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**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity
Case No. 2015-CP-10-3392

Appeal No. 2017-001628

RECEIVED
JAN 22 2018
SC Court of Appeals

Ann M. Blandin,

Respondent-Appellant,

v.

City of North Charleston,

Appellant-Respondent.

**MOTION TO AMEND THE NOTICE OF APPEAL
OF CITY OF NORTH CHARLESTON**

The Appellant-Respondent City of North Charleston submits this motion in conjunction with its return to the Respondent-Appellant’s motion to dismiss the City’s appeal for lack of specificity in its notice of appeal served on July 28, 2017. Without restating the background facts, the City would refer the Court to the Return for more detail. Most pertinently, the trial court issued three relevant orders: an intermediate order denying the City’s Rule 55(c) motion to set aside entry of default, filed June 15, 2016; an intermediate order denying the City’s motion to reconsider, filed July 12, 2016; and the order setting damages/final judgment, entered on June 23, 2017. Both parties appealed from the order/final judgment of June 23, 2017.

The City has served an initial appellant’s brief raising an issue as to the trial court’s denial of its Rule 55(c) motion where good cause was shown under the applicable standard

articulated in Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 681 S.E.2d 885 (2009). The Plaintiff has moved to dismiss the City's appeal on the ground that the City did not specify its appeal was from the Rule 55(c) intermediate orders in its notice of appeal and did not submit a copy of the orders with the notice. The City has submitted a Return in opposition to the motion maintaining that the intermediate orders merged with the final judgment and are reviewable on appeal from that judgment. [See Return for detailed argument.] However, to the extent that the asserted deficiency in the notice of appeal is considered a clerical error in need of correction even at this stage in the appeal, the City is submitting this motion seeking the Court's permission to allow amendment of the notice of appeal so as to separately list the orders and to allow submission of the relevant orders.

I.

As a general matter, appellate jurisdiction vests upon service of a notice of appeal from a final judgment per S.C. Code Ann. §14-3-330. "Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal." Canal Ins. Co. v. Caldwell, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct.App.1999), *quoted in* USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008). The requirement of service of the notice of appeal is jurisdictional, and the courts do not have any authority of discretion to rescue a party by extending deadline for service of the notice. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004), *also quoted in* USAA Prop. & Cas. Ins. Co. v. Clegg, *supra*. However, while the timing of a notice of appeal is critical, the requirements of Rule 203 regarding the form and content of the notice should not be considered so dire, particularly in these circumstances.

Rule 203(e)(1) provides that in appeals from lower courts, the notice of appeal shall contain the following information: “(C) The date of the order, judgment, or sentence from which the appeal is taken...” Rule 203(d)(1)(B) further provides that “(ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing.” The City’s notice lists the date of the final judgment as June 23, 2017, and a copy was sent to the Court with the notice for filing.

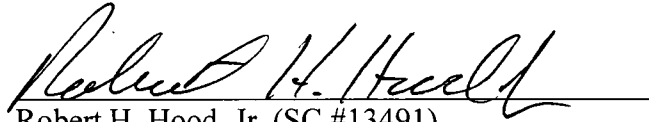
Again, the City maintains that the intermediate orders are reviewable on appeal from this final judgment under S.C. Code Ann. 14-3-330(1). To the extent that the City did not list the two intermediate orders in the notice and did not send copies to the Court, the City maintains that at worst this amounts to clerical errors that do not warrant dismissal of the appeal, particularly where the Plaintiff herself has also appealed and there is no prejudice demonstrated. Charleston Lumber Co. v. Miller Hous. Corp., 318 S.C. 471, 478, 458 S.E.2d 431, 435 (Ct. App. 1995); Moody v. Dickinson, 54 S.C. 526, 32 S.E. 563 (1899) (the court may properly allow an appellant to correct a mere clerical error in the title to his notice of intention to appeal where there is no prejudice to the appellee).

To the extent that the asserted deficiency is considered a clerical error in need of correction, the City moves the Court for permission to allow amendment of the notice of appeal in order to separately list the orders and to allow submission of the relevant orders. In hopeful anticipation of such permission, the City is submitting an amended notice of appeal along with the appropriate filing fees and copies of the two intermediate orders.

ACCORDINGLY, based on the foregoing, the City respectfully requests that the Court deny the motion to dismiss and allow the filing/service of an amended notice of appeal.

Respectfully submitted,

HOOD LAW FIRM, LLC



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**Attorneys for the Appellant/Respondent
City of North Charleston**

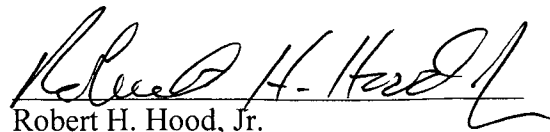
January 19, 2018

Certificate of Service

I, Robert H. Hood, Jr., attorney for the Appellant do hereby certify that on January 19, 2018, a copy of the City's Motion to Amend the Notice of Appeal along with the proffered Amended Notice of Appeal was served on Counsel for Respondent, via U.S. Mail, first class, postage prepaid to the following address:

Lawrence C. Kobrovsky, Esquire
Post Office Box 1726
Charleston, SC 29402-1726

John E. Parker, Esquire
Peters, Murdaugh, Parker, Eltzroth &
Detrick, P.A.
P.O. Box 457
Hampton, SC 29924



Robert H. Hood, Jr.

January 19, 2018

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

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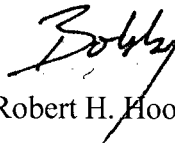
Re: Ann M. Blandin v. City of North Charleston
C/A No. 2015-CP-10-3392, Charleston CP
Appellate Case No. 2017-001628
HLF File No. 236.136

Dear Ms. Kitchings:

Enclosed please find for filing in the above matter are the original and seven copies of 1) Appellant/Respondent's Return to Motion to Dismiss; 2) Motion to Amend Notice of Appeal and 3) Amended Notice of Appeal with Orders. Please return a clocked-in copy of each in the attached envelope. We are also enclosing a check for the \$25.00 motion fee for the Motion to Amend. Please be advised that we do not oppose the Respondent/Appellant's Motion to Stay. By copy of this letter we are serving all counsel of record.

Kind regards,

Yours truly,



Robert H. Hood, Jr.

RHHjr/spc
Enclosure(s)

cc: J. Brady Hair, Esquire/Derk Van Raalte, Esquire
John E. Parker, Esquire/William F. Barnes, III, Esquire
Lawrence C. Kobrovsky, Esquire
William J. Horvath, Esquire

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PRIORITY MAIL

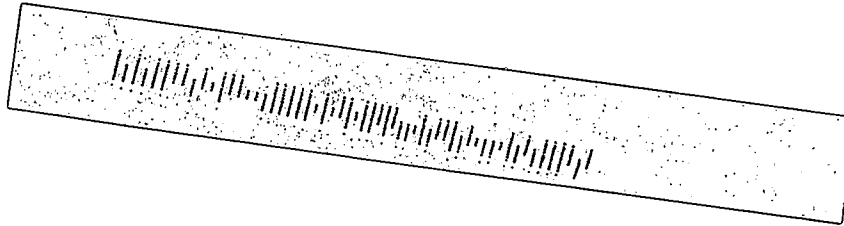
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