

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

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OCT 11 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.

REPLY 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

In reply to Appellant Karen K. Baber's response to Respondents Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts, and Connie Delaney's (collectively, the "Tate Respondents") Motion to Dismiss Appeal, the Tate Respondents raise the following points:

1. Although Appellant received notice from the York County Clerk of Court that the attempted e-filing of the Notice of Appeal was rejected on September 10, 2019 (Appellant Exhibit 4), Appellant did not make any attempts to re-file the Notice of Appeal until September 30, 2019. (Appellant Exhibit 5). Appellant only re-filed the Notice of Appeal after the Tate Respondents served their Motion to Dismiss on September 24, 2019, despite counsel for the Tate Respondents sending an e-mail to counsel for Appellant on September 16, 2019 asking whether the Notice of Appeal was ever filed with the lower court.¹

2. The Appellant argues that her failure to timely file the Notice of Appeal with the lower court has not prejudiced the Tate Respondents. (Response, p. 2.) However, Rule 260(a) does not require that the Tate Respondents be prejudiced. It merely requires that "an appellant or a petitioner has failed to comply with the requirements of these Rules . . ." Rule 260(a), SCACR.

3. Despite being notified that she had not timely filed the Notice of Appeal with the York County Clerk of Court, Appellant never sought additional time from the Court of Appeals to comply with Rule 203(d)(1)(B).

4. The Certificate of Service attached to the Appellant's Response to the Motion to Dismiss states that the Response was served "By depositing the same in the United States mail,

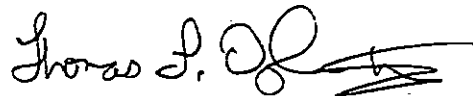
¹ Paragraph 4 of the Tate Respondents' Motion to Dismiss references the September 16, 2019 e-mail and indicates that a copy of the e-mail is attached to the Motion as Exhibit C. However, it appears that Exhibit C was inadvertently left off the copy of the Motion that was filed and served. A copy of Exhibit C is attached to this Reply.

postage prepaid, this the 4th day of October, 2019.” The copy of the Certificate served on the Respondents is file stamped as being received by the Court of Appeals on October 3, 2019. Therefore, Appellant certifies that the Response was served on the Tate Defendants on the day after the Certificate was filed with the Court of Appeals.²

CONCLUSION

Based on the foregoing and the arguments raised in the Motion to Dismiss, the Tate Respondents respectfully request that the Court dismiss the Appellant’s appeal.

This the 4th day of October, 2019.



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

² The Tate Respondents do not dispute that the Response was served on October 4, since that is the date on the envelope in which the Response was received. The Tate Respondents question how the Certificate attesting to service on “this the 4th day of October, 2019” can be filed with the Court of Appeals on October 3.

Ogburn, Tate

From: Ogburn, Tate
Sent: Monday, September 16, 2019 4:12 PM
To: Glenn Bowens; Creighton Coleman
Subject: RE: Allen Tate/Baber - Filing of Notice of Appeal

Categories: Saved to SharePoint

Glenn – Was the Notice of Appeal every filed in the trial court in accordance with Rule 203(d)? Also, did you order a copy of the transcript from the hearing?

Tate

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SC Court of Appeals

From: Glenn Bowens <gbowens@bowenslawsc.com>
Sent: Tuesday, September 10, 2019 4:11 PM
To: Ogburn, Tate <TOgburn@POYNERSPRUILL.COM>; Creighton Coleman <creighton@colemantolen.com>
Cc: Glenn Bowens <gbowens@bowenslawsc.com>
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>

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

This message constitutes a confidential attorney-client communication. If you have received this communication in error, do not read it. It is not intended for transmission to, or receipt by, any unauthorized persons. Please delete it from your system without copying it, and notify the sender by reply email or by calling 919-783-6400, so that our address record can be corrected. Thank you.

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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 Reply 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 9th day of October, 2019.


Creighton B. Coleman
Coleman & Tolen, LLC
120 West Washington Street
Winnsboro, SC 29180
ATTORNEYS FOR PLAINTIFF

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ATTORNEYS FOR PLAINTIFF

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11520 N. Community House Road
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Charlotte, NC 28277
ATTORNEYS FOR SUMMIT
FUNDING, INC.

Russell M. Racine
Cranfill Sumner & Hartzog, LLP
2907 Providence Road, Suite 200
Charlotte, NC 28211
ATTORNEYS FOR APPRAISAL
INNOVATIONS, LLC AND
BRIAN L. BLUE

This the 9th day of October, 2019.



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October 9, 2019

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

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

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Dear Ms. Kitchings:

Enclosed is an original and six (6) copies of a *Reply in Support of Motion to Dismiss Appeal* for filing in the above-referenced matter. 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,

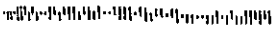
POYNER SPRUILL LLP



Thomas L. Ogburn, III

TLO/avd
Enclosures

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



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**The Honorable Jenny Abbott Kitchings
 Clerk, The South Carolina Court of Appeals
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 Columbia, South Carolina 29211**

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