

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

---

**APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas**

**Marvin H. Dukes III, Master in Equity & Special Circuit Court Judge**

---

**Appeal Case No. 2017-002270  
Circuit Court Case No. 2014-CP-07-00943**

---

**JOSEPH C. SUN ..... Appellant**

v.

**TOWN OF BLUFFTON, BLUFFTON  
POLICE DEPARTMENT, BRYAN  
NORBERG, ANGELA TUBBS,  
JOSEPH BABKIEWICZ, CLAUDIA  
HEBDA, JEFFERY DICKSON and  
CHRISTIAN GONZALES. .... Respondents**

**RECEIVED**  
JAN 02 2018  
SC Court of Appeals

---

**APPELLANT'S RESPONSE TO RESPONDENTS' MOTION  
TO DISMISS APPEAL FOR LACK OF JURISDICTION**

---

Joseph C. Sun, pro se  
P. O. Box 2543  
Bluffton, SC 29910  
843-226-8788

E. Mitchell Griffith, Esq.  
Griffith, Freeman & Liipfert  
P. O. Box 570  
Beaufort, SC 29901

Respondents' motion to dismiss appeal is without merit therefore must be denied. The respondents simply summarily and falsely allege that "Appellant did not timely serve his Notice of Appeal" with nothing in support of their motion. Appellant can show in his response that this court has jurisdiction on the within appeal because notice of appeal was timely served and filed.

Appellant served his notice of appeal on October 19, 2017 as shown on his certificate of service. The Respondents also acknowledge the aforesaid receipt in their motion, except they erroneously allege that Notice was served by Certified Mail when it was served by regular United States Mail as shown in the Notice of Appeal. It was the respondents who served the Appellant the Order Denying Plaintiff's Motion to Vacate and Set Aside Judgment entered on August 29, 2017, by Certified Mail and the Returned Receipt signed by the Appellant which they have<sup>1</sup> can show that Appellant received the copy of the aforesaid order on September 27, 2017 at 12:17 p.m. (Exhibit A, copy of Respondents' certified mail envelope and the USPS Mail Tracking print-out.)

Regardless of the Respondents' erroneous claim in their motion, Rule 4(d)(8) on Service by Certified Mail, provides that, "..... Service is effective upon the date of delivery as shown on the return receipt. ...."

Therefore, Appellant has timely served his Notice of Appeal on the Order Denying Motion to Vacate and Set Aside Judgment. Rule 203(b)(1), SCACR, requires that, "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." Record shows that Appellant served his Notice of Appeal on October 19, 2017 after he received the written copy of the Order by Certified Mail on September 27, 2017.

---

<sup>1</sup> Respondents intentionally chose not to mention their Certified Mail Receipt signed by the Appellant on September 27, 2017 to hide the fact that Appellant was delivered the copy of the Order on that date.

Regarding the dates of issuance and delivery of the Order Granting Respondents' Motion for Summary Judgment and the Order Denying Appellant's Motion to Reconsider, both Appellant and Respondents' counsel were confused and was not up to date on the ruling or orders entered regarding the two motions. As shown in Respondents motion to dismiss appeal, their attached Exhibit E showing several emails dated May 24 and 25, 2017 between Respondents' counsel and the assistant of the Master in Equity regarding the orders on Appellant's motion to reconsider. There is no evidence to show that Appellant was involved in those emails, even though Appellant stated in his motion to vacate and set aside judgment that on May 29, 2017, he "received" a copy of the Amended Order Granting Defendants' Motion for Summary Judgment and and the Form 4 Order on his Motion to Reconsider.<sup>2</sup> (Exhibit F of Motion)

Es shown in the attached emails (Exhibit E in Motion), Respondents counsel was also confused and was inquiring about the Order on Appellant's motion to reconsider. Appellant was still waiting for the signed Order containing findings of facts and conclusions of law in denying his motion to reconsider when he filed his motion to vacate and set aside judgment on June 16, 2017. Respondents cited *Wells Fargo Bank v. Fallon Properties*, 413 S.C. 642, 776 S.E.2d 575 (2015) as authority in their attempt to validate certain court orders sent by email. That is a far cry from the required due process stated in Rule 203(b)(1), SCACR.

In *Wells Fargo Bank, supra*, this court explained why the email service was valid. First, the e-mail was sent from the court itself, rather than an opposing party. Second, the e-mail included [776 S.E.2d 577] a copy of the signed and clocked order. In the within case, the emails

---

<sup>2</sup> Appellant "received" his copy of the court orders after he was instructed by the clerk of court to download the documents from the Beaufort County Court Public Index. Respondents counsel prepared the court orders but never served Appellant except the last Order Denying his Motion to Vacate and Set Aside Judgment which was served by U.S. Certified Mail.

were not addressed to Appellant who was proceeding pro se in the case. He had to rely on the Beaufort County Court Public Index website or the clerk of court at the courthouse to get copies of all documents. Appellant was able to get copies of some orders, while some others such as the detailed order denying his Motion to Reconsider was never issued. Most court orders were not even signed or dated. (See Respondents' Exhibits.) Appellant found out later that the Amended Order was an equivalent to the Order denying his motion to reconsider.

Respondents' Exhibit G in their motion shows that Appellant stated that he needs a copy of the signed and stamped filed order to begin counting the 30 days to file Notice of Appeal.<sup>3</sup> As a copy of the actual stamped filed Order Denying Appellant's motion to reconsider and the order granting respondents motion for summary judgment was never delivered or received by the Appellant, the time to start the 30 days to serve the notice of appeal has not begun and this court has jurisdiction on the matter.

The earlier dismissal of the Town of Bluffton and the Bluffton Police Department on Appellant's initial claims as shown in respondents Exhibits A-C was not a final order in the case against the town and the police department as it was based on the expiration of the two (2) year statute of limitation on earlier allegations in original complaint. Appellant Sun filed his amended complaint on October 8, 2015 and served all the original defendants-respondents the summons and amended complaint. The order granting Appellant's amended complaint was dated November 13, 2015 (Exhibit B attached) predated the respondent's Exhibit B, the order granting respondents summary judgment on the ground of statute of limitation on the initial causes of action. As the

---

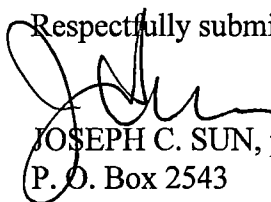
<sup>3</sup> Appellant did not object to e-filing of proposed orders because they were not time sensitive. But he needs signed and clocked copies of court orders for the purpose of appeal. Appellant is appearing pro se in the case, only shares an email account with his daughter. He was not required to file a valid email address with the Attorney Information System as held by this court in *Wells Fargo Bank, supra*, (footnote 3). After Appellant downloaded (received) the Form 4 Order, he was still waiting for the complete Order with finding of facts and conclusion of law.

amended complaint alleges claims of malicious prosecution and violation of Appellant's civil rights committed by the individual and conspired acts of all the original defendants, the order granting defendants Town of Bluffton and Bluffton Police Department was not considered to be the Final Order regarding the new claims as the accrual of the statute of limitation started at a much later date, after Appellant was acquitted or nolo prosec or found not guilty by the courts. Therefore respondents town of Bluffton and Bluffton Police Department are included in the Final Orders in the case and the notice of appeal was timely filed against the two respondents as well. Appellant needed not serve any other counsel as the present counsel had substituted the previous counsel for the town and police department.

**CONCLUSION**

For the foregoing reasons, respondents motion to dismiss should be denied.

Respectfully submitted,



JOSEPH C. SUN, pro se  
P. O. Box 2543  
Bluffton, SC 29910  
843-226-8788

**RECEIVED**

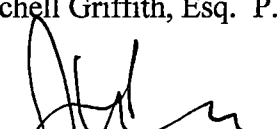
JAN 02 2018

SC Court of Appeals

**CERTIFICATE OF SERVICE**

This is to certify that I have this date served the Respondents a copy of Appellant's Response to Respondents' Motion to Dismiss Appeal by depositing a copy of same on 29<sup>th</sup> day of December, 2017 in the U.S. Mail postage prepaid to E. Mitchell Griffith, Esq. P. O. Box 570, Beaufort, SC 29901.

This 29th day of December, 2017.

  
\_\_\_\_\_  
JOSEPH SUN  
P.O. Box 2543  
Bluffton, SC 29910

# USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=2209900>)

[Track Another Package +](#)

[Remove X](#)

Tracking Number: **7016137000087533135**

Delivered

## Product & Tracking Information

[See Available Actions](#)

Postal Product:

Features:  
Certified Mail™

| DATE & TIME  | STATUS OF ITEM            | LOCATION                         |
|--|---------------------------|----------------------------------|
| September 27, 2017, 12:17 pm   | Delivered                 | BLUFFTON, SC 29910               |
| Your item was delivered at 12:17 pm on September 27, 2017 in BLUFFTON, SC 29910. |                           |                                  |
| September 23, 2017, 8:41 am  | Available for Pickup      | BLUFFTON, SC 29910               |
| September 4, 2017, 9:58 am   | In Transit to Destination | ON ITS WAY TO BLUFFTON, SC 29910 |
| September 3, 2017, 9:58 am   | In Transit to Destination | ON ITS WAY TO BLUFFTON, SC 29910 |

[See More v](#)

## Available Actions

[Text & Email Updates v](#)

[See Less ^](#)



**GRIFFITH FREEMAN LIIPFERT**  
ATTORNEYS AT LAW

Griffith Freeman & Liipfert, LLC  
600 Monson Street  
PO Box 570 || Beaufort, SC 29901

**CERTIFIED MAIL**



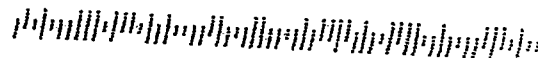
7016 1370 0000 8753 3135

9/23/17

Joseph C. Sun  
PO Box 151  
Bluffton, SC 29910

- A -

29910 2543  
2991080151 8001



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
Case No: 2014-CP-07-00943

JOSEPH C. SUN, )  
 )  
Plaintiff, )

v. )

BRYAN NORBERG, ANGELA )  
TUBBS, JOSEPH BABKIEWICZ, )  
CLAUDIA HEBDA, JEFFREY )  
DICKSON and CHRISTIAN )  
GONZALES, )  
Defendants. )

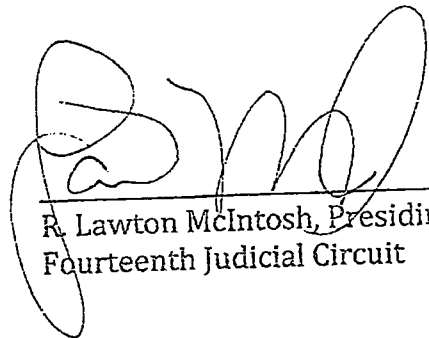
ORDER ON PLAINTIFF'S MOTION TO AMEND

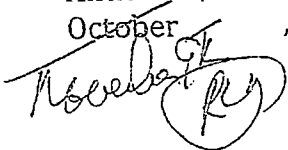
2015 NOV 13 PM 3:13  
JERRI ANN ROSENBAU  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

This matter came before the Court on September 9, 2015 pursuant to Plaintiff's Motion To Amend Complaint. Appearing for the Plaintiff was Kenneth L. Tootle, Attorney at Law. Appearing for the Defendants was Kelly D. Dean, Attorney at Law with the firm of Griffith, Sharp & Liipfert, LLC.

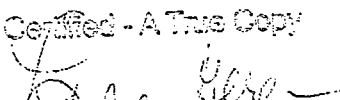
After careful consideration of the arguments of the attorneys, Plaintiff's Motion To Amend Complaint is GRANTED.

And It Is So Ordered.

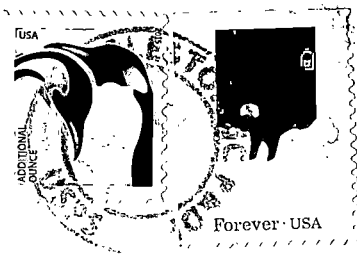
  
R. Lawton McIntosh, Presiding Judge  
Fourteenth Judicial Circuit

Anderson, South Carolina  
October , 2015  


- B -

Certified - A True Copy  
  
Jerri Ann Roseneau - Clerk of Court  
Beaufort County, SC - Lynn Geren

J. C. Sun  
P. O. Box 2543  
Bluffton, SC 29910



**RECEIVED**

JAN 02 2018

SC Court of Appeals

**Clerk of Court  
South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211**

29211 181629 5012

