

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge
Trial Court Case No. 2017-CP-10-04129

Appellate Case No. 2018-000932

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SC Court of Appeals

In re: The Kenneth J. Boniface Irrevocable Insurance Trust Agreement U/A Dated December 30, 1994 and

The Kenneth J. Boniface Family Trust, a testamentary trust under will dated April 23, 2002, as amended by first codicil dated June 28, 2001 and by second codicil dated January 29, 2004.

Mary E. Boniface and Barbara M. Boniface, Appellants

v.

John L. Boniface, Marian C. Boniface, Ann M. Boniface, Joan Boniface Jindl, and Kenneth J. Boniface, Jr. (deceased), and South State Bank as Trustee, Respondents.

RETURN TO APPELLANTS' MOTION TO REINSTATE APPEAL

Respondents, John L. Boniface, Marian C. Boniface, Ann M. Boniface, Joan Boniface Jindl, and Kenneth J. Boniface, Jr. (deceased) (collectively "Respondents"), oppose Appellants' motion to reinstate the appeal. The motion should be denied as this Court is without subject matter jurisdiction to hear the motion as the remittitur was properly issued.

Appellants were required to file their initial brief on September 6, 2018. Appellants failed to do so, which resulted in an Order of dismissal being entered September 28, 2018. Appellants

failure to timely file the initial brief, required dismissal. See, SC App. R 208(a)(4). The remittitur was issued October 17, 2018. The Court did not receive the instant motion until October 29, 2018, some twelve (12) days after the remittitur was issued, and 36 days after the initial brief was due.

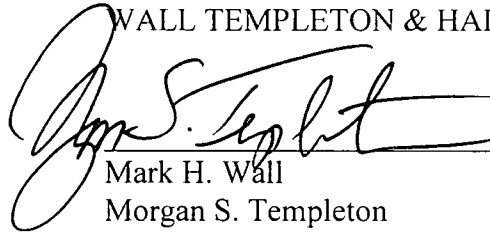
South Carolina Appellate Court Rule 260(a) allows for an appeal to be reinstated when it is involuntarily dismissed only “by leave of court, upon good cause shown, after notice to all parties.” Any motion seeking to reinstate the appeal, must be “actually received by the court within fifteen (15) days of the filing of the order of dismissal (the day of the filing being excluded).” SC App. R. 260(a). Here, the motion was not received by the Court until 31 days after dismissal, and 12 days after the remittitur was issued.

It has been the law of this state for more than a century that when a remittitur is issued, the appellate court loses jurisdiction to hear a motion to reinstate an appeal. Thomas v. Lynch, 68 S.E. 817 (S.C. 1910). “The sending of the remittitur ended appellate jurisdiction . . . and no further motions will be entertained after the remittitur is sent.” Stogsdill v. South Carolina Dept. of Health and Human Serv., 784 S.E.2d 669 (S.C. 2016). The Court does not have authority to grant relief sought, nor is it justified for at least three reasons.

First, the remittitur was issued on October 17, 2018. Once the remittitur was issued, this Court lost jurisdiction over the matter and the Court has no authority to reinstate the appeal as requested. Id. Second, the only exception to this rule is that of “mistake, error or inadvertence of the Court of Appeals.” Wise v. South Carolina Dept. of Corrections, 642 S.E.2d 551 (S.C. 2007). There is no allegation, suggestion, or argument that the Court of Appeals committed an error. Third, even if the Court did have jurisdiction, and was operating under the “good cause shown standard,” the standard is not met because of the time line. The dismissal was entered September 28, 2018,

which gave Appellant 15 days for the Court to receive a motion to reinstate the appeal. Even assuming the Court suspended the time calculation for October 11, 2018, (due to Hurricane Matthew), the filing of the instant motion is still well after the mandatory 15 day requirement for the Court to receive a motion to reinstate. Simply put, the Court properly dismissed the appeal and the remittitur was properly entered. Respondents respectfully request that the Court deny the motion.

WALL TEMPLETON & HALDRUP, P.A.



Mark H. Wall

Morgan S. Templeton

Post Office Box 1200

Charleston, SC 29402

Telephone: 843.329.9500

Facsimile: 843.329.9501

Attorneys for Respondents, John L. Boniface,
Marian C. Boniface, Ann M. Boniface, Joan
Boniface Jindl, and Kenneth J. Boniface, Jr.
(deceased)

October 30, 2018

Other Counsel of Record:

C. Pierce Campbell

Emily A. Jordan

TURNER PADGET GRAHAM & LANEY, PA

Post Office Box 5478

Florence, South Carolina 29502

(843) 656-4429

pcampbell@turnerpadget.com

Attorney for Respondent South State Bank

Timothy J. Vitollo

VITOLLO LAW FIRM, LLC

Post Office Box 42282

North Charleston, South Carolina 29423

(843) 371-7264

tim@vitollolawfirm.com

Attorney for Appellants

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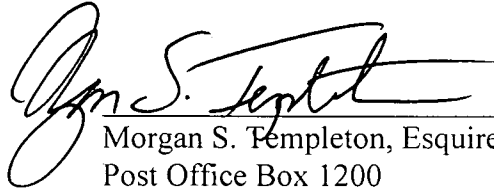
PROOF OF SERVICE

I, Morgan S. Templeton, of Wall Templeton & Haldrup, do hereby certify that I have served the Return to Appellants' Motion to Reinstate Appeal on counsel, by depositing the same in the United States Mail, properly posted on October 30, 2018 addressed as follows to counsel of record:

Timothy J. Vitollo, Esq.
VITOLLO LAW FIRM, LLC
Post Office Box 42282
North Charleston, South Carolina 29423
Attorney for Appellants

C. Pierce Campbell, Esq.
Emily A. Jordan, Esq.
TURNER PADGET, PA
Post Office Box 5478
Florence, South Carolina 29502
Attorneys for Respondent South State Bank

WALL TEMPLETON & HALDRUP, P.A.

A handwritten signature in black ink, appearing to read "Morgan S. Templeton", written over a horizontal line.

Morgan S. Templeton, Esquire
Post Office Box 1200
Charleston, South Carolina 29402
843-329-9500
Morgan.Templeton@walltempleton.com
Attorneys for the Respondents



Wall Templeton
ATTORNEYS

Morgan S. Templeton
Morgan.Templeton@WallTempleton.com
Telephone: 843.329.9500 Ext. 209
Facsimile: 843.329.9501

October 30, 2018

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

Re: *Mary E. Boniface, et al v. Boniface, et al.*
Appellate Case No.: 2018-000932

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Dear Madam Clerk:

Please find enclosed the following:

- 1. An original and one copy of a Notice of Appearance and Proof of Service; and**
- 2. An original and six copies of a Return to Appellants' Motion to Reinstate Appeal.**

Please file the originals and return file stamped copies to me in the envelope provided for your convenience. By copy of this letter with its enclosures, I am serving counsel of record.

If you have any questions or comments, please contact me.

Respectfully,

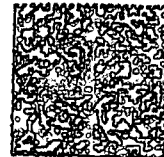
WALL TEMPLETON & HALDRUP, P.A.

Morgan S. Templeton

MST:are

Enclosures

cc Timothy J. Vitollo, Esq. (w/ encl.)
C. Pierce Campbell, Esq. (w/ encl.)
Emily A. Jordan, Esq. (w/ encl.)



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Wall Templeton
ATTORNEYS

145 King Street, Suite 300
Charleston, South Carolina 29401

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