

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Civil Action No.: 2017-CP-26-08135

RECEIVED

DEC 03 2019

SC Court of Appeals

Jesse Cook,.....Respondent,

vs.

Edward Jenerette,.....Appellant.

APPELLANT'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

The Appellant Jenerette respectfully opposes Respondent's Motion to Dismiss as improper and non-responsive to the issue underlying the Appeal.

As an initial matter, and as set forth in Appellant's Brief previously submitted to the Court, this Appeal arises from an Order which affects the Appellant's substantial right to have this action barred under §15-3-20 South Carolina Code Annotated ("general rule as to time for commencement") and specifically the three year statute of limitations as set forth in §15-3-530. These statutes inherently determine the action, whether the matter can proceed, and have the effect of striking a Complaint as time barred if the statute of limitations has not been complied with. Consequently, §14-3-330(2) would apply to this Appeal and confirms that this matter is subject to review.

As noted by the Respondent in their Memorandum, service has never been perfected upon the Appellant. The cause of action arose December 16, 2014. A case was filed December 12, 2017 but no service ever made. On September 11, 2018 the Chief Administrative Judge dismissed the action pursuant to SCRCF 5(d). A motion "to restore" was filed sixty-one (61) days later, on November 28, 2018. As more specifically set forth in Appellant's Brief filed August 23, 2019, there has never been any service upon the Appellant. This action remains unserved even to this date, and thus has not been "commenced" as defined by Rule 3 SCRCF. There being no proceeding commenced, there is nothing to "restore", and the statutory period through which an action can be maintained has long well expired. Counsel for the Respondent cites Shields v. Martin Marietta Corp., 303, S.C. 469, 402 S.E.2d 482 (1991) for the proposition that an order granting a motion to restore was not involving the merits thus not immediately appealable. That case, however, was a case that was properly filed and served, after which a Motion to Restore the case to the active docket was granted and an appeal filed. In the case at bar, no service has ever been made, the statute of limitations has expired, the additional 120 days allowed by statute has run, and no service has ever been perfected by any means. This is not a situation where the case was filed, removed under Rule 40(j) SCRCF, then sought to be restored. To the contrary, pursuant to Rule 3 SCRCF, the case was never commenced.

The South Carolina Constitution, Article 1, §3 describes the privileges and immunities of citizens of this state and requires due process of law as well as the equal protection of laws. §15-3-350 of the South Carolina Code provides a three-year statute of limitations, satisfying the equal protection clause, and with §15-3-20 establishing the time to commence an action, allowing for due process. The due process and equal protection clauses of the constitution are both substantial rights impacted and affected under §14-3-330(2) South Carolina Code Annotated, and

consequently this appeal is not interlocutory in nature, but rather the Appeal involves well established substantial, constitutional rights. The Respondent, never having served this action and thus never commencing an action statutorily or consistent with the South Carolina Rules of Civil Procedure, should be required to properly respond to this Appeal pursuant to the 3rd extension of Respondent and Order requiring Respondent's Brief by December 5th and address the Appellants grounds for relief and statutory compliance issues. The Respondent cannot be permitted to file an action and never serve it after five years, then proclaim the Appellant's due process and equal protection constitutional rights do not exist.

This appeal is both meritorious and warranted and should proceed including enforcement of previously issued deadlines for submission of Respondent's Brief as required under Rule 208 SCACR.

Respectfully submitted.

AIKEN, BRIDGES, ELLIOTT, TYLER
& SALEEBY, P. A.

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December 1, 2019

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CERTIFICATE OF SERVICE

I certify that I have served the document listed below in the above-entitled action to the addressees below via U.S. Mail on 12/2, 2019 and proper postage was attached thereto:

DOCUMENTS: APPELLANT'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

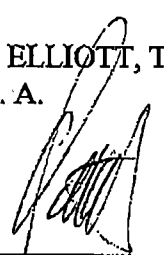
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THE HONORABLE JENNY ABBOTT KITCHINGS
SOUTH CAROLINA COURT OF APPEALS CLERK
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December 2, 2019

•Certified Mediator/Arbitrator
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VIA U.S. MAIL AND FACSIMILE

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

RE: Jesse Cook v. Edward Jenerette
Appellate Case #: 2019-001076
AB File No.: 34276

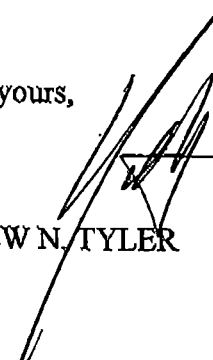
Dear Ms. Kitchings:

Please find enclosed with this letter the original and six (6) copies of the Appellant's Opposition to Respondent's Motion to Dismiss in the above-referenced matter. Please file the original with your court and return a filed copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

Should you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely yours,



MATTHEW N. TYLER

MNT/bdg
Enclosure

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Page 2

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