. Box 106  
Rock Hill, South Carolina 29731-6106

February 23, 2017

  
\_\_\_\_\_  
E. Melia Sweatt  
Paralegal



L. Melia Sweatt  
Paralegal  
803-329-7702  
[melia.sweatt@hamiltonmartens.com](mailto:melia.sweatt@hamiltonmartens.com)

February 23, 2017

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

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FEB 27 2017

**SC Court of Appeals**

RE: *Preferred Restoration & Construction, Inc. and vs. Lori Bechler*  
Appellate Case No.: 2017-000261

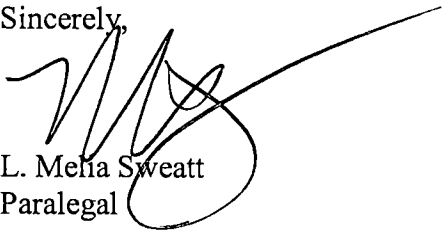
Dear Ms. Kitchings:

I have enclosed the original and seven copies of Respondent's Motion to Dismiss Appeal in connection with the above case. I have also enclosed a check in the amount of \$25.00 to cover the filing fee. Please return one clocked-in copy of the Motion in the envelope provided.

By copy of this letter to counsel for the Appellant, I have enclosed a copy of the Motion to Dismiss Appeal.

Thank you for your cooperation in this matter.

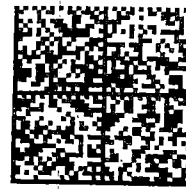
Sincerely,

  
L. Melia Sweatt  
Paralegal

/lms  
Enclosures  
cc: John Martin Foster  
P.O. Box 106  
Rock Hill, South Carolina 29731-6106

Hamilton Martens, LLC

130 East Main Street (29730) • Post Office Box 10940 (29731) • Rock Hill, South Carolina  
Phone: 803.329.7672 • Facsimile: 803.329.7678 • [www.hamiltonmartens.com](http://www.hamiltonmartens.com)



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015H14161005  
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**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
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SC Court of Appeals  
PO Box 11629  
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