

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
JAN 11 2018
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.

**RESPONDENTS' REPLY TO
APPELLANT'S RETURN IN OPPOSITION TO
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 reply to Appellant Daniel B. Albert's response/return in opposition ("Return") to their Motion to Dismiss Appeal ("Motion"). While Respondents were not copied on and, therefore, cannot independently verify the validity of the email chain attached as Exhibit 1 to Appellant's Return, he is flatly incorrect that there is no "assertion" by the Circuit Court that the July 27, 2017 Order was mailed to Appellant via U.S. Mail. In fact, the notice attached to Respondents' Motion as the last page of Exhibit D indicates that he was served the July 27, 2017 Order by traditional means on that date.

Pursuant to the Electronic Filing Policies and Guidelines issued by the South

Carolina Supreme Court, “Traditional Service” is “the service of a paper copy of a document using the forms or methods of service authorized under South Carolina Rules of Civil Procedure.” Rule 5(a), SCRCF, provides that all written orders “shall be served upon each of the parties of record.” Rule 5(b)(1), SCRCF, in turn, provides that, “[s]ervice ... upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address ...” As noted in Respondents’ Motion, the Circuit Court indicated that it served both the July 10, 2017 Order and the July 27, 2017 Order on Appellant by traditional means on the date each order was filed. That means, the July 27, Order was either personally delivered to Appellant or sent to him via U.S. Mail on that date.

Furthermore, while Appellant offered to “attest” to his assertion that he did not receive notice of the July 27, 2017 Order until September 18, 2017, “by affidavit or at a hearing, if necessary,” he pointedly did not attach any such affidavit to his Return. Pursuant to Rule 240(e), SCACR, “[t]he provisions of Rule 240(c) apply to a return.” Pursuant to Rule 240(c), SCACR, where the Record on Appeal has not yet been filed, which is the case in this matter, “the parties *shall* file affidavits and other documents in support of their positions.” The use of the term “shall” is mandatory. *See, e.g., Freeman v. J.L.H. Invs., LP*, 414 S.C. 362, 388, 778 S.E.2d 902, 915 (2015) (“[t]he term ‘shall’ in a statute means that the action is mandatory”). Thus, to the extent Appellant believed an affidavit was necessary or advisable, he was required to provide it along with his Return, which he failed to do. This Court’s rules do not provide for any further response to a Reply. Rule 240, SCACR.

For the reasons set forth herein and in Respondents’ Motion, Respondents

respectfully request that this Court grant their Motion dismiss this appeal for lack of appellate jurisdiction.

McANGUS GOUDELOCK & COURIE, LLC

January 9, 2018

A handwritten signature in black ink, appearing to read 'H. Hiser', is written over a solid horizontal line.

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

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Daniel B. Albert, Appellant.

PROOF OF SERVICE

I certify that on the 9th day of January 2018, I served the **Respondents' Reply to Appellant's Return in Opposition to 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


Kathy Aldrich
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*



Reply To

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

January 9, 2018

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JAN 11 2018
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' Reply to Appellant's Return in Opposition to 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.

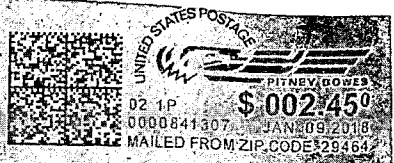
If you have any questions, please do not hesitate to contact me.

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

POST OFFICE BOX 2980
GREENVILLE, SC 29602

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20799.14001 HFH/kea
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211