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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

COURT OF COMMON PLEAS

Jackson S. Kimball, III, Master-in-Equity

Appellate Case No. 2018-000411

Suzette LeFebvre, Appellant

vs.

Blanco GmbH+CO.KG, Respondent.

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MAR 23 2018  
SC Court of Appeals

MOTION TO DISMISS APPEAL

BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein S.C. Bar No. 0677  
5418-B Rivers Avenue  
North Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)  
ATTORNEYS FOR RESPONDENT

March 20, 2018

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MAR 23 2018  
SC Court of Appeals

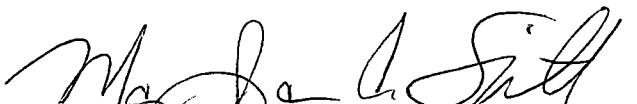
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON ) AFFIDAVIT

Personally appeared before me, Robert A. Bernstein, who being first duly sworn, deposes and says:

- 1) I am an attorney duly admitted to practice law before courts of the State of South Carolina; my South Carolina Bar number is 0677.
- 2) I am counsel for the Defendant/Respondent in the case of "Suzette LeFebvre, Appellant v. Blanco GmbH+CO.KG, Respondent," pending before the South Carolina Court of Appeals, bearing Appellate Case No. 2018-000411.
- 3) Attached hereto as Exhibit "A" to this Affidavit is the Notice of Appeal filed by the Respondent with the York County Court of Common Pleas.
- 4) Attached hereto as Exhibit "B" to this Affidavit is the Proof of Service of Notice of Appeal filed by the Respondent with the York County Court of Common Pleas.
- 5) The Notice of Appeal was served by the Appellant in this action on March 5, 2018.
- 6) The Notice of Appeal and Proof of Service of Notice of Appeal in this action were filed with the York County Court of Common Pleas on March 19, 2018.

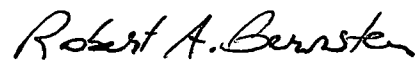
FURTHER DEPONENT SAYETH NOT!

SWORN and subscribed before me  
this 20<sup>th</sup> day of March, 2018.

  
\_\_\_\_\_  
Mary Jane A. Smith

Notary Public for the State of South Carolina;  
My Commission Expires: 08-26-18  
I hereby certify that I am neither a signer of,  
party to, nor beneficiary of the record that is  
hereby notarized

} BERNSTEIN & BERNSTEIN, P.A.  
}  
}  
}

  
\_\_\_\_\_

} Robert A. Bernstein  
} 5418-B Rivers Avenue  
} North Charleston, SC 29406-6129  
} (843) 529-1111; (843) 529-0035 (fax)  
} rbernstein@bernsteinpa.com  
} ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Hon. S. Jackson Kimball, III  
Special Circuit Court Judge  
York County Master in Equity

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Case no. 2017-CP-46-01149

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Suzette LeFebvre.....Appellant

vs.

Blanco GmbH+CO.KG.....Respondent

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NOTICE OF APPEAL

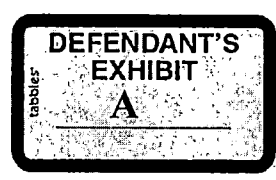
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Suzette LeFebvre here gives notice of appeal of the February 6, 2018 Order of Special Circuit Court Judge S. Jackson Kimball, III, entered of record February 6, 2018, pursuant to SCACR 203.

Counsel for Appellant here certifies that the Order was received via e-mail delivery on February 6, 2018. Appellant received written notice of the entry of this Order on February 6, 2018.

Halford Niemiec & Freeman, L.L.P.

*P. John Freeman / Matthew R. Worn*  
P. John Freeman  
238 Rockmont Drive  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax  
[jfreeman@fortmilllaw.com](mailto:jfreeman@fortmilllaw.com)



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Hon. S. Jackson Kimball, III  
Special Circuit Court Judge  
York County Master in Equity

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Case no. 2017-CP-46-01149

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Suzette LeFebvre.....Appellant

vs.

Blanco GmbH+CO.KG.....Respondent

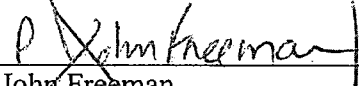
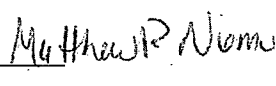
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PROOF OF SERVICE

I hereby certify that I am the attorney for the Appellant in the above case and that I did on March 5, 2018 serve a copy of the foregoing NOTICE OF APPEAL on counsel for the Defendant by depositing a copy of the same in the United States mail, postage prepaid, and addressed as follows:

Robert A. Bernstein, Esquire  
Bernstein & Bernstein, P.A.  
5418-B Rivers Avenue  
Charleston, SC 29413-0519  
Attorney for Respondent

Halford Niemiec & Freeman, L.L.P.

   
P. John Freeman  
238 Rockmont Drive,  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax



THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM YORK COUNTY

COURT OF COMMON PLEAS

Jackson S. Kimball, III, Master-in-Equity

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Appellate Case No. 2018-000411

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Suzette LeFebvre, Appellant

vs.

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SC Court of Appeals

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

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RAB #1

The undersigned Attorneys for the Respondent submit the present Memorandum in Support of Respondent's Motion to Dismiss this Appeal for failing to comply with Rule 203, SCRAP. The Appellant has failed to file its Notice of Appeal with the York County Court of Common Pleas within the time limits established by Rules 203(1)(d)(A) and 203(1)(d)(B), SCRAP. The Notice of Appeal and Proof of Service of Notice of Appeal were served by the Appellant on March 5, 2018, as indicated in the said Notice and Proof of Service. The Appellant, however, failed to file the Notice of Appeal with the York County Court of Common Pleas until March 19, 2018, fourteen (14) days after serving the Notice of Appeal.

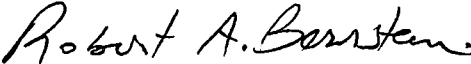
Rule 203(a) requires that "A party intending to appeal must serve *and file* a notice of appeal

and otherwise comply with these rules.” Rule 203(d)(1)(A), SCRAP, requires that the notice of appeal shall be filed with the clerk of the lower court and the clerk of the Court of Appeals. Rule 203(d)(1)(B), SCRAP, requires that “The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.” *(Emphasis added)*.

The failure to timely file and serve a notice of appeal is a jurisdictional defect which deprives the appellate court of jurisdiction. “The failure to comply with the procedural requirements for an appeal divests a court of appellate jurisdiction . . . .” *State v. Brown*, 358 S.C. 382, 387, 596 S.E. 2d 39, 41 (2004); *State v. Devore*, 416 S.C. 115, 119, 784 S.E. 2d 690, 692 (Ct.App. 2016). “If the notice of appeal *is not timely filed* . . . , the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.” Rule 203(d)(B)(3), SCRAP. *(emphasis added)*

“Whenever it appears that an appellant or petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.” Rule 260(a), SCRAP. Because the Appellant failed to file the notice of appeal with the lower court within ten days of serving the notice of appeal, the Clerk of this Court should issue an Order dismissing the present appeal.

BERNSTEIN & BERNSTEIN, P.A.



Robert A. Bernstein S.C. Bar No. 0677  
5418-B Rivers Avenue  
North Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)  
ATTORNEYS FOR RESPONDENT

March 20, 2018

RAS  
#2

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM YORK COUNTY

COURT OF COMMON PLEAS

Jackson S. Kimball, III, Master-in-Equity

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Appellate Case No. 2018-000411

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Suzette LeFebvre, Appellant

vs.

Blanco GmbH+CO.KG, Respondent.

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CERTIFICATE OF SERVICE

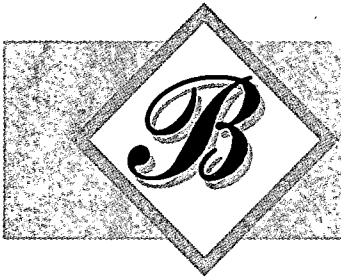
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The undersigned hereby certifies that I am the attorney for the Respondent in the above case and that on March 20, 2018, I did serve a copy of the Respondent's Motion to Dismiss Appeal, Affidavit of Robert A. Bernstein, and Memorandum in Support of Motion to Dismiss Appeal upon counsel for the Appellant by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows:

P. John Freeman, Esquire  
HALFORD, NIEMIEC & FREEMAN, LLP  
238 Rockmont Dr.  
Fort Mill, SC 29708  
Attorneys for Appellant

  
Robert A. Bernstein S.C. Bar No. 677  
BERNSTEIN & BERNSTEIN, P.A.  
5418-B Rivers Avenue  
North Charleston, SC 29406-6129  
(843) 529-1111  
Attorneys for Respondent



**BERNSTEIN & BERNSTEIN, P.A.**  
**ATTORNEYS AT LAW**

P.O. Box 20519 • CHARLESTON, SC 29413-0519  
5418-B RIVERS AVENUE • NORTH CHARLESTON, SC 29406-6129  
PHONE (843) 529-1111 • FAX (843) 529-0035

ROBERT A. BERNSTEIN, ESQUIRE  
rbernstein@bernsteinpa.com

March 20, 2018

CHARLES S. BERNSTEIN, ESQUIRE  
(Retired)

The Honorable Jenny Abbott Kitchings  
Clerk of SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RECEIVED**  
MAR 23 2018  
SC Court of Appeals

Re: Suzette Lefebvre, Appellant  
vs. Blanco GmbH+CO.KG, Respondent  
Appellate Case No. 2018-000411

Dear Ms. Kitchings:

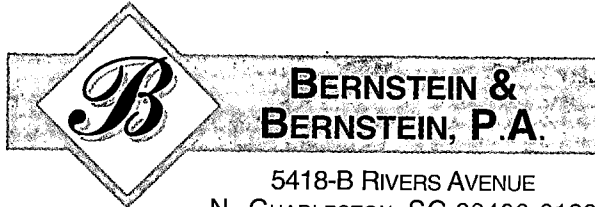
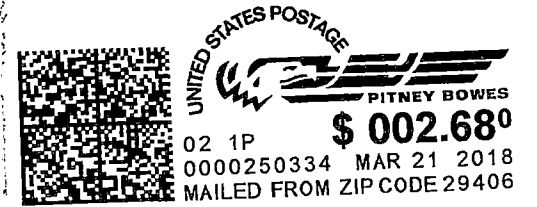
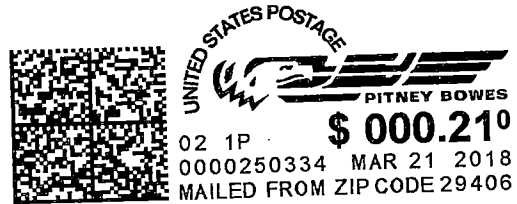
Enclosed herein for filing please find the original and six copies of the Brief of the Respondent and the Respondent's Motion to Dismiss Appeal, Affidavit of Robert A. Bernstein, and Memorandum in Support of Motion to Dismiss Appeal, with the Certificate of Service hereof. By copy of this correspondence to P. John Freeman, Attorney for the Appellant, we are serving the Appellant with a copy of these documents. Thanking you for your consideration, we are

Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

cc: P. John Freeman, Esquire ✓  
Jerome F. Gallagher, Esquire ✓



5418-B RIVERS AVENUE  
N. CHARLESTON, SC 29406-6129

ADDRESS CORRECTION REQUESTED

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The Honorable Jenny Abbott Kitchings  
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