

# WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
RANDOLPH R. LOWELL\*\*  
TRACEY C. GREEN  
CHAD N. JOHNSTON  
JOHN W. ROBERTS  
ELIZABETH ZECK\*  
ELIZABETHANN L. CARROLL  
ANDREW J. D'ANTONI  
R. WALKER HUMPHREY, II\*\*\*  
ANDREW R. HAND\*\*\*\*  
J. JOSEPH OWENS

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Feb 09 2021

SC Court of Appeals

ELIZABETH S. MABRY  
J. PATRICK HUDSON  
OF COUNSEL

JOSEPH H. FARRELL, III  
SPECIAL COUNSEL

\*ALSO ADMITTED IN TEXAS

\*\*ALSO ADMITTED IN WASHINGTON, D.C.

\*\*\*ALSO ADMITTED IN CALIFORNIA

\*\*\*\*ALSO ADMITTED IN NORTH CAROLINA

February 9, 2021

## VIA ELECTRONIC FILING

The Honorable Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: *Robert F. Berry, Respondent v. Scott A. Spang, Wells Fargo Clearing Services, LLC, f/k/a Wells Fargo Advisors, LLC, Wachovia Securities Financial Holdings, LLC, Wells Fargo & Company, and Wells Fargo Bank, N.A., Appellants.*  
C/A No. 2017-CP-32-00397  
Appellate Case No. 2017-001690

Dear Ms. Kitchings:

This firm represents Respondent Robert F. Berry in the above-referenced matter. The purpose of this letter is two-fold. First, pursuant to Rule 263(b), SCACR, and consistent with this Court's policy of considering an initial extension request made via correspondence, we would respectfully request a 10-day extension of time in which to file Mr. Berry's Return to the Petition for Rehearing of the Appellants, which Return was requested by letter of the Court dated February 2, 2021. By my calculation, Mr. Berry's Return would be due on Monday, February 22, 2021. I have conferred with opposing counsel regarding this request and am authorized to state that Appellants consent to the requested relief.

As permitted by part (d) and (l) of Order 2020-05-29-02, respectively, no additional copies of this motion are submitted and no filing fee is required for the motion under Rule 240(d), SCACR. Finally, by copy of this letter, I am serving counsel for Appellants electronically and enclose a proof of service to that effect, with transmittal email, as provided for under Order 2020-05-29-02, part (g)(3).

The second purpose of this letter is to follow up on my conversation with Court Staff to address an apparent issue in the parties' receipt of E-mails from the Court in this appeal. As I indicated in that conversation, a review of the C-Track file for this matter reveals that two recent filings and accompanying written correspondence from the Court have been uploaded to C-Track showing that they were sent via E-mail to the parties. Specifically, these documents include: (1) a January 13, 2021, E-mail from Stormy Falin, which indicates the transmission of a cover letter and the Opinion of the Court as an attachment to the message; and (2) a February 2, 2021, E-mail from Mary-Caitlyn Singleton, which indicates the transmission of a letter from Deputy Clerk Claire Allen acknowledging receipt of Appellants' petition for rehearing and requesting a return

OFFICES:

COLUMBIA | 930 RICHLAND STREET, COLUMBIA, SC 29201 | 803.252.3300 FAX 803.256.8062  
CHARLESTON | 133 RIVER LANDING DRIVE, SUITE 200, CHARLESTON, SC 29492 | 843.619.4426 FAX 843.619.4490

The Honorable Jenny A. Kitchings

February 9, 2021

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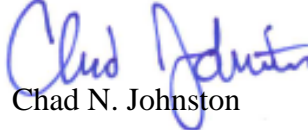
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to same within ten days. Although there are five individuals from my firm listed as recipients to both E-mails (three attorneys who are counsel of record, and two staff members of my firm), I have confirmed that none of us received either E-mail from the Court. That prompted me to inquire as to opposing counsel's receipt of the same E-mails, and I can confirm that Ms. Spruill indicated that she also did not receive either E-mail. I can also confirm that I have received correspondence from the Court and its staff in other pending appeals. All of which leads me to believe that the issue is perhaps not on our (the parties') side, but a glitch on the delivery side of the Court that is specific to this appeal. Regardless, any efforts that could be undertaken by the Court to determine the source of this issue would be greatly appreciated, and I would be happy to provide any additional information to the Court that would be helpful in that regard.

If you have any questions or if you need any additional information, please do not hesitate to contact me. With best regards, I am,

Respectfully,

**WILLOUGHBY & HOEFER, P.A.**

  
Chad N. Johnston

cc: Sarah P. Spruill, Esquire (via Electronic Mail)  
Frederick T. Smith, Esquire (via Electronic Mail)  
Adam N. Yount, Esquire (via Electronic Mail)  
Pierce T. MacLennan, Esquire (via Electronic Mail)

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Feb 09 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2017-001690

Robert F. Berry, .....Respondent,

v.

Scott A. Spang, Wells Fargo Clearing Services, LLC,  
f/k/a Wells Fargo Advisors, LLC,  
Wachovia Securities Financial Holdings, LLC,  
Wells Fargo & Company, and Wells Fargo Bank, N.A.,..... Appellants.

**CERTIFICATE OF SERVICE**

This is to certify that I, a shareholder with the law firm Willoughby & Hoefler, P.A., have caused to be served this day one (1) copy of Robert F. Berry’s **Motion for Extension of time to file Return to Petition for Rehearing** by electronic mail delivery of same to the recipients listed and at their AIS provided email addresses below and via the attached E-mail:

Sarah Spruill, Esquire  
sspruill@hsblawfirm.com  
Adam Yount, Esquire  
ayount@hsblawfirm.com  
Pierce T. MacLennan  
pmaclennan@hsblawfirm.com  
Frederick T. Smith  
fsmith@seyfarth.com

*Counsel to Appellants Wells Fargo Clearing Services, LLC f/k/a Wells Fargo Advisors,  
Wachovia Securities Financial Holdings, LLC, Wells Fargo & Company, Wells Fargo Bank,  
N.A., and Scott A. Spang*

*s/Chad Johnston*  
Chad N. Johnston

Columbia, South Carolina  
February 9, 2021

**From:** [Chad Johnston](#)  
**To:** ["Spruill, Sarah"](#); ["ayount@hsblawfirm.com"](#); ["pmaclennan@hsblawfirm.com"](#); ["fsmith@seyfarth.com"](#)  
**Cc:** [Mitchell Willoughby](#); ["ezeck@willoughbyhoefer.com"](#)  
**Subject:** Robert F. Berry v. Scott A. Spang, et al.; Case Number 2017-001690  
**Date:** Tuesday, February 9, 2021 5:04:00 PM  
**Attachments:** [Case No. 2017-001690 - 2021-02-09 Johnston Ltr to Kitchings \(Extension and Receipt of Correspondence\).pdf](#)

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Counsel,

As permitted by part (g)(3) of Supreme Court Order 2020-05-29-02, I am herewith serving via E-mail correspondence from Respondent Robert F. Berry seeking an extension of time to file a return to the petition for rehearing in the above-captioned appeal. Shortly, I will be filing these documents with the Court of Appeals electronically as permitted by part (c)(5) of the Order, and will attach this E-mail to the certificate of service of same.

Best regards,  
Chad



Chad N. Johnston, Esquire  
**WILLOUGHBY & HOEFER, P.A.**  
930 Richland Street (29201)  
P.O. Box 8416  
Columbia, SC 29202  
(o) 803.252.3300 | (d) 803.771.2126  
[cjohnston@willoughbyhoefer.com](mailto:cjohnston@willoughbyhoefer.com)

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