

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA CONTRACTORS LICENSING BOARD

Honorable Ralph King Anderson, III
Chief Administrative Law Judge

RECEIVED
SEP 27 2017
SC Court of Appeals

APPELLATE CASE NUMBER: 2017-001311

N. Bobby Knight & Construction Group, LLC,.....Appellants

v.

South Carolina Department of Labor, Licensing and Regulation,
South Carolina Contractor's Licensing Board.....Respondent

APPELLANTS' INITIAL BRIEF

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STATEMENT OF FACTS

This matter came before the South Carolina Department of Labor, Licensing and Regulation, South Carolina Contractor's Licensing Board, (hereinafter "Contractor's Board") on a formal complaint against Construction Group, LLC and N. Bobby Knight. A single notice of the formal complaint was allegedly mailed by personnel of the Contractor's Board to 3940 Hottinger Avenue, North Charleston, South Carolina 29405 by certified mail - return receipt requested and to 108 Wilson Street, Summerville, South Carolina 29483. However, the Contractor's Board failed to provide proof of a receipt of the service, as no return receipt was obtained. Thereafter, a notice of a hearing before the hearing officer and a Final Order Hearing were allegedly served in the same manner. Order of Dismissal dated and filed May 4, 2017.

PROCEDURAL HISTORY

This matter came before the South Carolina Department of Labor, Licensing and Regulation, South Carolina Contractor's Licensing Board, (hereinafter "Contractor's Board"), on a formal complaint against Construction Group, LLC and N. Bobby Knight. A single notice of the formal complaint was allegedly mailed by personnel of the Contractor's Board to 3940 Hottinger Avenue, North Charleston, South Carolina 29405 by certified mail - return receipt requested and to 108 Wilson Street, Summerville, South Carolina 29483 in compliance with SCRCF Rule 4(d)(3). However, the Contractor's Board failed to provide proof of a receipt of the service, as no return receipt was obtained, in compliance with SCRCF Rule 4(g) . Subsequent hearing notices were allegedly served in the same manner. The South Carolina Administrative Law Court dismissed the Appellants answer on the grounds that Construction Group, LLC could only be represented by counsel.

This matter comes now before this Honorable Court.

ISSUES ON APPEAL

1. Did the South Carolina Department of Labor, Licensing and Regulation, South Carolina Contractor's Licensing Board provide proper notice of the formal summons and complaint to Construction Group, LLC in compliance with SCRCF Rules 4 (d)(1), (3), (8), (g) and 5(d)?
2. Does the lack of proof of notice to Construction Group, LLR deprive the Administrative Law Court of subject matter jurisdiction pursuant to SCRCF Rule 12(b)(1)?

DISCUSSION

1. COMPLIANCE WITH SCRCF RULES 4(d)(1), (3), (8), (g) and 5(d)

Procedural due process is guaranteed under the 14th and 5th Amendments to the United States Constitution, and is applicable to the States, thereunder, as well.

In the absence of service of process (or waiver of service by the defendant), a court ordinarily may not exercise power over a party the complaint names as defendant. *See **Omni Capital Int'l, Ltd. V. Rudolf Wolff & Co.***, 484 U.S. 97, 104 (1987). ("Before a...court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.") ***Mississippi Publishing Corp. V. Murphree***, 326 U.S. 438, 444-5 (1946).

This very court opined in ***Roche v. Young Brothers, Inc. of Florence***, 313 S.C. 356, 437 S.E.2d 560 (Ct. App. 1993):

The rules of civil procedure with respect to service of process are mandatory and the strictest and most exacting compliance with them is required when service is by mail. A failure to comply with them renders any attempted service void. ***Timmons v. United States***, 194 F.2d 357 (4th Cir.), cert. Denied 344 U.S. 844, 73 S. Ct. 59, 97 L.Ed. 656 (1952); *See also **Dandy v. American Laundry Machinery, Inc.***, 301 S.C. 24, 389 S.E.2d 866 (1990); ***Able v. Schweitzer***, [313 S.C. 359], 300 S.C. 321, 387 S.E.2d 697 (Ct. App. 1989) (rule relating to commencement of action and service of process strictly construed).

Here, the failure to provide the actual notice to both Defendants, Construction Group, LLC and N. Bobby Knight, individually, is a fatal “due process” error. Either the single notice was an attempt to comply with SCRCF Rule 4(d)(1) on N. Bobby Knight, individually, or SCRCF Rule 4(d)(3) on Construction Group, LLC. It cannot accomplish both.

Further, the effort at service by “certified mail-return receipt requested” pursuant to SCRCF Rule 4(d)(8) of another single notice on both Defendants was defective in that the Contractor’s Board failed to provide the proof of service required by SCRCF Rule 4 (g). Service of a summons and complaint upon...defendant...may be made...by...certified mail, return receipt requested and delivery restricted to the addressee....Service pursuant to this paragraph shall not be the basis for the entry of default unless the record contains a return receipt showing the acceptance by the defendant. (emphasis added). **Graham Law Firm, P.A. v. Makawi**, 396 S.C. 290, 292, 721 S.E.2d 430, 432-3 (2012).

Further, SCRCF Rule 5(d) requires that proof of service of a summons and complaint shall be filed with the Clerk within ten (10) days of service. No proof was even filed as of the motion to dismiss hearing in the Administrative Law Court.

Thus, this Honorable Court is compelled to remand this matter to the Contractor’s Board for a new trial “de novo” after proper notice to the Appellants/Defendants.

2. **COMPLIANCE WITH SCRCP RULE 12(b)(1)**

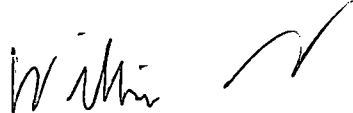
The issue of subject matter jurisdiction may be raised at any time, including for the first time on appeal. Here, as the underlying service of process issues deprived at least one of the Appellants of procedural “due process” and proper notice, the tribunals lacked subject matter, as well as personal jurisdiction over one or both parties. The proper remedy for which is remand for a new trial “de novo” before the Contractor’s Board after proper notice to both Appellants/Defendants.

CONCLUSION

Based upon the foregoing, this Honorable Court is compelled to reverse the Order of Dismissal of the Administrative Law Court, and to remand the matter to the Contractor’s Board for a new trial “de novo” after proper notice to the Appellants/Defendants.

Respectfully submitted,

THE SWOPE LAW FIRM, P.A.



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September 25, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION
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South Carolina Department of Labor, Licensing and Regulation,
South Carolina Contractor's Licensing Board.....Respondent


CERTIFICATE OF SERVICE

On this 25th day of Septembert, 2017, I, William K. Swope, Esquire, of the Swope Law Firm, P.A., did hereby serve an original and six (6) copies of Appellant's Initial Brief and Designation of Matter on the Honorable Clerk of the South Carolina Court of Appeals and counsel of record at the following addresses, respectively.

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

T. Kyle Tennis, Esquire
Assistant Disciplinary Counsel
South Carolina Department of Labor, Licensing and Regulation,
South Carolina Contractor's Licensing Board
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Mr. N. Bobby Knight
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September 25, 2017

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SC Court of Appeals

The Hon. Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211
Attn.: Intake Clerk

Re: N. Bobby Knight and Construction Group, LLC v. South Department of LLR, S.C.
Contractors Licensing Board
C/A No.: 2017-001311

Dear Sir/Madam:

Enclosed please an original and six (6) copies of Appellant's Initial Brief and Designation of Matter to be Included on Appeal, as well as a Certificate of Service for filing in the above referenced matter.

If you have any questions or need further information, please do not hesitate to contact me at your earliest convenience. With all best wishes, I am,

Sincerely,



William K. Swope, Esquire

WKS/lvh

cc: T. Kyle Tennis, Esquire
Client
File

