

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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MAR 28 2018

SC Court of Appeals

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Appeal from Chester County  
Court of Common Pleas  
Brian M. Gibbons, Circuit Court Judge

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2015-CP-12-0179

Appellate Case No. 2016-002016

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Robert H. Breakfield, as attorney in fact for John D. Hinson,  
John C. Hinson, Jerry Hinson, Kathy Huffstickle, Robert H. Hinson,  
Darrell W. Hinson, Lois Hinson, Tina Jones, George Stanford  
As Personal Representative of the Estate of Linda Stanford,  
William L. Hinson, Elaine H. Hensley, and  
William C. Hinson, Jr. .... Respondent,

v.

Mell Woods ..... Appellant.

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Respondent's Motion for Reconsideration or, More Accurately, for  
Consideration in the First Instance  
and to Stay Appeal Pending Ruling

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Respondent's Motion to Dismiss Appeal was filed on September 30, 2016. The motion alleged that Appellant's Rule 59 (e) motion was untimely and did not toll the time for an appeal to this court, thereby depriving this court of jurisdiction to entertain the appeal. The motion set

out two separate and independent bases for the untimeliness of the Rule 59 (e) motion and of this appeal: (1) the email notice issue decided by this court in Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC, 413 S.C. 642, 776 S.E.2d 575 Ct.App. 2015) and (2) separate and apart from the Fallon Properties issue, the untimely deposit of the Rule 59 (e) motion with the Postal Service thereby making both the motion and the subsequent appeal untimely and depriving the circuit court of jurisdiction over the motion and depriving this court of jurisdiction over the appeal. The issues and arguments were contained in Respondent's Return to the Motion for Reconsideration in circuit court, which was incorporated by reference in the Motion to Dismiss herein. (See page 5 of 9 of the Motion to Dismiss and Exhibit 4 attached thereto).

By Order dated December 9, 2016, the Motion to Dismiss was held in abeyance pending the Supreme Court's final disposition of the Fallon Properties appeal. Later realizing that the December 9, 2016 Order possibly signaled that the court may be acting on the belief that the only untimeliness issue was the Fallon Properties email notice question, the undersigned sent a letter to the court dated July 11, 2017 (attached as Exhibit A) that said in part:

Just to be clear, the Motion to Dismiss Appeal also alleges a separate and alternate untimeliness ground for dismissal. See Motion to Dismiss Appeal; Exhibit 4; p. 3 of 7. If the Supreme Court decides that email notice is not sufficient to trigger the time for a Rule 59 (e) motion, the alternate ground argued to the circuit court, and incorporated by reference into the Motion to Dismiss Appeal, will remain for the Court's consideration.


Promptly after learning of the Supreme Court's opinion in the Fallon Properties case, the undersigned mailed another letter to the court, dated March 16, 2018, (attached as Exhibit B) again reminding the court of the separate and alternate untimeliness ground for the Motion to Dismiss.

By Order dated March 22, 2018, this court denied the Motion to Dismiss Appeal on the sole stated ground regarding untimeliness that the Supreme Court's decision in Fallon Properties applied prospectively, and that a dismissal as a sanction was also denied. Sure enough, from the content of the Order, the court did not consider, mention or decide the separate and alternate untimeliness ground for the Motion to Dismiss; apparently an oversight.

Respondent moves the Court to give due consideration to the alternate untimeliness ground and to dismiss the appeal as untimely.

Respondent further moves that the normal process of the appeal be stayed pending a decision on this motion.

March 28, 2018

A handwritten signature in black ink, appearing to read "B. Michael Brackett", written over a horizontal line.

B. Michael Brackett, S.C. Bar No. 0838  
Moses & Brackett, PC  
133 Brookspring Rd.  
Columbia, SC 29223  
803.422.1158  
Attorney for Respondent

MOSES & BRACKETT, PC  
P.O. Box 100261  
Columbia, SC 29202  
803.422.1158

July 11, 2017

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

Re: Breakfield, as Attorney-in-Fact v. Woods  
Appellate Case No. 2016-002016

Dear Ms. Kitchings:

Respondent's Motion to Dismiss Appeal is pending, although presently stayed pursuant to the Court's Order dated December 9, 2016. That Order describes the motion to dismiss as contending that the "Appellant failed to timely serve the notice of appeal pursuant to Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC. . .".

Just to be clear, the Motion to Dismiss Appeal also alleges a separate and alternate untimeliness ground for dismissal. See Motion to Dismiss Appeal; Exhibit 4; p. 3 of 7. If the Supreme Court decides that email notice is not sufficient to trigger the time for a Rule 59(e) motion, the alternate ground argued to the circuit court, and incorporated by reference into the Motion to Dismiss Appeal, will remain for the Court's consideration.

Thank you.

Very truly yours,



B. Michael Brackett

cc. Mell Woods

Ex A

MOSES & BRACKETT, PC  
B. Michael Brackett, Esquire  
133 Brookspring Rd.  
Columbia, SC 29223  
803.422.1158

March 16, 2018

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

Re: Breakfield, as Attorney-in-Fact v. Woods  
Appellate Case No. 2016-002016

Dear Ms. Kitchings:

Respondent's Motion to Dismiss Appeal has been held in abeyance for almost 16 months awaiting a decision of the S.C. Supreme Court in the case of Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC. . .". The Supreme Court issued its opinion no. 27773 on February 28, 2018. Although the opinion confirmed that the ground at issue for my motion to dismiss is correct, the opinion applies prospectively only.

My Motion to Dismiss Appeal also alleges a separate and alternate untimeliness ground for dismissal. See Motion to Dismiss Appeal; Exhibit 4; p. 3 of 7. I respectfully request that the pending Motion to Dismiss Appeal be promptly considered. Thank you.

Very truly yours,

  
B. Michael Brackett

cc. Mell Woods  
Robert H. Breakfield, Esq.

Ex B

Moses & Brackett, PC  
B. Michael Brackett, Esquire  
133 Brookspring Rd.  
Columbia, SC 29223  
803.422.1158

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SC Court of Appeals

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Hand Delivery

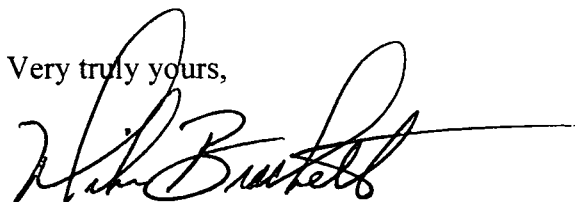
Honorable Jenny Abbot Kitchings  
Clerk of Court, South Carolina Court of Appeals  
1220 Senate St.  
Columbia, SC 29201

Re: Breakfield, as Attorney in Fact v. Woods  
Appellate Case No. 2016-002016

Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of Respondent's Motion for Reconsideration or, More Accurately, for Consideration in the First Instance and to Stay Appeal Pending Ruling. By copy of this letter, a copy of the enclosed Motion is being served on the Appellant, as confirmed by the enclosed Certificate of Service.

Very truly yours,



B. Michael Brackett

Enclosures

cc. Robert H. Breakfield, Esquire  
Mell Woods

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Appellate Case No. 2016-002016

Robert H. Breakfield, as attorney in fact for John D. Hinson,  
John C. Hinson, Jerry Hinson, Kathy Huffstickle, Robert H. Hinson,  
Darrell W. Hinson, Lois Hinson, Tina Jones, George Stanford  
As Personal Representative of the Estate of Linda Stanford,  
William L. Hinson, Elaine H. Hensley, and  
William C. Hinson, Jr. . . . . Respondent,


v.

Mell Woods . . . . . Appellant.

Certificate of Service

I, B. Michael Brackett, Attorney for Respondent, do hereby certify that I have served the Appellant by mail with a copy of the foregoing Motion for Reconsideration or, More Accurately, for Consideration in the First Instance and to Stay Appeal Pending Ruling, postage prepaid and return address clearly indicated on said envelope, on this 28<sup>th</sup> day of March, 2018, at the following address:

Mell Woods  
P.O. Box 2603  
Lancaster, SC 29721

  
B. Michael Brackett