

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Trial Court Case No. 2015-CP-40-00042
Appellate Case No. 2017-000846

Conyers Early Learning Center, Inc.,

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JUN 07 2017

SC Court of Appeals

Appellant,

v.

Formeicko Smith,

Respondent.

RETURN TO APPELLANT'S MOTION TO REINSTATE APPEAL

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STATEMENT OF THE MOTION

This matter concerns an appeal of the decision of the Honorable Clifton Newman granting Respondent summary judgment.¹ The Order granting Respondent summary judgment was entered on March 9, 2017. Appellant filed a Notice of Appeal, Statement of Issues on Appeal and Certificate of Service with this Court on April 6, 2017. (Exhibit 1). According to the Certificate of Service, the Notice of Appeal was served on Respondent on the same date. (Exhibit 1 at p. 17). On April 12, 2017, this Court sent a letter to Appellant's counsel, informing him of deficiencies in the Notice of Appeal and accompanying proof of service. (Exhibit 2). This Court instructed Appellant's counsel that he must correct the deficiencies and file an amended notice of appeal "within ten (10) days of the date of this letter or your appeal will be dismissed[.]" (Exhibit 2).

Appellant failed to correct the deficiencies identified by this Court in the April 12, 2017, letter within ten days. (*See* Exhibit 3). Appellant also failed to serve and file its Initial Brief within thirty (30) days of serving its Notice of Appeal as required by Rule 208, SCACR.² (Exhibit 4).

On May 17, 2017, this Court dismissed Appellant's appeal for Appellant's failure to correct the deficiencies in its Notice of Appeal and comply with the other requests in the Court's April 12, 2017, letter. (Exhibit 3).

¹ Appellant has also purported to appeal a decision of the Honorable L. Casey Manning. However, as of the date of this memorandum of law, no decision of Judge Manning has been entered in the underlying action. (*See infra* note 3). Moreover, Respondent has not included Judge Manning in the captions on this Return or accompanying Certificate of Service because Judge Manning was not included in the caption of this Court's May 17, 2017, Order dismissing the appeal. (*See* Exhibit 3).

² Upon information and belief, Appellant's Initial Brief had to be served and filed by May 8, 2017, as Appellant never ordered a transcript of the lower court proceeding. (Affidavit of Jeff Silverberg ¶ 3, attached hereto as Exhibit 4).

On May 30, 2017, Appellant filed the present Motion to Reinstate Appeal. (Exhibit 5). On this same date, Appellant filed an Amended Notice of Appeal and an Amended Proof of Service. (Exhibit 6). According to Appellant's Motion, Appellant argues its appeal should be reinstated because Appellant's counsel "erroneously believed that his law clerk had corrected the deficiencies noted in the Clerk's letter of April 12, 2017." (Exhibit 5 at p. 36). Appellant also argues that the deficiencies it failed to correct were only related to "form" and not substance, and that Appellant's counsel's failure to correct these deficiencies did not prejudice Respondent. *Id.* Respondent respectfully requests that this Court deny Appellant's Motion.

ARGUMENT

This Court should deny Appellant's Motion to Reinstate Appeal because (1) Appellant's Notice of Appeal did not comply with Rule 203, SCACR, and thus, this Court lacks jurisdiction to hear the underlying appeal and this Motion; (2) Appellant's Motion does not comply with Rule 240, SCACR, and should therefore be deemed abandoned; (3) Appellant has failed to show that "good cause" exists for reinstating the appeal; and (4) Appellant failed to file an initial brief in violation of Rule 208, SCACR.

I. Appellant's Notice of Appeal Did Not Comply with Rule 203 of the South Carolina Appellate Court Rules, and Thus, This Court Lacks Jurisdiction to Hear the Appeal and This Motion.

This Court did not have initial jurisdiction over Appellant's appeal of the March 9, 2017, Order of the Honorable Clifton Newman or the yet-to-be entered Order of The Honorable Judge L. Casey Manning.³ Therefore, Appellant's motion to reinstate its appeal is not properly before this Court and should be denied.

³ Appellant's Notice of Appeal purports to appeal a decision of the Honorable L. Casey Manning. (Exhibit 1 at p. 15). However, as of the date of this memorandum of law, no decision of Judge Manning has been

According to Rule 203(b), SCACR, a party must serve its notice of appeal within thirty days after the receipt of written notice of the entry of the order being appealed. The failure to serve the notice of appeal “divests [the court of appeals] of subject matter jurisdiction and results in dismissal of the appeal.” *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999). Furthermore, Rule 203(e) requires that the notice of appeal be substantially in the format shown by Form 1 in Appendix C to Part II of the South Carolina Appellate Court Rules and contain specific information set forth in Rule 203(e)(1).

Here, the Notice of Appeal served and filed on April 6, 2017, did not comply with the requirements of Rule 203(e), as it did not contain all the information required by Rule 203(1)⁴ and was not substantially in the same format as Form 1. (Exhibit 1; *see also* Exhibit 2). Appellant did not serve a notice of appeal upon Respondent that complied with Rule 203(e) within thirty days of Appellant’s receipt of written notice of the entry of Judge Newman’s Order.⁵ Therefore, since Respondent was not served with a notice of appeal that complied with the South Carolina Appellate Court Rules within thirty days of Appellant’s receipt of written notice of the entry of Judge Newman’s Order, service of the April 6, 2017, Notice of Appeal was ineffective, and this Court lacks jurisdiction to

entered in the underlying action. (*See* printout of court records on file for 2015-CP-40-000042, attached hereto as Exhibit 7).

⁴ The Notice of Appeal filed on April 6, 2017, did not contain the name of the county from which the appeal was taken, the date of the orders from which the appeal was taken, or a statement of when Appellant received notice of the orders. (Exhibit 1 at p. 15; *see also* Exhibit 2).

⁵ According to Appellant’s Amended Notice of Appeal, Appellant received written notice of Judge Newman’s Order on March 12, 2017. (Exhibit 6 at p. 39).

hear Appellant's appeal and this Motion.⁶ *See Pringle v. Builders Transp.*, 298 S.C. 494, 495, 381 S.E.2d 731, 731 (1989) (holding circuit court should have dismissed appeal of an order of the Workers' Compensation Commission because the petition lacked information required by the Administrative Procedures Act, noting "[t]he circuit court lacks jurisdiction of the appeal if the notice is insufficient.").

In light of the fact that this Court did not have jurisdiction over Appellant's appeal, this Motion is not properly before this Court and should be denied.

II. Appellant's Motion to Reinstate Appeal Does Not Comply With South Carolina Appellate Court Rule 240 and, Therefore, Should Be Deemed Abandoned.

Appellant's Motion to Reinstate Appeal should be deemed abandoned by Rule 240(g) for the failure to comply with Rule 240, SCACR.

Appellant's appeal was dismissed pursuant to Rule 260, SCACR, because Appellant's Notice of Appeal and accompanying proof of service did not comply with South Carolina Appellate Court Rules. Specifically, Appellant's Notice of Appeal did not comply with Rule 203(e), SCACR or Rule 267(a), SCACR, and Appellant's proof of service did not contain a caption.⁷ Notwithstanding that the basis for the dismissal was Appellant's noncompliance with the South Carolina Appellate Court Rules concerning the content and form of filed documents (after being given actual notice of said deficiencies and ample opportunity to correct them by this Court), Appellant has

⁶ Even if this Court determines it has jurisdiction over this matter as it relates to the appeal of Judge Newman's March 9, 2017, Order, this Court lacks jurisdiction over Appellant's purported appeal of Judge Manning's order, as this order has not yet been entered in the underlying action as of the date of this Return. (See *supra* note 3).

⁷ It is worth noting that it appears Appellant also failed to file its Notice of Appeal with the lower court as required by Rule 203(d), SCACR. (See Exhibit 7). Therefore, the appeal was also subject to dismissal for failure to timely file the Notice of Appeal. *See* Rule 203(d)(3), SCACR.

continued to ignore the South Carolina Appellate Court Rules by filing a motion that does not comply with Rule 240, SCACR and Rule 267, SCACR. In particular, Appellant's motion includes an incorrect caption⁸, lacks a memorandum with citation of authorities in support of the motion, and is not supported by any affidavits or other documents. (Exhibit 5; *see* Rule 240(c) and Rule 267, SCACR).

In light of the foregoing, Appellant's Motion to Reinstate Appeal should be deemed abandoned by Rule 240(g) for the failure to comply with Rule 240, SCACR. *See Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) ("the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.").

III. Appellant Has Failed to Establish "Good Cause" For Reinstating the Appeal.

Appellant has failed to establish "good cause" for its failure to comply with the South Carolina Appellate Court Rules and correct deficiencies in its Notice of Appeal and Proof of Service as requested by this Court in its April 12, 2017, letter to Appellant's counsel. Therefore, Appellant's Motion to reinstate its appeal should be denied.

According to Rule 260, SCACR, "A case shall not be reinstated except by leave of the court, **upon good cause shown . . .**" (emphasis added). Although the South Carolina Appellate Court Rules do not define "good cause," the application of the "good cause" standard for granting relief from an entry of default pursuant to Rule 55(c),

⁸ Appellant included an incorrect case title and case number. (Exhibit 5 at p. 35) Notably, the same deficiencies are contained in Appellant's untimely Amended Notice of Appeal and Amended Proof of Service, which were served and filed in conjunction with the Motion to Reinstate Appeal. (Exhibit 6).

SCRCPC, is instructive. The “good cause” standard applied by South Carolina courts when evaluating whether to grant relief from an entry of default requires the moving party “to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” *Sundown Operating Co. v. Intedger Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Moreover, “[o]nce a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Id.* at 607–08, 681 S.E.2d at 888. Using this “good cause” analysis as a framework, it is evident that Appellant has failed to show good cause for reinstating its appeal.

Appellant’s sole explanation for failing to correct deficiencies in the Notice of Appeal and Proof of Service as requested by the Court’s April 12, 2017, letter is that Appellant’s counsel thought his law clerk had corrected the deficiencies. As an initial matter, Appellant does not provide any facts by way of affidavit or otherwise to support the basis of this belief. *See* Rule 240(c), SCACR (noting that “where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.”). Instead, Appellant simply provides a conclusory statement indicating this erroneous belief. Regardless, Appellant’s counsel’s belief that his law clerk had already corrected the deficiencies in Appellant’s Notice of Appeal and Proof of Service is not “good cause” for reinstating Appellant’s appeal.

The South Carolina Supreme Court “has recognized . . . that the good cause standard of Rule 55(c), encompasses reasonableness. *Limehouse v. Hulsey*, 397 S.C. 49,

71, 723 S.E.2d 211, 223 (Ct. App. 2011), *rev'd on other grounds*, 404 S.C. 93, 744 S.E.2d 566 (2013) “[B]ecause unreasonable conduct does not amount to good cause, an unreasonable explanation for defaulting is not a satisfactory explanation that serves a sufficient interest of justice.” *Id.* Here, appellant’s counsel’s belief is not reasonable given that his law clerk, alone, could not have corrected the deficiencies in the Notice of Appeal and Proof of Service identified by this Court. Both the Amended Notice of Appeal and corrected Proof of Service that the Court requested be filed had to be signed and filed by Appellant’s counsel. *See* Rule 267(b), SCACR; *Part II, Appendix C*, Forms 1 and 7. It was the responsibility of appellant’s counsel alone to ensure that the deficiencies in these documents were corrected, and that the corrected documents were filed within the 10-day deadline set by this Court.

Furthermore, Appellant cites no case law or authority supporting the contention that its purported reason for failing to correct the deficiencies identified in the Court’s April 12, 2017, letter serves as “good cause” for reinstating appellant’s appeal. To the contrary, prior decisions of this Court and the South Carolina Supreme Court illustrate that Appellant’s excuse is insufficient grounds for reinstating the appeal. For example, by way of analogy, this Court and the South Carolina Supreme Court have consistently held that the neglect of an attorney in failing to answer a complaint is imputable to a defaulting party and have upheld lower court rulings finding an attorney’s neglect is not “good cause” for setting aside an entry of default. *E.g.*, *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) (noting that the negligence of an attorney in failing to answer a complaint is imputed to the defaulting party and such negligence supports the finding that there was no good cause to set aside the default);

Hodges v. Fanning, 266 S.C. 517, 224 S.E.2d 713 (1976) (holding that the negligence of an attorney’s secretary in failing to return signed answers to another attorney for filing was insufficient grounds for setting aside default); *Limehouse v. Hulsey*, 397 S.C. 49, 71, 723 S.E.2d 211, 223 (Ct. App. 2011), *rev'd on other grounds*, 404 S.C. 93, 744 S.E.2d 566 (2013) (“In South Carolina, negligence on the part of an attorney is imputable to the client and will not be the basis of finding good cause to set aside entry of default.”); *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 609, 681 S.E.2d 885, 889 (2009) (“[T]he law is clear that an attorney or insurance company’s misconduct is imputable to the client.”). Therefore, even if the failure of Appellant to correct the deficiencies in Appellant’s Notice of Appeal and Proof of Service was a result of the neglect of Appellant’s counsel’s law clerk, such conduct is imputable to Appellant and is not a basis for reinstating Appellant’s appeal.

Moreover, Appellant’s apparent contention that the deficiencies this Court identified and requested be corrected are only matters of form, not substance, and that this somehow mitigates Appellant’s failure to comply with the Court’s 10-day deadline to correct these deficiencies, is meritless. This Court emphasized the importance of parties complying with the South Carolina Appellate Court Rules in *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992):

[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.

Id. at 437, 415 S.E.2d at 794.⁹

⁹ In *Henning*, the appellant’s initial brief failed to comply with Rule 207, SCACR in that the brief was not properly organized and contained other deficiencies that one could characterize as matters of “form”. *See id.* The respondent in *Henning* moved to dismiss the appeal for the appellant’s noncompliance. *Id.* While

Finally, allowing Appellant's appeal to be reinstated would not serve the interests of justice and would prejudice Respondent. The South Carolina Appellate Court Rules are intended to protect the rights of both appellants and respondents. While Appellant had the opportunity to appeal the lower court's decision, it was incumbent upon Appellant to exercise this right in compliance with the rules governing the appellate process. Appellant's failure to follow the rules and comply with the April 12, 2017, directive of this Court to correct deficiencies has led to undue delay, which in turn has resulted in increased costs for Respondent. Reinstating the Appellant's appeal, and thereby rewarding Appellant's failure to follow the rules and directives of this Court, would deny Respondent the protection of the South Carolina Appellate Court Rules and her right to finality of judgment. *See Trimmier v. Thomson et al.*, 39 S.C. 554 (1893) (denying a motion to reinstate an appeal dismissed for failure to comply with court rules, and noting "Rules of court are designed to secure the orderly and prompt dispatch of business, and it is very important that these rules should be observed. At all events, when parties invoke the protection of these rules in order to prevent delays in the adjudication of their rights, this court is bound to accord them that protection.").

Appellant has failed to show good cause for its failure to correct the deficiencies in its Notice of Appeal and Proof of Service in accordance with the April 12, 2017, directive of this Court. Appellant's counsel's erroneous belief that his law clerk corrected

this Court ultimately did not dismiss the appeal, this Court noted that it "would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules . . ." *Id.* Importantly, the procedural posture of the present case is different than that in *Henning* since, here, the Court has already made the determination that dismissal of Appellant's appeal was warranted in light of the fact that Appellant failed to correct its violations of the South Carolina Appellate Court Rules after this Court gave Appellant the opportunity to do so. Therefore, this Court should uphold its decision to dismiss Appellant's appeal.

said deficiencies is not a basis for reinstating the appeal. *See Sundown Operating Co.*, at 609, 681 S.E.2d at 889 (finding that “a defendant may not be relieved from the entry of default [under the “good cause” standard] *solely* because it relied to its detriment on a negligent insurance agent.” (emphasis in original)). Therefore, Appellant’s Motion to Reinstate Appeal should be denied.

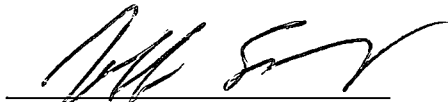
IV. Appellant Failed to File Its Initial Brief.

Even if Appellant could show good cause for its failure to correct the deficiencies identified by this Court in its April 12, 2017, letter, Appellant’s appeal should be dismissed for Appellant’s failure to file an initial brief. According to Rule 208, SCACR, unless Appellant ordered a hearing transcript, Appellant was required to serve its initial brief on Respondent within thirty days after serving its Notice of Appeal. Appellant did not order a transcript of the hearing in the lower court. (Exhibit 4 at ¶ 3). Therefore, Appellant was required to serve its initial brief on Respondent by May 8, 2017. Appellant did not serve an initial brief on Respondent; nor did Appellant file an initial brief with the Court. Therefore, Appellant’s failure to serve and file its initial brief within the prescribed time serves as additional grounds for dismissing the appeal and denying Appellant’s Motion to Reinstate Appeal. *See* 208(a)(4), SCACR (“Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal . . .”).

CONCLUSION

For the foregoing reasons, Respondent respectfully requests the Court deny Appellant's Motion to Reinstate Appeal.

Respectfully submitted,



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Attorneys for Respondent

June 7, 2017

Exhibit 1

STATE OF SOUTH CAROLINA
COURT OF APPEALS

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APPEAL FROM SOUTH CAROLINA COURT OF COMMON PLEAS

SC Court of Appeals

Honorable Clifton Newman, Circuit Court Judge

and

The Honorable I. Casey Manning

Case No. 2015-CP-40-00042

Conyers Early Learning CenterAppellant,

v.

Formeicko SmithRespondent.

NOTICE OF APPEAL

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Counsel for Respondent

STATEMENT OF ISSUES ON APPEAL

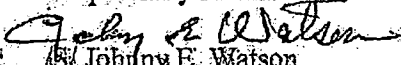
The Appellant, Conyers Early Learning Center, hereby gives notice of appeal from the judgment of the South Carolina Court of Common Pleas, Honorable Clifton Newman, presiding, in the above action.

Notice of Appeal is made subsequent to Order of Judgment signed on March 8, 2017 and filed on March 10, 2017.

Appellant's exceptions to the judgment of the Court of Common Pleas Judge are set forth as follows:

- i. The Trial Judge erred in finding that it was illegal for the Appellant to sell their business to the Respondent; and
- ii. The Trial Judge erred in deciding that the transfer of the business needed the written consent of the South Carolina Department of Social Services.
- iii. The trial judge erred in assessing the Respondent's costs to the Appellant and his attorney for not attending a scheduled deposition appearance when the Appellant, Denna Conyers was too ill to attend the deposition.

Respectfully submitted,


BY: Johnny E. Watson
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Columbia, South Carolina

Dated: April 6, 2017

CERTIFICATE OF SERVICE

I, Johnny E. Watson, of 2715 Edgewood Avenue (29204), P. O. Box 2305, Columbia, South Carolina 29202, hereby certify that I have served the individual named below with a copy of the documents described herein by depositing the documents in the United States mail, postage prepaid and sent the same to them at the addresses listed herein below:

PERSON SERVED:

Honorable Jenny Kitching, Clerk
S. C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Jeffrey I. Silverberg, Esquire
Houser, Besley and Newman
1508 Washington
Columbia, South Carolina 29201

DOCUMENT SERVED:

NOTICE OF APPEAL

By:


JOHNNY E. WATSON

Columbia, South Carolina
Date: April 6, 2017

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SC Court of Appeals

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4000042

Conyers Early Learning Center Inc.

Formaicka C Smith

PLAINTIFF(S)

DEFENDANT(S)

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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonfit);
 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:

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
		\$
		\$
		\$

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.

Circuit Court Judge _____ Judge Code 2127 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of March, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of March, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Johnny Elliot Watson Sr.

Benjamin Davis McCoy
Jeffrey Ian Silverberg

Trevor Penrose Eddy

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court [Signature]

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At the time the Contract was executed, Plaintiff and Donna Conyers each had a judgment entered against them, pursuant to an Order for Damages issued by this Court, in the amount of \$15,000, arising from a tort action filed against the daycare in 2009. Following this judgment, the case was referred to the Master-in-Equity, who issued a Rule to Show Cause Order on June 13, 2013 against the defendants in the tort action, which ordered that:

"...until further order of this Court to the contrary, you are hereby enjoined and restrained from making any transfers or other disposition of your property, real or personal, tangible or intangible, not exempt by law from execution, and from any interference therewith."

(June 13, 2013, Rule to Show Cause Order, CAA-2009-CP-40-6947)

Plaintiff and Donna Conyers admit that at the time the Rule to Show Cause Order was issued it enjoined and restrained them from making any transfers or other dispositions of their property. The Rule to Show Cause Order was never superseded by a subsequent Order and remained in effect until March 2014 when the judgment lien was finally satisfied.

On January 5, 2015, Plaintiff filed a Complaint against Defendant for Breach of Contract and Replevin. Defendant asserted a number of counterclaims in its Answer, including fraud, fraud in the inducement, negligence/gross negligence, breach of contract, breach of contract accompanied by a fraudulent act, money/assets had and received, and a cause of action for an accounting. Defendant filed a Motion for Summary Judgment on December 12, 2016, based on the ground that the Contract upon which Plaintiff's causes of action are based is void.

STANDARD OF LAW

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56(c). When a party makes a motion for summary judgment that is supported by

evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion but must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists. *Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 399 S.E.2d 163 (Ct. App. 1990); *Dyer v. Moss*, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that there is a genuine issue for trial in order to overcome a summary judgment motion. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

DISCUSSION

Defendant is entitled to summary judgment as to Plaintiff's causes of action for Breach of Contract and Replevin because at the time the Contract was executed by Ms. Conyers on behalf of Plaintiff, Plaintiff and Ms. Conyers were judicially ordered not to sell any of their assets. Therefore, the Contract violates public policy, is void *ab initio* and is unenforceable.

"The general rule, undoubtedly, is, that a contract to do an act which is prohibited by statute, or which is contrary to public policy, is void, and cannot be enforced in a court of justice." *Grant v. Butt*, 198 S.C. 298, 17 S.E.2d 689, 693 (1941) (quoting *McConnell v. Kitchens*, 20 S.C. 430, 437-38 (1884)). "[C]ontracts having for their object anything that is . . . repugnant to justice and morality, are void; and . . . the Courts of this State will not lend aid to the enforcement of contracts that are in violation of law or opposed to sound public policy." *Id.* "A contract which contravenes public policy is void, and an action cannot be maintained for . . . its breach . . ." *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 277-78, 437 S.E.2d 168, 171 (Ct. App. 1993); *see also Ward v. W. Oil Co.*, 387 S.C. 268, 274, 692 S.E.2d 516, 519 (2010) ("this Court will not 'lend its assistance' to carry out the terms of a contract that violates statutory law or public policy.") (internal citation omitted); *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d

342, 345 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.").

In the case at hand, Plaintiff and Doana Conyers admit that at the time the Rule to Show Cause Order was issued it enjoined and restrained them from making any transfers or other dispositions of their property. Plaintiff has failed to present any evidence to establish a genuine issue of fact disputing that the Rule to Show Cause Order was in effect on August 14, 2013. The court records in the underlying tort action show no evidence that the Rule to Show Cause Order was not in effect on August 14, 2013. Moreover, according to an affidavit of the attorney who represented the Plaintiffs in the underlying tort action, the Rule to Show Cause Order was in effect on August 14, 2013 and the case was not resolved until March 2014—seven months after the Contract was executed. This Court finds that the Rule to Show Cause Order was in effect on August 14, 2013 when the contract was executed.

The Court holds that the fact that Plaintiff entered a contract to "do an act"—i.e. sell assets and property—in violation of the Master in Equity's order is a violation of public policy and/or "repugnant to justice and morality." See *Grant*, 198 S.C. 298, 17 S.E.2d at 693. To allow a party to enforce a contract that it was judicially forbidden from entering would contravene public policy by undermining the integrity of our judicial system and the authority and enforceability of a Judge's order. Therefore, the Contract is void *ab initio* and unenforceable. See *Ward v. W. Oil Co.*, 387 S.C. 268, 279, 692 S.E.2d 516, 522 (2010) (finding that the parties' contract "void *ab initio* and unenforceable as it violates statutory law and public policy.").

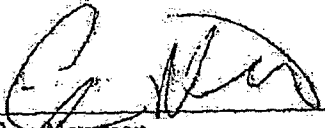
475

As an additional basis for finding the Contract at hand is void, the Court further holds that the contract violates S.C. Code Ann. § 63-13-440, which forbids the transfer of a daycare license without the written consent of the South Carolina Department of Social Services. *Id.* Neither Ms. Conyers nor Plaintiff sought or obtained approval from DSS prior to executing the Contract, which purported to transfer Plaintiff's license to operate a daycare to Defendant. Thus, the Contract also violated S.C. Code Ann. § 63-13-450 and is therefore unenforceable. *See White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.").

For the foregoing reasons, the Court grants Defendant's Motion for Summary Judgment as to Defendant's causes of action for Breach of Contract and Replevin, which are based upon a contract that violates public policy and statutory law, and therefore, is void *ab initio*.

IT IS ORDERED that Defendant's Motion for Summary Judgment shall be GRANTED.

AND IT IS SO ORDERED.


Clifton Newman
Presiding Judge

March 8, 2017
Columbia, South Carolina.

Exhibit 2



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 12, 2017

Mr. Johnny Elliot Watson, Sr., Esquire
PO Box 2305 (29202)
2715 Edgewood Avenue 29204
Columbia SC 29204

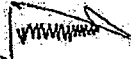
Re: Conyers Early Learning v. Formeicko Smith
Appellate Case No. 2017-000846

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. It lacks a caption, including a case number.
- The caption/title does not comply with Rule 267(a), SCACR. Specifically, it does not contain the county name or Judge Manning's title.
- You have provided a "statement of issues on appeal." However, what is required is that you provide an amended notice of appeal that names the appellant and states the name and date of the order(s) or judgment(s) you are appealing, as well as the date on which a copy of the order(s) or judgment(s) were received.

Very truly yours,

Tommy Abbott Kitching 

CLERK

cc: Jeffrey Ian Silverberg, Esquire

Exhibit 3

The South Carolina Court of Appeals

Conyers Early Learning Center, Inc., Appellant,

v.

Formeicko Smith, Respondent.

Appellate Case No. 2017-000846

The Honorable Clifton Newman
Richland County
Trial Court Case No. 2015CP4000042

ORDER

Appellant has failed to correct deficiencies in the notice of appeal as required by Rule 267(a) of the South Carolina Appellate Court Rules, and to make other corrections as requested by the Court's April 12, 2017, letter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
Johnny Elliot Watson, Sr., Esquire
Jeffrey Ian Silverberg, Esquire

FILED

May 17, 2017

Exhibit 4

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Trial Court Case No. 2015-CP-40-00042
Appellate Case No. 2017-000846

Conyers Early Learning Center, Inc.,

Appellant,

v.

Formeicko Smith,

Respondent.

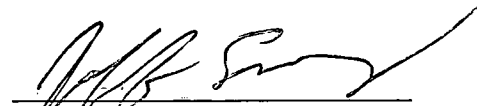
AFFIDAVIT OF JEFF SILVERBERG

Personally appeared before me, Jeff Silverberg, Esquire, who first being duly sworn deposes and says:

1. I am counsel of record for the Respondent in the above-captioned matter.
2. Appellant has failed to serve its initial brief on Respondent as of the date of this affidavit.
3. On May 16, 2017, I e-mailed Bonnie H. Kelly, the court reporter for the lower court proceeding underlying this appeal of The Honorable Clifton Newman's Order granting Respondent summary judgment. (See "Exhibit A" attached hereto).

According to Ms. Kelly, Appellant never requested a transcript of this proceeding. *See id.* Therefore, upon information and belief, Appellant was required to serve its initial brief on Respondent by May 8, 2017.

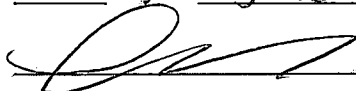
FURTHER SAYETH THE AFFIANT NAUGHT.



Jeff Silverberg

SWORN BEFORE ME this

7th day of June 2017

 (L.S.)

Notary Public for South Cochin

My Commission Expires: 10/24/24

Jeffrey Silverberg

From: Kelly, Bonnie <bkelly@sccourts.org>
Sent: Tuesday, May 16, 2017 10:17 PM
To: Jeffrey Silverberg
Subject: Re: Conyers Early Learning v. Formeicko Smith (2015CP4000042)

Hi, Mr. Silverberg. No one has requested this transcript. I estimate the cost to produce it to be \$194.25, which includes the cost to e-tran it to you. I have 60 days from date of receipt of payment in which to produce the transcript, according to our rules. If you wish it to be expedited, the cost will be \$243.25 via e-tran, and I will produce it within seven (7) business days from date of receipt of payment.

Please advise how you'd like me to proceed. Thank you.

Bonnie H. Kelly, CVR
Official Court Reporter
5th Circuit - At-large

From: Jeffrey Silverberg <jsilverberg@hnblaw.com>
Sent: Tuesday, May 16, 2017 10:23 AM
To: Kelly, Bonnie
Subject: RE: Conyers Early Learning v. Formeicko Smith (2015CP4000042)

Thank you!

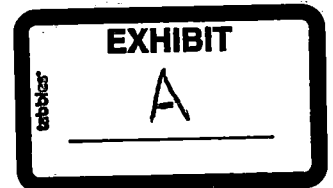
Jeff

Jeffrey I. Silverberg
jsilverberg@hnblaw.com
1508 Washington Street
Columbia, SC 29201
803.758.6000 T
803.758.4445 F
www.hnblaw.com

THIS MESSAGE MAY BE PROTECTED BY THE ATTORNEY/CLIENT, ATTORNEY WORK PRODUCT OR OTHER PRIVILEGES. IF YOU RECEIVED THIS MESSAGE IN ERROR, PLEASE SEND A REPLY TO LET ME KNOW, DELETE THE MESSAGE AND DO NOT FORWARD THIS MESSAGE TO ANY OTHER PERSON OR ENTITY. THANK YOU VERY MUCH FOR YOUR COOPERATION.

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

From: Kelly, Bonnie [<mailto:bkelly@sccourts.org>]
Sent: Tuesday, May 16, 2017 10:15 AM
To: Jeffrey Silverberg
Subject: Re: Conyers Early Learning v. Formeicko Smith (2015CP4000042)



?I keep my records at home and I am in court this morning. I'll be glad to check on that when I get back home though. The name is not familiar, so off the top of my head, I'd say no one has requested it, but let me check to be sure.

Bonnie H. Kelly, CVR
Official Court Reporter
5th Circuit - At-large

From: Jeffrey Silverberg <jsilverberg@hnblaw.com>
Sent: Monday, May 15, 2017 3:26 PM
To: Kelly, Bonnie
Cc: Chelsea Thorne
Subject: Conyers Early Learning v. Formeicko Smith (2015CP4000042)

Ms. Kelly,

I represent the respondent (Ms. Smith) in an appeal of the above-referenced case. This appeal concerns an Order issued by Judge Clifton Newman granting my client summary judgment. I believe you were the court reporter for the hearing on my client's motion for summary judgment (January 5th, 2017).

I was hoping you could let me know whether Plaintiff's/Appellant's counsel ever requested a transcript of this hearing from you?

Thanks,
Jeff

Jeffrey I. Silverberg
jsilverberg@hnblaw.com
1508 Washington Street
Columbia, SC 29201
803.758.6000 T
803.758.4445 F

www.hnblaw.com<[\[Description: howser-tag updated\]](https://urldefense.proofpoint.com/v2/url?u=http-3A%20www.hnblaw.com%20&d=DwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=foeJXuYBs3wWUq1wbAvuYxyyu53TA%20jUzWpVmdDTnak&m=Op8eccg3hXOBEzG20ua22R8TVA0cixVVifiiKQRFczU&s=V--MeRniTNDymbKc-6C19bJursHaqiN3SQCyEYklUeY&e=>></p></div><div data-bbox=)

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~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

# Exhibit 5

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

---

Clifton Newman, Circuit Court Judge

RECEIVED

And

L. Casey Manning, Circuit Court Judge

MAY 30 2017

SC Court of Appeals

---

Case No. 2017-CP-40-000846

---

Forneicko Smith ..... Respondent.

v

Conyers Early Learning Center, Inc. .... Appellant.

---

NOTICE OF MOTION AND MOTION TO REINSTATE APPEAL

---

Johnny E. Watson, Sr., Esquire  
Watson Law Firm  
2715 Edgewood Avenue  
Columbia, South Carolina 29202  
Phone (803) 400-1600  
Fax (803) 400-1200

*Counsel for Appellant*

Jeffrey I. Silverberg, Esquire  
Houser, Besley & Newman, LLC  
1508 Washington Street  
Columbia, South Carolina 29201  
Phone (803) 758-6000  
Fax (803) 758-4445

*Counsel for Respondent*

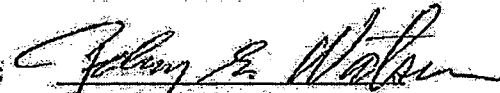
STATEMENT OF MOTION

PLEASE TAKE NOTICE that the above-named Appellant, by and through its counsel, undersigned, will move before the Presiding Judge of the South Carolina Court of Appeals, State of South Carolina, immediately, or as soon as this matter may be heard, for an Order reinstating its appeal based on the statutory and common laws of this state, the Rules of Appellate procedure and the following facts:

- A. The attorney for the Appellant erroneously believed that his law clerk had corrected the deficiencies noted in the Clerk's letter of April 12, 2017,
- B. The corrections needed related the errors of form and not of substance, and
- C. The Respondent is not prejudiced by the error on behalf of Appellant's attorney in failing to ament the fillngs by the due date.

Respectfully submitted,

BY:



Johnny E. Watson, Sr.  
Attorney at Law, SCB# 5967  
P. O. Box 2305 (29202)  
2715 Edgewood Avenue  
Columbia, South Carolina 29204  
(803) 400-1600 Phone  
(803) 400-1200 Fax

jewatson.lwr@gmail.com

Columbia, South Carolina  
Dated: May 29, 2017

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge  
And  
L. Casey Manning, Circuit Court Judge

Case No. 2017-CP-40-000846

RECEIVED

MAY 30 2017

SC Court of Appeals

Formeicko Smith,

Respondent,

v.

Conyers Early Learning,

Appellant.

PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal, Amended Proof of Service and Notice of Motion and Motion to Reinstate Appeal on Formeicko Smith by depositing a copy of it in the United States Mail, postage prepaid, on May 29, 2017, addressed to her attorney of record, Jeffrey I. Silverberg, 1508 Washington Street, Columbia, South Carolina 29201.

May 29, 2017



Johnny E. Watson  
Post Office Box 2305  
Columbia, South Carolina 29202  
(803) 400-1600  
Attorney for Appellant

# Exhibit 6

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge  
And  
L. Casey Manning, Circuit Court Judge

RECEIVED

MAY 30 2017

SC Court of Appeals

Case No. 2017-CP-40-000846

Formeicko Smith,

Respondent,

v.

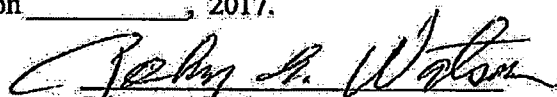
Conyers Early Learning,

Appellant.

AMENDED NOTICE OF APPEAL

Conyers Early Learning appeals the order of the Honorable Clifton Newman dated March 8, 2017 and L. Casey Manning dated \_\_\_\_\_, 2017. Appellant received written notice of entry of this order of Judge Newman on March 12, 2017 and Appellant received written notice of entry of this order of Judge Manning on \_\_\_\_\_, 2017.

May 29, 2017



Johnny E. Watson  
Post Office Box 2053  
Columbia, South Carolina 29202  
(803) 400-1600  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge  
And  
L. Casey Manning, Circuit Court Judge

Case No. 2017-CP-40-000846

RECEIVED

MAY 30 2017

SC Court of Appeals

Formeicko Smith,

Respondent,

v.

Conyers Early Learning,

Appellant.

AMENDED PROOF OF SERVICE

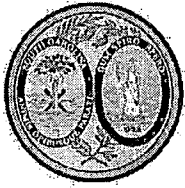
I certify that I have served the Notice of Appeal on Formeicko Smith by depositing a copy of it in the United States Mail, postage prepaid, on April 6, 2017, addressed to her attorney of record, Jeffrey I. Silverberg, 1508 Washington Street, Columbia, South Carolina 29201.

May 29, 2017



Johnny E. Watson  
Post Office Box 2305  
Columbia, South Carolina 29202  
(803) 400-1600  
Attorney for Appellant

# Exhibit 7





## Richland County 5th Judicial Circuit Public Index








[Richland County Home Page](#) | 
 [Online Payments](#) | 
 [Public Index](#) | 
 [City of Columbia Municipal Ct](#) | 
 [S.C. Judicial Department](#) | 
 [Summary Ct Dockets](#)





| <b>Conyers Early Learning Center Inc vs Formeicko C Smith</b> |                       |                          |                                           |                           |            |
|---------------------------------------------------------------|-----------------------|--------------------------|-------------------------------------------|---------------------------|------------|
| <b>Case Number:</b>                                           | 2015CP4000042         | <b>Court Agency:</b>     | Richland County Common Pleas              | <b>Filed Date:</b>        | 01/05/2015 |
| <b>Case Type:</b>                                             | Common Pleas          | <b>Case Sub Type:</b>    | Debt Collection 110                       | <b>File Type:</b>         | Non-Jury   |
| <b>Status:</b>                                                | Pending/ADR Sanctions | <b>Assigned Judge:</b>   | Clerk Of Court C P, G S, And Family Court |                           |            |
| <b>Disposition:</b>                                           |                       | <b>Disposition Date:</b> |                                           | <b>Disposition Judge:</b> |            |
| <b>Original Source Doc:</b>                                   |                       | <b>Original Case #:</b>  |                                           |                           |            |
| <b>Judgment Number:</b>                                       |                       | <b>Court Roster:</b>     |                                           |                           |            |

| Case Parties    Judgments    Tax Map Information    Associated Cases    Actions    Financials |                                                        |        |               |                  |                 |           |
|-----------------------------------------------------------------------------------------------|--------------------------------------------------------|--------|---------------|------------------|-----------------|-----------|
| Name                                                                                          | Description                                            | Type   | Motion Roster | Begin Date       | Completion Date | Documents |
| Conyers Early Learning Center Inc                                                             | Order granting defendant's motion for summary judgment | Order  |               | 03/09/2017-11:24 |                 |           |
| McCoy, Benjamin Davis                                                                         | Roster/Notice of Case Roster Publication Sent          | Action |               | 01/27/2017-08:41 |                 |           |
| Eddy, Trevor Penrose                                                                          | Roster/Notice of Case Roster Publication Sent          | Action |               | 01/27/2017-08:41 |                 |           |
| Watson, Johnny Elliot Sr.                                                                     | Roster/Notice of Case Roster Publication Sent          | Action |               | 01/27/2017-08:41 |                 |           |
| Silverberg, Jeffrey Ian                                                                       | Roster/Notice of Case Roster Publication Sent          | Action |               | 01/27/2017-08:41 |                 |           |
| Silverberg, Jeffrey Ian                                                                       | Roster/Notice of Motions Roster Publication Sent       | Action |               | 01/18/2017-16:55 |                 |           |
| Silverberg, Jeffrey Ian                                                                       | Roster/Notice of Motions Roster Publication Sent       | Action |               | 01/18/2017-16:55 |                 |           |
| Watson, Johnny Elliot Sr.                                                                     | Roster/Notice of Motions Roster Publication Sent       | Action |               | 01/18/2017-16:55 |                 |           |
| Watson, Johnny Elliot Sr.                                                                     | Roster/Notice of Motions Roster Publication Sent       | Action |               | 01/18/2017-16:55 |                 |           |

|                                   |                                                  |        |                  |                                                                                       |
|-----------------------------------|--------------------------------------------------|--------|------------------|---------------------------------------------------------------------------------------|
| Eddy, Trevor Penrose              | Roster/Notice of Motions Roster Publication Sent | Action | 01/18/2017-16:55 |                                                                                       |
| Eddy, Trevor Penrose              | Roster/Notice of Motions Roster Publication Sent | Action | 01/18/2017-16:55 |                                                                                       |
| McCoy, Benjamin Davis             | Roster/Notice of Motions Roster Publication Sent | Action | 01/18/2017-16:55 |                                                                                       |
| McCoy, Benjamin Davis             | Roster/Notice of Motions Roster Publication Sent | Action | 01/18/2017-16:55 |                                                                                       |
| Smith, Formeicko C                | Motion for Sanctions/Costs                       | Motion | 01/04/2017-09:18 |    |
| Conyers Early Learning Center Inc | Motion/Motion Filing Fee                         | Filing | 01/04/2017-09:12 |                                                                                       |
| McCoy, Benjamin Davis             | Roster/Notice of Motions Roster Publication Sent | Action | 01/03/2017-11:36 |                                                                                       |
| Silverberg, Jeffrey Ian           | Roster/Notice of Motions Roster Publication Sent | Action | 01/03/2017-11:36 |                                                                                       |
| Watson, Johnny Elliot Sr.         | Roster/Notice of Motions Roster Publication Sent | Action | 01/03/2017-11:36 |                                                                                       |
| Eddy, Trevor Penrose              | Roster/Notice of Motions Roster Publication Sent | Action | 01/03/2017-11:36 |                                                                                       |
| Eddy, Trevor Penrose              | Roster/Notice of Motions Roster Publication Sent | Action | 01/03/2017-09:44 |                                                                                       |
| Silverberg, Jeffrey Ian           | Roster/Notice of Motions Roster Publication Sent | Action | 01/03/2017-09:44 |                                                                                       |
| Watson, Johnny Elliot Sr.         | Roster/Notice of Motions Roster Publication Sent | Action | 01/03/2017-09:44 |                                                                                       |
| McCoy, Benjamin Davis             | Roster/Notice of Motions Roster Publication Sent | Action | 01/03/2017-09:44 |                                                                                       |
| Conyers Early Learning Center Inc | Motion/Motion Filing Fee                         | Filing | 12/30/2016-13:23 |                                                                                       |
| Smith, Formeicko C                | Motion to Compel                                 | Motion | 12/30/2016-09:14 |  |
| McCoy, Benjamin Davis             | Roster/Notice of Case Roster Publication Sent    | Action | 12/21/2016-16:33 |                                                                                       |
| Silverberg, Jeffrey Ian           | Roster/Notice of Case Roster Publication Sent    | Action | 12/21/2016-16:33 |                                                                                       |
| Watson, Johnny Elliot Sr.         | Roster/Notice of Case Roster Publication Sent    | Action | 12/21/2016-16:33 |                                                                                       |
| Eddy, Trevor Penrose              | Roster/Notice of Case Roster Publication Sent    | Action | 12/21/2016-16:33 |                                                                                       |

|                                            |                                                                       |        |  |                  |                                                                                       |
|--------------------------------------------|-----------------------------------------------------------------------|--------|--|------------------|---------------------------------------------------------------------------------------|
| Conyers<br>Early<br>Learning<br>Center Inc | Motion/Motion<br>Filing Fee                                           | Filing |  | 12/12/2016-12:21 |                                                                                       |
| Smith,<br>Formeicko C                      | Affidavit of Natalie<br>Armstrong Ham<br>Esquire                      | Filing |  | 12/12/2016-09:52 |    |
| Smith,<br>Formeicko C                      | Motion for Summary<br>Judgment                                        | Motion |  | 12/12/2016-09:50 |    |
| Conyers<br>Early<br>Learning<br>Center Inc | Mediation Report /<br>in need of further<br>ADR                       | Filing |  | 09/19/2016-10:02 |    |
| Conyers<br>Early<br>Learning<br>Center Inc | Consent Scheduling<br>Order                                           | Order  |  | 08/25/2016-09:55 |    |
| Conyers<br>Early<br>Learning<br>Center Inc | Archived Strike<br>Case No Activity                                   | Filing |  | 06/15/2016-00:00 |                                                                                       |
| Conyers<br>Early<br>Learning<br>Center Inc | Notice of<br>Appearance                                               | Filing |  | 11/06/2015-10:34 |    |
| Conyers<br>Early<br>Learning<br>Center Inc | ADR/Notice of ADR                                                     | Filing |  | 11/06/2015-00:00 |                                                                                       |
| Conyers<br>Early<br>Learning<br>Center Inc | Order Relieving<br>Counsel                                            | Order  |  | 11/02/2015-10:10 |   |
| Jordan,<br>Leonard R.<br>Jr.               | Roster/Notice of<br>Motions Roster<br>Publication Sent                | Action |  | 10/15/2015-08:31 |                                                                                       |
| Eddy, Trevor<br>Penrose                    | Roster/Notice of<br>Motions Roster<br>Publication Sent                | Action |  | 10/15/2015-08:31 |                                                                                       |
| McCoy,<br>Benjamin<br>Davis                | Roster/Notice of<br>Motions Roster<br>Publication Sent                | Action |  | 10/15/2015-08:31 |                                                                                       |
| Jordan,<br>Leonard R.<br>Jr.               | Roster/Notice of<br>Motions Roster<br>Publication Sent                | Action |  | 10/15/2015-08:31 |                                                                                       |
| Conyers<br>Early<br>Learning<br>Center Inc | Form 4 Order<br>Motion to relieve<br>counsel continued<br>to allow pl | Order  |  | 09/28/2015-14:39 |  |
| McCoy,<br>Benjamin<br>Davis                | Roster/Notice of<br>Motions Roster<br>Publication Sent                | Action |  | 09/11/2015-11:21 |                                                                                       |
| Jordan,<br>Leonard R.<br>Jr.               | Roster/Notice of<br>Motions Roster<br>Publication Sent                | Action |  | 09/11/2015-11:21 |                                                                                       |
| Eddy, Trevor<br>Penrose                    | Roster/Notice of<br>Motions Roster<br>Publication Sent                | Action |  | 09/11/2015-11:21 |                                                                                       |
| Jordan,<br>Leonard R.<br>Jr.               | Roster/Notice of<br>Motions Roster<br>Publication Sent                | Action |  | 09/11/2015-11:21 |                                                                                       |

|                                   |                                                  |        |                  |                  |                                                                                       |
|-----------------------------------|--------------------------------------------------|--------|------------------|------------------|---------------------------------------------------------------------------------------|
| Conyers Early Learning Center Inc | Motion for Continuance                           | Motion | 09/08/2015-10:34 |                  |    |
| McCoy, Benjamin Davis             | Roster/Notice of Motions Roster Publication Sent | Action | 09/08/2015-10:29 |                  |                                                                                       |
| Jordan, Leonard R. Jr.            | Roster/Notice of Motions Roster Publication Sent | Action | 09/08/2015-10:29 |                  |                                                                                       |
| Jordan, Leonard R. Jr.            | Roster/Notice of Motions Roster Publication Sent | Action | 09/08/2015-10:29 |                  |                                                                                       |
| Eddy, Trevor Penrose              | Roster/Notice of Motions Roster Publication Sent | Action | 09/08/2015-10:29 |                  |                                                                                       |
| Conyers Early Learning Center Inc | Motion/Motion Filing Fee                         | Filing | 09/08/2015-09:57 |                  |                                                                                       |
| Jordan, Leonard R. Jr.            | Roster/Notice of Motions Roster Publication Sent | Action | 08/14/2015-11:55 |                  |                                                                                       |
| Eddy, Trevor Penrose              | Roster/Notice of Motions Roster Publication Sent | Action | 08/14/2015-11:55 |                  |                                                                                       |
| Jordan, Leonard R. Jr.            | Roster/Notice of Motions Roster Publication Sent | Action | 08/14/2015-11:55 |                  |                                                                                       |
| McCoy, Benjamin Davis             | Roster/Notice of Motions Roster Publication Sent | Action | 08/14/2015-11:55 |                  |                                                                                       |
| Smith, Formeicko C.               | Notice of Appearance                             | Filing | 08/04/2015-14:49 |                  |  |
| Conyers Early Learning Center Inc | ADR/Alternative Dispute Resolution (Workflow)    | Action | 08/03/2015-14:45 | 11/06/2015-14:45 |                                                                                       |
| Conyers Early Learning Center Inc | Motion to be Relieved As Counsel                 | Motion | 06/23/2015-14:15 | 11/02/2015-14:15 |  |
| Conyers Early Learning Center Inc | Motion/Motion Filing Fee                         | Filing | 06/23/2015-10:10 |                  |                                                                                       |
| Jordan, Leonard R. Jr.            | Roster/Notice of Case Roster Publication Sent    | Action | 04/21/2015-14:26 |                  |                                                                                       |
| Jordan, Leonard R. Jr.            | Roster/Notice of Case Roster Publication Sent    | Action | 04/21/2015-14:26 |                  |                                                                                       |
| McCoy, Benjamin Davis             | Roster/Notice of Case Roster Publication Sent    | Action | 04/21/2015-14:26 |                  |                                                                                       |
| Conyers Early Learning Center Inc | Reply to Counterclaim                            | Filing | 03/13/2015-09:26 |                  |  |
| Smith, Formeicko C.               | Answer and Counterclaim of Formeicko C. Smith.   | Filing | 02/06/2015-09:38 |                  |  |

|                                             |                            |        |  |                  |  |                                                                                                                                                                         |
|---------------------------------------------|----------------------------|--------|--|------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Smith,<br>Formeicko C                       | Summons to<br>Counterclaim | Filing |  | 02/06/2015-09:38 |  |                                                                                      |
| Conyers<br>Early<br>Learning<br>Center Inc. | Verification/Verified      | Filing |  | 01/14/2015-10:37 |  |                                                                                                                                                                         |
| Conyers<br>Early<br>Learning<br>Center Inc. | Verification               | Filing |  | 01/05/2015-14:49 |  |                                                                                      |
| Conyers<br>Early<br>Learning<br>Center Inc. | Summons &<br>Complaint     | Filing |  | 01/05/2015-14:44 |  |   |

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
*Court of Common Pleas*

*Clifton Newman, Circuit Court Judge*

**Trial Court Case No. 2015-CP-40-00042**  
**Appellate Case No. 2017-000846**

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JUN 07 2017

SC Court of Appeals

Conyers Early Learning Center, Inc.,

*Appellant,*

v.

Formeicko Smith,

*Respondent.*

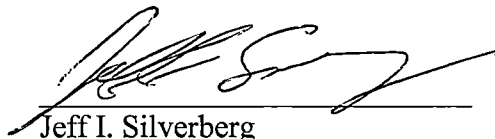
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**CERTIFICATE OF SERVICE**

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I certify that pursuant to Rule 240(c)(1), *SCACR*, I have served the *Return to Appellant's Motion to Reinstate Appeal* in this matter on Appellant Conyers Early Learning Center, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on June 7, 2017, addressed to Appellant's attorney of record as follows:

Johnny E. Watson, Sr., Esquire  
P. O. Box 2305  
Columbia, SC 29202  
*Attorney for Appellant*



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Howser, Newman & Besley, LLC  
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June 7, 2017

R. Davis Howser  
James P. Newman, Jr.<  
William G. Besley<  
Benjamin D. McCoy^  
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Andrew E. Haselden<  
George V. Hanna, IV\*  
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June 7, 2017

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SC Court of Appeals

**(Via Hand Delivery)**

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

RE: Conyers Early Learning Center, Inc., Appellant v. Formeicko Smith, Respondent.  
Appellate Case No.: 2017-000846

Dear Ms. Kitchings:

Enclosed for filing are the following in the above-referenced action:

- (1) an original and seven (7) copies of ***Return to Appellant's Motion to Reinstate Appeal***; and
- (2) an original and seven (7) copies of the ***Certificate of Service*** with respect to the ***Return***.

After filing the original and six (6) copies of these documents, please return the extra clocked-in copies in the self-addressed, stamped envelope provided.

By copy of this letter, I am serving Appellant's counsel with copies of each of the above-described documents.

Thank you for your attention in this matter. If you have any questions or concerns, please do not hesitate to contact me.

Regards,

Jeffrey I. Silverberg

JIS/cmt

Enclosures

cc: Johnny E. Watson, Sr., Esquire (via U.S. Mail and electronic mail)