

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

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

Respondents,

RECEIVED
JAN 08 2018
SC Court of Appeals

v.

Daniel B. Albert,

Appellant.

APPELLANT'S RESPONSE AND OBJECTION TO RESPONDENTS'
MOTION TO DISMISS APPEAL

Daniel B. Albert hereby responds and objects to Respondents' Motion to Dismiss Appeal. In their motion, Respondents allege that Appellant did not timely file his notice of appeal as required by Rule 203, and that therefore, this Court has no jurisdiction over this matter.

On September 18, 2017, Appellant notified a representative of the court of common pleas by email that he had not received notification of when the hearing that he had requested in his Motion to Reconsider would be scheduled. Appellant received a response the same day from a different representative of the court that an order on the Motion to Reconsider was issued on July 27, 2017. The representative of the court attached a PDF of the July 27, 2017 order to his response to Appellant. The September 18, 2017 email string is hereby attached as Exhibit 1, and the order that was included in the September 18, 2017 email string is hereby attached as Exhibit 2.

Appellant cannot speak to why the July 27, 2017 order was not mailed to him, he can only attest to the fact that he did not receive the order until September 18, 2017. Without personal

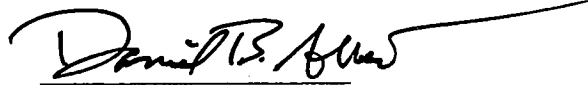
knowledge, Respondents allege that Appellant was served the July 27, 2017 order by US Mail. Using faulty logic, Respondents assert that Appellant's timely filing of his Motion to Reconsider Ruling on Defendant's Motion for Relief of Judgment and for Reinstatement to Trial Roster, which was filed on July 20, 2017, is evidence that Appellant received the July 27, 2017 order by US mail.

Appellant has been involved in another matter before the Court of Common Pleas whereby it was necessary for Appellant to email an inquiry to the court regarding scheduling a hearing on a motion made by Appellant in that matter. Mr. Steve Lopez apologized to Appellant for Appellant's request for a hearing on his motion "falling through the cracks" and promptly scheduled the hearing on the motion of Appellant. Because Appellant was involved in that other matter, which went to trial on September 12, 2017, and because Appellant was aware that Judges are under no time constraint for making decisions, Appellant did not make inquiry about the lack of response from the Court of Common Pleas on the requested hearing on his motion until the September 18, 2017 email to Steve Lopez.

When making inquiry with the clerk of the Court of Appeals about the requirements for filing a notice of appeal on October 16, 2017, Appellant confirmed his understanding that Rule 203 allowed thirty days to file a notice of appeal after the receipt of written notice of the final order. When discussing the fact that notice was received by email with the clerk, Appellant learned of the pending case, Wells Fargo versus Fallon Properties, which might disallow delivery of written notice by email. Appellant decided at that time to file the notice of appeal, even though it was only received by email, so that there would be no doubt that the notice of appeal was timely filed, regardless of the outcome of the Fallon Properties case.

Since there has been no assertion by the Court of Common Pleas that the July 27, 2017 order was indeed mailed to Appellant by US Mail, the assertion by Appellant that he only received written notice of the July 27, 2017 order on September 18, 2017 should be accepted as uncontroverted fact. Appellant could attest to this fact by affidavit or at a hearing, if necessary. As a result, this Court should deny Respondents' Motion to Dismiss, as Appellant's Notice of Appeal was timely filed, and this Court indeed has jurisdiction in this matter.

January 2, 2018



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 Respondents
(864) 239-4000

Helen F. Hiser
McAngus, Goudelock & Courie, LLC
Post Office Box 650007
Mt. Pleasant, SC 29465
Attorney for Respondents
(843) 576-2900



Dan Albert <dan.albert7@gmail.com>

Scheduling of hearing on MTR

2 messages

Dan Albert <dan.albert7@gmail.com>
To: "Lopez, Stephen" <SLopez@greenvillecounty.org>

Mon, Sep 18, 2017 at 11:34 AM

Hi Steve,

It has been about 60 days since I filed my Motion to Reconsider in case No. 2014-CP-23-05031, yet I have not received notification of when the hearing I requested will be scheduled.

When can I expect to receive a response on my motion?

Dan Albert
321-474-9189

Lopez, Stephen <SLopez@greenvillecounty.org>
To: Dan Albert <dan.albert7@gmail.com>

Mon, Sep 18, 2017 at 11:52 AM

Dan,

Steve will be back on Thursday so I'm checking his email until he returns. In looking at the index it appears that an order was issued on 7/27/17 that denied your motion of 7/20/17. I've attached a copy of this order. On motions for reconsideration the judge that heard the motion always rules on the motion and sets a hearing if he deems it necessary.

Thanks,

Shawn Knox

From: Dan Albert [mailto:dan.albert7@gmail.com]
Sent: Monday, September 18, 2017 11:34 AM
To: Lopez, Stephen
Subject: Scheduling of hearing on MTR

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

[Quoted text hidden]

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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

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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 2017-07-27 10:54:39 page 2 of 2

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

Oldcastle APG South, Inc.,
d/b/a Adams Products
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Southeastern,

Respondents,

v.

Daniel B. Albert,

Appellant.

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SC Court of Appeals

PROOF OF SERVICE

I certify that I have served **Appellant's Response and Objection to Respondents' Motion to Dismiss Appeal** on Oldcastle APG South, Inc., d/b/a Adams Products Company, and Oldcastle APG Northeast, Inc., d/b/a Foster-Southeastern by depositing a copy of it in the United States Mail, postage prepaid, on January 2, 2018, addressed to their attorney of record, Elizabeth McMillan, McAngus, Goudelock & Courie, LLC, PO Box 2980, Greenville, South Carolina 29602.

January 2, 2018

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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January 2, 2018

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

January 2, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

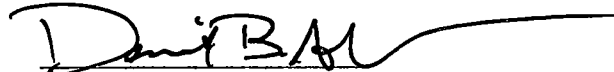
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RE: Oldcastle APG South, Inc., d/b/a Adams Products Company, and
Oldcastle APG Northeast, Inc., d/b/a Foster-Southeastern, Respondents v.
Daniel B. Albert, Appellant
Civil Action No.: 2014-CP-23-05031
Appeal No.: 2017-002183

Dear Ms. Kitchings:

Enclosed for filing is **Appellant's Response and Objection to Respondents' Motion to Dismiss Appeal** in the above case, and the Proofs of Service in the above referenced matter.

Sincerely,



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

Enclosures

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

Helen F. Hiser
McAngus, Goudelock & Courie, LLC
Post Office Box 650007
Mt. Pleasant, SC 29465
Attorney for Respondent
(843) 576-2900

PRIORITY MAIL 2-Day®

Expected Delivery Day: 01/05/2018

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PRESS FIRMLY TO SEAL

USPS TRACKING NUMBER



9505 5162 9817 8002 2125 53

FROM:

DAN ALBERT
2 JENNWOOD DR
GREENVILLE, SC
29609

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JAN 08 2018

SC Court of Appeals

TO:

THE HONORABLE JENNY KETCHUM
CLERK, SC COURT OF APPEALS
P.O. Box 11629
COLUMBIA, SC 29211