

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2017-000560
Lower Court Case No. 2016-CP-23-04998

Thomas Raymond Firriolo.....Appellant,

v.

City of Greenville, *et. al.* Respondents,

MOTION TO DISMISS APPEAL

Respondent City of Greenville¹ respectfully moves this Court for an order to dismiss this appeal because Appellant has failed to timely serve his notice of appeal on all respondents within thirty (30) days after receipt of written notice of the entry of the appealed order as required by Rule 203, SCACR. This motion is based on the following grounds:

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JUL 14 2017

SC Court of Appeals

¹ The complaint named as defendants numerous employees and divisions of the City of Greenville, including the “Municipal Court Clerk of Court,” “Judge Matthew Hawley, Jr’s City Court,” “Greenville Cares Center”, Jeff Bowman (improperly identified by the complaint as “Jeff Bowen”), Jodie Dudash, Cynthia Vilaro, Brad Rice, Harold E. Skinner (improperly identified by the complaint as “Bobbie Skinner”), Tammy Mappus (improperly identified by the complaint as “Ms. Tammy (Jane Doe)”), Dwayne Cooper, Kim Jones, Clint Link, Bryan Wood (improperly identified by the complaint as “Bryon Wood”), Jason Gillespie, Steven Landrith, Knox White, Jil Littlejohn, Gaye Sprague, George Fletcher, Amy Doyle, Lillian Fleming, David Sudduth (improperly identified by the complaint as “David Suddith”), and any other City of Greenville employees and/or divisions so named in the complaint. The “City” shall refer to all employees, officers, agents, council members, and divisions of the City of Greenville named in the original caption.

FACTUAL BACKGROUND

This matter concerns a lawsuit initiated by a *pro se* litigant seeking damages for contempt of court against multiple defendants, including numerous employees and divisions of the City. On January 19, 2017, the Honorable Robin B. Stilwell held a hearing on multiple motions filed by the parties, including the City's motion for judgment on the pleadings. On February 2, 2017, the circuit court issued a Form 4 Order dismissing Appellant Thomas Raymond Firriolo's claims without prejudice. A copy of the Form 4 Order is attached hereto as **Exhibit A**. Six days later, on February 8, 2017, the circuit court issued a formal order stating that all claims and counterclaims were dismissed without prejudice. A copy of the Formal Order is attached hereto as **Exhibit B**.

On March 6, 2017, Appellant served a notice of appeal upon some of the City's codefendants: Elizabeth Corley, South Carolina Department of Labor, Licensing, and Regulation, and Dean Grigg (the "State Defendants"). A copy of the notice of appeal filed by Appellant with this Court is attached hereto as **Exhibit C**. In a letter dated March 9, 2017, the Clerk of the South Carolina Court of Appeals instructed Appellant to comply with the mandates of Rule 203, SCACR, including providing a proper notice of appeal, proof of service of the notice, and a copy of the order being appealed. A copy of the letter is attached hereto as **Exhibit D**.

ARGUMENT

Under Rule 203(b)(1), SCACR, an appellant must serve a notice of appeal "on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." (emphasis added). "Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal." *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct. App. 1999). "[I]f 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 service of the notice.” *Elam v. South Carolina Dep’t of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004). Similarly, Rule 263(b), SCACR, states, “The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.” (emphasis added).

First, Appellant has failed to timely serve his notice of appeal to any respondent. According to Appellant’s notice of appeal filed with this Court on March 8, 2017, “Appellant received written notice of entry of this order on 1-19-17.” *See* Ex. C, p. 1. Since Appellant states that he received written notice of the entry of the final order on January 19, 2017, Appellant had until Monday, February 19, 2017 to serve all respondents with a notice of appeal. *See* Rule 203(b)(1), SCACR. However, the filed notice of appeal indicates that Appellant did not serve any respondent until March 6, 2017, which is more than fifteen days beyond the 30-day time period set by Rule 203. *See* Ex. C, p. 2.

Second, Appellant failed to serve all respondents with a notice of appeal and additionally failed to file proof service with this Court showing service of same. Rule 203(b)(1), SCACR, requires, “A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” (emphasis added). Additionally, Rule 203(d)(1), SCACR, requires filing with this Court “Proof of service showing that the notice has been served on all respondents.” Here, the notice indicates that Appellant served only counsel for the State Defendants, which are separate parties and represented by different counsel than the City. *See* Ex. C, p. 2. To date, Appellant has neither served the City with a notice of appeal nor has he

filed proof of service of same with this Court. Furthermore, Appellant was notified by letter dated March 9, 2017 that his filings were deficient and that Appellant “must provide the Court with...[p]roof of service naming the documents served and showing you timely served all parties to the appeal” or his appeal would be dismissed. *See* Ex. D. To date, Appellant has neither served the City with a notice of appeal nor has he filed proof of service of same with this Court, which falls short of the requisite proof of service upon “all respondents” required by Rule 203 and this Court’s letter dated March 9, 2017.

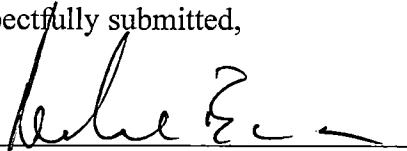
Third, Rule 203(d)(1), SCACR, requires, “The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.” As discussed above, Appellant served a notice upon the State Defendants on March 6, 2017, thus he was required to file a notice of appeal with the lower court, the Greenville County Court of Common Pleas, on or before Thursday, March 16, 2017. According to the publicly available records of the lower court, it does not appear that Appellant has filed any notice of appeal with the Greenville County Court of Common Pleas.

Finally, the date for Appellant to comply with the mandates for Rule 203(b) has long since passed and cannot be cured. The latest possible date that Appellant could presumably claim to have received written notice of the entry of the appealed order would be shortly after the entry of the Form 4 Order on February 2, 2017. *See* Ex. B. However, substantially more than thirty days has passed since that time, during which Appellant failed to comply with any of the requirements of Rule 203 discussed in detail above. *See* Ex. C, D. Pursuant to Rule 263(b), SCACR, the Court may not extend the time for Appellant to comply with his duties under Rule 203, thus Appellant’s untimely appeal cannot be cured. Accordingly, the instant appeal must be dismissed for lack of jurisdiction.

CONCLUSION

For the foregoing reasons, the City respectfully submits that this Court should grant its motion to dismiss the instant appeal.

Respectfully submitted,



Adam C. Bach (SC Bar # 74885)
R. Hudson Smith (SC Bar # 101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Respondent City of Greenville

July 10, 2017
Greenville, South Carolina

Exhibit A

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

FORM 4
 COURT
 S.C.
 NONSUIT

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP2304998

Thomas Raymond Firriolo

2017 FEB 2 AM 11 21

Greenville City Of

Municipal Court Clerk
 Of Court

Jeff Bowen
 Jodie Dudash
 Brad Rice
 Tammy Jane Doe

Gary Fannell
 Cynthia Vilardo
 Bobbie Skinner

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

Due to the lack of subject matter jurisdiction, this case is dismissed without prejudice. Plaintiff filed a motion prior to the hearing in this case on January 19, 2017 of which he has requested to withdraw. Plaintiff's request to withdraw that motion is granted. The Clerk of Court is directed to refund plaintiff's motion filing fee of \$25.00.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed

1-3-17

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

2/2/2017
Date

For Clerk of Court Office Use Only

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

Thomas Raymond Firriolo 11 Addie Court Greenville, SC 29605

Cecil Golden 248 Cowan St. Greenville, SC 29607
Charles Franklin Turner Jr. 872 South Pleasantburg Drive Greenville, SC 29607
Robert Hudson Smith 1306 South Church Street Greenville, SC 29605
Adam Crittenden Bach 1306 S. Church Street Greenville, SC 29605

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Exhibit B

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	C.A. NO. 2016-CP-23-04998
)	
Thomas Raymond Firriolo,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
City of Greenville, et al.,)	
)	
Defendants.)	
)	

This matter came before me for a hearing on motions to dismiss filed by the City of Greenville (“City of Greenville”), the South Carolina Law Enforcement Division (“SLED”), Lt. Elizabeth Corley, the South Carolina Department of Labor, Licensing, and Regulation (“LLR”), and Dean Grigg.¹ Present at the hearing on behalf of the City was Adam C. Bach of the law firm Eller Tonnsen Bach, LLC. Present at the hearing on behalf of SLED, Corley, LLR, and Dean Grigg was Katie M. Brown of the law firm Wilson, Jones, Carter & Baxley, P.A.² The plaintiff appeared on his own behalf.

The City sought dismissal on a number of grounds, one of those being that this Court lacked subject matter jurisdiction over the plaintiff’s complaint. The plaintiff’s complaint makes allegations related to construction performed at his home without proper licenses and permits. The only cause of action contained in the plaintiff’s complaint, however, is a single cause of action for

¹ The City’s motion was also filed on behalf of all City employees, officers, agents, council members, and divisions named in the original caption. As used in this order “City” includes the City and all employees, officers, agents, council members, and divisions named in the original caption.

² Although not identified in the original pleadings, the plaintiff also filed a summons and motion directed at the Greenville Water System. Ms. Brown also appeared on behalf of Greenville Water System to the extent it is a proper party to this case.

“Contempt of Court.” In his sole action, the plaintiff alleges that Judge Matthew Hawley, Jr. of the City Municipal Court ordered the City of Greenville to issue the plaintiff a building permit and failed to do so. The plaintiff seeks to hold the City in contempt for disobeying Judge Hawley’s order.

“The question of subject matter jurisdiction is a question of law,” Byrd v. McDonald, 417 S.C. 474, 790 S.E.2d (Ct. App. 2016). “Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong,” Normandy Corp. v. S.C. Dep't of Transp., 386 S.C. 393, 688 S.E.2d 136 (Ct. App. 2009). “A court without subject matter jurisdiction does not have authority to act.” South Carolina Department of Social Services v. Tran, 418 S.C. 308, 792 S.E.2d 254 (Ct. App. 2016). “Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court.” Id.

Under South Carolina law, a municipal court has jurisdiction to try all cases arising under the ordinances of the municipality for which it is established. S.C. Code § 14-25-45. The statutes establishing municipal courts provide that it has the power to enforce its orders by contempt. Determination of contempt ordinarily resides in the sound discretion of the trial judge. This Court is not a municipal trial court and, instead, sits only as an appellate court with respect to the orders of a municipal court. S.C. Code § 14-25-95. Therefore, the appropriate jurisdiction in which to raise an alleged violation of the municipal court’s order is in the municipal court. This Court’s jurisdiction is limited to review of such order on appeal, if any.

THEREFORE, IT IS ORDERED, that this case be dismissed **without prejudice** in its entirety, including all claims and counterclaims and as to the plaintiff and all defendants.

IT IS SO ORDERED.

Judge, Thirteenth Judicial Circuit Court

Date: _____



Greenville Common Pleas

Case Caption: Thomas Raymond Firriolo vs. Greenville City Of , defendant, et al
Case Number: 2016CP2304998
Type: Order/Dismissal

So Ordered

s/ Robin B. Stilwell 2158

Exhibit C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAR 08 2017
SC Court of Appeals

APPEAL FROM Greenville COUNTY
Court of Common Pleas

Hon: Robert B. Stelwell, Circuit Court Judge

Case No. 2016-CP-23-04998

Thomas R. Furiolo

Appellant,

v.

(Circle one)

The City of Greenville Et al.

Respondent.

NOTICE OF APPEAL

Thomas R. Furiolo appeals the order [judgment] of the Honorable Robert B. Stelwell
order dated Jan 19th 2017. Appellant received written notice of entry of this order
[judgment] on 1-19-17.

Date: March 6th 2017

s/ Thomas R. Furiolo
Name: THOMAS R. FURILOLO
Address: 11 ADDIE COURT
Greenville South Carolina 29605
Phone Number: 864-235-6774
Attorney for Appellant

Other Counsel of Record:

Name: None

Address: _____

Phone Number: _____

- Proof of Service
- Filing fee: _____
- Order or judgment on appeal

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAR 08 2017

APPEAL FROM Greenville COUNTY
Court of Common Pleas/ General Session (circle one)

SC Court of Appeals

Hon: Robert B. Stahl Circuit Court Judge

Case No 2016-CP-23-04998

Thomas R. Furrish

Appellant/Respondent (circle one)

v.

The City of Greenville Et al.

Appellant/Respondent (circle one)

PROOF OF SERVICE

v.s. mail

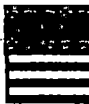
I certify that I have served the Notice of Appeal on March 6th 2017 by depositing a copy of it in the United States Mail, postage prepaid, on March 6th 2017, addressed to

Illson Jones Center + Boxley, PA, via U.S. Mail [by personally delivering a copy of it to 872 Pleasantburg Drive on

March 6th 2017]. So. 29607

Date: March 6th 2017

s/ Thomas R. Furrish
Name: Thomas R. Furrish
Address: 11 Apple Court
Greenville S.C. 29605
Phone Number: 864-235-6774
Attorney for Appellant

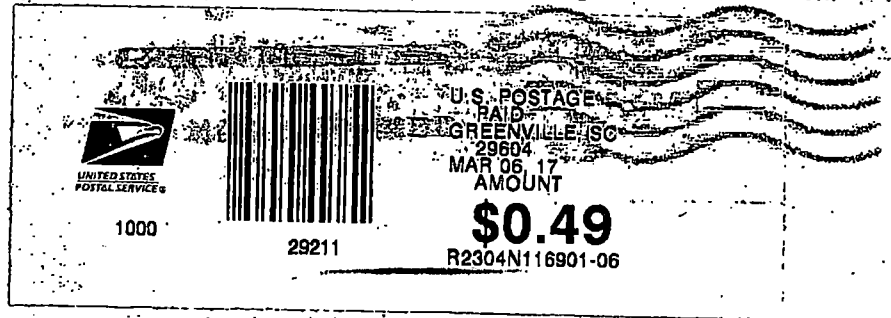
 **Thomas Firriolo**
11 Addie Ct.
Greenville, SC 29605-3910

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MAR 08 2017

SC Court of Appeals

The State of South Carolina Court of Appeals
P.O. Box 11629
Columbia South Carolina 29211



29211-162929

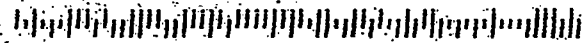


Exhibit D



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

March 09, 2017

Thomas Raymond Firriolo
11 Addie Court
Greenville SC 29605

Re: Thomas Raymond Firriolo v. City of Greenville
Appellate Case No. 2017-000560

Dear Mr. Firriolo:

This will acknowledge receipt of your documents in the above entitled matter. According to Rule 203 of the South Carolina Appellate Court Rules, a notice of appeal must include the name of the court from which the appeal is taken; the judge's name; the lower court docket number; the date of the order being appealed; a statement of when the appealing party received the decision from which the appeal is taken; the name of the appealing party; and the names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each, a copy of the order being challenged on appeal, a certificate of service showing the notice has been timely served on all respondents, and a filing fee of \$100.00 must accompany the notice of appeal.

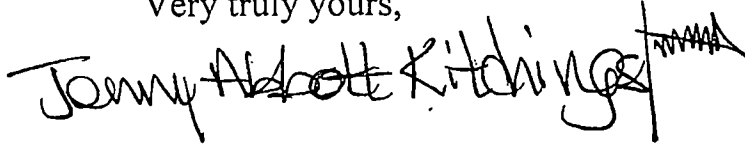
Within ten (10) days of the date of this letter, you must provide the Court with the following or your appeal will be dismissed:

- (1) A notice of appeal containing all information required in Rule 203, SCACR.**
- (2) The one-hundred dollar (\$100) filing fee.**
- (3) Proof of service naming the documents served and showing you timely served all parties to the appeal.**
- (4) A copy of the court order being challenged on appeal.**
- (5) The date on which you received a copy of the court order being challenged on appeal.**

Please be advised that the time limits for perfecting this appeal are not held in abeyance.

If you intend to proceed with this appeal pro se, the fact that you are not an attorney does not relieve you of the responsibility to perfect your appeal in accordance with the South Carolina Appellate Court Rules. These rules are now available on the Internet at www.sccourts.org.

Very truly yours,

Handwritten signature of Jonny Abbott Kitchings in black ink. The signature is written in a cursive style and includes a vertical line at the end.

CLERK

cc: Adam Crittenden Bach, Esquire
Robert Hudson Smith, Esquire
Charles Franklin Turner, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2017-000560
Lower Court Case No. 2016-CP-23-04998

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JUL 14 2017
SC Court of Appeals

Thomas Raymond Firriolo.....Appellant,

v.

City of Greenville, *et. al.* Respondents,

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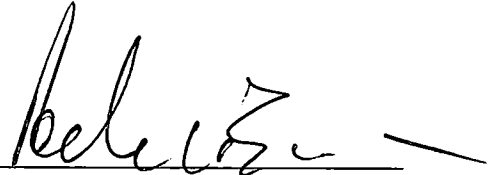
The undersigned certifies that he served Respondent City of Greenville's Motion to Dismiss Appeal by depositing a copy of same in the United States Mail, postage prepaid, on this the 10th day of July 2017, addressed to the self-represented Appellant at the address listed below:

Thomas Raymond Firriolo
11 Addie Court
Greenville, SC 29605

Cecil Golden
248 Cowan Street
Greenville, SC 29607

Charles F. Turner, Jr.
Katie M. Brown
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607

[Signature Page Follows]



Adam C. Bach (SC Bar # 74885)
R. Hudson Smith (SC Bar # 101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Respondent City of Greenville

July 10, 2017
Greenville, South Carolina



ELLER TONNSEN BACH
Attorneys at Law

Adam C. Bach
Licensed in South Carolina and North Carolina
abach@etblawfirm.com

1306 South Church Street
Greenville, SC 29605
Telephone (864) 236-5013
Facsimile (864) 312-4191

July 10, 2017

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

Re: Thomas Raymond Firriolo v. City of Greenville, et al.
C. A. No.: 2016-CP-23-04998
Appellate Case No: 2017-000560

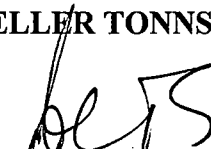
Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of Respondent City of Greenville's motion to dismiss appeal in the above-referenced matter, along with proof of service of the same. We would appreciate your filing the original and returning a clocked copy to us in the envelope provided.

If we may provide you with any additional information, please do not hesitate to call or email.

Sincerely,

ELLER TONNSEN BACH, LLC



Adam C. Bach

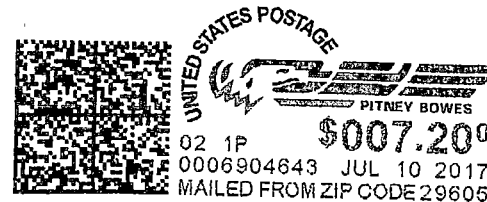
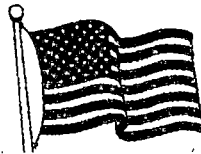
RECEIVED

JUL 14 2017

SC Court of Appeals

ACB/amp
Enclosure

cc: Thomas Firriolo
Charles F. Turner, Jr.
Katie M. Brown
Cecil Golden, *pro se* defendant



ELLER TONNSEN-BACH
Attorneys at Law

1306 South Church Street • Greenville, SC 29605

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JUL 14 2017

SC Court of Appeals

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

