

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
OCT 03 2019
SC Court of Appeals

Karen K. Baber Appellant,

v.

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

Of Which Summit Funding, Inc., Allen Tate Co. Inc., Collen Coesens, Jonathan Garvey, Robert Ouzts, Connie Delaney, and Gloria Long-Robinsonare the Respondents.

RESPONSE TO MOTION TO DISMISS

NOW COMES the Appellant and submits her response to the Respondents' Motion to Dismiss. The Respondents' Motion to Dismiss should be denied for the following reasons. The Appellant acted in good faith and complied with SCACR 203(d)(1)(B). The Appellant mailed the Notice of Appeal to the York County Clerk of Court on August 28, 2019 at the same time the Notice of Appeal was served on the Respondents. The receipts for the mailing of the Notice of Appeal are attached as **Exhibit 1**. This action complied with SCACR 203(d)(1)(B).

The York County Clerk of Court subsequently returned the Notice of Appeal along with a notice that it should be filed electronically. The notice is attached as **Exhibit 2**. The ten (10) day time period for filing the Notice of Appeal with the lower court had elapsed by the time counsel for the Appellant received the clerk's notice.

On September 10, 2019 the Appellant filed the Notice of Appeal electronically and received a Notice of Electronic Filing stating the Notice of Appeal had been received by the Circuit Court, which is attached as **Exhibit 3**. The York County Clerk of Court then rejected the electronic filing because (1) it was filed as "Notice/Other" and (2) the last two documents (the orders) were not submitted as exhibits to the Notice of Appeal. The York County Clerk of Court's notice is attached as **Exhibit 4**. The Appellant then re-filed the Notice of Appeal in accordance with the instructions of the York County Clerk of Court as set forth in **Exhibit 4**. The Notice of Electronic Filing is attached as **Exhibit 5**.


As a preliminary matter the Appellant would argue that the Respondents have not been prejudiced in any way by the alleged failure to file the Notice of Appeal with the York County Clerk of Court. As the Appellant's exhibits make clear the Notice of Appeal was mailed to the York County Clerk of Court in a timely manner. Mailing the Notice of Appeal to the York County Clerk of Court on August 28, 2019 satisfied the requirement of SCACR 203(d)(1)(B).

By the time the York County Clerk of Court notified Appellant's counsel that the Notice of Appeal must be filed electronically the 10 day time period provided in SCACR 203(d)(1)(B) had expired. The Appellant complied with the instructions of the York County Clerk of Court and received notification the lower court had received the Notice of Appeal (**Exhibit 3**). When the York County Clerk of Court rejected the electronic filing the Appellant then re-filed the Notice of Appeal in accordance with the clerk's instructions (**Exhibit 4 and 5**).

Under these circumstances SCAR 260(a) does not require dismissal of the appeal. The Appellant provided the lower court with a copy of the Notice of Appeal by mailing it to the York County Clerk of Court on August 28, 2019. Thereafter the Appellant complied with the York County Clerk of Court's instructions on how to file the Notice of Appeal electronically. The Appellant acted in good faith in complying with SCACR 203(d)(1)(B). Based on the foregoing the Appellant respectfully requests the Respondents' Motion to Dismiss be denied.

Respectfully submitted,

October 4, 2019

By: 
Glen E. Bowens, Esq.
Creighton Coleman, Esq.
P.O. Box 424
Winnsboro, South Carolina 29180
Phone: (803) 714-7766
Fax: (803) 714-0775
Attorneys for Appellant

Other Counsel of Record:

Poyner Spruill, LLP
Thomas Lynn Ogburn, III
301 S. College Street, Suite 2900
Charlotte, NC 28202

Attorney for Respondents Allen Tate Co. Inc., Collen Coesens, Jonathan Garvey; Robert Ouzts;
Connie Delaney

Driscoll Sheedy, P.A.
Susan Elizabeth Driscoll
11520 N. Community House Road, Suite 200
Charlotte, NC 28277

Attorney for Respondent Summit Funding, Inc
Belton, Montrio Montess Sr.
125 Hampton Street, Suite 200
PO Box 566
Rock Hill, SC 29731

Attorney for Respondent Gloria Long-Robinson

=====

COLUMBIA
1601 ASSEMBLY ST

COLUMBIA
SC
29201-9998
451804-9550
(800)275-8777

8/28/2019 04:29 PM

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Product	Qty	Unit Price	Price
First-Class Mail® Large Envelope (Domestic) (CHARLOTTE, NC 28277) (Weight:3.70 oz) (Estimated Delivery Date) (Friday 08/30/2019)	1	\$1.45	\$1.45

Total: \$1.45

VISA \$1.45
(Account #:XXXXXXXXXX0263)
(Approval #)
(Transaction #:010175)
(Receipt #:010175)
(AID:A000000980840 Chip)
(AL:US DEBIT)
(PIN:Not Required)

Receipt #: 840-12900506-1-735077-1

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COLUMBIA
1601 ASSEMBLY ST

COLUMBIA
SC
29201-9998
451804-9550
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8/28/2019 04:24

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Product	Qty	Unit Price	Price
First-Class Mail® Large Envelope (Domestic) (YORK, SC 29745) (Weight:3.70 oz) (Estimated Delivery Date) (Friday 08/30/2019)	1	\$1.45	\$1.45

Total: \$1.45

VISA \$1.45
(Account #:XXXXXXXXXX0263)
(Approval #)
(Transaction #:010173)
(Receipt #:010173)
(AID:A000000980840 Chi)
(AL:US DEBIT)
(PIN:Not Required)

Receipt #: 840-12900506-1-735033-1

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1601 ASSEMBLY ST

COLUMBIA
SC
29201-9998
451804-9550
(800)275-8777

8/28/2019 04:26 PM

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Product	Qty	Unit Price	Price
First-Class Mail® Large Envelope (Domestic) (ROCK HILL, SC 29731) (Weight:3.70 oz) (Estimated Delivery Date) (Friday 08/30/2019)	1	\$1.45	\$1.45

Total: \$1.45

VISA \$1.45
(Account #:XXXXXXXXXX0263)
(Approval #)
(Transaction #:010174)
(Receipt #:010174)
(AID:A000000980840 Chip)
(AL:US DEBIT)
(PIN:Not Required)

Receipt #: 840-12900506-1-735077-1

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COLUMBIA
1601 ASSEMBLY ST

COLUMBIA
SC
29201-9998
451804-9550
(800)275-8777

8/28/2019 04:31 PM

=====

Product	Qty	Unit Price	Price
First-Class Mail® Large Envelope (Domestic) (CHARLOTTE, NC 28202) (Weight:3.70 oz) (Estimated Delivery Date) (Friday 08/30/2019)	1	\$1.45	\$1.45

Total: \$1.45

VISA \$1.45
(Account #:XXXXXXXXXX0263)
(Approval #)
(Transaction #:010176)
(Receipt #:010176)
(AID:A000000980840 Chip)
(AL:US DEBIT)
(PIN:Not Required)



Attention Attorneys:

On Tuesday, February 27, 2018 the York County Clerk of Court of Common Pleas went live on E-filing.

Any mail that was received with a postmark of February 26th and earlier has and will be accepted. If your mail/check has a post mark of February 27th or later it is being returned to you for E-filing.

If you have any questions or concerns pertaining to E-filing (training, instructions, updates..etc) please visit

<http://www.sccourts.org/efiling/>

Thank you,

York County Clerk of Court of Common Pleas

(803) 684-8507



From: efiledonotreply@sccourts.org
Subject: Courtesy NEF RE: 2018CP4601592
Date: September 10, 2019 at 4:08 PM
To: gbowens@bowenslawsc.com



***** 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.



**From:** efiledonotreply@sccourts.org  
**Subject:** Received Notice: Your filing, Re: 2018CP4601592 - (150) Fraud/Bad Faith - Notice/Other, was received  
**Date:** September 10, 2019 at 4:08 PM  
**To:** gbowens@bowenslawsc.com

---



**To:** Glenn E. Bowens gbowens@bowenslawsc.com  
**From:** efiledonotreply@sccourts.org  
**Date:** 2019-09-10 16:08:16.123  
**Subject:** Your electronic filing, Re: 2018CP4601592 - (150) Fraud/Bad Faith - Notice/Other, was received by CIRCUIT COURT.

Case Number: 2018CP4601592  
Case Type: (150) Fraud/Bad Faith  
Document Type: Notice/Other  
Document Type: Notice/Other  
Document Type: Notice/Other

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From: efiledonotreply@sccourts.org
Subject: Rejection Notice: Your filing, Re: 2018CP4601592 - (150) Fraud/Bad Faith - Notice/Other, was rejected
Date: September 10, 2019 at 4:16 PM
To: gbowens@bowenslawsc.com



To: Glenn E. Bowens gbowens@bowenslawsc.com
From: efiledonotreply@sccourts.org
Date: 2019-09-10 16:08:16.123
Subject: Your electronic filing, Re: 2018CP4601592 - (150) Fraud/Bad Faith - Notice/Other, was rejected by CIRCUIT COURT.

Case Number: 2018CP4601592

Case Type: (150) Fraud/Bad Faith

Document Type: Notice/Other

Document Type: Notice/Other

Document Type: Notice/Other

Reason(s) rejected: You will need to submit as Appeal/Notice of Appeal to Court of Appeals and submit your last 2 documents as exhibits to the Appeal. Please correct and resubmit. Thank you, Donna Yarbrough

~~~~ 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.



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

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

Official File Stamp: 09-30-2019 04:57:40 PM

Court: CIRCUIT COURT

Common Pleas

York

Case Caption: Karen K Baber VS Summit Funding Inc ,  
defendant, et al

Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals

- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits

Filed by or on behalf of: Creighton B. Coleman

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

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P.A., Michael F. Gillen, Allen Tate Co. Inc., Collen Coesens, Jonathan Garvey, Robert  
Ouzts, Connie Delaney, and Gloria Long-Robinson,

Of Which Summit Funding, Inc., Allen Tate Co. Inc., Collen Coesens, Jonathan Garvey,  
Robert Ouzts, Connie Delaney, and Gloria Long-Robinson ..... are the Respondents.

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that I served a copy of the Response to Motion to Dismiss upon:

Poyner Spruill, LLP  
Thomas Lynn Ogburn, III  
301 S. College Street, Suite 2900  
Charlotte, NC 28202


Driscoll Sheedy, P.A.  
Susan Elizabeth Driscoll  
11520 N. Community House Road, Suite 200  
Charlotte, NC 28277

Belton, Montrio Montess Sr.  
125 Hampton Street, Suite 200  
PO Box 566  
Rock Hill, SC 29731

**RECEIVED**  
OCT 03 2019  
SC Court of Appeals

By depositing the same in the United States Mail, postage prepaid, this the 4<sup>th</sup> Day of October, 2019.

October 4, 2019

  
\_\_\_\_\_  
Glenn E. Bowens, Esq.  
Creighton Coleman, Esq.  
P.O. Box 424  
Winnsboro, South Carolina 29180  
Phone: (803) 714-7766  
Fax: (803) 714-0775  
Attorneys for Appellant