

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE MAITE MURPHY, CIRCUIT COURT JUDGE

Case No. 2014-CP-10-07597

APPELLATE CASE NO. 2018-000143

RECEIVED
FEB 16 2018
SC Court of Appeals

CPM Federal Credit Union,Appellant,

v.

George W. Lockwood and Sarah P. Thackston,Respondents.

RESPONDENT SARAH P. THACKSTON'S MEMORANDUM
ADDRESSING THE ISSUE OF APPEALABILITY

Respondent Sara P. Thackston, by and through her undersigned attorneys responding to the February 6, 2018 request of V. Claire Allen, Deputy Clerk of the South Carolina Court of Appeals to submit a memorandum addressing the issue of appealability of the Order of the Honorable Maite Murphy signed on December 18, 2017 and filed December 29, 2017

(hereinafter “the Order”) states that the Order is not appealable and should be dismissed for the following reasons:

I. BACKGROUND / PROCEDURAL HISTORY

The Appellant seeks to challenge a portion of the Order which grants as a penalty for discovery violations monetary sanctions payable to Respondent Sara P. Thackston and Respondent George W. Lockwood. The sanctions were contained in a multi-part order entitled “Order Denying Plaintiff’s Rule 59(e) Motion, Granting in Part and Denying in Part Defendants’ Motion for Summary Judgement and Granting Defendants’ Motion for Sanctions.” The order denied Appellant’s motion for reconsideration of the applicable statute of limitations, denied the Respondents’ Motions for Summary Judgement as to negligence and granted Respondents’ Motions for Summary Judgement as to breach of fiduciary duty claims. Lastly the order granted monetary sanctions to Respondent Sara P. Thackston and Respondent Lockwood. Appellant filed a notice of appeal on January 29, 2018 with this Court but did not file a motion to alter or amend a judgment pursuant to Rule 59(e).

II. THE ORDER IS NOT APPEALABLE, AND THE APPEAL SHOULD BE DISMISSED

There are two grounds upon which the lack of appealability rest. First, the portion of the Order being appealed deals with discovery violations and the sanctions awarded against the Appellant. Second, Appellant failed to file a motion to alter or amend a judgement pursuant to Rule 59(e), SCRCP and thereby denying the Court the opportunity to rule on the specific issue being appealed.

The Appellant’s appeal is improperly before the Court as discovery orders are interlocutory and do not represent a final order under S.C. Code Ann. § 14-3-330(2)(a). S.C. Code Ann. § 14-3-300(2)(a) allows appellate jurisdiction to review orders affecting a substantial right in an action

and when that order determines the action, prevents a judgement from which an appeal might be taken or discontinues an action. The South Carolina Supreme Court has repeatedly held that discovery orders are “interlocutory and not immediately appealable.” See *Hamm v. S.C.Pub. Serv. Comm’n*, 312 S.C. 238, 240, 439 S.E.2d 852, 853 (1994); *Grosshuesch v. Heller*, 377 S.C. 12, 25, 659 S.E.2d 112, 122 (2008). The Appellant has attempted to appeal that portion of the Order dealing with discovery prior to a resolution of the case. As the appealed portion of the Order is interlocutory this notice of appeal should be dismissed by the Court.

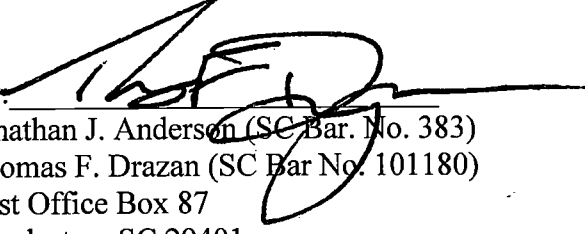
The Appellant has filed this notice of appeal without first filing a motion to alter or amend a judgement in accordance with South Carolina Rule of Civil Procedure 59(e). Case law has made it clear that an issue must be ruled upon by a trial judge or raised in a post-trial motion to be preserved for appeal. *Pelican Bldg. Ctrs. v. Dutton*, 427 S.E.2d 673, 675 (1993). The Appellants have attempted to appeal the sanctions while not having filed a S.C.R.C. P. 59(e) motion and denying the ability of the trial court to rule on their argument against the imposition of Sanctions. The Respondent would have had to file a motion to alter or amend the judgement no later than ten days after receipt of written notice of the entry of the Court’s December 29, 2017 order. Appellant received written notice of the order on January 2, 2018, therefore the time to file a S.C.R.C.P. 59(e) motion has passed and the issues on appeal have not been properly preserved.

III. CONCLUSION

For all the reasons stated above, the Order is not appealable as Appellant failed to preserve the issues presented in the notice for appeal, and have appealed the interlocutory portion of the Order dealing with discovery. The appeal should be dismissed.

Respectfully Submitted,

ANDERSON REYNOLDS & STEPHENS, LLC

By: 

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Attorneys for Respondent Sara P. Thackston

Charleston, South Carolina

Dated: February 15, 2018

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In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

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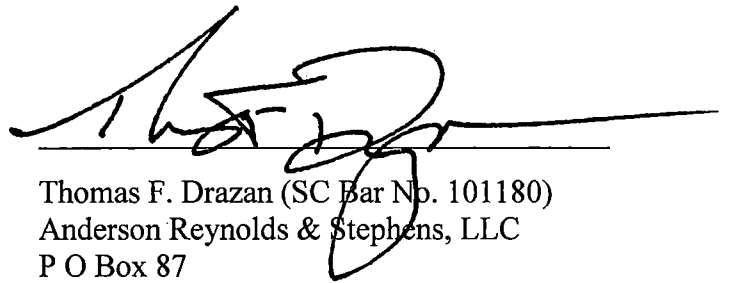
PROOF OF SERVICE OF

I certify that I have served Repondent Sarah P. Thackston's Memorandum Addressing the Issue of Appealability by depositing a copy in the U.S. mail, postage paid on February 15, 2018 and via electronic mail addressed to counsel of record as set forth below:

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February 15, 2018

Via Federal Express

RECEIVED

FEB 16 2018

SC Court of Appeals

The Honorable V. Claire Allen
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: CPM Federal Credit Union v. George W. Lockwood and Sara P. Thackston
Case #: 2014-CP-10-7597
Claim #: M0982787
ARS #: 20140.51

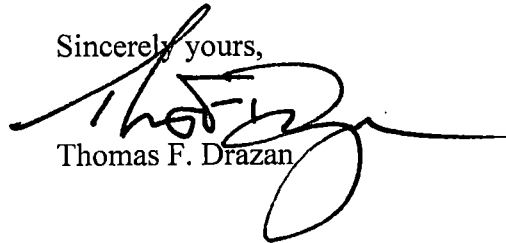
Appellate Case No. 2018-000143

Dear Ms. Allen:

Please find enclosed pursuant to your correspondence dated February 6, 2018, Respondent Sara P. Thackston's Memorandum Addressing the Issue of Appealability of Appellant's submission of its Notice of Appeal to the South Carolina Court of Appeals. Also enclosed is our Proof of Service upon all counsel in this matter.

With kindest regards, I am

Sincerely yours,



Thomas F. Drazan

TFD/jcd

Enclosures

cc: W. Duvall Spruill, Esquire / R. Hawthorne Barrett, Esquire
Richard S. Dukes, Esquire
Lindsay J. Joyner, Esquire / Amy Hill, Esquire
(via U. S. mail and electronic mail)

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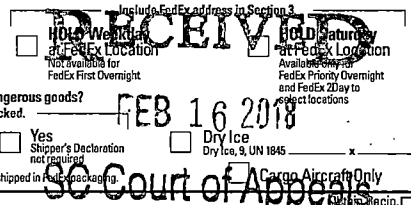
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