

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

MAR 13 2017

SC Court of Appeals

Case No. 2017-000261

Preferred Restoration & Construction, Inc. Appellant,

v.

Lori Bechtler, Respondent.

RESPONDENT'S REPLY –
RESPONDENT'S MOTION TO DISMISS APPEAL

From Appellant's March 6, 2017 Response, it is apparent that Appellant conflates the term "service" with "receipt of written notice." See Appellant's Response ¶ 8 (arguing that changes to the definitions of "service" and "notice" should be determined by the Supreme Court, and promulgated by Rule). Contrary to Appellant's argument, the time for appeal under Rule 203 is not triggered by "service" of an order. Rather, the time for appeal begins to run upon the party's "receipt of written notice of entry of the order or judgment." Rule 203(b) S.C.A.C.R.

Appellant now acknowledges that its attorney *received* written notice of the circuit court's appealed order by email in November 2016. Appellant's Response ¶ 5. Notwithstanding that acknowledgment, Appellant contends the Clerk of Court's November 2016 email message 'should not count' as "written notice" because the email (and attached Form 4) was not *served* in accordance with the South Carolina Rules of Civil Procedure. *Id.* ¶ 8. Appellant's argument

overlooks two important points. First, the appeal deadline imposed by Rule 203 is not triggered by *service* of an order; it is triggered by *receipt of written notice* of an order. Rule 203(b) S.C.A.C.R. Second, even if Appellant were entitled to await *service* of the court's Form 4 order, the certificate attached to the Form 4 order shows that the York County Clerk of Court mailed the order to both attorneys of record on November 17, 2016. See Ex. C to Respondent's Motion to Dismiss – "For Clerk of Court Office Use Only." Therefore, the York County Clerk of Court served the Form 4 Order, in compliance with the South Carolina Rules of Civil Procedure,¹ on November 17, 2016. Not only did Appellant "receive written notice" of the court's order in November 2016, but Appellant was served with the order that same month.

Appellant's appeal was not filed within the time required by Rule 203(b) S.C.A.C.R. Consequently, this court lacks subject matter jurisdiction. Elam v. South Carolina Dep't. of Transp., 602 S.E.2d 772, 775 (S.C. 2004). The appeal must be dismissed.

March 10, 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

ATTORNEYS FOR RESPONDENT

¹ Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address. . . . Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

Other Counsel of Record:

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

ATTORNEY FOR APPELLANT

4841-9262-1893, v. 1

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAR 13 2017

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

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

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 Reply 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

March 10, 2017



L. Melba Sweatt
Paralegal



HAMILTON
MARTENS
ATTORNEYS AT LAW

L. Melia Sweatt
Paralegal
803-329-7702
melia.sweatt@hamiltonmartens.com

March 10, 2017

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

RECEIVED

MAR 13 2017

SC Court of Appeals

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

Dear Ms. Kitchings:

I have enclosed the original and seven copies of Respondent's Reply in connection with Respondent's Motion to Dismiss Appeal in the above case. Please return one clocked-in copy of the Reply in the envelope provided.

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

Thank you for your cooperation in this matter.

Sincerely,

L. Melia Sweatt
Paralegal

/lms

Enclosures

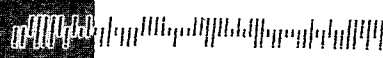
cc: John Martin Foster
P.O. Box 106
Rock Hill, South Carolina 29731-6106

4847-9489-4882, v. 2

Hamilton Martens, LLC*

241 Oakland Avenue (29730) • Post Office Box 10940 (29731) • Rock Hill, South Carolina
Phone: 803.329.7672 • Facsimile: 803.329.7678 • www.hamiltonmartens.com

*Herbert W. Hamilton, Retired



241 Oakland Avenue, Rock Hill, SC 29730
Post Office Box 10940, Rock Hill, SC 29731

RECEIVED
MAR 13 2017
SC Court of Appeals

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