

The South Carolina Court of Appeals

One Belle Hall Property Owners Association, Inc., and
Marvin T. Meek and Francis E. Hill, individually and on
behalf of all others similarly situated, Respondents,

v.

Builders FirstSource-Southeast Group, LLC, Appellant.

Appellate Case No. 2018-001230

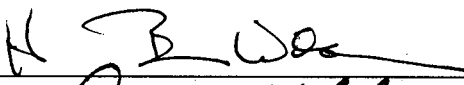
ORDER

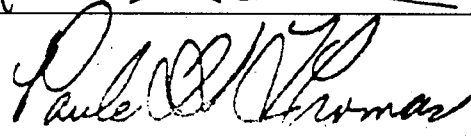
Respondents filed a motion to dismiss this appeal, asserting this court lacks appellate jurisdiction because Appellant did not timely serve its notice of appeal within 30 days after receiving the final order ending this action. Appellant received written notice of the September 22, 2016 Form 4 order on September 27, 2016. Thus, Appellant was required to either move for reconsideration of the final order within ten days after receipt, by October 10, 2016, or appeal the final order within thirty days after receipt, by October 28, 2016. Appellant did not file a Rule 59(e), SCRCP, motion to reconsider the final order within ten days, and Appellant filed its notice of appeal with this court on July 2, 2018, almost two years later. Therefore, we agree this court does not have jurisdiction to hear this appeal. *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.").

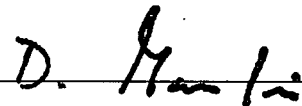
Appellant argues its post-trial motions stayed the time for appeal. Appellant filed a motion titled motion to compel and motion for determination of set-off on September 8, 2016. However, Appellant only sought to compel settlement documents, and despite stating that following the production of the requested documents Appellant would move to seek a determination on set-off, Appellant

never filed its subsequent set-off motion or any further briefing as to its entitlement to a set-off. Appellant also filed a second motion for judgment notwithstanding the verdict (JNOV) as well as a new trial absolute and a new trial nisi remittitur on September 13, 2016. Appellant never filed a Rule 59(e) motion asking the trial court to reconsider its denial of its first motion for JNOV. The trial court found the filing of the second JNOV motion was a successive JNOV motion that was a nullity in the eyes of the law and did not suspend the time for appeal. *See Wright v. Craft*, 372 S.C. 1, 19-20, 640 S.E.2d 486, 496-97 (Ct. App. 2006) (holding when a defendant fails to move for directed verdict at the close of all the evidence, an appellate court is precluded from reviewing both the denial of prior directed verdict motions and any subsequent JNOV motion); *Elam*, 361 S.C. at 16, 602 S.E.2d at 776 (holding successive post-trial motions do not stay the time for serving notice of appeal). We agree with the trial court and find Appellant's post-trial motions did not stay the time for Appellant to file its appeal.

Accordingly, this appeal is dismissed.



J.


J.


J.

Columbia, South Carolina

cc:
C. Mitchell Brown, Esquire
William C. Wood, Jr., Esquire
Justin O'Toole Lucey, Esquire
Dabny Lynn, Esquire
Anna Scarborough McCann, Esquire

FILED
Mar 15 2021