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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM SALUDA COUNTY
In The Circuit Court

MAR 20 2017

SC Court of Appeals

Jocelyn Newman, Circuit Court Judge

Appeal No.: 2017-000198

Amy Potts.....Respondent.

v.

McCarty Enterprises, LLC, John Miles McCarty, Audrey S. McCarty, a/k/a Audrey
J. McCarty and Jane DoeAppellants.

**MOTION TO ACCEPT RESPONSE TO RESPONDENT’S MOTION TO
DISMISS OUT OF TIME**

The undersigned on behalf of Appellants hereby moves for the Court to accept its Response to Respondent’s Motion to Dismiss out of time. In support of its Motion, Respondent asserts that the failure to file its response to Respondent’s Motion was a simple internal mistake while Appellant’s counsel was on medical leave relating to her kidney cancer surgery.

Appellant’s counsel prepared the Appellant’s Notice of Appeal and request for extension prior to her January 26, 2017, kidney cancer surgery and the same was filed on January 31, 2017. Appellant’s Counsel also had previously requested that Respondent’s counsel consent to her request for extension to file the brief, but he declined to do so. (See attached **Exhibit A**). As a result, Appellant’s counsel also filed a Motion for Extension to file her clients’ Initial Brief until one month after returning from her medical

leave, which ends this Friday, March 17, 2017. (See attached **Exhibit B**). Appellant's counsel had already received protection from the lower court regarding this case. (**Id.**) Sixteen days later, on February 16, 2017, Respondent filed the Motion to Dismiss. (See attached **Exhibit C**). On March 2, 2017, this Court entered its Order granting the undersigned's Motion for Extension. (See attached **Exhibit D**).

In the undersigned's absence, her staff erroneously believed that the Order entered on March 2, 2017, extended the deadlines for response in this case until the time set forth in the Order. As the undersigned prepared this week to return to work and schedule her calendar accordingly, she instructed her staff on March 14, 2017, to ensure that the Motion deadline was indeed covered by the Order. Upon discovery that it was not, this instant Motion and Return to the Respondent's Motion is being filed the very next day, March 15, 2017.

Accordingly, Appellants assert that any error by its counsel in failing to file the Response to Respondent's Motion to Dismiss was an inadvertent error caused by the undersigned's legitimate medical leave for renal cell carcinoma surgery and attendant recovery and treatment (See attached **Exhibit E**) and, therefore, Appellants request the Court accept its Return to Respondent's Motion out of time.

Due to the expedited nature of this matter, the undersigned was unable to confer with opposing counsel, Frank Potts, Esq., but believes the same would not have been fruitful based upon his previous denial for the request for extension.

Respectfully submitted,



Candy M. Kern-Fuller, S.C. Bar No. 11392

UPSTATE LAW GROUP

200 East Main Street

Easley, South Carolina 29640

864-855-3114

864-855-3446 (Facsimile)

Candy@upstatelawgroup.com

March 15, 2017

ATTORNEY FOR APPELLANTS

Exhibit A

Candy M. Kern-Fuller, Esq.

From: Candy M. Kern-Fuller, Esq. <candy@upstatelawgroup.com>
Sent: Wednesday, January 4, 2017 4:52 PM
To: 'Potts, Frank'
Subject: RE: Emailing: Protection Granted Saluda Co.pdf Fax Received Yesterday McCarty

I believe that since the judge struck our Answer that appeal at this stage is appropriate under S.C. Code Ann. 14-3-330(2). I have 30 days to file our Notice of Appeal (2/3). My brief would then be due 30 days after that. (3/6). So, I am simply asking for another 6 weeks because I am already on protection in all Courts for that time.

If you cannot consent, I understand, I simply wanted to clarify my reasoning and request.

Candy Kern-Fuller, Esq.
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3446 (facsimile)
** CERTIFIED MEDIATOR AND ARBITRATOR FOR OVER 15 YEARS **

CONFIDENTIALITY NOTE: THIS EMAIL WAS SENT FROM A LAW FIRM. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION AND IS INTENDED SOLELY FOR THE USE OF THE PERSON(S) NAMED ABOVE OR THE PERSON(S) WHO IS THE INTENDED RECIPIENT OF THE MESSAGE. IF YOU ARE NOT AN INTENDED RECIPIENT OF THIS EMAIL, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E-MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE OR CONFIDENCE BY YOUR RECEIPT OF THIS TRANSMISSION. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US BY COLLECT TELEPHONE CALL OR FAX TO THE NUMBER INDICATED ABOVE.

-----Original Message-----

From: Potts, Frank [mailto:fpotts@ogc.sc.gov]
Sent: Wednesday, January 4, 2017 4:08 PM
To: candy@upstatelawgroup.com
Subject: RE: Emailing: Protection Granted Saluda Co.pdf Fax Received Yesterday McCarty

Dear Ms. Kern-Fuller,
I cannot consent to your request for an extension until April 17, 2017 to file an Appellant's brief because Judge Newman's ruling is not appealable until after a judgment is entered against your clients.
Frank S. Potts

-----Original Message-----

From: Candy M. Kern-Fuller, Esq. [mailto:candy@upstatelawgroup.com]
Sent: Wednesday, January 04, 2017 3:06 PM
To: Potts, Frank
Cc: paralegal@upstatelawgroup.com
Subject: FW: Emailing: Protection Granted Saluda Co.pdf Fax Received Yesterday McCarty

Dear Mr. Potts:

I received this grant of protection request today right after I received Judge Newman's denial of our motion for reconsideration. Obviously, my clients intend to appeal Judge Newman's ruling. As such, my briefing will fall right in the middle of my surgery protection.

Pursuant to SCRPC 11, I would respectfully request your consent to seek an extension until April 17, 2017 to file Appellant's brief as that will be 30 days after my protection ends.

Please advise. Thank you,

Candy Kern-Fuller, Esq.
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3446 (facsimile)
** CERTIFIED MEDIATOR AND ARBITRATOR FOR OVER 15 YEARS **

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-----Original Message-----

From: Susan Lockwood [mailto:susan@upstatelawgroup.com]
Sent: Wednesday, January 4, 2017 2:07 PM
To: Candy@upstatelawgroup.com
Subject: Emailing: Protection Granted Saluda Co.pdf Fax Received Yesterday McCarty

Your message is ready to be sent with the following file or link attachments:

Protection Granted Saluda Co.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Exhibit B



FAX MEMORANDUM/COVER SHEET

PROTECTION GRANTED

TO: Candy M. Kern-Fuller, Esquire
FAX NO.: 864-855-3446
FROM: William P. Keesley, Adm. Judge for the 11th Circuit Court of Common Pleas
RE: Protection request for January 16, 2017 through March 17, 2017
for the Court Common Pleas SALUDA COUNTY
DATE: January 4, 2017

TOTAL NUMBER OF PAGES BEING FAXED INCLUDING MEMO: 1

MESSAGE: This is a form response to your request for protection for the above-noted dates. Your request is granted. I will notify the Clerk of Court, BUT IT IS YOUR RESPONSIBILITY TO NOTIFY ANY OPPOSING ATTORNEYS OR PRO SE LITIGANTS, AS WELL AS ANY WITNESSES WHO MAY BE UNDER YOUR SUBPOENA. Thank you.

cc: Hon. Sherri C. Coleman, Clerk of Court Saluda County Fax No.: 864-445-3772

P.S. If you need protection for General Sessions, you need to contact Judge Eugene C. Griffith, Jr. office. [wpk]

Exhibit C

FRANK S. POTTS

ATTORNEY AT LAW

137 STONE RIDGE ROAD
LEESVILLE, SOUTH CAROLINA 29070

803.622.6000
LAKECOTTAGE@COMPORIUM.NET

February 16, 2017

Honorable Jenny A. Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

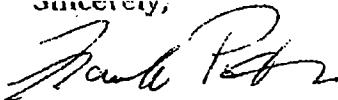
Re: Amy Potts v. McCarty Enterprises
Appellate Case No. 2017-000198

Dear Ms. Kitchings:

Enclosed is the original and six copies of a Motion to Dismiss the above referenced appeal. Also enclosed is a Certificate of Service upon all counsel of record and a check for the filing of the motion in the amount of \$25.

If you have any questions about the enclosed, please don't hesitate to call me.

Sincerely,



Frank S. Potts

cc. Candy Kern-Fuller, Esq.
Evan Lacke, Esq.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2017-000198

Amy Potts Respondent

v.

McCarty Enterprises, LLC, John Miles McCarty,
Audrey S. McCarty, a/k/a/ Audrey J. McCarty and Jane Doe...Appellants


MOTION TO DISMISS

To the Honorable Judges of the Court of Appeals:

The Respondent in the matter herein would show that the Appellants' appeal is premature, interlocutory and not of a final judgment and would move that the appeal be dismissed with fees and costs assessed against Appellants.

In support of this motion the Respondent would reference the Order being appealed and in further support thereof would provide her memorandum of authorities in support of the motion.

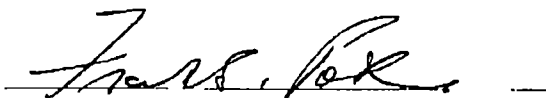
Wherefore, the Respondent respectfully moves that this Honorable Court dismiss the appeal of the Appellants.



Frank S. Potts, Esquire
(SC Bar No. 4538)
137 Stone Ridge Road
Leesville, SC 29070
(803) 622-6000
lakecottage@comporium.net
Attorney for Respondent

general rule, only final judgments are appealable... Any judgment or decree, leaving some further act to be done by the Court before the rights of the parties are determined, is interlocutory and not final.”).

The Respondent respectfully prays her Motion to Dismiss be granted.



Frank S. Potts
Attorney at Law
(SC Bar No. 4538)
137 Stone Ridge Road
Leesville, SC 29070
(803)622-6000
lakecottage@pbtcomm.net

M. Evan Lacke
Attorney at Law
(SC Bar No. 74969)
LACKE LAW FIRM
147 Wappoo Creek Drive, Ste. 204
Charleston, SC 29412
(843)327-1523
evanlacke@lackelawfirm.com

February 16, 2017
Leesville, SC

EXHIBIT

A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-41-0139

FILED

ANY FEES

McCARTY ENTERPRISES, LLC; JOHN MILLES

2016 SEP 28 PM 12:04

McCARTY; AUDREY S. McCARTY A/K/A AUDREY J.
 McCARTY; AND JANE DOE
 DEFENDANT(S)

PLAINTIFF(S)

CLERK OF COURT
 SALUDA CO. S.C.

Submitted by: _____ Attorney for: Plaintiff Defendant
 or
 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: Plaintiff's Motion to Strike Amended Motion to Dismiss and Answer to Amended Complaint is GRANTED. Plaintiff's Motion for Entry of Default is GRANTED. Defendants are held in default pursuant to Rule 55(a), SCRPC. Plaintiff is ordered to provide notice to Defendants of any damages hearing that is scheduled, in compliance with Rule 55(b)(2), SCRPC.

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)
		\$
		\$
		\$
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.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-41-0139

AMY POTTS

MCCARTY ENTERPRISES, LLC; JOHN MILES MCCARTY;

2016 DEC 29 AM 9:03

AUDREY S. MCCARTY A/K/A AUDREY J. MCCARTY; AND

PLAINTIFF(S)

CLERK OF COURT
 SALUDA CO. S.C.

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for: Plaintiff Defendant
 or
 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:

Defendants' Motion for Reconsideration (dated October 17, 2016) is DENIED.

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)
		\$
		\$
		\$
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.
 E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Opelyn Newman
 Circuit Court Judge
 SCRPC Form 4C (12/2016)

2757
 Judge Code

12/20/16
 Date

EXHIBIT

B

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STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

CIRCUIT COURT
2015-CP-41-00139

AMY POTTS,
Plaintiff,

-vs-

TRANSCRIPT OF RECORD

MCCARTY ENTERPRISES, LLC,
JOHN MILES MCCARTY, AUDREY S.
MCCARTY a/k/a AUDREY J.
MCCARTY, and JANE DOE,
Defendant.

Heard on Wednesday, September 7, 2016
Lexington, South Carolina

BEFORE:

THE HONORABLE JOCELYN NEWMAN

APPEARANCES:

Counsel on Behalf of the Plaintiff:
Frank S. Potts, Esq.

Counsel on Behalf of the Defendant:
Candy Kern-Fuller, Esq.

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
Aiken, SC 29804

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
In The Circuit Court

Jocelyn Newman, Circuit Court Judge

Appeal No. 2017-000198

RECEIVED
MAR 20 2017
SC Court of Appeals

Amy Potts.....Respondent.

v.

McCarty Enterprises, LLC, John Miles McCarty, Audrey S. McCarty, a/k/a Audrey
J. McCarty and Jane DoeAppellants.


PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Accept Response to Respondent's Motion to Dismiss Out of Time and Appellant's Response to Respondent's Motion to Dismiss on Amy Potts, by depositing a copy of it in an envelope via the United States Mail, Certified Mail, Return Receipt Requested, with proper postage affixed thereto, on March 15, 2017, addressed to her attorney of record:

Mr. Frank S. Potts
State Fiscal Accountability Authority
1201 Main Street
Suite 350 (Capitol Center)
Columbia, SC 29201

And the Clerk for the Court of Appeals:

The Honorable Jenny Abbott Kitchings
Clerk of Court of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211



Candy Kern-Fuller, Esq. (SC Bar No. 11392)

UPSTATE LAW GROUP, LLC

200 E. Main Street

Easley, SC 29640

864-855-3114

864-855-3446 (Fascimile)

Candy@UpstateLawGroup.com

ATTORNEY FOR APPELLANT

March 15, 2017

F



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TO:

*The Honorable Jenny Abbott
Kitchings
S.C. Court of Appeals*

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COLUMBIA SC 29211-1629

USPS CERTIFIED MAIL



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MAR 20 2017

SC Court of Appeals

3/18