

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Phillip Lenski, Administrative Law Judge

RECEIVED

MAY 22 2017

SC Court of Appeals

Case No. 2017-000968

Richard Beltram, Appellant,

v.

South Carolina Department of Revenue, Respondent.

RETURN TO MOTION TO DISMISS

Respondent South Carolina Department of Revenue (“SCDOR”) has moved to dismiss Appellant Richard Beltram’s (“Beltram”) appeal.

Specifically, SCDOR argues that Beltram did not, prior to filing his Notice of Appeal, pay the withholding taxes specified in the Administrative Law Court’s Amended Final Order, or post an appropriate bond, pursuant to S.C. Code Ann. § 12-60-3370. Beltram submits that, for the reasons set forth herein, this does not divest this Court of jurisdiction.

First, the South Carolina Appellate Court Rules are clear regarding the requirements for filing a notice of appeal from an administrative tribunal. Rule 203(b)(6) and (d)(2), SCACR. The Appellate Court Rules further state that the only time period that cannot be enlarged or diminished by order of the Court of Appeals is the time for filing and serving the Notice of Appeal. Rule 263 (b), SCRCP. Beltram has fully complied with these requirements.

Because the deadline for a Notice of Appeal is not subject to extension, Beltram acted promptly in filing the Notice of Appeal to preserve his rights. The statute cited by SCDOR, while providing that such payment or bond should be filed prior to filing the Notice of Appeal, does not have a corresponding provision that the appeal must be dismissed if the payment is made after, and not before, the filing of the Notice of Appeal. SCDOR has cited general law stating that failure of a party to comply with procedural requirement for perfecting an appeal “may” deprive the appellate court of jurisdiction. There is no specific law governing Beltram’s situation, and certainly no South Carolina case requiring the dismissal of his case with prejudice. In short, the statute cannot override the specific rules of the South Carolina Court of Appeals. Under those rules, an appeal is perfected by timely filing and service of the Notice of Appeal. There is no question that Beltram has done so.

Beltram does not dispute that he did not pay either the amounts due under the Amended Final Order or post a bond, as set forth in his attached affidavit, because he was not aware of this requirement. Upon notice of this requirement, Beltram provided counsel with credit card information that would enable a prompt and full payment of the amounts at issue in order to proceed with his appeal. Beltram attempted to make an online payment to SCDOR, but there was no accommodation on the website for the collection of this type of payment.

The question, then, is the amount of the payment required pending Beltram’s appeal.

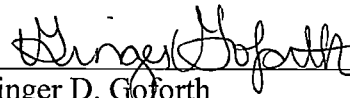
SCDOR submitted in support of its motion the affidavit of Perry T. Mathis, stating that the Amended Final Order calls for a payment from Beltram of \$52,273.05. This calculation is not accurate. The Amended Final Order does not set forth a specific money judgment. Rather, it calls for a calculation of the judgment based on certain time parameters set forth in the Amended Final Order. As set forth more fully in Beltram's affidavit, the amount required by statute does not include all amounts specified in the Mathis affidavit. Rather, under § 12-60-3370, and the Amended Final Order, the amount of taxes determined to be due is \$13,602.11. Beltram stands ready to make this provisional payment to SCDOR in the manner specified by SCDOR.

This case is fraught with many issues of delay and noncompliance with applicable procedural rules by SCDOR, as will be fully brief in this appeal. Beltram in no way wishes to circumvent the court rules or refuse to post a payment as required by law. However, the SCDOR is once again overstepping and overreaching in both its reading of S.C. Code Ann. § 12-60-3370 and its calculations of the amount required to be paid into trust to SCDOR. Beltram, out of an abundance of caution, wishes to establish the proper amount due.

In conclusion, Beltram submits that the Court of Appeals has jurisdiction over this appeal because he timely filed a Notice of Appeal under the Appellate Court Rules and the rules governing administrative procedure. The omission of a payment in trust to SCDOR does not deprive the Court of Appeals of this jurisdiction, and the Court of Appeals has the authority to determine the amount under the Amended Final Order and the applicable law that Beltram owes, under the circumstances. In the alternative, Beltram submits that the Court of Appeals has the authority to remand this issue to the Administrative Law Court for clarification of this issue, if necessary and desired by the Court, without losing jurisdiction over this timely filed appeal. See S.C. Code Ann. 1-23-380.

Respectfully submitted

THE WARD LAW FIRM, P.A.
Attorneys for Appellant



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May 18, 2017

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AFFIDAVIT OF RICHARD BELTRAM

Personally appeared before me Richard Beltram who, being duly sworn, deposes and says as follows:

1. I am the Appellant in this matter. I am in receipt of the Affidavit of Perry T. Mathis, submitted by Respondent South Carolina Department of Revenue ("SCDOR") in support of its assertion that I owe \$52,273.05 under the Administrative Law Court's March 17,

2017 Amended Final Order (“Amended Final Order”). This amount is not accurate under the terms of the Amended Final Order.

2. Under the terms of the Amended Final Order, the Administrative Law Court decided that I owe the following amounts, as represented by the dates each lien attached:

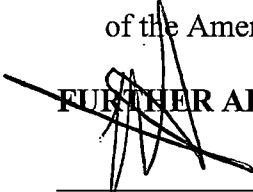
<u>Date</u>	<u>Assessment</u>	<u>Date</u>	<u>Lien</u>
September 2003	\$4,258.28	September 7, 2004	\$4,258.28
December 2003	\$3,923.79	February 16, 2005	\$3,923.79
March 2004	\$3,528.79	February 16, 2005	\$3,528.79
June 2004	\$2,566.25	May 23, 2005	\$2,566.25
			\$14,277.11
			(675.00)
			\$13,602.11

3. The Amended Final Order found that I was responsible for the payment of withholding tax liens against Intedg Industries, Inc. for the periods of May 1, 2003 through July 1, 2005. The Amended Final Order specifically found that I was not responsible for any withholding taxes due on or after July of 2005. The amounts set forth in paragraph 2 of this affidavit represent the dates that the tax liens falling within this period attached based on quarterly withholding due dates. The Amended Final Order also allowed a credit of \$675.00 for attorney’s fees, which was imposed as a sanction for the SCDOR’s discovery infractions.
4. I was not aware of the provisions of S.C. Code Ann. § 12-60-3370 at the time that I filed my Notice of Appeal. I had no intention of avoiding any requirements of this code section. I have since learning of these provisions attempted to pay the amount reflected in paragraph 2 directly to the SCDOR by credit card through its website. However, there is not a

provision on the website for the collection of this type of payment. I have therefore, simultaneous with executing this affidavit, provided my counsel with the means to pay the \$13,602.11 tax owed under the contested terms of the Amended Final Order upon obtaining the details of making such a payment to the SCDOR.

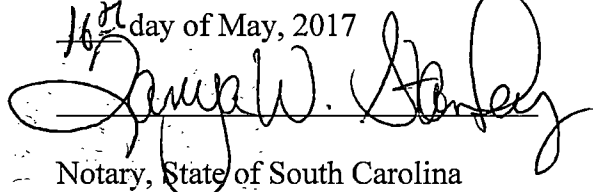
5. This affidavit is made upon my personal knowledge and information. I stand ready to pay the proper amount of withholding tax assessed in the Amended Final Order, but contest the amount set forth in the affidavit of Perry T. Mathis based upon a plain reading of the terms of the Amended Final Order.

~~FURTHER AFFIANT SAYETH NOT~~


Richard Beltram

RSB / Ham

Sworn to and subscribed before me this
16th day of May, 2017



Notary, State of South Carolina

My commission expires 1-26-2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Appellant Richard Beltram's Return to Motion to Dismiss and Affidavit of Richard Beltram was served upon all parties of record on May 18, 2017 by depositing copies of the same via process service and/or United States mail, postage affixed, to the following address:

South Carolina Department of Revenue
Nicole M. Wooten
Timothy C. Thompson
Milton G. Kimpson

Office of General Counsel for Litigation
South Carolina Department of Revenue
300A Outlet Pointe Boulevard
P.O. Box 12265
Columbia, SC 29211


Ginger D. Goforth

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SC Court of Appeals


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

**RE: Richard Beltram v. South Carolina Department of Revenue
Appellate Case No. 2017-000968**

Dear Ms. Kitchings:

Enclosed please find one (1) original and seven (7) copies of Appellant Richard Beltram's Return to Motion to Dismiss and Affidavit of Richard Beltram. Also please find a Certificate of Service enclosed herewith. Please file the originals and return the clocked copy to me in the postage-paid, self-addressed envelope provided.

Sincerely,


Ginger D. Goforth

GDG/prm
Enclosure

cc: South Carolina Department of Revenue
Nicole M. Wooten
Timothy C. Thompson
Milton G. Kimpson

05/18/2017
US POSTAGE \$002.66⁰



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Court of Appeals Clerk of Court
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