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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2020-001043

Town of Lexington South Carolina.....Respondent,

v.

Patty Cox Wingard, as Trustee for PLCW Trust,
and Scott's Furniture Company, Inc.Appellants.

**RESPONDENT'S MOTION TO DISMISS AND MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS**

Respondent Town of Lexington South Carolina ("Respondent") hereby moves for an Order dismissing the above-captioned appeal pursuant to Rules 203(d)(1) and (3) and 240, *South Carolina Appellate Court Rules*. The grounds of this motion are as follows:

1. Appellants Patty Cox Wingard, as Trustee for the PLCW Trust, and Scott's Furniture Company, Inc. ("Appellants") served their notice of appeal of Orders of the Honorable Alison Renee Lee, dated May 4, 2020 and July 15, 2020, on July 29, 2020. The notice of appeal was filed with this Court on the same date.

2. The notice of appeal was not filed with the Lexington County Court of Common Pleas. **See Exhibit A.**

3. Pursuant to Rule 203(d)(1)(a), the notice of appeal “*shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals*” (emphasis supplied).

4. Rule 203(d)(1)(b) requires that the notice of appeal be filed with both the lower court and this Court “within ten (10) days after the notice of appeal is served.”

5. The notice of appeal herein was not filed with the lower court within the prescribed time.

6. Rule 203(d)(3) provides that “[i]f the notice of appeal is not timely filed . . . the appeal shall be dismissed.”

7. Because Appellants have not timely filed the notice of appeal in both this Court and the lower court, Respondent respectfully submits that this case should be dismissed.¹

[SIGNATURE ON FOLLOWING PAGE]

¹ Respondents do not take lightly seeking the dismissal of Appellants’ appeal, but because this issue may be jurisdictional, it is in the interest of all parties not to continue litigation if the failure to timely *file* the notice of appeal deprived this Court of jurisdiction over this matter. See *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (“The requirement of *service* of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”)

Respectfully submitted,

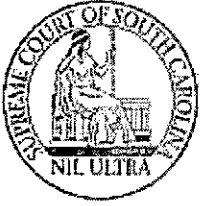
Bradford T. Cunningham
Clifford O. Koon, Jr.
PO Box 397
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s/Adam T. Silvernail
Adam T. Silvernail (Bar #80219)
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December 19, 2020

Counsel for Respondent

EXHIBIT A



Lexington County Eleventh Judicial Circuit Public Index



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Switch View

Town Of Lexington South Carolina VS Patty C Wingard Trustee Plcw Trust , defendant, et al					
Case Number:	2018CP3203352	Court Agency:	Common Pleas	Filed Date:	10/02/2018
Case Type:	Common Pleas	Case Sub Type:	Relief 820	File Type:	Non-Jury
Status:	Ended	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Non Jury	Disposition Date:	05/04/2020	Disposition Judge:	McLeod, Walton J IV
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties		Actions		Financials		
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Town Of Lexington South Carolina	NEF(07-15-2020 02:39:30 PM) Order/Other	Filing		07/15/2020-14:39	05/04/2020-14:39	
Town Of Lexington South Carolina	Order/Other	Order		07/15/2020-14:39	05/04/2020-14:39	
Town Of Lexington South Carolina	NEF(05-24-2020 03:19:45 PM) Response	Filing		05/26/2020-08:25	05/04/2020-08:25	
Town Of Lexington South Carolina	Pift's. Response to Def's. Motion to Reconsider	Filing		05/24/2020-15:19	05/04/2020-15:19	
Patty C Wingard Trustee Plcw Trust	NEF(05-14-2020 05:00:21 PM) Filing/Other	Filing		05/15/2020-08:10	05/04/2020-08:10	
Patty C Wingard Trustee Plcw Trust	Filing/Exhibit A/Agreement	Filing		05/14/2020-17:00	05/04/2020-17:00	
Patty C Wingard Trustee Plcw Trust	Filing/Exhibit B/Resolution	Filing		05/14/2020-17:00	05/04/2020-17:00	
Patty C Wingard Trustee Plcw Trust	NEF(05-14-2020 03:44:36 PM) Motion/Reconsider	Filing		05/14/2020-15:52	05/04/2020-15:52	

Patty C Wingard Trustee Plcw Trust	Motion/Reconsider	Motion		05/14/2020-15:44	07/15/2020-15:44	
Town Of Lexington South Carolina	NEF(05-04-2020 10:30:01 AM) Order/Other	Filing		05/04/2020-10:30	05/04/2020-10:30	
Town Of Lexington South Carolina	Order/Other	Order		05/04/2020-10:30	05/04/2020-10:30	
Town Of Lexington South Carolina	NEF(09-30-2019 01:51:35 PM) Reply/Reply to Counterclaim	Filing		09/30/2019-14:40	05/04/2020-14:40	
Town Of Lexington South Carolina	Reply/Plaintiffs Reply to Counterclaim	Filing		09/30/2019-13:51	05/04/2020-13:51	
Cunningham, Bradford T.	10/14/2019_NJURY_Roster/Notice of Case Roster Publication Se	Action		09/17/2019-10:40	05/04/2020-10:40	
Koon, Clifford O. Jr.	10/14/2019_NJURY_Roster/Notice of Case Roster Publication Se	Action		09/17/2019-10:40	05/04/2020-10:40	
Bradley, James Edward	10/14/2019_NJURY_Roster/Notice of Case Roster Publication Se	Action		09/17/2019-10:40	05/04/2020-10:40	
Koon, Clifford O. Jr.	8/12/2019_NJURY_Roster/Notice of Case Roster Publication Sen	Action		07/11/2019-15:07	05/04/2020-15:07	
Bradley, James Edward	8/12/2019_NJURY_Roster/Notice of Case Roster Publication Sen	Action		07/11/2019-15:07	05/04/2020-15:07	
Cunningham, Bradford T.	8/12/2019_NJURY_Roster/Notice of Case Roster Publication Sen	Action		07/11/2019-15:07	05/04/2020-15:07	
Town Of Lexington South Carolina	NEF(04-03-2019 02:48:46 PM) Order/Electronic Form 4	Filing		04/03/2019-14:48	05/04/2020-14:48	
Town Of Lexington South Carolina	Scheduling Order	Order		04/03/2019-14:48	05/04/2020-14:48	
Cunningham, Bradford T.	4/1/2019_NJURY_Roster/Notice of Case Roster Publication Sent	Action		03/12/2019-11:03	05/04/2020-11:03	
Koon, Clifford O. Jr.	4/1/2019_NJURY_Roster/Notice of Case Roster Publication Sent	Action		03/12/2019-11:03	05/04/2020-11:03	
Bradley, James Edward	4/1/2019_NJURY_Roster/Notice of Case Roster Publication Sent	Action		03/12/2019-11:03	05/04/2020-11:03	
Scotts Furniture Company Inc	NEF(11-06-2018 08:37:52 AM) Notice/Notice of Appearance	Filing		11/06/2018-08:38	05/04/2020-08:38	
Scotts Furniture Company Inc	Notice/Notice of Appearance	Filing		11/06/2018-08:37	05/04/2020-08:37	
Patty C Wingard Trustee Plcw Trust	NEF(11-01-2018 01:52:55 PM) Notice/Notice of Appearance	Filing		11/01/2018-14:16	05/04/2020-14:16	
Patty C Wingard Trustee Plcw Trust	Notice/Notice of Appearance	Filing		11/01/2018-13:52	05/04/2020-13:52	
Patty C Wingard Trustee Plcw Trust	Answer/Answer & Counterclaim	Filing		11/01/2018-13:52	05/04/2020-13:52	
Town Of Lexington South Carolina	Summons & Complaint	Filing		10/02/2018-15:26	05/04/2020-15:26	



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PROOF OF SERVICE

The undersigned counsel for respondent certifies that on the date shown below he has served a copy of the Notice of Appearance on counsel for Appellants by U.S. Mail, first-class postage prepaid, addressed as follows:

James Edward Bradley, Esquire
Sierra D. Carini, Esquire
Moore Taylor Law Firm, P.A.
PO Box 5709
West Columbia, SC 29171

December 19, 2020

s/Adam T. Silvernail
Counsel for Respondent

Law Office of
ADAM T. SILVERNAIL
LLC

December 19, 2020

By U.S. Mail:
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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Re: *Town of Lexington South Carolina v. Wingard, et al*
Appellate Case No. 2020-1043

Dear Ms. Kitchings:

I am one of Respondent's counsel in the above-referenced appeal. Enclosed for filing, please find the original of our Motion to Dismiss, along with a Proof of Service and a check for \$50.00 to cover the filing fee.

By copy of this letter, I am serving Appellants' counsel with the enclosures.

Thank you for your attention to this matter.

Sincerely,



Adam T. Silvernail

Cc: James Edward Bradley, Esquire
Sierra D. Carini, Esquire
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The Honorable Jerry Abbott King
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

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