

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2007-CP-46-0119

J. W. Neal Construction, LLC..... Respondent,

v.

Cornelia Thomas..... Appellant.

RETURN TO MOTION TO DISMISS APPEAL

The Appellant files this Return in Opposition to the Respondent's Motion to Dismiss the Appeal.

1. Request for Extension of Time

The Appellant consents to the Respondent's request for an extension of time.

2. Motion to Dismiss Appeal

Appellant opposes the Motion to Dismiss the Appeal. The Appeal was timely noticed after issuance of the final order "determining the rights of the parties..."

Widener v. Fort Mill Ford, et al 381 S.C. 522, 674 SE 2d 172.

On February 25, 2010 the arbitrator issued his award in this case. On March 31, 2010, the Appellant filed a motion in the Court of Common Pleas to confirm the award.

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SC Court of Appeals

On June 1, 2010, the Court issued an order denying the motion to confirm the award. The Court remanded the case to the arbitrator with directions regarding modification of the award. The Court also gave instructions regarding attorneys' fees to the prevailing party.

On July 26, 2010, out of an abundance of caution, the Appellant filed a notice of appeal of the Trial Court's order of June 1, 2010. Thereafter, Appellant filed a motion dated August 26, 2010 suggesting that the June 1, 2010 order was interlocutory and requesting that the appeal be dismissed without prejudice pending the issuance of a final order. The Appellant's motion was granted.

On June 17, 2010, the arbitrator issued an amended award. Thereafter, no action was taken until February 3, 2012, when the Respondent filed a motion to confirm the amended award.

On June 18, 2012, the Trial Court issued an order confirming the arbitrator's amended award and entered judgment thereon. Notice of Appeal was served on July 13, 2012.

The order dated June 18, 2012 is the final order in the case, determining all the rights of the parties. All orders issued before the order of June 18, 2012, were interlocutory. While §15-48-200 of the South Carolina Code permits immediate appeal of certain interlocutory orders, there is no requirement that the interlocutory orders be appealed until the final order is issued.

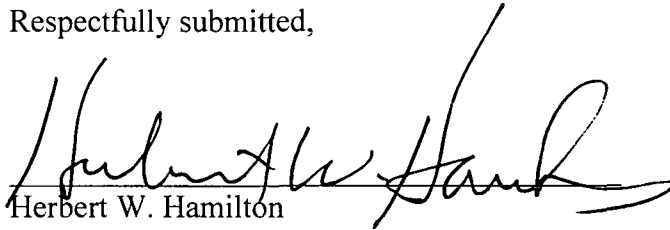
Section 15-48-200 provides that certain interlocutory orders "may" be immediately appealed. Section 15-48-200 also states that appeals of orders in arbitration

“... shall be taken in the manner and to the same extent as from orders or judgments in a civil action”.

Section 14-3-330 provides for immediate appeal of certain “intermediate” orders. Section 14-3-330 also provides, however, that if an appeal is not filed until final judgment is entered, the Appellate Court may review the intermediate orders upon appeal from the final judgment.

Here, Appellant has done everything possible to assure that the right to appeal is preserved. Until February 3, 2012, there had been no motion to confirm the amended award. The Order of June 18, 2012 is the only order granting judgment on the amended award. The Appellant submits that the appeal is timely and requests that the Motion to Dismiss the Appeal be denied.

Respectfully submitted,



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November , 2012

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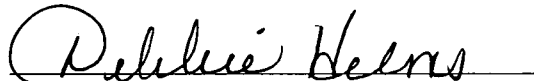
Cornelia Thomas..... Appellant.

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens & Ballou, LLC certifies that the Appellant's RETURN TO 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
Attorney at Law
PO Box 106
Rock Hill, SC 29731
ATTORNEYS FOR RESPONDENT

The is the 7th day of November, 2012


Debbie Helms