

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
MAY 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 RETURN TO APPELLANT'S MOTION TO
STAY APPEAL AND FOR REMAND TO CIRCUIT COURT FOR THE LIMITED PURPOSE
OF CONSIDERING MOTIONS TO COMPEL SETTLEMENT AND TO VACATE ORDER
AWARDING SANCTIONS

Appellant, CPM Federal Credit Union filed their Motion to stay appeal and for remand to Circuit Court for the limited purpose of considering motions to compel settlement and to vacate order awarding sanctions on May 1, 2018 with this Court. Respondent Thackston became aware of the Appellant's motion to stay the appeal and for remand to Circuit Court on May 4, 2018 but was not served with a copy of this filing until May 7, 2018.

Appellant appealed the Circuit Court's Order filed on December 29, 2017 titled, Order Denying Plaintiff's Rule 59(e) Motion, Granting in part and Denying in Part Defendants' Motion

for Summary Judgment and Granting Defendants' Motion for Sanctions. Appellant's Notice of Appeal was filed on February 1, 2018. This Court requested memorandum on the Appealability of the order in a letter dated February 6, 2018. Respondent filed their memorandum addressing the lack of Appealability of the order on February 15, 2018. Appellant has now filed their motion seeking stay and remand of an appeal in which they seek to invalidate a portion of the order currently on Appeal.

Appellant's motion to stay and remand as well as their motion to vacate the order of sanctions is opposed by this Respondent.

Respondent Thackston previously produced a memorandum on the appealability of the order in accordance with this Court's request. That memorandum describe that the order being appealed is not properly before the Court because it is a discovery order and therefore interlocutory. *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). Additionally, the appeal is improper as the Appellant never filed a Motion for Reconsideration with the Circuit Court in accordance with South Carolina Rule of Civil Procedure 59(e). The failure to file such a motion waives their opportunity to Appeal. *See Pelican Bldg. Ctrs. v. Dutton*, 427 S.E.2d 673, 675 (1993). While the order on its face is not appealable, Appellant now seeks to have the Circuit Court reconsider its grant of Sanctions which it should have done before filing a notice of Appeal in January.

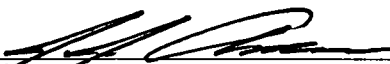
Respondent Thackston also opposes Appellant's motion to stay and remand to the Circuit Court due to jurisdictional issues. Appellant's notice of appeal dated and filed on January 29, 2018 states that they are appealing the Circuit Court's order granting sanctions. Appellant now seeks to return jurisdiction to the Circuit Court to vacate their order of Sanctions while

maintaining their Appeal of the same order. Appellant seeks to have their cake and eat it too by vesting jurisdiction to overturn the order with the Court of Appeals while leaving the Circuit Court jurisdiction to vacate the order on separate grounds. Simply put, one Court has proper jurisdiction over the order. As Respondent Thackston does not believe the order was appealable in the first place, jurisdiction should rest with the Circuit Court after a dismissal of the Appeal by the Court of Appeals.

Respondent Thackston respectfully requests the Court of Appeals dismiss the appeal as Appellant failed to preserve the issues presented in the notice for appeal, and have appealed an interlocutory portion of the Order, and thereby fully remand the case to the Circuit Court.

Respectfully Submitted,

ANDERSON REYNOLDS & STEPHENS, LLC

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Attorneys for Respondent Sara P. Thackston

Charleston, South Carolina

Dated: May 15, 2018

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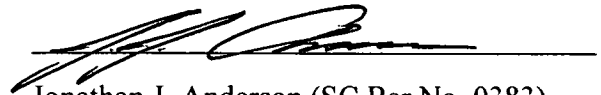
PROOF OF SERVICE

I certify that I have served Respondent Sarah P. Thackston's RETURN TO APPELLANT'S MOTION TO STAY ITS APPEAL AND REMAND FOR LIMITED PURPOSE by depositing a copy in the U.S. mail, postage paid on May 15, 2018 and via electronic mail addressed to counsel of record as set forth below:

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May 15, 2018

Via Federal Express

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

RECEIVED
MAY 16 2018
SC Court of Appeals

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 the original and seven (7) copies of Respondent Sara P. Thackston's Return to Appellant's Motion to Stay Appeal and Remand to Circuit Court for Limited Purpose of Considering Motions to Compel Settlement and Vacate Order Awarding Sanctions. Also enclosed is our original Proof of Service and one (1) copy.

We ask that you return one clocked copy of Respondents' Return and Proof of Service for our file. A self-addressed, prepaid envelope is provided for your use.

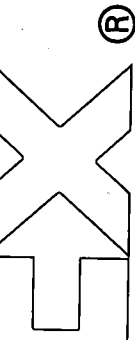
With kindest regards, I am

Sincerely yours,


Jonathan J. Anderson

JJA/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)



Express

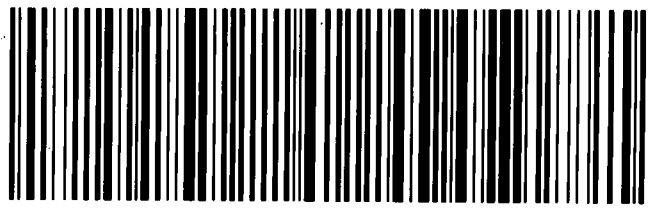
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Does this shipment contain dangerous goods? One box must be checked.

No Yes As per attached Shipper's Declaration Yes Shipper's Declaration not required

Dry Ice Dry Ice, 9, UN 1845 Cargo Aircraft Only

7 Payment Bill to:

Sender Acct. No. in Section 1 will be billed.

Recipient Third Party Credit Card Cash/Check

Total Packages _____ Total Weight _____ Total Charges _____

Credit Card Auth. _____

8 Release Signature

Sign to authorize delivery without obtaining signature.



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MAY 16 2018

Court of Appeals

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By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

Questions? Visit our Web site at fedex.com

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