

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**RECEIVED**  
AUG 09 2019  
SC Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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Appellate Case No. 2019-000872

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Sharon Thompson,.....Appellant,

v.

Sprint Food Store #728..... Respondent.

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**RESPONDENT’S RESPONSE IN OPPOSITION OF APPELLANT’S  
MOTION TO REINSTATE APPEAL**

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TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH  
CAROLINA:

The instant appeal arises from an Order granting summary judgment in favor of Respondent Sprint Food Stores (“Respondent”). On July 15, 2019, this Court dismissed Appellant Sharon Thompson’s (“Appellant”) appeal for failure to comply with the South Carolina Appellate Court Rules. **Exhibit A.**

Appellant filed a Motion to Reinstate her appeal on or about July 29, 2019. Respondent submits the following brief in opposition of Appellant's motion.

### **PROCEDURAL BACKGROUND**

On May 13, 2019, the Circuit Court entered an Order granting Respondent's Motion for Summary Judgment. On or about May 21, 2019, Appellant filed her Notice of Appeal, appealing the summary judgment order of the Circuit Court. Subsequent to the filing of her Notice of Appeal, this Court issued a deficiency correspondence to Appellant, advising of deficiency related to the South Carolina Appellate Court Rules; specifically, that Appellant had failed to submit a proof of service that a copy of the notice of appeal was filed with the trial court clerk. **Exhibit B.**

On June 19, 2019, this Court issued a second deficiency correspondence to Appellant, advising that the time for ordering a transcript had expired. This Court advised: "Within ten days of the date of this letter, you must file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if not motion is made within ten days of the day of this letter." **Exhibit C.**

On July 1, 2019, Appellant filed with the Circuit Court a Motion to Extend Deadline to Order Transcript. **Exhibit D.** Additionally, Appellant filed with the Circuit Court on the same date a correspondence for Request for Transcript, issued to Krystal J. Smith, Court reporter during the Motion for Summary Judgment Hearing. **Exhibit E.** Despite the Court of Appeals requesting a copy of the request for transcript and motion to extent deadline for ordering a transcript, and the Court of Appeals having exclusive jurisdiction upon the filing on the Notice of Appeal, Appellant filed the correspondence requesting the transcript and motion in the Circuit Court.

By Order filed July 15, 2019, this Court dismissed the appeal, finding: “Appellant has failed to provide this Court with a copy of the transcript order, as required by Rule 207 of the South Carolina Appellate Court Rules and this Court’s letter dated June 19, 2019. Accordingly, this appeal is dismissed.”

**Exhibit A.**

On July 29, 2019, Appellant filed a Motion to Reopen the Appeal, advising that an extension of time to order the transcript as well as correspondence ordering the transcript were “inadvertently filed in the Marlboro County Court of Common Pleas.” **Exhibit E.** This motion was not served upon undersigned counsel. The Court subsequently issued two

additionally deficiency correspondences related to failure to file a proof of service. **Exhibit F.**

### LAW/ANALYSIS

Rule 260 of the South Carolina Rules of Civil Procedure states:

Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.

Rule 260(a), SCACR. Where a party fails to comply with the Court Rules, dismissal is warranted.

Additionally, Rule 205 provides that “upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal.” Rule 205, SCACR.

Upon every filing by Appellant, the Court has issued a deficiency correspondence, directing Appellant to comply with the South Carolina Appellate Court Rules. In total, the Court has issued four deficiency correspondences.

Further, good cause does not exist to excuse the failure to comply with the Appellate Court Rules. The Rules, as well as South Carolina jurisprudence, explicitly provides that upon the filing of the notice of appeal, jurisdiction rests exclusively with the appellate court. Therefore, Appellant's "inadvertent" filing of the motion to enlarge the time to request a transcript in the Circuit Court should not be ignored. This Court requested the motion by correspondence dated June 19, 2019. It was not until July 15, 2019, that Appellant filed the motion and a copy of the transcript request letter with this Court.

Due to the failure to comply with the Appellate Court Rules resulting in dismissal pursuant to Rule 260, SCACR, Respondent respectfully requests the Court deny Appellant's motion to reinstate.

### **CONCLUSION**

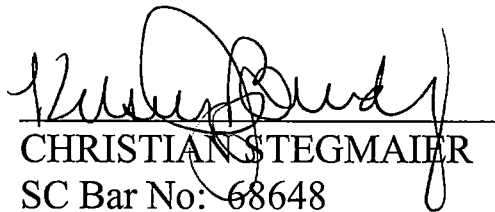
Respondent respectfully requests the Court deny Appellant's motion to reinstate the appeal.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

COLLINS & LACY, P.C.

By:



CHRISTIAN STEGMAIER

SC Bar No: 68648

[cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com)

KELSEY J. BRUDVIG

SC Bar No: 101680

[kbrudvig@collinsandlacy.com](mailto:kbrudvig@collinsandlacy.com)

1330 Lady Street, Sixth Floor  
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ATTORNEYS FOR  
RESPONDENT SPRINT FOOD  
STORES, INC.

**RESPONDENT'S RESPONSE  
IN OPPOSITION OF  
APPELLANT'S MOTION TO  
REINSTATE APPEAL**

# **EXHIBIT A**

# The South Carolina Court of Appeals

Sharon Thompson, Appellant,

v.

Sprint Food Store #728, Respondent.

Appellate Case No. 2019-000872

The Honorable J. Derham Cole  
Marlboro County  
Trial Court Case No. 2017CP3400367

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## ORDER

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Appellant has failed to provide this Court with a copy of the transcript order, as required by Rule 207 of the South Carolina Appellate Court Rules and this Court's letter dated June 19, 2019. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allom, Deputy  
CLERK

Columbia, South Carolina

cc:  
Marshall Solomon Weaver, Sr., Esquire  
Kelsey Jan Brudvig, Esquire

**FILED**

July 13, 2019 S.S.  
0

# **EXHIBIT B**



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

June 04, 2019

Mr. Marshall Solomon Weaver, Sr., Esquire  
PO Box 3888  
Florence SC 29502

Re: Sharon Thompson v. Sprint Food Store  
Appellate Case No. 2019-000872

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The proof of service does not indicate that a copy of the notice of appeal was filed with the trial court clerk.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Kelsey Jan Brudvig, Esquire

# **EXHIBIT C**



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
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FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

June 19, 2019

Mr. Marshall Solomon Weaver, Sr., Esquire  
PO Box 3888  
Florence SC 29502

Re: Sharon Thompson v. Sprint Food Store  
Appellate Case No. 2019-000872

Dear Counsel:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Kelsey Jan Brudvig, Esquire

# **EXHIBIT D**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	APPELLATE CASE NO.: 2019-000872
	)	
SHARON THOMPSON,	)	
	)	
PLAINTIFF,	)	<b>MOTION TO EXTEND DEADLINE TO</b>
	)	<b>ORDER TRANSCRIPT</b>
VS.	)	
	)	
SPRINT FOOD STORES #728	)	
	)	
DEFENDANT.	)	
_____	)	

The Plaintiff, by and through her undersigned counsel, hereby moves before this honorable court requesting permission to order the transcript in the above captioned matter outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules.

In support of this Motion, the Plaintiff has attached a copy of the letter which was sent to the transcribing Court reporter, requesting a copy of the transcript from the Summary Judgment proceedings held on September 25, 2018 in Marlboro County.

RESPECTFULLY SUBMITTED

s/Marshall S. Weaver  
MARSHALL S. WEAVER, ESQUIRE  
SC Bar No.: 78752  
2137-B Hoffmeyer Road (29502)  
P.O. Box 3888  
Florence, SC 29501  
Phone: (843) 407-4203  
Facsimile: (843) 407-4297  
ATTORNEY FOR THE PLAINTIFF

July 1, 2019  
Florence, South Carolina

# **EXHIBIT E**

**WEAVER LAW FIRM**

2137-B Hoffmeyer Road

P. O. Box 3888

Florence, SC 29502

**Marshall Solomon Weaver**

Office: (843) 407-4203

Fax: (843) 407-4297

July 1, 2019

Ms. Krystal J. Smith

P. O. Box 13563

Florence, SC 29504

**REQUEST FOR TRANSCRIPT**

**RE: Sharon Thompson vs. Sprint Food Store #728**

**Marlboro County Court of Common Pleas**

**Motion for Summary Judgment Hearing**

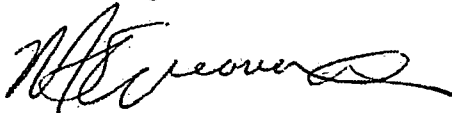
**September 25, 2018**

Dear Ms. Smith:

You were the court reporter during the Motion for Summary Judgment Hearing held by Judge Cole in the Court of Common Pleas in Marlboro County on September 25, 2018. I am requesting a copy of the transcript of that hearing. Please forward me the transcript along with your invoice for payment.

Please contact my office immediately if you have any questions or concerns.

With kind regards,



Marshall S. Weaver, Esq.

MSW/gcr

# **EXHIBIT F**



# **EXHIBIT G**



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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July 30, 2019

Mr. Marshall Solomon Weaver, Sr., Esquire  
PO Box 3888  
Florence SC 29502

Re: Sharon Thompson v. Sprint Food Store  
Appellate Case No. 2019-000872

Dear Counsel:

Upon reviewing your motion to allow the late filing of the transcript order, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Kelsey Jan Brudvig, Esquire



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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July 30, 2019

Mr. Marshall Solomon Weaver, Sr., Esquire  
PO Box 3888  
Florence SC 29502

Re: Sharon Thompson v. Sprint Food Store  
Appellate Case No. 2019-000872

Dear Counsel:

Upon reviewing your motion to reinstate, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

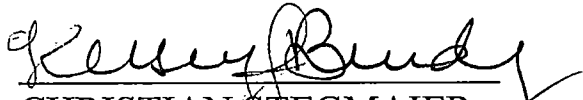
*V. Claire Allen, Deputy*

CLERK

cc: Kelsey Jan Brudvig, Esquire

Respectfully submitted,

COLLINS & LACY, P.C.

By:   
CHRISTIAN STEGMAIER  
SC Bar No: 68648  
[cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com)  
KELSEY J. BRUDVIG  
SC Bar No: 101680  
[kbrudvig@collinsandlacy.com](mailto:kbrudvig@collinsandlacy.com)  
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ATTORNEYS FOR  
RESPONDENT SPRINT FOOD  
STORES, INC.

**PROOF OF SERVICE-  
RESPONDENT'S RESPONSE  
IN OPPOSITION OF  
APPELLANT'S MOTION TO  
REINSTATE APPEAL**

THE STATE OF SOUTH CAROLINA  
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AUG 09 2019

J. Derham Cole, Circuit Court Judge

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**SC Court of Appeals**

Appellate Case No. 2019-000872

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Sharon Thompson,.....Appellant,

v.

Sprint Food Store #728..... Respondent.

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**PROOF OF SERVICE**

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I hereby certify that I served Respondent's Response in Opposition of Appellant's Motion to Reinstate Appeal upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on August 9, 2019, addressed to the following:

Marshall S. Weaver, Esquire  
Weaver Law Firm, LLC  
Post Office Box 3888  
Florence, SC 29502  
***Counsel for Plaintiff***



Kelsey J. Brudvig | D: 803.255.0418 | E: kbrudvig@collinsandlacy.com

August 9, 2019

**VIA HAND DELIVERY**

The Honorable Jenny A. Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

**Re: *Sharon Thompson v. Sprint Food Stores #728/Sprint Food Stores, Inc. v. Allen Moore***  
***Civil Action No. 2017-CP-34-00367***  
***Claim No. 1009173***  
***C&L File No. 001832-00125***

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of Respondent's Response in Opposition of Appellant's Motion to Reinstate Appeal in connection with the above referenced matter. Please file the original and return one copy to our office via our courier.

By copy of this letter to counsel of record, we are serving same on them.

Thank you for your attention to this matter.

Respectfully,

A handwritten signature in black ink that reads "Kelsey Brudvig". The signature is written in a cursive, flowing style.

Kelsey J. Brudvig

KJB/net

Enclosures

cc (via U.S. Mail and email):

Marshall S. Weaver, Esquire, Weaver Law Firm, LLC

**RECEIVED**

AUG 09 2019

SC Court of Appeals



1330 Lady Street, Sixth Floor (29201) Post Office Box 12487 | Columbia, SC 29211

The Honorable Jenny A. Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

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AUG 09 2019

SC Court of Appeals