

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Robin B. Stilwell, Circuit Court Judge

Case No.: 2014-CP-23-05031

RECEIVED

DEC 27 2017

SC Court of Appeals

Oldcastle APG South, Inc.,
d/b/a/ Adams Products Company,
and Oldcastle APG Northeast, Inc.,
d/b/a Foster-Southeastern, Respondents,

v.

Daniel B. Albert, Appellant.

MOTION TO DISMISS APPEAL

Respondents Oldcastle APG South, Inc., d/b/a/ Adams Products Company, and Oldcastle APG Northeast, Inc., d/b/a Foster-Southeastern hereby move to dismiss the appeal in the above-reverenced matter pursuant to Rule 203, SCACR. The Order Denying Defendant’s Motion to Reconsider was filed and served on July 27, 2017 (“July 27 Order”). Appellant did not file and serve his Notice of Appeal until October 18, 2017, some 83 days later.

Where a party fails to file and serve a notice of appeal within thirty days of receiving written notice of the entry of a final order, “this court lacks appellate jurisdiction, and [is] required to dismiss the appeal.” Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC, 413 S.C. 642, 646, 776 S.E.2d 575, 577 (Ct. App. 2015). In other words, the requirement of timely service of the notice of appeal “is jurisdictional, *i.e.*, if

a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008).

Without any explanation or proof whatsoever, Appellant merely alleged that he first “received written notice of entry of the July 27, 2017 order denying his Motion to Reconsider via email on September 18, 2017.” (Exh. A). He did not provide, however, any explanation of who the email was from, or why the email was sent on September 18, 2017. He did not provide a copy of the alleged September 18, 2017 email. He also provided no explanation of why or how, or proof that he did not receive written notice of the entry of the July 27 Order for over a month and a half from the date the Circuit Court mailed it to him.

Allowing a party to file and serve an appeal outside of the 30-day window provided for in Rule 203(b) & (d)(3), SCACR, without a credible explanation of why or any proof whatsoever that the appellant did not receive notice of entry of an order for over a month and a half, invites parties to delay filing an appeal and then randomly “choose” a date on which they allege they received notice of an order. While a few additional days for receipt by mail is understandable, and contemplated by Rule 203(e)(1)(C), a delay of over a month and a half demands a plausible explanation of the delay and proof of the receipt of notice of entry of the order.

This is particularly true in cases where, as is the case here, the appellant received every other order and pleading in a timely fashion. The July 10, 2017 Order Denying Defendant’s Motion for Relief of Judgment and Reinstatement to Trial Roster was

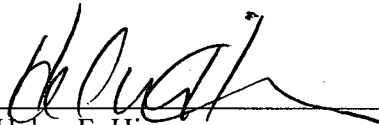
served on counsel for Oldcastle electronically, while Appellant was served by traditional means, *i.e.*, U.S. Mail. (Exh. B). Appellant received the July 10 Order in time to file a timely Motion to Reconsider Ruling on Defendant's Motion for Relief of Judgment and for Reinstatement to Trial Roster, which he filed on July 20, 2017. (Exh. C). Likewise, the July 27 Order was served on counsel for Oldcastle electronically, while Appellant was served by traditional means, *i.e.*, U.S. Mail. (Exh. D). Appellant has offered no evidence that, or even a plausible explanation as to why or how, he did not receive the July 27 Order for a month and a half.

As a result, Respondents move this Court to dismiss this appeal for lack of jurisdiction.

This motion conforms with Rule 240 and Rule 267, SCACR.

McANGUS GOUDELOCK & COURIE, LLC

December 22, 2017



Helen F. Hiser

S.C. Bar No.: 76124

735 Johnnie Dodds Blvd., Suite 200 (29464)

P.O. Box 650007

Mount Pleasant, South Carolina 29465

(843) 576-2900

Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

2017 OCT 18 AM 9:46

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

FILED-CLERK OF COURT
PAUL S. WICKENSIMLER
GREENVILLE, SC

Robin B. Stilwell, Circuit Court Judge

Case No. 2014-CP-23-05031

Oldcastle APG South, Inc.,
d/b/a Adams Products
Company, and Oldcastle APG
Northeast, Inc., d/b/a Foster-
Southeastern, Respondent,

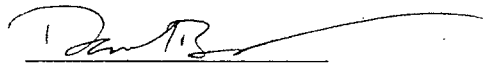
v.

Daniel B. Albert, Appellant.

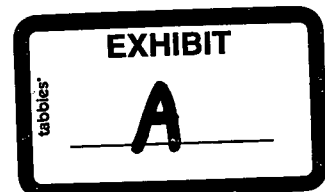
NOTICE OF APPEAL

Daniel B. Albert appeals the orders of the Honorable Robin B. Stilwell dated July 10, 2017, and July 27, 2017. Appellant filed a Motion for Relief of Judgment and Reinstatement to Trial Roster, which Judge Stilwell denied on July 10, 2017. Appellant filed a Motion to Reconsider the July 10, 2017 order on July 20, 2017. Judge Stilwell entered an order denying said Motion to Reconsider on July 27, 2017. Appellant received written notice of entry of the July 27, 2017 order denying his Motion to Reconsider via email on September 18, 2017.

October 18, 2017


Daniel B. Albert
2 Tennwood Dr
Greenville, South Carolina 29609
(321) 474-9189
Appellant, pro se

Other Counsel of Record:
Elizabeth McMillan
McAngus, Goudelock & Courie, LLC
Post Office Box 2980
Greenville, South Carolina 29602
Attorney for Respondent
(864) 239-4000



STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

OLDCASTLE APG SOUTH, INC. D/B/A)
ADAMS PRODUCTS COMPANY AND)
OLDCASTLE APG NORTHEAST, INC.)
D/B/A FOSTER-SOUTHEASTERN,)

Civil Action No. 2014-CP-23-05031

Plaintiff, **RECEIVED**)

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF OF
JUDGMENT AND REINSTATEMENT
TO TRIAL ROSTER**

v.)

OCT 20 2017)

DANIEL B. ALBERT, SC Court of Appeals)
Defendant.)

This matter comes before the Court pursuant to *pro se* Defendant's Motion for Relief of Judgment and Reinstatement to Trial Roster. The Court conducted a hearing on June 15, 2017, which was fully briefed by both parties before the hearing. Present at the hearing were Elizabeth M. McMillan, Esq., on behalf of Plaintiff, and Daniel B. Albert, *pro se*. Having fully considered the arguments by the parties in the briefs and at the hearing, the Court hereby **DENIES** Defendant's Motion for Relief of Judgment after reaching the following conclusions.

BACKGROUND FACTS

Plaintiff initiated this action by filing a Complaint on September 11, 2014, asserting claims for breach of contract, unjust enrichment, breach of guarantee, and quantum meruit against Defendant alleging that Defendant owed it \$127,212.13 for goods and services provided to Defendant and his companies for which he did not pay.

After discovery was conducted and numerous discussions were had regarding a settlement of this matter, Defendant agreed to enter into a confession of judgment for \$100,000 to end the litigation which he executed on May 16, 2016 ("Confession of Judgment"). The



Confession of Judgment states that Defendant obtained a judgment in a United States District Court case (the "Federal Case") in the amount of \$928,915.00 which judgment was on appeal. In the event Defendant received payment in the Federal Case, Defendant agreed to pay Plaintiff \$100,000. If within ten days after receiving payment in the Federal Case, Defendant failed to make a payment to Defendant, then Plaintiff would file the Confession of Judgment with the court. After executing the Confession of Judgment, Defendant requested a settlement agreement be signed by both parties. Plaintiff prepared a settlement agreement and release ("Settlement Agreement") to set forth the terms of the settlement and of the Confession of Judgment which was executed by all parties on May 23, 2016. Plaintiff then informed the court of the settlement and requested the case be removed from the trial roster. The case was removed from the immediate trial roster, but it remained an active case in the system and was subsequently scheduled for a status conference with the administrative judge for March 8, 2017.

On January 31, 2017, Defendant was awarded \$361,559.00 in the Federal Case. Defendant did not pay the \$100,000 settlement amount and the parties proceeded to the status conference on March 8. On March 9, 2017, Plaintiff made a formal demand for the \$100,000 agreed to in the Settlement Agreement and Confession of Judgment and informed Defendant that if payment was not received within ten days of the date of the letter, Plaintiff would file the Confession of Judgment with the Court. Defendant refused to pay the agreed upon settlement amount, and the Confession of Judgment was filed on May 5, 2017. Defendant argued to Plaintiff that because Plaintiff refused to file a stipulation of dismissal, Plaintiff had breached the Settlement Agreement and the Confession of Judgment was not valid. Defendant then proposed a new settlement agreement of \$75,000 and a declaration that the Confession of Judgment and Release were null and void. After Plaintiff declined to enter into a new settlement agreement,

Defendant filed a Motion for Relief of Judgment and For Reinstatement to Trial Roster on May 15, 2017.

In his motion, Defendant argued that the Confession of Judgment and Settlement Agreement were invalid because a stipulation of dismissal had not yet been filed. The Settlement Agreement contained paragraph 5 which states as follows: "Stipulation of Dismissal. The parties agree to enter into a Stipulation of Dismissal which will dismiss all claims and counterclaim in the Litigation." Defendant argued that because no stipulation of dismissal had been filed and through negligence, breach of contract, fraud, misrepresentation or other misconduct of Plaintiff, Defendant had been denied the benefit of his bargain. He asked this Court to rule that the Confession of Judgment was null and void, and without any continuing effect.

Plaintiff filed a Memorandum in Opposition to the Motion for Relief of Judgment denying and refuting Defendant's entitlement to relief from the Confession of Judgment, and both sides appeared at the hearing and presented arguments. Plaintiff argued that the Motion should be denied for the following reasons: (1) Defendant failed to honor the terms of the Settlement Agreement and pay the \$100,000 upon his receipt of that amount from the Federal Case, and, thus the Confession of Judgment was rightly entered; (2) Defendant could not establish the necessary grounds to repudiate the Settlement Agreement and the Confession of Judgment because he could not show that there was any evidence of fraud, mistake or misconduct by Plaintiff; (3) Defendant could not establish that the Settlement Agreement had been breached by Plaintiff because Plaintiff had no duty to file a stipulation of dismissal, especially since Defendant had refused to pay the \$100,000 once he received more than that amount from the Federal Case; and (4) Defendant could not establish the grounds for relief from

judgment pursuant to Rule 60, SCRCP, even if that Rule were applicable to the Confession of Judgment.

APPLICABLE STANDARD OF LAW

The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct.App. 2008).

When a party asserts grounds for relief because of fraud, misrepresentation, or other misconduct of an adverse party under Rule 60(b)(3), SCRCP, the movant must prove his entitlement by clear and convincing evidence. Chewing v. Ford Motor Co., 354 S.C. 72, 578 S.E.2d 605 (2003). A party asserting the fraudulent nature of a statement must demonstrate: (1) a representation; (2) the falsity of the representation; (3) the materiality of the representation; (4) knowledge of its falsity, or reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 451 S.E.2d 907 (Ct.App. 1994).

CONCLUSIONS OF FACT AND LAW

Based on the filings of both parties and the arguments presented at the hearing, I make the following findings:

1. The Settlement Agreement is not ambiguous.
2. Based on the unambiguous language of the Settlement Agreement, Plaintiff was under no duty to file a stipulation of dismissal.
3. Defendant has failed to present sufficient evidence to show that the Plaintiff breached any terms of the Settlement Agreement.
4. Defendant has failed to present sufficient evidence to show that Plaintiff engaged in

negligence, fraud, misrepresentation or other misconduct that would relieve Defendant from his obligations under the Settlement Agreement and Confession of Judgment.

5. Defendant entered into a valid Settlement Agreement and Confession of Judgment and was obligated by their terms and cannot renegotiate the terms of those agreements under a pretextual argument that because, no stipulation of dismissal had been filed he is not obligated by the terms of those agreements.
6. Defendant has failed to present sufficient evidence to establish that he is entitled to any relief under Rule 60, SCRPC.
7. The Confession of Judgment was validly entered by Plaintiff.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Relief of Judgment and Reinstatement to the Trial Roster is hereby denied and this case is stricken from the trial docket.

AND IT IS SO ORDERED.

Robin B. Stilwell, Judge
Thirteenth Judicial Circuit



Greenville Common Pleas

Case Caption: Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert

Case Number: 2014CP2305031

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2017-07-10 10:21:23 page 6 of 6

ELECTRONICALLY FILED - 2017 Jul 10 10:49 AM - GREENVILLE - COMMON PLEAS - CASE#2014CP2305031

From: efiledonotreply@sccourts.org
Sent: Monday, July 10, 2017 10:50 AM
To: Jeanmarie Tankersley
Cc: Melinda Owens
Subject: Courtesy NEF RE: 2014CP2305031

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2014CP2305031

Official File Stamp: 07-10-2017 10:49:48 AM
Court: CIRCUIT COURT
Common Pleas
Greenville
Case Caption: Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert
Document(s) Submitted: Order/Other-Motion for Relief Denied
Filed by or on behalf of: Robin B. Stilwell

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

Jeanmarie Tankersley for Oldcastle APG South Inc et al
Elizabeth McDaniel McMillan for Oldcastle APG South Inc et al
Walter B. Todd, Jr.

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Jeff D. Griffith, III
Daniel B Albert for Daniel B Albert
Daniel B Albert for Daniel B Albert

~~~~ 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.



ambiguous if both parties had completely different understandings of the intended timeframe. The court improperly concluded that the Settlement Agreement was not ambiguous.

3. Defendant testified that ambiguity in the agreement must be construed against the drafter of the agreement, which in this case was Plaintiff. Defendant also testified that there were at least three instances when counsel for Plaintiff stated that she would enter a stipulation of dismissal without delay. Each of these statements by counsel for Plaintiff were contained in the exhibits to the motion, as pointed out by Defendant. The court improperly failed to look outside the four corners of the agreement to see the clear evidence that there indeed was an agreement for the immediate cessation of the Litigation, and that Defendant entered into the Settlement Agreement upon reliance upon the statements and representations of counsel for Plaintiff. All of this is plain as day if the court would simply look outside the four corners of the agreement to see what the true intent was of the parties.
4. The court pointed out that the Settlement Agreement did not clearly state that it was the responsibility of Plaintiff to file the Stipulation of Dismissal, but the agreement also did not state that it was *not* the responsibility of Plaintiff to do so. There is ambiguity as to who had the responsibility to file the stipulation, but by looking outside the four corners of the agreement it is clear that counsel for Plaintiff took the responsibility for filing the Stipulation of Dismissal. The court improperly held that it was not clear that Plaintiff had responsibility for filing the Stipulation of Dismissal in spite of the fact that there was ambiguity, the evidence outside the four corners clearly demonstrates that Plaintiff was responsible, that Plaintiff was the drafter of the agreement and that Defendant is a pro se litigant.
5. Counsel for Plaintiff misled the court by saying that no attorney would file a stipulation of dismissal before payment was received, when in fact, the evidence is clear in the exhibits presented by Defendant with the motion that that is exactly what counsel for Plaintiff was representing would happen. At the time of entering the Settlement Agreement, Defendant did not know the precise mechanics by which Plaintiff would bring the Litigation to an immediate, full and final end, but

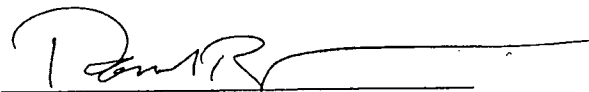
the mechanics did not matter to Defendant as long as the Litigation ended immediately. All the court has to do to test the veracity of this misleading statement by counsel for Plaintiff is to look at the exhibits presented with the motion.

6. Defendant testified that he was shocked or stunned to learn that the litigation was still pending when, in late January or early February 2017, he received a notice of a status conference in this litigation that was scheduled for March.
7. The preponderance of the evidence clearly proves that Plaintiff breached a material term of the Settlement Agreement, and that Plaintiff engaged in negligence, fraud, misrepresentation or other misconduct that should relieve Defendant from his obligations under the Settlement Agreement and Confession of Judgment.
8. The court improperly concluded that the Settlement Agreement and Confession of Judgment entered into by the parties was indeed a valid agreement, and that Defendant continues to be obligated by the terms of the Settlement Agreement, which Plaintiff breached. Even if the Settlement Agreement and Confession of Judgment were judged to be valid, Defendant should be granted relief from the judgment based upon the negligence, fraud, misrepresentation or other misconduct of Plaintiff in inducing Defendant into entering agreement under false or pretextual circumstances.
9. In Plaintiff's brief, which was submitted to the court and to Defendant the day before the hearing, Plaintiff misrepresents to the court that Defendant offered to settle the case for \$75,000, when in fact Defendant offered to make an immediate payment of \$75,000 and then pay an additional \$68,000 as he was able, so long as Plaintiff was willing to resume doing business with Defendant. This misrepresentation is even more egregious when consideration is given to the fact that Defendant, in the same email string, proceeded to make several improvements to the offer in order to try to come to terms with Plaintiff that would give Plaintiff what they were seeking and yet provide some measure of compensation to Defendant for the breach of the Settlement Agreement by Plaintiff. All of this evidence, presented in the exhibits to the motion, clearly

shows that Defendant was simply seeking to have some form of compensation for what Plaintiff took from Defendant when they breached the Settlement Agreement.

10. Defendant testified that if the court were to grant him relief from the Confession of Judgment and reinstate the Litigation to the trial roster, he was hopeful that Plaintiff would then be willing to come to agreeable terms to resolve the litigation without having to go to trial. The exhibits presented by Defendant clearly show that Plaintiff was unreasonable in addressing their breach of the Settlement Agreement despite the best efforts of Defendant.
11. Defendant testified at the hearing and asserted numerous times in the exhibits presented with the motion that it is his firm belief that Plaintiff would fail in their claims due to statute of limitation defenses. Defendant was seeking to restore a business relationship with Plaintiff, but believes that counsel for Plaintiff has made that difficult, which diminishes the motivation that Defendant had to enter into the Settlement Agreement.
12. If the court granted Defendant's motion, the result would be that the Litigation would proceed, and Plaintiff would then be able to prove its case upon the merits. Plaintiff would not lose a valid judgment that they earned by proving the merits of their case, they would simply lose a confession of judgment that was secured by counsel for Plaintiff through negligence, fraud and misrepresentation. Justice in this case requires that the court grant the motion of Defendant and allow the parties to prove their claims, defenses and counterclaims.

Respectfully submitted,



DANIEL B. ALBERT, pro se  
DEFENDANT  
2 Tennwood Dr  
Greenville, SC 29609  
Phone: 321-474-9189

July 20, 2017

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS  
CIVIL JUDICIAL CIRCUIT

COUNTY OF Greenville )

2017 JUL 20 ) PM 4: 31

**CERTIFICATE OF SERVICE**

Oldcastle APG South, Inc. and Oldcastle APG  
Northeast, Inc. )

FILED-CLERK OF COURT  
PAUL B. WICKINS  
GREENVILLE, SC

vs. )

Case No.: 2014-CP-23-05031

Daniel B. Albert )

Defendant. )

I certify that on this date, I served a copy of Defendant's Motion for Reconsideration\_ in this  
action, dated

July 20, 2017, ON McAngus, Goudelock & Courie LLC by

- Delivering it to him/her personally;
- Mailing it to him/her, at his/her last known address, by depositing it in the U.S.

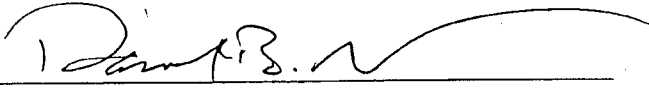
Mail, in an envelope with sufficient postage affixed, addressed as follows:

McAngus Goudelock & Courie, PO Box 2980, Greenville, SC 29602

Delivering it by commercial delivery service in accordance with Rule 4(d)(9),  
SCRCP, addressed as follows: ; or,

Other:

7-20-17  
Date

  
Signature

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS  
CIVIL JUDICIAL CIRCUIT

COUNTY OF GREENVILLE )

CASE NO.: 2014-CP-23-05031

2017 JUL 20 PM 4:31

Oldcastle APG South Inc., et al )

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

vs.

FILED CLERK OF COURT  
PAUL B. WICKENS  
GREENVILLE

Daniel B. Albert )

Defendant. )

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Plaintiff's Attorney:<br>McAngus, Goudelock & Courie, Bar No. _____<br>Address:<br>55 E. Camperdown Way, Suite 300,<br>Greenville, SC 29601<br>Phone: 864-239-4000 Fax 864-242-3199<br>E-mail: beth.mcmillan@mgclaw.com Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Defendant's Attorney:<br>Daniel B. Albert, pro se, Bar No. _____<br>Address:<br>2 Tennwood Dr., Greenville, SC 29609<br>Phone: 321-474-9189 Fax _____<br>E-mail: dan.albert7@gmail.com Other: _____ |
| <input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)<br><input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)<br><input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                     |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                     |
| Nature of Motion: Motion for Reconsideration<br>Estimated Time Needed: 60 minutes      Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                     |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                     |
| <input type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |
| Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant      Date submitted _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                     |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |
| <input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25.00</u><br><input type="checkbox"/> EXEMPT: (check reason)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                     |
| <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |                                                                                                                                                                                                     |
| <b>JUDGE'S SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                     |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | JUDGE CODE _____<br>Date: _____                                                                                                                                                                     |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                     |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                     |

ELECTRONICALLY FILED - 2017 Jul 27 3:08 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2305031

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Oldcastle APG South, Inc., d/b/a Adams )  
Products Company, and Oldcastle APG )  
Northeast, Inc., d/b/a Foster-Southeastern, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
Daniel B. Albert, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

**ORDER DENYING DEFENDANT'S  
MOTION TO RECONSIDER**

Case No.: 2014-CP-23-05031

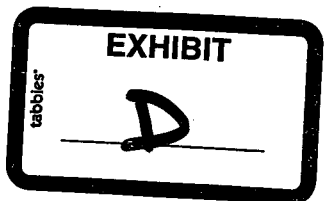
This matter comes before the Court pursuant to the Defendant's July 20, 2017, Motion to Reconsider the Court's Ruling on Defendant's Motion for Relief of Judgment and for Reinstatement to Trial Roster. Having carefully considered the same, this Court respectfully denies the Motion.

**AND IT IS SO ORDERED.**

\_\_\_\_\_  
ROBIN B. STILWELL

July 26, 2017  
Greenville, South Carolina

**RECEIVED**  
OCT 20 2017  
SC Court of Appeals





Greenville Common Pleas

**Case Caption:** Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert

**Case Number:** 2014CP2305031

**Type:** Order/Other

So Ordered

s/ Robin B. Stilwell 2158

**Helen Hiser**

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**From:** efiledonotreply@sccourts.org  
**Sent:** Thursday, July 27, 2017 3:09 PM  
**To:** Beth McMillan  
**Cc:** Melinda Owens  
**Subject:** Courtesy NEF RE: 2014CP2305031

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

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**A filing has been submitted to the court RE: 2014CP2305031**

**Official File Stamp:** 07-27-2017 03:08:10 PM  
**Court:** CIRCUIT COURT  
Common Pleas  
Greenville  
**Case Caption:** Oldcastle APG South Inc , plaintiff, et al vs. Daniel B Albert  
**Document(s) Submitted:** Order/Order Denying Defendant's Motion to Reconsider  
**Filed by or on behalf of:** Robin B. Stilwell

This notice was automatically generated by the courts auto-notification system.

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**The following people were served electronically:**

Jeanmarie Tankersley for Oldcastle APG South Inc et al  
Elizabeth McDaniel McMillan for Oldcastle APG South Inc et al  
Walter B. Todd, Jr.

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Jeff D. Griffith, III  
Daniel B Albert for Daniel B Albert  
Daniel B Albert for Daniel B Albert

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Robin B. Stilwell, Circuit Court Judge

Case No.: 2014-CP-23-05031

RECEIVED

DEC 27 2017

SC Court of Appeals

Oldcastle APG South, Inc.,
d/b/a/ Adams Products Company,
and Oldcastle APG Northeast, Inc.,
d/b/a Foster-Southeastern, Respondents,

v.

Daniel B. Albert, Appellant.

PROOF OF SERVICE

I certify that on the 22nd day of December 2017, I served the Respondents' **Motion to Dismiss Appeal** on *pro se* Appellant Daniel B. Albert by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

Daniel B. Albert
2 Tennwood Dr.
Greenville, SC 29609



Gayle McDaniel
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents Oldcastle APG
South, Inc., d/b/a Adams Products
Company, and Oldcastle APG Northeast,
Inc., d/b/a Foster-Southeastern*

mgc

Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

December 22, 2017

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DEC 27 2017

SC Court of Appeals

Via U.S. Mail

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

RE: Oldcastle APG South, Inc. d/b/a Adams Products Company and
Oldcastle APG Northeast, Inc. d/b/a Foster-Southeastern v. Madawaska
Hardscape Products, Inc. and Daniel B. Albert
Civil Action No.: 2014-CP-23-05031 (Greenville)
MGC File No.: 20799.14001
Appeal No.: 2017-002183

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Motion to Dismiss Appeal, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the enclosed self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Daniel B. Albert, *pro se* (via U.S. Mail & Certified Mail)
Sarah T. Brooks, Oldcastle, Inc.

mgc | INSURANCE
DEFENSE

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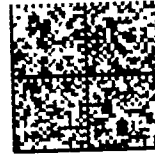
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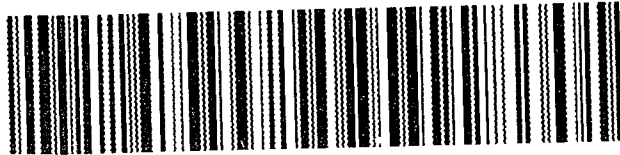
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Honorable Jenny Abbot Kitchings
SC Court of Appeals
PO Box 11629
Columbia SC 29211-1629

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