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**Apr 16 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Walton J. McLeod, Circuit Judge

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Appellate Case 2021-000033  
Case No. 2018-CP-32-04329

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John Deere Construction & Forestry Company, Respondent,

v.

North Edisto Logging, Inc. and Paul Gunter, Appellants.

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RETURN to MOTION to DISMISS

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Respondent's motion to dismiss should be denied because it is premised both on a misreading of the applicable rule, and on erroneous factual assumptions.

**Rule 208**

Rule 208 SCACR provides:

**(1) Brief of Appellant.** Within thirty (30) days after **receiving** the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service. (Emphasis added)

Respondent's repeated use of the term "delivery" is obviously a misreading of the rule. The important event is not when the court reporter delivers the package containing the transcript to the U.S. Postal Service. Rather the thirty day period under Rule 208 begins to run when Appellant receives the package containing the transcript.

Attached is a scan of the mailing label from the package containing the transcript, which reflects an anticipated delivery date of February 10. The label also gives a tracking number of 9405 5036 9930 0269 3033 92.

Also attached is a screenshot of the USPS.com tracking information for this number which shows that the transcript was received on February 10. This information can be viewed at the following address: [https://tools.usps.com/go/TrackConfirmAction?qtc\\_tLabels1=9405503699300269303392](https://tools.usps.com/go/TrackConfirmAction?qtc_tLabels1=9405503699300269303392)

Respondent's motion is manifestly without merit and could have been avoided by the simple effort of inquiring as to how the transcript was sent, and what evidence existed of the date it was received by Appellants, rather than when it was mailed by the court reporter.

### **Rule 207**

Rule 207 SCACR mandates providing copies of correspondence with the court reporter with Respondent. Initially, Respondent's motion contains a factual assertion that is simply false. In Paragraph 22 on page 6 of the motion Respondent asserts that "Upon request of Respondent, Appellants provided a copy of their correspondence with the Court Reporter requesting the transcript."

Ms. Wooten, Mr. Fanning and their paralegal were all copied on the email sent January 15, 2021 that transmitted the transcript request form. No "request" was necessary. As to other correspondence, Respondent's appear to imagine that there were a flurry of other letters to the Court Reporter that they were left out of. Again this is incorrect. The initial order was emailed to the Respondent's counsel at the same time it went to the court reporter. An online payment was made for the cost of the transcript. The Court Reporter sent the transcript by itself without further Correspondence.

Respondent's busy work mindset is evidence by their filing of voluminous documents that are already part of this Court's file with their motion and sending a duplicate package by mail even though effective service had already been made by email. It is apparently inconceivable to them that a single email transmitted the request, which was not followed up by mailing a duplicate, was all the correspondence necessary. As noted, payment was made online, again without mailing a paper check. Finally the Court Reporter trusted that counsel for Appellants would be able to figure out that the contents of the package she mailed was a transcript without a letter identifying the transcript.

Respondent also asserts that Appellants were obligated to provide them with a free copy of the transcript. Nothing in Rule 207 says or suggests this and Counsel for Appellant's was at a loss as to how to respond to the idea that he should facilitate cutting out the Court Reporter from the fee that she was entitled to for Respondent's copy of the transcript

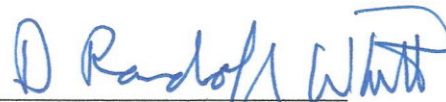
Respondent's Rule 207 argument is also manifestly without merit.

#### **Designation of Matter**

Respondent alludes to objecting to Appellants' Designation of matter, but fails to identify any of the items designated as being irrelevant. The transcript is a relatively brief 37 pages, It only covers the motion hearing that gave rise to the order appealed from. It is unclear how the pleadings could be irrelevant or what the issue could be, so Respondent's motion should be denied on this point as well.

#### **Conclusion**

Respondent's motion should be denied on all points.



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West Columbia, SC 29170  
(803) 422-2176 Tel  
dwhitt2001@aol.com

April 16, 2021

Attorney for Appellants

FROM:

UNITED STATES POSTAL SERVICE® Click-N-Ship®

P

USPS.com 9405 5036 9930 0269 3033 92 0079 5000 0012 9170

US POSTAGE  
Flat Rate Env



02/09/2021

Mailed from 29575 062S0000001309

PRIORITY MAIL 1-DAY™

BOBBI FISHER  
715 SANDBERG ST  
MYRTLE BEACH SC 29575-8657

Expected Delivery Date: 02/10/21

Ref#: JOHN DEERE

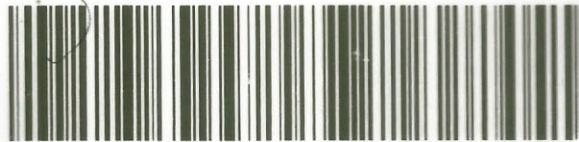
0006

R001

SHIP

TO: D. RANDOLPH WHITT  
LAW OFFICE  
344 BLOSSOM VIEW CT  
WEST COLUMBIA SC 29170-2337

USPS TRACKING #



9405 5036 9930 0269 3033 92

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February 10, 2021 at 2:06 pm  
WEST COLUMBIA, SC 29170

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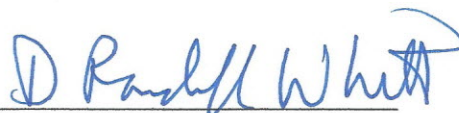
PROOF OF SERVICE

I certify that I have served the Return to Motion to Dismiss on Respondent listed above via emailing a copy of it on April 16, 2021, addressed to their attorney of record as follows:

Paul A. Fanning PAF@wardandsmith.com

Amy H. Wooten AHWooten@wardandsmith.com

Michelle C. Howard MCHoward@wardandsmith.com



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Attorney for Appellants

April 16, 2021

**From:** dwhitt2001@aol.com,

**To:** paf@wardandsmith.com, ahwooten@wardandsmith.com, mchoward@wardandsmith.com,

**Subject:** Return to Motion to Dismiss

**Date:** Fri, Apr 16, 2021 6:00 pm

**Attachments:** return to motion scan.pdf (1531K), return svc Scan.pdf (239K)

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Good Afternoon,

Attached is a scan of my return to your motion to dismiss and proof of service that I will be filing with the Court Shortly.

Regards,  
Randy Whitt