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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APR 02 2018  
SC Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel D. Hall, Circuit Judge  
S. Jackson Kimball, III, Special Circuit Court Judge

Case No. 2017-000261

Preferred Restoration & Construction, Inc. . . . . Appellant,

v.

Lori Bechtler, . . . . . Respondent.

RESPONDENT’S MOTION FOR  
REHEARING OF MOTION TO DISMISS

Respondent respectfully requests that this court reconsider its order of March 22, 2018, which denied Respondent’s motion to dismiss this appeal for lack of subject matter jurisdiction. While Respondent recognizes that the South Carolina Supreme Court’s opinion in *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, Op. No. 27773 (S.C. Sup. Ct., Feb. 28, 2018)(Shearouse Adv. Sh. No. 9 at 100) applies prospectively, this court failed to consider that the York County Clerk of Court also served Appellant with written notice of the trial court’s order via United States Mail on November 17, 2016. *See* Exhibit C to Respondent’s Motion, Clerk’s Certificate of Mailing. “Evidence of mailing establishes a rebuttable presumption of receipt.”<sup>1</sup> *Bakala v. Bakala*, 352 S.C. 612, 625, 576 S.E.2d 156, 165 (2003)(citing *Weir v.*

<sup>1</sup> In response to Respondent’s motion to dismiss, Appellant’s Counsel averred only that “No copy of an Order denying [Appellant’s] Rule 59 Motion was found” when Counsel reviewed his file on or about January 9, 2017. Respondent submits that this statement is insufficient to rebut the presumption that Appellant received the Clerk’s mailing within days of the date shown on the Clerk’s certificate of mailing.

*Citicorp Nat'l Servs., Inc.*, 312 S.C. 511, 435 S.E.2d 864 (1993)). Even allowing five (5) days for delivery by United States Mail, Appellant's Counsel would have received written notice of the trial court's order via United States Mail on or about November 22, 2016, approximately eighty (80) days before Appellant filed its notice of appeal. Because the appeal was not commenced within the time limitations of Rule 203 S.C.A.C.R., this court does not have subject matter jurisdiction.

Respondent submits that the Supreme Court's opinion in *Wells Fargo v. Fallon* is not dispositive on issues related to service of an order by United States Mail. Respondent respectfully requests that this court reconsider its order, to address the effect of the Clerk of Court's service on Appellant's Counsel via United States Mail on November 17, 2016.

Because the action of this court on this motion would have the effect of dismissing or finally deciding this appeal, Respondent submits that this is an appropriate request for rehearing of this motion. *See* Rule 221(c) S.C.A.C.R.

Respectfully Submitted,

March 29, 2018



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ATTORNEYS FOR RESPONDENT

Other Counsel of Record:  
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ATTORNEY FOR APPELLANT

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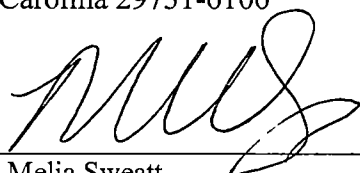
Preferred Restoration & Construction, Inc. . . . . Appellant,  
v.  
Lori Bechtler, . . . . . Respondent.

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens, LLC certifies that the Respondent's Motion for Rehearing on Motion to Dismiss was served upon other counsel of record by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

John Martin Foster  
P.O. Box 106  
Rock Hill, South Carolina 29731-6106

March 29, 2018

  
\_\_\_\_\_  
L. Melia Sweatt  
Paralegal



HAMILTON  
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March 29, 2018

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

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SC Court of Appeals

RE: *Preferred Restoration & Construction, Inc. and vs. Lori Bechtler*  
Appellate Case No.: 2017-000261

Dear Ms. Kitchings:

I have enclosed the original and seven copies of Respondent's Motion for Rehearing of Motion to Dismiss in connection with the above case. Please return one clocked-in copy of the Motion in the envelope provided. I have also enclosed a check in the amount of \$25.00 to cover the filing fee.

By copy of this letter to counsel for the Appellant, I have enclosed a copy of the Motion.

Thank you for your cooperation in this matter.

Sincerely,

L. Melia Sweatt  
Paralegal

/lms

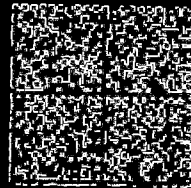
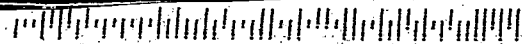
Enclosures

cc: John Martin Foster  
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Hamilton Martens, LLC\*

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\*Herbert W. Hamilton, Retired



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