

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge
Trial Court Case No. 2014-CP-15-00384

Appellate Case No. 2017-000037

Home Builders Finance, Inc., Respondent,

v.

Willard E. Wilson, Annie L,
Green and Palmetto Citizens
Federal Credit Union,
Defendants,

Of whom Willard E. Wilson is
Appellant Appellant.

RESPONDENT HOME BUILDERS FINANCE, INC.'S RETURN AND MEMORANDUM TO
APPELLANT WILLARD E. WILSON'S MOTION TO ORDER TRANSCRIPT OUT OF
TIME, MOTION TO REINSTATE CASE, AND MOTION TO BE RELIEVED AS COUNSEL

Drew B. Walker, Esq.
P.O. Box 11803
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803-978-2836
Attorney for Respondent

Thomas C. Nelson, Esq.
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Mt. Pleasant, SC 29465
843-284-5500 ext. 226
Attorney for Appellant

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SC Court of Appeals

Respondent Home Builder's Finance, Inc. submits this Return and Memorandum opposing Appellant Willard E. Wilson's Motion to Order Transcript Out of Time, Motion to Reinstate Case, and Motion to Be Relieved As Counsel.

1. FACTUAL AND PROCEDURAL HISTORY

In this attempted appeal, Appellant seeks to challenge the Circuit Court's Order enforcing and compelling a settlement agreement amongst the parties in the underlying case ("Circuit Court Order").

The parties in the underlying lawsuit executed a Mutual Release and Settlement Agreement ("Agreement") with an effective date of September 4, 2015. Appellant Wilson and Defendant Green failed to comply with the terms of the Agreement and Respondent was forced to file a Motion to Compel Enforcement of Settlement Agreement on April 20, 2016 ("Circuit Court Motion"), which resulted in the Circuit Court Order on appeal. The underlying motion arguments were heard on May 13, 2016 ("Hearing"). Neither Appellant nor his counsel made formal appearances or arguments opposing the Circuit Court Motion at the Hearing. Appellant did not file a Rule 59, SCRPC, motion following the Hearing.

The Honorable Carmen T. Mullen executed the Circuit Court Order on November 17, 2016, which was filed with the Colleton County Clerk of Court's Office on November 22, 2017. Respondent's Counsel was provided with notice of entry of the Circuit Court Order as well as a copy of the Circuit Court Order by email on November 30, 2016. Respondent's Counsel provided Appellant's counsel notice of entry of the Circuit Court Order and a copy of the Circuit Court Order on November 30, 2016 by email with attachments, which is attached here and incorporated here as

Exhibit A (“Notice Email”).

Appellant filed its untimely Notice of Appeal on January 6, 2017, more than thirty (30) days since notice of entry of the Circuit Court Order by virtue of the Notice Email. On January 13, 2017, Appellant received a letter from the South Carolina Court of Appeals Clerk of Court (“Clerk”) requiring him to correct the Notice of Appeal within ten days of the letter by providing proof of when it received notice of entry of the Circuit Court Order. Appellant failed to Order a Transcript from the Hearing within ten days of the Notice of Appeal, which should have been ordered by January 17, 2017.

Appellant failed to timely file an Amended Notice of Appeal by January 23, 2017, as required by the Clerk’s January 13, 2017 letter. On January 27, 2017, Appellant filed an untimely Amended Notice of Appeal with an email attached from Lori Weiss with the Colleton County Clerk of Court’s Office providing notice of entry and a copy of the Circuit Court Order dated December 9, 2016. However, Appellant had already been provided notice of the order on November 30, 2016 by virtue of the Notice Email.

The Hearing transcript was not ordered by the January 17, 2017 deadline. February passed. March passed.

The Clerk wrote Appellant a letter dated April 7, 2017 giving Appellant notice of the expiration of time to file a copy of a letter to the Clerk showing the transcript had been ordered from the Hearing Court Reporter. The Clerk graciously provided Appellant an additional ten (10) days to order the transcript.

Appellant failed to order a transcript by April 17, 2017, which was the additional allotted time provided by the Clerk. Another month passed from the Clerk’s April 7, 2017 letter.

On May 12, 2017, the Clerk issued an Order dismissing the case due to Appellant's failure to order a transcript for over four months in the face of the deadlines established in the South Carolina Appellate Court Rules and the gracious reminders and extensions provided by this Court and the Clerk.

On May 24, 2017, the Clerk received the three instant motions filed by the Appellant that are the subject of this Return ("Motions"). A transcript of the Hearing has still not been ordered as of today's date, June 1, 2017.

2. ARGUMENT

Appellant's pattern of disregard for this Court's procedural rules cannot continue to cause detrimental delay to Respondent. Respondent requests that this Court deny Appellant's Motions and send the remittitur provided by Rule 221(b), SCACR. "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Rule 260(a), SCACR. "A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties." Id.

Appellant's sole explanation for its dilatory behavior is that Appellant thought the transcript had been ordered. Appellant should have been on high alert when the Clerk sent the April 7, 2017, notifying it that it had missed a deadline by roughly three months. To the contrary, it missed another gracious deadline extension ten days later when it failed yet again to order the transcript and file notice of same with the Clerk by April 17, 2017. Only in late May, after the instant case was dismissed, did Appellant apparently discover that a transcript had not been ordered over four months after the deadline and a reminder.

Respondent has waited patiently as it continues to suffer from Appellant's late filings. As shown by the chronology in the Facts section above, Appellant did not timely file a Notice of Appeal. "The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for the service of the notice." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). Further, Appellant did not timely file an Amended Notice of Appeal. Additionally, Appellant continues to wait to consummate the Agreement that was reached One Year and Nine Months ago in September 2015. The Agreement resolves a real estate issue, and the Respondent's real property continues to languish as a result of Appellant's prejudicial actions.

In light of the above reasoning and Appellant's prejudicial omissions, good cause for reinstating this case or extending the time to order a transcript cannot be shown under Rule 260(a), SCACR. For those reasons, Respondent does not believe this Court needs to reach Appellant's counsel's motion to be relieved as counsel.

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3. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Motions be denied and that this Court send the remittitur provided by Rule 221(b), SCACR.



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F: 803-252-3653
dwalker@rogerslewis.com
Attorney for the Respondent

June 1, 2017
Columbia, South Carolina

EXHIBIT

A

Pamela Baker

From: Drew Walker
Sent: Wednesday, November 30, 2016 11:30 AM
To: Lori Weiss; S. NELSON WESTON; dwayne@lawyeruptoday.com
Cc: Pamela Baker; Thomas Nelson
Subject: RE: Court order
Attachments: Scanned from a Xerox Multifunction Printer.pdf

Dwayne, per the order, please send me a W-9 for your trust account.

Nelson, please send me a W-9 either for your trust account or your client, and let me know who to make the check out to for our agreed-upon amount of \$9,290.85.

Thanks,
Drew

Drew Walker
Member
Rogers Lewis Jackson Mann & Quinn, LLC
1330 Lady St., Suite 400
803-978-2836 (direct)
Columbia, SC 29201
P.O. Box 11803 (29211)
www.rogerslewis.com

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

From: Lori Weiss [mailto:lweiss@colletoncounty.org]
Sent: Wednesday, November 30, 2016 9:23 AM
To: Drew Walker <dwalker@rogerslewis.com>; S. NELSON WESTON <NWESTON@RPCLAW.COM>; dwayne@lawyeruptoday.com
Subject: Court order

Please see attached Order.

Sincerely,
Lori L. Weiss
Court Specialist III
Colleton County Court of Common Pleas
(843) 549-5791 phone
(843) 549-6857 fax
lweiss@colletoncounty.org

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

From: civ5765wx@colletoncounty.org [mailto:civ5765wx@colletoncounty.org]
Sent: Wednesday, November 30, 2016 8:24 AM

To: Weiss, Lori <lweiss@colletoncounty.org>
Subject: Scanned from a Xerox Multifunction Printer

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Printer.

Sent by: Guest [civ5765wx@colletoncounty.org]
Attachment File Type: pdf, Multi-Page

Multifunction Printer Location: machine location not set
Device Name: XRX9C934E312308

For more information on Xerox products and solutions, please visit
<http://www.xerox.com>

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Home Builders Finance, Inc.,

Plaintiff,

v.

Willard E. Wilson; Annie L. Green; and
Palmetto Citizens Federal Credit Union,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A NO: 2014-CP-15-384

ORDER

This matter came before me on May 13, 2016 for hearing on a motion pursuant to Rules 7(b) and Rule 41 of the South Carolina Rules of Civil Procedure, brought by the Plaintiff Home Builders Finance, Inc. ("Plaintiff") for an Order compelling the enforcement of the Settlement Agreement signed by all parties on September 4, 2015.

Attorney Drew Walker, Esq. appeared on behalf of the Plaintiff. Attorney Dayna Buckner, Esq. appeared on behalf of Defendant Annie L. Green ("Ms. Green").

After hearing oral arguments from counsel, reviewing the evidence on the record considering the relevant case law, and for the reasons more fully articulated below, the Motion is GRANTED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 3, 2015, the parties participated in mediation. After lengthy negotiations, the parties reached a settlement agreement ("Agreement") and subsequently filed it into the court's record with the Clerk of Court's office on April 11, 2016 with its defined terms incorporated herein. The signed document sets forth clear and specific terms of the settlement agreement between the parties. Plaintiff did not receive payment due under Section 1 of the Agreement, thereby triggering Section 2(b) and requiring compliance therewith. Plaintiff's attempts to

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COLLETON COUNTY
COMMON PLEAS

comply with section 2(b) of the Agreement by delivering \$20,000.00 ("Payment") to Defendant Annie L. Green ("Ms. Green") were unsuccessful despite good faith efforts.

Accordingly,

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's Motion to Compel Enforcement of Settlement Agreement is GRANTED.

2. Plaintiff, by and through its title insurance company, shall issue Payment to Ms. Green by mailing a check to the office of her counsel, Dwayne T. Buckner, Esq., said check being made out to his trust account, to satisfy obligations under Section 2(b) of the Agreement. Mr. Buckner's office shall provide Plaintiff's counsel a W-9 for purposes of issuing said check.

3. Upon mailing of the Payment to Mr. Buckner and following payment of the Judgment (as defined in the instant Motion and Agreement) to Palmetto Citizens Federal Credit Union ("PCFCU"), Plaintiff is entitled to record the Quitclaim Deed in its possession in the Colleton County Register of Deeds Office.

4. Furthermore, Plaintiff may file the Stipulation of Dismissal attached as Exhibit C to the Agreement following Plaintiff's payment of the Payment and the Judgment, and PCFCU's counsel's execution of the Stipulation of Dismissal.

AND IT IS SO ORDERED.



The Honorable Carmen T. Mullen
Presiding Judge for the Fourteenth Circuit

11/17, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2014-CP-15-384

Home Builders Finance, Inc. Respondent

v.

Willard E. Willson Appellant

PROOF OF SERVICE

I certify that I have served the Respondent Home Builders Finance Inc.'s Return and Memorandum to Appellant Willard E. Wilson's Motion to Order Transcript Out of Time, Motion to Reinstate Case, and Motion to be Relieved as Counsel on the following recipients by depositing a copy of it in the United States Mail, postage prepaid and return address clearly indicated, on June 1, 2017:

Willard Wilson
PO Box 281
Varnville, SC 29944
Appellant

Thomas C. Nelson, Esquire
Post Office Box 1385
Mt. Pleasant, SC 29465
Attorney for Appellant

June 18th, 2017



Pamela Baker, Paralegal
Rogers Lewis Jackson Mann & Quinn, LLC

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ROGERS LEWIS

ATTORNEYS AT LAW

Drew B. Walker, Esq.
dwalker@rogerslewis.com

June 1, 2017

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SC Court of Appeals

Via Hand-Delivery to:

South Carolina Court of Appeals
Jenny Abbott Kitchings; Clerk of Court
1220 Senate Street
Columbia, SC 29201

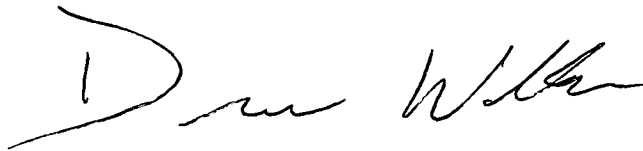
RE: Willard Wilson v. Home Builders Finance, Inc.
Civil Action No.: 2014-CP-15-384

Dear Ms. Kitchings:

Enclosed please find the original and a copy of Respondent Home Builders Finance Inc.'s Return and Memorandum to Appellant Willard E. Wilson's Motion to Order Transcript Out of Time, Motion to Reinstate Case, and Motion to be Relieved as Counsel for filing in the above referenced matter. Please file the original and return one filed copy back to the courier for our records.

Thank you for your assistance with this matter. Please contact our office with any questions.

Sincerely,



Drew Walker

ABW/pdb

cc: Thomas C. Nelson, Esq.
Willard E. Wilson

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