

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Appellate Case No.: 2017-001258

RECEIVED
SEP 12 2017
SC Court of Appeals

Christine LeFont,.....Appellant,

v.

City of Myrtle Beach.....Respondent.

RESPONDENT’S REPLY IN SUPPORT OF MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent City of Myrtle Beach (“Respondent”) files this Reply in Support of Motion to Dismiss on the grounds that this Court lacks jurisdiction because Appellant’s Notice of Appeal was untimely.

ARGUMENT

In Appellant’s Return to Respondent’s Motion to Dismiss, Appellant Christine LeFont (“Appellant”) asserts that jurisdiction is proper because Appellant’s post-trial motion was a Rule 59(e) motion to reconsider which stayed the deadline for filing a notice of appeal. However, the ultimate relief sought in Appellant’s post-trial motion was a new jury trial. Appellant’s motion was untimely, pursuant to Rule 59(b), SCRCF. Accordingly, Appellant’s Notice of Appeal was untimely.

I. Appellant's Post-Trial Motion was an Untimely Motion for New Trial.

In Appellant's Return in Opposition to Respondent's Motion to Dismiss, Appellant asserts that her post-trial motion was "not just a motion for new trial," because it requested additional relief. (Appellant's Return to Resp.'s Mot. To Dismiss, p. 2). What Appellant fails to note is that all of the alleged, additional relief is still for a new trial.

Appellant's post-trial motion presented the following arguments:

- Appellant's status on the premises was a question of fact that should be determined by a jury (Ex. A to Resp.'s Mot. To Dismiss, p. 5);
- There are questions of fact regarding Respondent's notice of the condition, which requires the case be submitted to a jury (Id., p. 8); and
- Whether the condition was dangerous as a matter of law was a question of fact that should be determined by a jury. (Id., pp. 8-9).

The grounds in Appellant's motion are the grounds for a new trial. Accordingly, regardless of how Appellant captioned the motion, the ultimate relief sought was a new jury trial. See Richland Cnty v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) ("It is the substance of the requested relief that matters regardless of the form in which the request for relief was framed.").

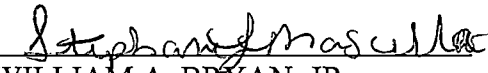
Rule 59(b), SCRCF provides that a motion for new trial must be made "promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter." Appellants did not make a motion at trial following the discharge of the jury or request leave to make a motion ten days thereafter. Even if she had requested leave of court, Appellant's post-trial motion was filed thirteen days after the circuit court directed a defense verdict. Accordingly, Appellant's motion was untimely and did not stay the deadline to file a notice of appeal. Consequently, Appellant's Notice of Appeal was also untimely.

CONCLUSION

Appellant's post-trial motion is properly construed as a motion for new trial pursuant to Rule 59(a), SCRCP. Appellant's motion was not timely filed and therefore, did not stay the deadline to file a notice of appeal. Accordingly, Appellant's Notice of Appeal was untimely and this Court is without jurisdiction to decide this matter.

Respectfully submitted,

COLLINS & LACY, P.C.

By: 
for WILLIAM A. BRYAN, JR.
wbryan@collinsandlacy.com
AMY L. NEUSCHAFER
aneuschafer@collinsandlacy.com
11945 Grandhaven Drive, Suite D
Murrells Inlet, South Carolina 29576
843.353.2350 (voice)
843.353.2351 (fax)

ATTORNEYS FOR RESPONDENT
CITY OF MYRTLE BEACH

**RESPONDENT'S REPLY IN SUPPORT OF
MOTION TO DISMISS**

Murrells Inlet, South Carolina
September 6, 2017

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R. Markley Dennis, Jr., Circuit Court Judge
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Appellate Case No.: 2017-001258

Christine LeFont,.....Appellant,

v.

City of Myrtle Beach.....Respondent.

PROOF OF SERVICE

I hereby certify that I served Respondent's Reply in Support of Motion to Dismiss upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on September 6, 2017, addressed to the following:

COUNSEL SERVED:

Thomas Winslow, Esquire
Ryan Compton, Esquire
Stephen L. Goldfinch, Jr., Esquire
Goldfinch Winslow, LLC
11943 Grandhaven Drive, Suite A-2
Post Office Box 829
Murrells Inlet, SC 29576
Attorney for Appellants

Respectfully submitted,

COLLINS & LACY, P.C.

By: *Amy L. Neuschafer*
for WILLIAM A. BRYAN, JR.

wbryan@collinsandlacy.com

AMY L. NEUSCHAFER

aneuschafer@collinsandlacy.com

11945 Grandhaven Drive, Suite D

Murrells Inlet, South Carolina 29576

843.353.2350 (voice)

843.353.2351 (fax)

ATTORNEYS FOR RESPONDENT

CITY OF MYRTLE BEACH

**RESPONDENT'S REPLY IN SUPPORT OF
MOTION TO DISMISS**



William A. Bryan, Jr. | D: 843.353.2330 | E: wbryan@collinsandlacy.com

September 8, 2017

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SEP 12 2017
SC Court of Appeals

Re: **Christine LeFont v. City of Myrtle Beach**
Appellate Case No. 2017-001258
C&L File No. 000456-01020

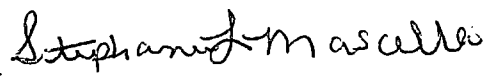
Dear Ms. Kitchings:

Please find enclosed for filing the unbound original and seven (7) copies of Respondent's Reply in Support of Motion to Dismiss in the above-referenced matter. Please file the original and return a clocked copy in the enclosed stamped, self-addressed envelope.

By copy of this letter and enclosure, I am serving same on counsel of record.

With kind regards,

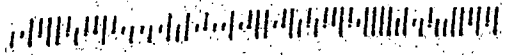
Sincerely,

for 
William A. Bryan, Jr.

WAB/dma

Enclosures

cc: Thomas Winslow, Esquire
Ryan Compton, Esquire
Stephen Goldfinch, Jr., Esquire



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Collins LacySM
ATTORNEYS AT LAW

11945 Grandhaven Drive, Suite D | Murrells Inlet, SC 29576

The Honorable Jenny A. Kitchings
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