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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Jocelyn Newman, Circuit Court Judge

Case No. 2017CP4004548

Rhonda Meisner

Appellant

v.

Respondent.

John R. Frazier, Inc; Jimmy Baker, a/k/a Troy Baker in his personal capacity; Jimmy Baker a/k/a Troy Baker as agent for John R. Frazier, Inc.; Pegasus, LLC; John Does (1-10), Jane Does (1-10) whose names are unknown or yet to be discovered and represent individuals and companies retained by John R. Frazier, Inc. and/or Jimmy Baker a/k/a Troy Baker.

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NOV 30 2018

SC Court of Appeals

MOTION TO REINSTATE APPEAL

Rhonda Meisner, Appellant
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(803) 206-3402

2018-001777
AS

The appellant respectfully requests this Court to reconsider the dismissal of this appeal and reinstate the appeal.

This is a procedural due process appeal and an appeal of the decision to not hold the respondents responsible for the failure to respond within the allotted time to the request to admit. The question of whether the motion to compel arbitration was properly filed and served in the new electronic filing system, because it did not contain a traditional certificate of service, as required by the rules is an inquiry outside of the arbitration agreement itself and enforcement thereof.

Secondly, the trial court declined to hold the respondent accountable for their failure to answer and their default for the failure to answer the request to admit within thirty days which is a substantive right of the appellant and was made before the motion to compel arbitration. This Court held “ South Carolina has long had the discovery rule that failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial.” *Scott v. Greenville Housing*, 353 S.C. 639 (S. C. Ct. App. 2003).

ARGUMENT

I. The appellee did not comply with S.C.R. Civ. P. Rule 4 (A)(B) and the clerk of court did not notice the hearing for the respondent’s motion to compel arbitration at least 10 days before the appellant’s motion to compel discovery hearing heard on July 13, 2018.

- (A) E-Filed motions, pleadings, or other papers that must be served upon a party who is not represented by an Authorized E-Filer in the case or who is a Traditional Filer must be served by a Traditional Service method in accordance with Rule 5, SCRCP. An Authorized E-Filer who has E-Filed a motion, pleading, or other paper prior to service of the pleading, motion, or other paper shall serve a paper copy of the corresponding NEF on the Traditional Filer(s). The Authorized E-Filer must also file proof of

Traditional Service as to all other parties who are Traditional Filers.

The appellant is not an e-filer and is designated as such in the court filings. The respondent was notified of its obligations for paper filers when the motion to compel arbitration was filed electronically as noted in the court documents. Rule 4 requires the respondent to file motions in accordance with Rule 5 and *must also file proof of traditional service as to all other parties who are traditional filers.*

Here, the respondent, as an authorized e-filer, did not file a traditional proof of service, as required by rule 5, with the Court, or with the plaintiff. The Clerk of Court should have rejected the e-filing and not scheduled the motion hearing because it was deficient and lacked the proper certificate of service. The appellant argues the failure to file the certificate of service is substantive rather than administrative since if the respondent had tried to file the motion in person, the clerk would not have accepted the motion without the corresponding certificate of service. As such, the appellant argues that even though the motion was accepted electronically, the motion was not properly filed and therefore should not have been accepted by the court or

ruled on by the court. In effect, there is currently no motion to compel arbitration that is properly before the court for the court to rule on.

(B) Traditional Filers must continue to serve all parties with a paper copy of the pleading, motion, or other paper by a Traditional Service method in accordance with Rule 5, SCRCP, and file a copy of the pleading, motion, or other paper with the Clerk of Court, together with proof of service, as required by Rule 5(d), SCRCP.

Here, the motion to compel arbitration was added to the roster improperly and heard improperly. The appellant's motion to compel discovery time was changed by the court after the hearing notice was mailed to the respondent. The respondent then claimed to be unable to attend the new time on the appointed day and requested the motion be moved to the end of the week. The appellant agreed to move the appellant's motion to compel discovery to the end of the week but was never notified the motion to compel arbitration would be heard on that day, at the same time. As such, the motion itself was not properly filed or noticed 10 days in advance of the hearing. Instead, the motion was heard as a tag on to the appellants motion to compel discovery which included a request to find the appellees failure to respond to the appellant's request to admit an admission of the facts. The court declined to hold the respondent's failure to respond as a deemed admission. This Court should decline to allow the respondent to benefit by its own failure to

properly file the motion to compel arbitration. While a notice of the hearing was attached retroactively to the June 22, 2018 motion to compel arbitration, an electronic review of the Court's filings would show that the document was added **after** the cancelled July 10th hearing but only 2-3 days before the motion to compel discovery on July 13, 2018.

In fact, the notice for the hearing on July 10th was filed before the respondent filed the motion to compel arbitration. Additionally, the hearing notice filed by the appellant and mailed to the respondent indicated the only motion to be heard on the 10th which was subsequently moved to the 13th of July was the motion to compel discovery filed by the appellant.

II. The defendants did not file a traditional certificate of service as required by Rule 5(A)(d).

The record reflects a traditional certificate of service has never been filed for the motion to compel arbitration. The appellant argued during the motion to compel hearing that the respondent did not properly serve the appellant with the motion. As such, the clerk of court should strike the filing of the motion to compel arbitration as improperly filed.

The written form 4 Order determined the motion to compel discovery was moot and

was denied since the Court ordered arbitration; however, the appellant argues the respondent was already in default for not answering its request to admit and there is no proper motion to compel discovery before the court.

(e) Additional Time After Service by Mail or Upon Statutory Agent. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

In the appellants view, the respondent did not properly electronically file or file in person the motion to compel arbitration because it was not accompanied by the traditional certificate of service when it was filed with court electronically or served on the appellant. Therefore, the electronic motion, should have been rejected by the court as not complying with the rules because there was no traditional certificate of service to be served upon the self -represented appellant. As such, there is technically no motion to compel arbitration before the court, for the court to properly rule because the respondent's filing was deficient and has thus far not been corrected.

The appellant respectfully requests to return the appeal to roster to review the trial court's decision.

November 30, 2016

Respectfully Submitted,



Rhonda Meisner, Appellant
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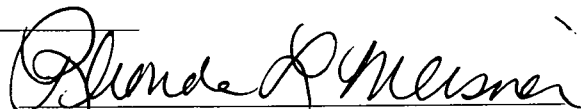
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Proof of Service

The appellant Rhonda Meisner certifies she has served the defendants of record by placing a copy of this motion to reinstate the appeal accompanied by this proof of service of the U.S. Mail postage prepaid on this day to the attorney of record: Charles Verner 1219 Boyce Street Newberry, South Carolina 29108.



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Nov 30, 2018