

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2017-002220

RECEIVED

JUL 18 2019

SC Court of Appeals

LM Insurance Corporation,	v.	Plaintiff,
Josh Steele,	v.	Defendant, Third-Party Plaintiff, Appellant,
Ernie Yarborough d/b/a Yarborough Insurance Agency,		Third-Party Defendant, Respondent.

RETURN TO MOTION TO DISMISS APPEAL

In its Motion to Dismiss Appeal, Respondent and his Counsel have made material misrepresentations to this Court. Specifically, Respondent's Motion to Dismiss states: "Appellant failed to file the Notice of the Appeal with the Circuit Court Until July 1, 2019, (see Exh. A), over a year and a half late." This statement is false, inaccurate and untrue. *See Exhibits A and B.* Appellant and his Counsel filed the Notice of Appeal with the Circuit Court on the same day it was filed with this court. *See Exhibit A and B.* Moreover, Respondent was served electronically with the Notice of Appeal through the Circuit Court's electronic filing system on the same day the Notice of Appeal was filed with the Circuit Court. *See Exhibits A and B.* The South Carolina Court's website, www.sccourts.org, shows clearly the filing was made in October, 2017. *See Exhibit A.*

In fact, at all times relevant this information was readily available to Respondent and his Counsel but was ignored in favor of the pending Motion.

Apparently, someone else refiled or resubmitted the Notice of Appeal on or about July 1 or 2. *See* Exhibit B. However, no one with Appellant's Counsel refiled or resubmitted these documents this year. *See* Exhibit B. Indeed, there would have been no reason to do so as they were filed in October, 2017 and remained online ever since. All of this could and should have been easily recognized by Respondent's Counsel. Instead, however, when the Notice of Appeal was reserved a second time, Respondent's Counsel filed the pending Motion without checking the public index and filings which clearly shows the original filing was timely.

The pending Motion is frivolous and without a factual or legal basis. It should be denied and this court should decide the appeal on the merits.

Respectfully submitted,

July 16, 2019



Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
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Telephone: 803-252-2600
Facsimile: 803-771-2259

Attorney for Appellant

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2017-CP-32-00507

LM Insurance Corporation,	v.	Plaintiff,
Josh Steele,	v.	Appellant,
Ernie Yarborough d/b/a Yarborough Insurance Agency,	v.	Respondent.


NOTICE OF APPEAL

Josh Steele appeals the following rulings and Orders of the Honorable R. Knox McMahon:

- Order Granting Third-Party Defendant Ernie Yarborough d/b/a Yarborough Insurance Agency's Motion to Dismiss dated September 19, 2017; and
- Order (related to Appellant's Motion for Reconsideration dated October 12, 2017.

Appellant received written notice of entry of the Order denying the motion for reconsideration on October 16, 2017.

October 18, 2017



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Attorney for Appellant

Counsel for *Respondents*:

Elizabeth M. McMillan
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P.O. Box 2980
Greenville, SC 29602
Telephone: 864-239-4037

Other Counsel for *Plaintiff*:

Amanda M. Scott
Parnell & Crum, P.A.
P.O. Box 743
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Telephone: 803-252-0034

Stephanie G. Brown, Esquire
Wall Templeton & Haldrup, P.A.
P.O. Box 1200
Charleston, SC 29402
Telephone: 843-329-9500

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

LM INSURANCE CORPORATION

Plaintiff,

vs.

JOSH STEELE,

Defendant/Third-Party Plaintiff,

vs.

ERNIE YARBOROUGH D/B/A
YARBOROUGH INSURANCE AGENCY

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

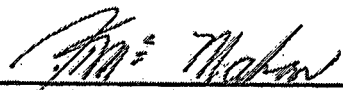
CASE NO: 2017-CP-32-00507

ORDER

The narrow issue before the court was the sufficiency of service as to the certified mail. Please see the Third Party Defendant's Motion to Dismiss. To clarify the Court's Order of September 19, 2017 the Court redacts the last sentence of paragraph one, page 2 of its Order for the following. "Third Party Defendant Yarborough was not properly served by certified mail or in any other matter as of the date of the alleged attempted service on Sandy Pike on April 21, 2017." The Court's Order of September 19, 2017 is the Order of the Court in all other aspects and adopted in its entirety.

Granted in Part Denied in Part.

AND IT IS SO ORDERED, this 12th day of October, 2017.


The Honorable R. Knox McMahon

ELECTRONICALLY FILED - 2017 Oct 18 3:30 PM - LEXINGTON - COMMON PLEAS - CASE#2017CP3200507
ELECTRONICALLY FILED - 2017 Oct 16 11:55 AM - LEXINGTON - COMMON PLEAS - CASE#2017CP3200507

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

LM INSURANCE CORPORATION,)
)
)
Plaintiff,)

Civil Action No. 2017-CP-32-00507

v.)

JOSH STEELE,)
)
)
Defendant/Third-Party)
Plaintiff,)

**ORDER
GRANTING THIRD-PARTY
DEFENDANT ERNIE YARBOROUGH
D/B/A YARBOROUGH INSURANCE
AGENCY'S MOTION TO DISMISS**

v.)

ERNIE YARBOROUGH D/B/A)
YARBOROUGH INSURANCE AGENCY,)
)
)
Third-Party Defendant.)

NOW BEFORE THE COURT is Third-Party Defendant Ernie Yarborough d/b/a Yarborough Insurance Agency's ("Yarborough") Motion to Dismiss the Third-Party Complaint filed by Defendant/Third-Party Plaintiff Josh Steele ("Steele"). A hearing was held on August 2, 2017. Present at the hearing were Morgan S. Templeton, Esquire, on behalf of the Plaintiff, LM Insurance Corporation ("LM"), Robert D. Dodson, Esquire, on behalf of Steele and Elizabeth M. McMillan on behalf of Yarborough. The Court, having heard arguments of counsel and fully considering the matter, grants Yarborough's motion.

BACKGROUND

This matter comes before me upon Yarborough's Motion to Dismiss for Insufficient Service of Process pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure. On or around April 21, 2017, Steele attempted to serve Yarborough by certified mail, with

instructions that delivery should be restricted to Yarborough. However, Sandy Pike, a sales and service representative employed by Yarborough signed the certified mail return receipt while Yarborough was out of the office. Yarborough asserts that Pike has no ownership interest in his agency and that her duties do not include signing for certified mail delivered to Yarborough's office. Additionally, Yarborough states that he has never represented that she is authorized to sign for certified mail or accept service on his behalf. Subsequently, Yarborough has not been personally served or any other manner contemplated by the Rules of Civil Procedure.

FINDINGS OF FACT AND LAW

Rule 4 of the South Carolina Rules of Civil Procedure specifies the methods in which the Summons and Complaint can be served to effectuate process on a defendant. "Rule 4, SCRPC, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Pursuant to Rule 4(d)(8), SCRPC, a plaintiff may serve a the defendant "by registered or certified mail, return receipt requested **and restricted to the addressee.**" (emphasis added). Where, as here, service is accomplished by certified mail, delivery must be restricted to and the return receipt signed by the addressee. Langley v. Graham, 322 S.C. 428, 431, 472 S.E.2d 259, 260-61 (1996).

In this case, the Third-Party Complaint was addressed to Ernie Yarborough, an individual. It is undisputed that Sandra Pike, a sales and service representative of Yarborough's company, received delivery of and signed the return receipt for the Third-Party Complaint. As a result, Steele has failed to comply with the requirements of Rule 4(d)(8) and his attempt to serve Yarborough by mail is defective.

Further, even had Steele complied with the requirements regarding receipt and delivery,

Pike was not capable of accepting service on behalf of Yarborough. For service to be effective under Rule 4(d)(8), a plaintiff must serve the addressee or "an authorized person" for the individual. Graham Law Firm, P.A. v. Makawi and MKKM, Inc., 396 S.C. 290, 721 S.E. 2d 430, 433 (2012). The class of persons who may receive service of process on behalf of an individual or corporation as set forth in Rule 4(d)(8) is limited. See Rule 4(d)(1), SCRCF (limiting service on individuals to the named individual, a person of suitable age and discretion who resides at the individual's home, or with an agent authorized by appointment or law); Rule 4(d)(3), SCRCF (limiting service on a corporation or partnership to officer, managing or general agents, or an agent authorized by appointment or law). For an agent to have implied authority, the agent must believe she had such authority. Roberson v. S. Fin. of S.C., Inc., 365 S.C. 6, 11, 615 S.E. 2d 112, 115 (2005) (citing 2A CJS *Agency* § 132 (2004)). In regard to apparent authority, an agent has apparent authority only where the principal knowingly permits the agent to exercise authority or the principal holds the agent out as possessing such authority. Id. Whether an agent has apparent authority is established by the actions and statements of the principal, not the agent. Id.

Here, the only evidence before me is that Pike did not have express, apparent, or implied authority to accept service on behalf of Yarborough. Yarborough submitted an affidavit in which he states that he did not give Pike express permission to accept service of process on his behalf or for his company and has never given Pike such authority. Similarly, Pike submitted an affidavit in which she confirms that Yarborough never gave her permission to accept service or sign on his behalf for certified mail. Furthermore, despite the Court granting Steele thirty days to conduct discovery regarding Pike's authority to accept service, he has failed to present any evidence to the Court which contradicts Pike's and Yarborough's sworn statements.

Therefore, based upon the applicable law and facts before me, I grant Yarborough's motion to dismiss for insufficient service of process.

AND IT IS SO ORDERED.

The Honorable R. Knox McMahon
Administrative Judge

Dated: _____

ELECTRONICALLY FILED - 2017 Oct 18 3:30 PM - LEXINGTON - COMMON PLEAS - CASE#2017CP3206907
ELECTRONICALLY FILED - 2017 Sep 19 11:55 AM - LEXINGTON - COMMON PLEAS - CASE#2017CP3206907



Lexington Common Pleas

Case Caption: LM Insurance Corporation VS Josh Steele
Case Number: 2017CP3200507
Type: Order/Other

So Ordered

s/ R. Knox McMahon, #2145

Electronically signed on 2017-09-19 09:51:15 page 5 of 5

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ELECTRONICALLY FILED - 2017 Sep 19 11:55 AM - LEXINGTON - COMMON PLEAS - CASE#2017CP3200507

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2017CP3200507

Official File Stamp: 10-18-2017 03:30:44 PM
Court: CIRCUIT COURT
Common Pleas
Lexington
Case Caption: LM Insurance Corporation VS Josh Steele ,
defendant, et al
Document(s) Submitted: Notice/Other
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
Service/Certificate Of Service
Filed by or on behalf of: Robert Daniel Dodson

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

John Carroll Moylan, III
Elizabeth McDaniel McMillan for Ernie
Yarborough, Ernie Yarborough
Morgan S. Templeton for LM Insurance
Corporation
Robert Daniel Dodson for Josh Steele
Amanda Mange Scott for LM Insurance
Corporation

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Albert John Dooley, Jr.

Certificate of Electronic Notification

Recipients

Elizabeth McMillan - Notification transmitted on 10-18-2017 03:31:06 PM.

Morgan Templeton - Notification transmitted on 10-18-2017 03:31:06 PM.

John Moylan - Notification transmitted on 10-18-2017 03:31:06 PM.

Robert Dodson - Notification transmitted on 10-18-2017 03:31:06 PM.

Amanda Scott - Notification transmitted on 10-18-2017 03:31:06 PM.

From: efiledonotreply@sccourts.org
Sent: Wednesday, October 18, 2017 3:31 PM
To: Robert Dodson
Cc: Trudy Mishoe
Subject: Received Notice: Your filing, Re: 2017CP3200507 - (110) Debt Collections - Notice/Other, was received

To: Robert Daniel Dodson rdodson@rdodsonlaw.com
From: efiledonotreply@sccourts.org
Date: 2017-10-18 15:30:44.433
Subject: Your electronic filing, Re: 2017CP3200507 - (110) Debt Collections - Notice/Other, was received by CIRCUIT COURT.

Case Number: 2017CP3200507
Case Type: (110) Debt Collections
Document Type: Notice/Other
Document Type: Exhibit/Filing of Exhibits
Document Type: Exhibit/Filing of Exhibits
Document Type: Service/Certificate Of Service

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**From:** efiledonotreply@sccourts.org  
**Sent:** Wednesday, October 18, 2017 4:40 PM  
**To:** Robert Dodson  
**Cc:** Trudy Mishoe  
**Subject:** Accepted Notice: Your filing, Re: 2017CP3200507 - (110) Debt Collections - Notice/Other, was accepted

**To:** Robert Daniel Dodson rdodson@rdodsonlaw.com  
**From:** efiledonotreply@sccourts.org  
**Date:** 2017-10-18 15:30:44.433  
**Subject:** Your electronic filing, Re: 2017CP3200507 - (110) Debt Collections - Notice/Other, was accepted by CIRCUIT COURT.

Case Number: 2017CP3200507  
Case Type: (110) Debt Collections  
Document Type: Notice/Other  
Document Type: Exhibit/Filing of Exhibits  
Document Type: Exhibit/Filing of Exhibits  
Document Type: Service/Certificate Of Service  
Reason(s) : (none provided)

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

EXHIBIT B

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF ROBERT D. DODSON
COUNTY OF RICHLAND)

Robert D. Dodson, being first duly sworn and deposed testifies as follows:

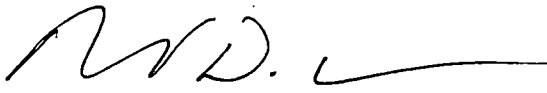
1. My name is Robert D. Dodson and I am an attorney in good standing with both the South Carolina and North Carolina bars.
2. My office electronically filed the Notice of Appeal with the Lexington County Clerk of Court's online filing system on October 18, 2017.
3. I believe the Notice of Appeal was timely filed electronically online with the Circuit Court for several reasons. First, I received an electronic email from the online filing system indicating that the Notice of Appeal was filed and had been accepted by the Circuit Court. Second, the online filing system shows that all other parties were electronically served on October 18, 2017. Third, the original filing is currently online and continues to show that it was timely filed on October 18, 2017. Fourth, my office has printed up hard copies of the Notice of Appeal which shows it date stamped on October 18, 2017, the day it was filed with the Circuit Court.
4. I believe the Notice of Appeal was refiled on July 1, 2019 by someone other than me or someone from my office. I was out of the country on July 1, 2019 and was not able to access the online filing system during that time.

Additionally, I would have had no reason to refile the Notice of Appeal because it was originally filed in October, 2017. I have checked with my office staff and no one at my office refiled the Notice of Appeal in July, 2019. The online filing system seems to suggest it was filed online by LM Insurance

Company but I cannot attest to who refiled other than to attest to the fact that it was not me or my staff.

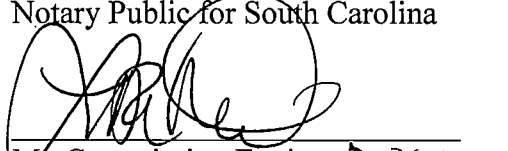
5. When I returned to the office on July 15, I saw Respondent's Motion to Dismiss and checked the online filing in this case. At that time, the online filing showed the Notice of Appeal was electronically filed by office on October 18, 2017 and showed that it was served on Respondent's Counsel on that date.
6. True and correct copies of documents and filings referenced in this Affidavit are attached as Exhibit A to Respondent's Return to Motion to Dismiss Appeal.

Further deponent sayeth not.



Robert D. Dodson

Sworn to and subscribed before me
This 16th day of July, 2019
Notary Public for South Carolina



My Commission Expires: 7-26-2026

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2017-002220

LM Insurance Corporation, v. Plaintiff,
Josh Steele, v. Appellant,
Ernie Yarborough d/b/a Yarborough Insurance Agency, v. Respondent.

PROOF OF SERVICE

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JUL 18 2019

SC Court of Appeals

I certify that I have served the Return to Motion to Dismiss Appeal by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorneys of record, Helen F. Hiser, McAngus, Goudelock & Courie, LLC, P. O. Box 65007, Mount Pleasant, South Carolina 29465 and Elizabeth M. McMillan, Esquire, McAngus, Goudelock & Courie, P.O. Box 2980, Greenville, SC 29602.

July 16, 2019



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Attorney for Appellant

Law Offices of
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Columbia, South Carolina 29201

Robert D. Dodson,
Esquire
Attorney at Law
Also Licensed in N.C.



Telephone: 803.252.2600
Facsimile: 803.771.2259

July 16, 2019

RECEIVED
JUL 18 2019
SC Court of Appeals

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

Re: LM Insurance Corporation, Plaintiff v. Josh Steele, Appellant v. Ernie
Yarborough d/b/a Yarborough Insurance Agency, Respondent.
Case No. 2017-CP-32-00507
Appellate Case No. 2017-002220

Dear Ms. Kitchings:

Enclosed please find the original and several copies of the Return to Motion to Dismiss Appeal along with a Proof of Service in the above case. I have also enclosed a self-addressed, stamped envelope for your convenience in returning a filed copy to our office.

Please do not hesitate to contact our office with any questions or concerns.

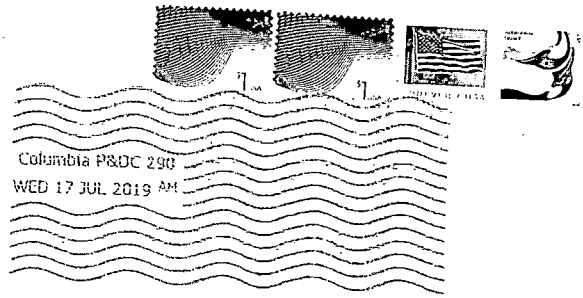
Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Malcolm", written over a large, loopy flourish.

Lisa Malcolm
Paralegal to Robert Dodson

cc: Helen F. Hiser, Esquire
Elizabeth M. McMillan, Esquire

Law Office of Robert Dodson
1722 M
Columb



The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P O Box 11629
Columbia SC 29211

RECEIVED
JUL 18 2019
SC Court of Appeals