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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
The Honorable Charles B. Simmons, Jr., Master-in-Equity

**RECEIVED**

SEP 28 2018

Civil Action No. 2015-CP-23-05935  
Appellate Case No. 2018-001687

SC Court of Appeals

Jeanne A. Burton, Trustee..... Appellant,

v.

Triad Grading, LLC,..... Respondent.

**RESPONDENT'S MOTION FOR SANCTIONS FOR FRIVOLOUS APPEAL**

Triad Grading, LLC, the Respondent, moves the Court of Appeals to impose sanctions on the Appellant pursuant to Rule 269 of the South Carolina Appellate Court Rules because the Appellant knowingly filed a frivolous Notice of Appeal at a time when there was no final judgment, appealable order, or decision to appeal. A party has a right to appeal only when there is a final judgment, appealable order, or decision. See S.C. Code Ann. §4-3-330; Rule 201(a), SCACR.

This appeal concerns an order that has yet to have been issued by the Honorable Charles B. Simmons, Jr., the Greenville County Master-in-Equity. Judge Simmons held a hearing on September 12, 2018 to address issues in a supplemental proceeding between the Appellant and the Respondent. At the conclusion of the

hearing, Judge Simmons verbally indicated that he planned to release certain attached/frozen funds in a bank account that belonged to the Respondent. However, the judge opted not to issue a final order from the bench, but instead, asked the Respondent's attorney to prepare a proposed order for the judge's review. The Respondent's attorney complied with this request. To date, Judge Simmons has not finalized, signed, and filed the written order.

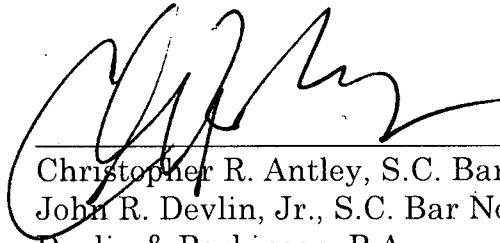
Despite the lack of a final order, the Appellant filed a Notice of Appeal. Appellant's attorney has been notified on at least two occasions that his Notice of Appeal was improper because Judge Simmons had not issued a final order. Judge Simmons, himself, conveyed this message to the Appellant's attorney, but the Appellant continues to push this appeal. **(See Exhibit "A" attached)** In addition, before filing a Motion to Dismiss the Appeal, the Respondent's attorney requested in an e-mail that the Appellant dismiss its Notice of Appeal without requiring the Respondent's attorney to spend time and the Respondent's money filing a motion. **(See Exhibit "B" attached)** In that e-mail, the Respondent's attorney also notified the Appellant that if he would not voluntarily dismiss the Notice of Appeal, the Respondent's attorney would be forced to file a Motion to Dismiss and would seek recovery of the attorney's fees and costs associated with dealing with the improperly filed Notice of Appeal. **(See Exhibit "B" attached)**

Despite having been told directly by Judge Simmons that the Court had not filed or issued a final order on the matter and despite having been afforded an opportunity to dismiss the appeal without requiring the Respondent to file a motion,

the Appellant has continued to pursue this appeal. The Respondent, then, filed a Motion to Dismiss the appeal.

Under these circumstances, the Respondent asks that in addition to dismissing the appeal, the Court impose sanctions upon the Appellant requiring her to pay the costs of filing this motion and the attorney's fees incurred in preparing the motion. The Respondent's costs in pursuing the Motion to Dismiss amount to \$34.00. The attorney's fees in preparing and pursuing the Motion to Dismiss are \$1,935.50. (See Exhibit "C" - Affidavit of Christopher R. Antley)

Respectfully submitted,



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Christopher R. Antley, S.C. Bar No. 13631  
John R. Devlin, Jr., S.C. Bar No. 1667  
Devlin & Parkinson, P.A.  
P.O. Box 10387  
Greenville, South Carolina  
Phone: (864) 242-4050/ Fax: (864) 242-4277  
[crantley@devlinparkinson.com](mailto:crantley@devlinparkinson.com)

Attorneys for the Respondent

Date: September 26, 2018  
Greenville, South Carolina

From: Simmons, Judge Charles <CSimmons@greenvillecounty.org>

Sent: Thursday, September 13, 2018 6:00 PM

To: Townes Johnson <tjohnson@sc.legal>

Cc: Laura Kirwan <Laura.Kirwan@devlinparkinson.com>; Fudge, Wanda <WFudge@greenvillecounty.org>; John Devlin <John.devlin@devlinparkinson.com>

Subject: RE: Jeanee Burton v Triad Grading CA No.: 2015-CP-23-05935

Mr. Johnson,

You are a fine advocate, as is Mr. Devlin, so I certainly understand the need to appeal. The issue presented appears to novel and one that could benefit from appellate guidance and clarification.

From a very practical/procedural standpoint, I would ask that you and Mr. Devlin take a look at Rule 58(a) SCRCP and the cases of *First Union Nat'l Bank v. Hitman, Inc.* 411 SE2d 681 (SC App. 1991) and *Case v. Case* 134 SE2d 394 (SC 1964).

At this point, I'm not sure what the appellate courts can review since a written order has not been filed.

I have great confidence that the two of you will decide the best way to proceed at this point.

Charles B. Simmons, Jr., Judge

Greenville County Courthouse

305 East North Street, Suite 313

Greenville, SC 29601

Phone: (864) 467-8556

Fax: (864) 467-8401

EXHIBIT "A"

**John Devlin**

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**From:** John Devlin  
**Sent:** Thursday, September 13, 2018 7:39 PM  
**To:** Townes Johnson  
**Cc:** Chris Antley  
**Subject:** Re: Jeanee Burton v Triad Grading CA No.: 2015-CP-23-05935

Townes:

I am in Boston on vacation. I very much wish I weren't dealing with this.

Your notice of appeal is premature and improper. As rule 58 and the Hitman case cited by the judge makes clear, orders aren't final until written and entered.

Please review that case and withdraw your NOA. If I have to file a motion to dismiss, I will seek fees and costs under the appellate equivalent of SCRCR Rule 11.

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**AFFIDAVIT OF CHRISTOPHER R. ANTLEY**

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The undersigned, Christopher R. Antley, attorney for Respondent, Triad Grading, LLC, being first duly sworn, states upon his personal knowledge and belief the following:

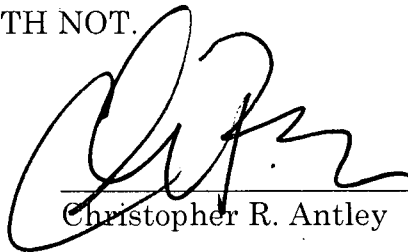
1. The matters stated in this Affidavit are based on my personal knowledge.
2. I am a partner in the law firm of Devlin & Parkinson, P.A. I was licensed to practice law in November of 1997 and have practiced continuously since then. In that capacity, I have performed work on behalf of the Respondent, Triad Grading, LLC. Specifically, I researched the law and prepared the Motion to Dismiss the Appellant's Notice of Appeal dated September 12, 2018.

3. Pursuant to the agreement with the Respondent, my hourly rate for the work that I have performed is \$245.00.

4. The number of hours that I dedicated to the work for this Motion to Dismiss in dealing with this appeal is 7.90. The attorney's fees incurred due to the filing of this Notice of Appeal are \$1,935.50.

5. In addition, Devlin & Parkinson, P.A. has advanced costs in the amount of \$34.00 to prepare and file the Motion to Dismiss.

FURTHER AFFIANT SAYETH NOT.



Christopher R. Antley

SWORN TO AND SUBSCRIBED before me  
on this the 26<sup>th</sup> day of September, 2018.

Laura Lerman  
Notary Public for South Carolina  
My Commission Expires: 3-25-25

EXHIBIT "C"

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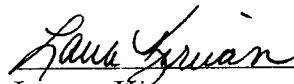
Triad Grading, LLC, ..... Respondent.

CERTIFICATE OF SERVICE

I certify that on September 26, 2018, I have served the following with a copy of the **Respondent's Motion for Sanctions for Frivolous Appeal** by depositing same in the United States Mail, postage prepaid and properly addressed as follows:

Townes B. Johnson, III, Esq.  
Townes B. Johnson, III, LLC  
P. O. Box 9246  
Greenville, SC 29604

*Attorney for Appellant*



\_\_\_\_\_  
Laura Kirwan  
Legal Assistant to Christopher R. Antley  
Devlin & Parkinson, P.A.  
P. O. Box 10387  
Greenville, SC 29603

**DEVLIN & PARKINSON, P.A.**

ATTORNEYS AT LAW

JOHN R. DEVLIN, JR.  
E. BROWN PARKINSON, JR.  
CHRISTOPHER R. ANTLEY  
LORI E. JOLLY\*

POST OFFICE BOX 10387  
GREENVILLE, SOUTH CAROLINA 29603-0387  
www.devlinparkinson.com

PHONE (864) 242-4050  
FAX (864) 242-4277

STREET ADDRESS:  
27 CLEVELAND STREET  
SUITE 201  
GREENVILLE, SC 29601

\*ALSO ADMITTED IN GEORGIA

September 26, 2018

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Jeanne A. Burton, Trustee vs. Triad Grading, LLC  
Appellate Case No. 2018-001687

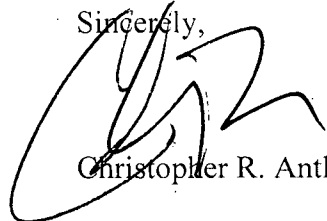
Dear Ms. Kitchings:

Please find enclosed the original and six copies of the Respondent's Motion for Sanctions for Frivolous Appeal that we would appreciate you filing with the Court in connection with the above matter, along with our filing fee in the amount of \$25.00.

I would also appreciate it if you would return a clocked-in copy of the same to our office in the enclosed envelope.

Should you have any questions, please give me a call.

Sincerely,



Christopher R. Antley

CRA\llk

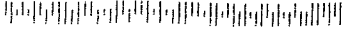
Enclosures

cc: Townes B. Johnson, III, Esq. (w/enclosures)

**RECEIVED**

SEP 28 2018

SC Court of Appeals



PRIORITY MAIL



02 1P  
0001160694  
MAILED FROM ZIP CODE 29601

FRANK BOWES  
US POSTAGE  
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SEP 26 2018

DEVLIN & PARKINSON, P.A.  
ATTORNEYS AT LAW  
POST OFFICE BOX 10387  
GREENVILLE, SOUTH CAROLINA 29603-0387

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TO:

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29222

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