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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-1592

RECEIVED

SEP 30 2019

SC Court of Appeals

Karen K. BaberAppellant,

v.

Summit Funding, Inc.; Appraisal Innovations, LLC; Brian L. Blue; The Gillen Law Firm, P.A.; Michael F. Gillen; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom

Summit Funding, Inc.; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert Ouzts; and Connie Delaney are the Respondents.

MOTION TO DISMISS APPEAL

NOW COME Respondents Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts and Connie Delaney (collectively, the "Tate Respondents") and move the Court, pursuant to Rules 203 and 260, SCACR, to dismiss Appellant's appeal. In support of this motion, Respondents rely on the Memorandum of Law In Support of Motion to Dismiss Appeal filed with this Motion and show the Court as follows:

1. The Appellant filed her Notice of Appeal with the Court of Appeals on August 28, 2019. The Certificate of Service for the Notice of Appeal erroneously indicated that the Notice of Appeal was served on October 13, 2008, so on September 19, 2019, the Appellant filed

an amended certificate of service at the Court's direction indicating that she served the Notice of Appeal on August 28, 2019.

2. Pursuant to Rule 203(d)(1)(B), SCACR, "The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served." Therefore, the Appellant's deadline to file the Notice of Appeal with the York County Clerk of Court (the lower court) was Monday, September 9, 2019 (September 7 being a Saturday).

3. On September 10, 2019, counsel for the Tate Respondents e-mailed counsel for the Appellant and asked whether the Notice of Appeal had been filed with the York County Clerk of Court. In response, Counsel for Appellant attempted to electronically file the Notice of Appeal in York County and replied that Counsel for the Appellant had filed the Notice of Appeal with York County on the same day it was filed with the Court of Appeals, but it was sent back. Later, Appellant's electronic filing of the Notice of Appeal was rescinded by York County. Attached hereto as Exhibits A and B are true and correct copies of the e-mails between counsel and the Notice of Electronic Filing from York County rescinding the filing of the Notice of Appeal, which are incorporated herein by reference.

4. On September 16, 2019, counsel for the Tate Respondents again e-mailed counsel for the Appellant asking if the Notice of Appeal was ever filed with the lower court. Counsel for Appellant did not respond to this e-mail. A true and correct copy of this e-mail is attached hereto as Exhibit C and incorporated herein by reference.

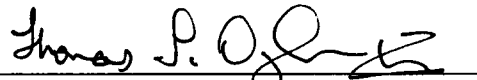
5. To date, the Appellant has not filed the Notice of Appeal with the lower court.

6. Pursuant to Rule 260, SCACR, “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.”

7. Appellant has failed to comply with Rule 203(d)(1)(B), SCACR, despite ample opportunity to do so. Therefore, this appeal should be dismissed.

WHEREFORE, Respondents respectfully request that the Court dismiss Appellant’s appeal, pursuant to Rules 203 and 260, SCACR, for failure to timely file her Notice of Appeal with the Clerk of Court of York County and for such other and further relief as may be just and proper.

This the 24th day of September, 2019.



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Attorneys for Respondents Allen Tate Co., Inc.;
Colleen Coesens; Jonathan Garvey; Robert Ouzts;
and Connie Delaney

Ogburn, Tate

From: Glenn Bowens <gbowens@bowenslawsc.com>
Sent: Tuesday, September 10, 2019 4:11 PM
To: Ogburn, Tate; Creighton Coleman
Cc: Glenn Bowens
Subject: Re: Allen Tate/Baber - Filing of Notice of Appeal

I filed it with the York County Court the same day it was filed with the Court of Appeals - they just sent it back so I e-filed it today. Sorry for any confusion

On Sep 10, 2019, at 2:21 PM, Ogburn, Tate <TOgburn@POYNERSPRUILL.COM> wrote:

Creighton and Glenn – Yesterday was the deadline to file the Notice of Appeal with the Court of Appeals and the York County Clerk of Court. (Rule 203(d)(1), SCACR). The Notice of Appeal that you sent appears to have been filed with the Court of Appeals, but I do not see where it was filed with the York County Clerk of Court. Was the Notice of Appeal filed with York County?

Tate

Thomas L. Ogburn III | Partner

Licensed in NC and SC

<image001.jpg>

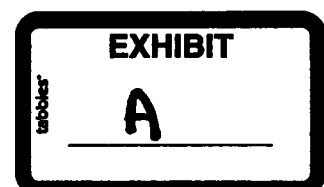
301 S. College Street, Suite 2900, Charlotte, NC 28202

D: 704 342 5258 | F: 704 342 5264

togburn@poynerspruill.com | www.poynerspruill.com

<image002.png> <image003.png> <image004.png>

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Ogburn, Tate

From: efiledonotreply@sccourts.org
Sent: Tuesday, September 10, 2019 4:16 PM
To: Ogburn, Tate
Cc: Dineen, Amy V.
Subject: Retraction: Courtesy NEF RE: 2018CP4601592

The Notice below is **RESCINDED**
The filing was not filed.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP4601592

Official File Stamp: 09-10-2019 04:08:16 PM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al
Document(s) Submitted: Notice/Other
Notice/Other
Notice/Other
Filed by or on behalf of: Glenn E. Bowens

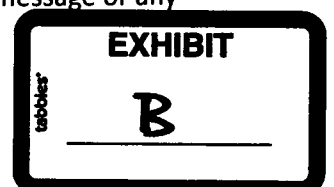
This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Creighton B. Coleman for Karen K Baber
Glenn E. Bowens for Karen K Baber
Susan Elizabeth Driscoll
Russell M. Racine for Appraisal Innovations Llc, Brian L Blue
Thomas Lynn Ogburn, III for Jonathan Garvey, Robert Ouzts, Connie Delaney, Allen Tate Co Inc, Colleen Coesens

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

~~~ 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.

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of whom

Summit Funding, Inc.; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert Ouzts; and Connie Delaney are the..... Respondents.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS APPEAL**

Thomas L. Ogburn III  
Poyner Spruill LLP  
301 South College Street, Suite 2900  
Charlotte, North Carolina 28202  
(704) 342-5250  
Attorneys for Respondents Allen Tate Co., Inc.;  
Colleen Coesens; Jonathan Garvey; Robert Ouzts;  
and Connie Delaney

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PROCEDURAL HISTORY

Appellant Karen K. Baber filed a complaint in the York County Court of Common Pleas on May 29, 2018 alleging, among other things, that Respondents Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts, and Connie Delaney (collectively, the “Tate Respondents”), and others, engaged in fraud, conspiracy, negligent misrepresentation, and professional negligence in connection with Appellant’s purchase of a house in York County, South Carolina. On May 29, 2019, the Honorable Daniel D. Hall granted summary judgment in favor of the Tate Respondents and entered an order dismissing Appellant’s claims, with prejudice.

On June 6, 2019, Appellant filed a Motion to Reconsider, Alter and Amend Judgment, which was subsequently denied by Judge Hall by order filed on July 29, 2019. The Appellant then

served her Notice of Appeal on August 28, 2019 and filed the Notice of Appeal with the Court of Appeals on the same day. However, Appellant failed to timely file her Notice of Appeal with the York County Clerk of Court, as required by Rule 203(d)(1)(B), SCACR.

On September 10, 2019, counsel for the Tate Respondents e-mailed counsel for the Appellant and asked whether the Notice of Appeal had been filed with the York County Clerk of Court. In response, Counsel for Appellant attempted to electronically file the Notice of Appeal in York County and replied that Counsel for the Appellant had filed the Notice of Appeal with York County on the same day it was filed with the Court of Appeals, but it was sent back. Later, Appellant's electronic filing of the Notice of Appeal was rescinded by York County.

On September 16, 2019, counsel for the Tate Respondents again e-mailed counsel for the Appellant asking if the Notice of Appeal was filed with the lower court. To date, counsel for the Tate Respondents has not received a response to this e-mail and the Notice of Appeal has not been filed with the York County Clerk of Court.

#### ARGUMENT

SINCE THE APPLICABLE DEADLINE TO FILE THE NOTICE OF APPEAL WITH THE LOCAL COURT HAS PASSED, RULES 203 AND 260, SCACR REQUIRE THAT THIS APPEAL BE DISMISSED.

There is no question that the Appellant has failed to timely file the Notice of Appeal with the Clerk of Court for York County, as required by Rule 203(d)(1)(B). As a result, the Court must dismiss her appeal.

Rule 260(a), SCACR, clearly 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.

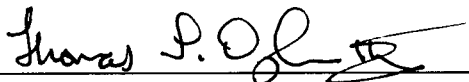
Appellant's failure to timely file her their Notice of Appeal with the York County Clerk of Court necessitates dismissal of her appeal. See, Wise v. S.C. Dep't of Corr., 372 S.C. 173, 174, 642 S.E.2d 551 (2007) ("Whenever it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal shall be issued.<sup>1</sup>")

The Appellant was required to file the Notice of Appeal with the York County Clerk of Court on or before September 9, 2019. Not only did she fail to meet this deadline, she has never filed the Notice of Appeal in York County despite multiple inquiries from the Tate Respondents' counsel and ample opportunity do so. As a result, Rule 260, SCACR, requires that the Court dismiss the Appellant's appeal.

#### CONCLUSION

Based on the foregoing, the Tate Respondents respectfully request that the Court dismiss the Appellant's appeal.

This the 24<sup>th</sup> day of September, 2019.



Thomas L. Ogburn III  
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Attorneys for Respondents Allen Tate Co., Inc.;  
Colleen Coesens; Jonathan Garvey; Robert Ouzts;  
and Connie Delaney

---

<sup>1</sup> The Wise court cites to Rule 231(a), SCACR instead of Rule 260. Id. However, on April 29, 2009, Rule 231 was renumbered to Rule 260. See, commentary to Rule 260, SCACR. The operative language is the same as the former Rule 231.

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of whom

Summit Funding, Inc.; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert Ouzts; and Connie Delaney are the..... Respondents.

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that true copies of the Memorandum of Law in Support of Motion to Dismiss Appeal in the above-referenced case have been served upon opposing counsel by depositing in the United States mail addressed to the parties below on this 24<sup>th</sup> day of September, 2019.

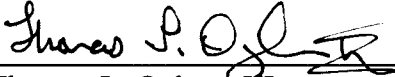
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ATTORNEYS FOR APPRAISAL  
INNOVATIONS, LLC AND  
BRIAN L. BLUE

This the 24<sup>th</sup> day of September, 2019.



---

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and Connie Delaney

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Ouzts; and Connie Delaney are the ..... Respondents.

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that true copies of the Motion to Dismiss  
Appeal in the above-referenced case have been served upon opposing counsel by depositing in  
the United States mail addressed to the parties below on this 24<sup>th</sup> day of September, 2019.

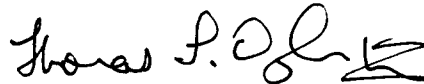
Creighton B. Coleman  
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2907 Providence Road, Suite 200  
Charlotte, NC 28211  
ATTORNEYS FOR APPRAISAL  
INNOVATIONS, LLC AND  
BRIAN L. BLUE

This the 24<sup>th</sup> day of September, 2019.



---

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and Connie Delaney

Poyner Spruill<sup>LLP</sup>

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September 24, 2019

Clerk, The South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**

SEP 30 2019

SC Court of Appeals

**Re: Karen K. Baber v. Summit Funding, Inc., et al.**  
Appellate Case No.: 2019-001440  
York County Case No.: 2018-CP-46-01592

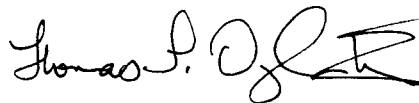
Dear Sir or Madam:

Enclosed are an original and six (6) copies of a *Motion to Dismiss Appeal* and *Memorandum of Law in Support of Motion to Dismiss Appeal* for filing in the above-referenced matter. Also enclosed is a check in the amount of \$50.00 for the filing fee. Once these documents have been filed, please return the file-stamped copies to our office in the enclosed self-addressed, stamped envelope.

We appreciate your assistance in this matter. If you have any questions, please feel free to contact our office.

Sincerely,

POYNER SPRUILL LLP



Thomas L. Ogburn, III

TLO/avd  
Enclosures

cc: Creighton B. Coleman (w/enclosures)  
Glenn E. Bowens (w/enclosures)  
Susan E. Driscoll (w/enclosures)  
Russell M. Racine (w/enclosures)

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USPS0785 \$007.85  
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041L10402104

# First Class Mail

Poyner Spurrill  
RICHMOND CHARLOTTE ROCKY MOUNT SOUTHERN PINES

Clerk, The South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RECEIVED  
SEP 30 2013  
SC Court of Appeals

