

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

MARVIN H. DUKES, III, MASTER IN EQUITY

CASE NO.: 2017-CP-07-01921

RECEIVED

JUL 21 2021

SC Court of Appeals

Serena Green Grant

Respondent,

vs.

Palbert, Inc, et al.,

Appellant.

RESPONDENT'S
MOTION TO DISMISS APPEAL

RESPONDENT, SERENA GREEN GRANT, by and through their undersigned attorney, hereby moves for an Order dismissing the Appellant's appeal of that certain Order issued by the Honorable Marvin H. Dukes, III, Master In Equity, dated April 21, 2021, hereinafter referred to as (the "Order"), and as grounds therefor, would respectfully set forth as follows:

HISTORY

The Respondent filed and served her Summons and Complaint upon the Appellant on September 22, 2017. The Appellant was properly served on October 27, 2017, by personal service. Responsive pleadings were not timely filed.

On May 3, 2018, the Plaintiff filed her Affidavit of Default and thereafter requested a

hearing for damages before the Honorable Marvin H. Dukes, III. A damages hearing was held, and Judge Dukes awarded the Plaintiff \$400,000.00 in compensatory damages on May 10, 2019, and a Form Order entered on July 15, 2019.

On October 22, 2019, the Appellant, by and through its counsel filed a Motion to Set Aside Entry of Default.

On March 23, 2020, the Honorable Marvin H. Dukes, III, denied Appellant's Motion to Set Aside Default but granted the Appellant's motion to set aside the judgment and ordered that a new damages hearing be rescheduled at a later date. No Appeal or Motion for Reconsideration was filed as to this Order.

Prior to the rescheduling of the damages hearing, the Respondent was informed that the insurance carrier for the Appellant, American Service Insurance Company by Order dated August 11, 2020, was ordered to be liquidated, staying this action for ninety (90) days.

The ninety (90) day stay period expired on November 9, 2020, and thereafter, the Appellant filed yet another motion to set aside the default, attempting to circumvent the South Carolina Rules of Civil Procedure, which was appropriately denied by this Court. Appellant cannot show that the South Carolina Rules of Civil Procedure allow a litigant to "start over" merely because the insurance carrier was in liquidation. The 90 day stay period began on August 11, 2020. If a reconsideration or appeal was going to be made, it had to be made on or before April 22, 2020, which it was not.

Notwithstanding Appellant's failure to appeal said Order, they instead, attempted to take "two more bites of the apple" by filing the identical motion two more times, both of which were denied for the same reasons.

Section 38-31-160 of the Code of Laws for South Carolina does not circumvent the South

Carolina Rules of Civil Procedure; and further, nowhere does the South Carolina Rules of Civil procedure become subservient to §38-31-160.

South Carolina Appellate Court Rule 203(b)(1) states the following:

(b) Time for Service.

(1) Appeals From the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCF), motion to alter or amend the judgment (Rules 52 and 59, SCRCF), or a motion for a new trial (Rule 59, SCRCF) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

The Appellant filed a Notice of Appeal on July 7, 2021, attempting to appeal an Order entered on April 27, 2021, which is seventy-one days (71) days from the entry of the Order.

Based upon South Carolina Appellate Court Rule 203(b)(1) a notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. The parties received this Order via the AIS system on April 27, 2021, and therefore the Appellants Notice of Appeal is not timely and should be dismissed in its entirety.

MOSS, KUHN & FLEMING, P.A.

By 

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Beaufort, South Carolina
July 16, 2021

Attorneys for the Respondent

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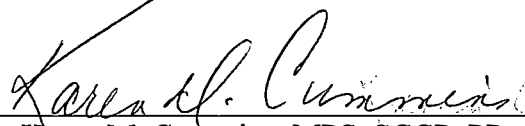
CERTIFICATE OF SERVICE

Undersigned certifies that the **Appellant's Motion to Dismiss Appeal**, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Brandon P. Jones, Esquire
Alexander P. Zuraff, Esquire
The McKay Firm, PA
Post Office Box 7217
Columbia, SC 29202

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on July 16, 2021.

By: _____


Karen M. Cummins, MPS, SCCP, PP

LAW OFFICES

MOSS, KUHN & FLEMING P.A.

JAMES H. MOSS
H. FRED KUHN, JR.
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*ALSO MEMBER OF GA BAR

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SC Court of Appeals

July 16, 2021

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Serena Green Grant v. Palbert, Inc. ,et al.

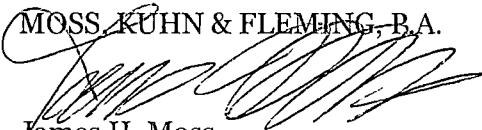
Dear Clerk Kitchings :

Enclosed for filing is the original and seven (7) copies of the Respondent's Motion to Dismiss Appeal and Certificate of Service. Please file the enclosures and return a clocked copy to me in the enclosed self-addressed stamped envelope. By copy of this letter and the enclosures, I am serving a copy of the same on Brandon P. Jones, Esquire, Attorney for the Appellant.

With kindest regards, I am

Very truly yours,

MOSS, KUHN & FLEMING, P.A.


James H. Moss

JHM:kmc

Enclosures

C: Brandon P. Jones, Esquire (w/enclosures)



JHM

MOSS, KUHN & FLEMING, P.A.
ATTORNEYS AT LAW
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To:

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