

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
In The Circuit Court

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

Appellate Case No. 2017-000261

PREFERRED RESTORATION  
& CONSTRUCTION, INC.,

Appellant

v.

LORI BECHTLER,

Respondent.

REPLY TO MOTION TO DISMISS APPEAL

Pursuant to Rules 240(e), S.C.A.C.R., the Appellant, by its counsel herein, makes its reply to the Respondent's Motion to Dismiss, on the grounds stated below:

1. To recite the history of this matter, as evidenced by the attached and incorporated e-mail correspondence:

11/09/16: Judge Hall's law clerk states the Appellant's Rule 59 Motion has been denied.

11/10/16: Appellant's counsel "assume[s] we will be sent a Form 4."

11/10/16: Clerk states that once the Judge signs a Form 4, the Clerk will mail a copy.

01/09/17: Respondent's counsel's e-mail references a presumed failure to appeal.

01/09/17: Appellant's Counsel states no service of the Form 4; he will look into it.

2. After the above correspondence, Appellant's counsel had his file examined. No copy of an

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Order denying the Rule 59 Motion was found.

3. On January 31, 2017, counsel for Appellant contacted the Clerk's office and obtained an e-mailed copy of the Form 4 Order denying the Rule 59 Motion.
4. On February 9, 2017, this appeal was noticed and served on opposing counsel.
5. On re-examining his e-mail records, counsel for Appellant acknowledges that he did receive an e-mail from the Clerk dated 11/17/16, with an attachment of the Form 4 Order.
6. Counsel further acknowledges the holding of this Court in *Wells Fargo Bank v. Fallon Properties South Carolina, LLC*, 413 S.C. 642, 776 S.E.2d 575 (Ct. App. 2015). That holding was based upon that Appellant's receipt of a faxed copy of the holding thirty-one days prior to service of the appeal notice.
7. In *Wells Fargo, supra*, this Court based its holding upon the following reasoning:

Since adoption of Rule 203 in 1990, the only limitation ever expressed on how notice must be received is that it must be "written notice." For the reasons set forth below, this Court finds the e-mail constitutes written notice.

...

Finally, although neither the rules of civil nor appellate procedure specifically authorized service by fax, e-mail has actually been contemplated by the rules. See, e.g., Rule 410(e), SCACR (providing that both "[t]mailing and e-mail address shown in the AIS [Attorney Information System] shall be used for the purpose of notifying and serving" an attorney.

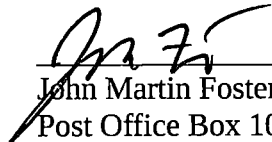
[*Id.*, 413 S.C. at 644-645, 776 S.E.2d at 576-577.]

8. With respect to this Court, service and notice under the Rules are matters under the prerogative of the Supreme Court. Counsel for Appellant relied upon the Rules as they govern notice and service; he did not delay this matter by his actions. If it is the intent of the Appellate Courts to allow effective service by e-mail, that fact needs to be stated in the Rules, rather than determined on a case-by-case basis in appellate precedent. This appeal is timely and should be allowed.

The basis of this Reply is the within-cited Rules, the records of this appeal, and any attached affidavit or stipulation of the undersigned, which items are hereby incorporated in this Motion.

WHEREFORE, the Appellant herein moves this Court to deny the Respondent's Motion to Dismiss, pursuant to Rule 240(e), S.C.A.C.R.

March 6, 2017

  
\_\_\_\_\_  
John Martin Foster  
Post Office Box 106  
Rock Hill, South Carolina 29731  
803 324-8100  
Attorney for Appellant

Other Counsel of Record:

W. Keith Martens  
Hamilton Martens, LLC  
Attorneys for Respondent  
Post Office Box 10940  
Rock Hill, SC 29731  
803 329-7662

Subject: RE: Preferred Restoration v. Lori Bechtler

From: "Hall, Daniel D. Law Clerk (Michael Hirsch)" <dhalllc@sccourts.org>

Date: 11/10/2016 12:08 PM

To: John Martin Foster <jmfoster@comporium.net>

Mr. Foster:

Yes. Once Judge Hall signs and files the Form 4, Lynn will mail you a copy.

---

**From:** John Martin Foster [mailto:jmfoster@comporium.net]

**Sent:** Thursday, November 10, 2016 11:23 AM

**To:** Hall, Daniel D. Law Clerk (Michael Hirsch) <dhalllc@sccourts.org>; Keith Martens <keith.martens@hamiltonmartens.com>

**Cc:** Strait, Lynn <Lynn.strait@yorkcountygov.com>

**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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--

RE: Preferred Restoration v. Lori Bechtler

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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Subject: Preferred Restoration v. Bechtler

From: Keith Martens <keith.martens@hamiltonmartens.com>

Date: 01/09/2017 10:41 AM

To: "jmfoster@comporium.net" <jmfoster@comporium.net>

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.

Subject:Re: Preferred Restoration v. Bechtler

From:John Martin Foster <jmfoster@comporium.net>

Date:01/09/2017 11:21 AM

To:Keith Martens <keith.martens@hamiltonmartens.com>

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,

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## **W. Keith Martens**

**Hamilton Martens, LLC**

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[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](mailto:JMFOSTER@COMPORIUM.NET)

Re: Preferred Restoration v. Bechtler

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Subject: RE: Preferred Restoration v. Bechtler  
From: Keith Martens <keith.martens@hamiltonmartens.com>  
Date: 01/09/2017 11:23 AM  
To: John Martin Foster <jmfoster@comporium.net>

The clerk's records indicate it went out on 11/17.

**W. KEITH MARTENS**

**HAMILTON MARTENS, LLC**

ATTORNEYS AT LAW

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POST OFFICE BOX 10940 (29731)

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---

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

Keith:

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

Martin,

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**Hamilton Martens, LLC**

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Martin Foster

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From:<Courtmail46\_DoNotReply@sccourts.org>

Date:01/31/2017 09:46 AM

To:<jmfoster@comporium.net>

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**Attachments:**

2015CP4601155\_OFORM4\_748776.PDF

89.8 KB

Subject:Form 4 Order

From:"Strait, Lynn" <Lynn.Strait@yorkcountygov.com>

Date:11/17/2016 02:19 PM

To:John Martin Foster <jmfoster@comporium.net>,  
"keith.martens@hamiltonmartens.com" <keith.martens@hamiltonmartens.com>  
CC:'Melia Sweatt' <melia.sweatt@hamiltonmartens.com>

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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**Attachments:**

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89.8 KB

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Appellate Case No. 2017-000261

PREFERRED RESTORATION  
& CONSTRUCTION, INC.,

Appellant


v.

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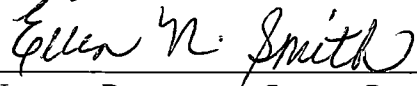
Respondent.

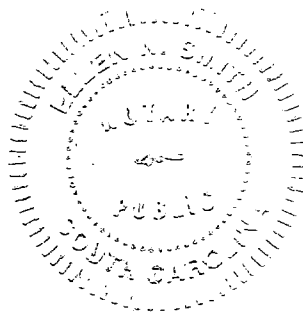
AFFIDAVIT ON MOTION

1. The undersigned is an attorney, licensed to practice in and by the State of South Carolina. He is counsel for the named Appellant in the above-captioned and -numbered Appeal.
2. He has read the allegations of the preceding Reply to Motion to Dismiss Appeal. The said allegations are true of his own knowledge or based upon the records of, and relating to, this civil action in his possession, except those allegations made upon knowledge and information, and, as to those allegations, he believes them to be true.

  
John Martin Foster

SWORN TO and subscribed before me  
this day of March 6, 2017.

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My commission expires: 03/04/2024



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**SC Court of Appeals**

APPEAL FROM YORK COUNTY  
In The Circuit Court

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Daniel Dewitt Hall, Circuit Court Judge

Appellate Case No. 2017-000261

PREFERRED RESTORATION  
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LORI BECHTLER,

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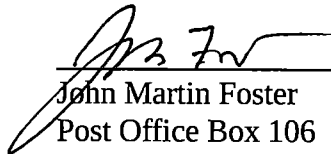
PROOF OF SERVICE

I certify that I have served the Reply to Motion to Dismiss Appeal dated March 6, 2017, on the following counsel or persons of record:

W. Keith Martens  
Hamilton Martens, LLC  
Post Office Box 10940  
Rock Hill, SC 29731

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262(b), S.C.A.C.R.

March 6, 2017

  
\_\_\_\_\_  
John Martin Foster  
Post Office Box 106  
Rock Hill, S. C. 29731-6106  
803 324-8100  
Attorney for Appellant

JOHN MARTIN FOSTER

*Attorney at law*

---

|                                |              |                         |
|--------------------------------|--------------|-------------------------|
| The Guardian Building          | PO Box 106   | 803 324 8100            |
| 223 East Main Street Suite 520 | Rock Hill SC | 803 324 8109 Fax        |
| Rock Hill South Carolina 29730 | 29731-6106   | jmfooster@comporium.net |

---

March 6, 2017

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

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MAR 09 2017  
SC Court of Appeals

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

Appellate Case No. 2016-000451

Dear Ms. Kitchings:

In accordance with Rule 240(e), S.C.A.C.R., enclosed herewith please find the original and seven (7) copies of the Appellant's Reply to the Respondent's Motion to Dismiss Appeal, together with the Certificate of Service for the same in the above referenced case.

By copy of this letter, I am serving the attorney for the Respondents with copies of the said Reply, as evidenced by the Certificate of Service.

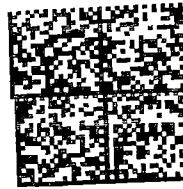
Please return the extra conformed copy to my office in the enclosed self-addressed, stamped envelope. As always, thank you, and your staff, for your assistance in these matters.

Sincerely yours,

  
John Martin Foster

jmf/  
enclosures

cc: W. Keith Martens  
Hamilton Martens, LLC  
Attorneys for Defendant  
Post Office Box 10940  
Rock Hill, SC 29731  
803 329-7662



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Mailed From 29730  
US POSTAGE

**John Martin Foster Attorney**

223 East Main St Suite 520  
Post Office Box 106  
Rock Hill SC 29731-6106

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**TO:**

THE HONORABLE JENNY ABBOTT KITCHINGS  
CLERK OF THE COURT OF APPEALS  
POST OFFICE BOX 11629  
COLUMBIA, S.C. 29211

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MAR 09 2017  
SC Court of Appeals