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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman

Case No. 2017-CP-32-03043
2017-LP-32-745
Appellate Case No. 2018-001044

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SC Court of Appeals

Stephens Remodeling, LLC,.....Respondent,

v.

Demetric Hayes and Carla Marshall,.....Petitioners,

INITIAL BRIEF OF RESPONDENT

MOORE TAYLOR LAW FIRM, P.A.



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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE TRIAL COURT PROPERLY CANCELLED APPELLANTS' LIS PENDENS.
2. WHETHER THIS COURT HAS JURISDICTION TO CONSIDER THIS APPEAL.

STATEMENT OF THE CASE

On August 21, 2017, Respondent Stephens Remodeling LLC ("Respondent") filed a Summons and Complaint in Lexington County, South Carolina under docket number: 2017-CP-32-03043. (R. _____.) Demetric Hayes and Carla Marshall ("Appellants") subsequently filed a Notice of Removal and Defendant's Answer and Affirmative Defenses on September 22, 2017. (R. _____.) Additionally, Appellants filed a Lis Pendens on September 19, 2017 under docket number: 2017-LP-32-745. (R. _____.) Thereafter, Respondent filed a Notice of Motion to Remand with the District Court of South Carolina under docket number: 3:17-CV2575-JFA-SVA. (R. _____.) An Order granting Respondent's Motion to Remand was issued by the Honorable Joseph F. Anderson, Jr. and filed on April 5, 2018. (R. _____.)

On April 4, 2018, Respondent filed a Notice of Motion and Motion to Cancel Defendants' Lis Pendens on an Expedited Basis. (R. _____.) On May 7, 2018, the parties were before the Court for Respondent's Motion to Cancel Defendants' Lis Pendens. A Form 4 Order granting the cancellation of Defendants' Lis Pendens was issued by the Honorable Jocelyn Newman. (R. _____.) Pursuant to the Honorable Judge Newman's ruling on May 7, 2018, the Honorable R. Knox McMahon issued a Cancellation of Lis Pendens in case number 2017-LP-32-745 on May 11, 2018. (R. _____.) Subsequently, Appellants filed a Notice of Appeal from the Order of Cancellation of Lis Pendens on June 5, 2018. (R. _____.)

STATEMENT OF FACTS

In April 2017, the Respondent purchased the property located at 232 Edinfield Court, Gaston, South Carolina from JPMorgan Chase Bank. (Quitclaim Deed to 232 Edinfield Court). Appellants had been living and residing at the property despite having no ownership, lease hold interest, or control of the property. The Lexington County Magistrate determined Appellants were trespassers and were occupying the premises without permission of the owner of the premises. (Notice to Quit Premises, June 7, 2017). As a result, Appellants were ordered to vacate within five (5) days. *Id.* Subsequently, Appellants filed documents with the Federal District Court for the District of South Carolina to remove the case from Magistrate's Court to Federal District Court; however, the case was remanded back to the Lexington County Magistrate Court for lack of subject matter jurisdiction. (Order, May 4, 2018).

On September 19, 2017, Appellants filed a lis pendens with the Lexington County Clerk of Court seeking to recover the property at issue, as well as a monetary award of Two Million Two Hundred Twenty-Three Thousand Five Hundred (\$2,223,500.00) Dollars. (Lis Pendens, Sept. 19, 2017). However, testimony revealed that Appellants' Lis Pendens was improperly filed, which warranted its cancellation. (Form 4 Order, May 9, 2018). Specifically, the Honorable R. Knox McMahon found that Appellants had no interest affecting title to the property and that their foreclosure claims were unrelated to the Respondent. (Cancellation of Lis Pendens Order, May 11, 2018). Additionally, the Honorable Judge McMahon noted that Appellants have no rights in the title to the property at issue, as those rights were extinguished by foreclosure by order of Foreclosure and Sale. *Id.* As a result, Appellants' Lis Pendens was cancelled by order of the court. *Id.*

ARGUMENT

I. THE TRIAL COURT PROPERLY CANCELLED APPELLANTS' LIS PENDENS.

In South Carolina, the filing of a lis pendens is “an extraordinary privilege granted by statute,” requiring “strict compliance with the statutory provisions.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002). Accordingly, a lis pendens is permissible only when the action actually affects the title to real property. See, *Id.* at 18, 567 S.E.2d at 890; *Carolina Park Associates, LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (S.C. 2012); S.C. Code Ann. § 15-11-10 (1976). Moreover, “the court in which the action was commenced, in its discretion at any time after the action is settled, discontinued, or abated...on application of a person aggrieved and on good cause shown and on a notice as directed or approved by the court,” may order the cancellation of the lis pendens. S.C. Code Ann. § 15-11-40 (1976).

The evidence presented in this matter clearly supports the trial court’s cancellation of Appellants’ Lis Pendens. Namely, the Appellants’ rights, if any, in the title of the property located at 232 Edinfield Court was extinguished by foreclosure by order of Foreclosure and Sale. (Master’s Order and Judgment of Foreclosure and Sale, July 30, 2010). As a result, Appellants possess no interest affecting the title to the property at issue. (Cancellation of Lis Pendens Order, May 11, 2018). Further, Appellants’ claims concern a foreclosure of property and thus, are in no way related to the Respondent. (Lis Pendens, Sept. 19, 2017). Therefore, the trial court properly cancelled Appellants’ Lis Pendens.

II. THE APPELLANTS FAILED TO TIMELY FILE THEIR NOTICE OF APPEAL PURSUANT TO RULE 203, SCACR; THUS, THIS COURT LACKS APPELLATE JURISDICITON.

“The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction.” *Allison v. W.L. Gore & Assoc.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). Rule 203 of the South Carolina Appellate Court Rules requires a party to file their notice of appeal with the clerk of the lower court and with the Clerk of the Court of Appeals, or in

specific cases with the Clerk of the Supreme Court, within ten (10) days after the notice of appeal is served. Rule 203(d)(1)(A), SCACR. If the notice of appeal is not timely filed, then the appeal shall be dismissed. Rule 203(d)(3), SCACR. Consequently, the timely filing and service of the notice of appeal are jurisdictional requirements under Rule 203, SCACR.

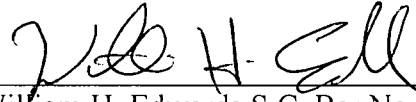
In the present matter, Appellants filed a Notice of Appeal with the South Carolina Court of Appeals on June 5, 2018 and served the Notice of Appeal on Respondent on June 5, 2018; however, Appellants failed to file the Notice of Appeal with the Lexington County Clerk of Court within ten (10) days from the date of service, as required by Rule 203(d), SCACR. While the Respondent recognizes that Appellants are proceeding *pro se*, a *pro se* litigant is responsible “for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003); *State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013). Moreover, Appellants were given notice of their failure to timely file their Notice of Appeal with the Lexington County Clerk of Court by way of Respondent’s Motion to Dismiss Appeal. (Motion to Dismiss Appeal, Aug. 8, 2018). Nonetheless, Appellants have not offered any evidence that they in fact timely filed their Notice of Appeal with the lower court. *See*, Lexington County Eleventh Judicial Circuit Public Index, docket no: 2017-LP-32-745; Lexington County Eleventh Judicial Circuit Public Index, docket no: 2017-CP-32-03043. Because Appellants have failed to comply with the jurisdictional requirements of Rule 203(d)(1)(A), SCACR, the appeal should be dismissed for lack of jurisdiction.

CONCLUSION

For the reasons given above, the Court should affirm the order of the trial court in its entirety or otherwise dismiss the appeal.

(Signature on following page)

MOORE TAYLOR LAW FIRM, P.A.

A handwritten signature in black ink, appearing to read "W. H. Edwards", is written over a horizontal line.

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January 7, 2019.

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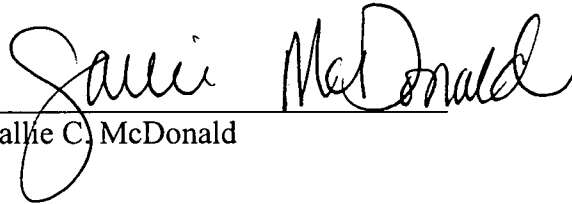
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PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent by US Mail, postage prepaid,
upon counsel for the Respondent at the address listed below:

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Sallie C. McDonald

January 7, 2019

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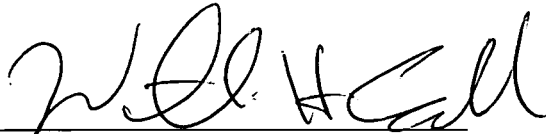
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Initial Brief of Respondent complies with
Rule 211 (b) of the SCACR.



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