

THE STATE OF SOUTH CAROLINA  
In the South Carolina Court of Appeals

**RECEIVED**

AUG 09 2021

**SC Court of Appeals**

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Marvin H. Dukes, III, Master In Equity

Case No. 2017-CP-07-01921  
Appellate Case No. 2021-000750

Serena Green Grant.....Respondent,

v.

Palbert Inc., et al.....Appellants.

**APPELLANTS' RETURN TO MOTION TO DISMISS APPEAL**

Appellants, by and through the undersigned counsel, hereby submit this Return to Respondent's Motion to Dismiss Appeal. For the reasons stated herein, Respondent's Motion to Dismiss should be denied.

**LAW & ANALYSIS**

As an initial matter, Respondent's Motion to Dismiss Appeal should be dismissed for failure to comply with Rule 240(c), SCACR. ("All motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following: (1) A certificate or affidavit reflecting the date of service upon all parties... (2) A memorandum with citation of authorities in support of the motion; (3) Where the Record on Appeal or Appendix has not been filed, or where the facts relief upon in support of the motion are not contained in the Record on

Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.”). Not only does Respondent’s Motion fail to cite to any authority in support of the Motion – other than citing to Rule 203(b)(1), SCACR – Respondent’s Motion is devoid of any authority which supports the arguments presented in the Motion to Dismiss Appeal.

Moreover, and perhaps more importantly, Respondent’s Motion contains mischaracterized allegations and facts without any documents to reference in support of Respondent’s position. Therefore, Respondent’s Motion fails to comply with Rule 240(c)(3), SCACR. (“Where the Record on Appeal or Appendix has not been filed, **or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix**, the parties shall file affidavits and other documents in support of their positions.”) (emphasis added). Respondent’s Motion completely ignores the requirements under the South Carolina Appellate Court Rules and attempts to put forth a “history” of the case but fails to provide any affidavits or other documents in support of Respondent’s position. Because Respondent’s Motion fails to comply with the requirements of Rule 240(c), SCACR, the Court may dispose of the Motion to Dismiss Appeal pursuant to Rule 240(g), SCACR.

Rule 203(b)(1), SCACR, requires that the notice of appeal be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1) further provides, however, that “[w]hen a *timely* ... motion to alter or amend the judgment (Rules 52 and 59, SCRCPP) ... 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.” (emphasis added). A Rule 59(e) motion is timely if it is “served not later than 10 days after receipt of written notice of the entry of the order.” Rule 59(e), SCRCPP.

If a timely Rule 59(e) motion is made, the time for appeal runs from the receipt of written notice of entry of the order disposing of the motion. Rule 59(f), SCRCRCP. Additionally, when a party makes a motion for reconsideration, “the time for appeal from the judgment begins to run from the time of the order granting or denying the motion.” See Otten v. Otten, 287 S.C. 166, 167, 337 S.E.2d 207, 208 (1985).

In the Motion to Dismiss Appeal, Respondent states that “[t]he Appellant[s] filed a Notice of Appeal on July 7, 2021, attempting to appeal an Order entered on April 27, 2021, which is seventy-one (71) days from the entry of the Order.” However, Respondent is incorrect because Appellants filed the Notice of Appeal within ten (10) days of receipt of the Order denying Appellants’ Motion for Reconsideration pursuant to Rule 59(e).

More importantly, Respondent misstates the facts – Appellants are appealing the Order denying the Motion for Reconsideration pursuant to Rule 59(e). Therefore, again, the filing of the Notice of Appeal is certainly not untimely and Appellants would be remiss in failing to bring to Respondent’s attention that the Notice of Appeal was submitted well within the thirty (30) day period set forth in Rule 203(b)(1) of the South Carolina Appellate Court Rules. As stated hereinabove, Respondent’s Motion fails to comply with Rule 240(c), SCACR, and without any documents which support Respondent’s position and “history” of the case Appellants request that this Court deem the Motion abandoned pursuant to Rule 240(g), SCACR.

The Order denying the Motion for Reconsideration was entered June 28, 2021 – a critical date which Respondent completely omits from the Motion to Dismiss Appeal. (See Order dated June 28, 2021, attached hereto as Exhibit A). On July 8, 2021, ten (10) days from receipt of the Order, Appellants filed the Notice of Appeal of the June 28, 2021 Order denying Appellants’ Motion for Reconsideration. Therefore, Appellants’ Motion for Reconsideration was timely

under the South Carolina Rules of Civil Procedure and Appellants' Notice of Appeal complies with Rule 203(b)(1) of the South Carolina Appellate Court Rules.

Respondent's Motion to Dismiss Appeal is wholly without merit and this Court should deny said Motion for the reasons provided herein. Appellants further request that this Honorable Court allow the matters on appeal to be decided on the merits.

Respectfully submitted,



Brandon P. Jones, Esq. (#78696)  
Alexander P. Zuraff, Esq. (#103824)  
The McKay Firm, PA  
3700 Forest Dr., Ste. 404 (29204)  
P.O. Box 7217  
Columbia, South Carolina 29202  
ATTORNEYS FOR APPELLANTS

August 9, 2021

Other Counsel of Record:

James H. Moss, Esq.  
Moss, Kuhn & Fleming, P.A.  
P.O. Box 507  
Beaufort, South Carolina 29901  
ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA  
 COUNTY OF BEAUFORT  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-07-01921

Serena Green Grant

Palbert, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

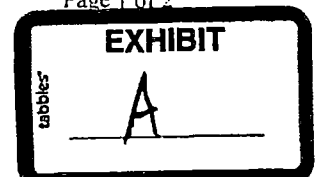
This came before me on Defendant's Motion to Reconsider; filed May 7<sup>th</sup>, 2021. After review of the file, I hereby deny the motion.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		



ELECTRONICALLY FILED - 2021 Jun 28 2:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701921

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	3069	
<b>Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

James H. Moss  
\_\_\_\_\_  
\_\_\_\_\_

Brandon Paul Jones  
\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**

**Court Reporter:** N/A

ELECTRONICALLY FILED - 2021 Jun 28 2:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701921



Beaufort Common Pleas

**Case Caption:** Serena Green Grant VS Palbert Inc  
**Case Number:** 2017CP0701921  
**Type:** Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2021-06-28 14:15:34 page 3 of 3

ELECTRONICALLY FILED - 2021 Jun 28 2:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701921

**RECEIVED**

**AUG 09 2021**

**SC Court of Appeals**

**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master In Equity

Case No. 2017-CP-07-01921

Serena Green Grant

Respondent,

Palbert Inc, *et al.*

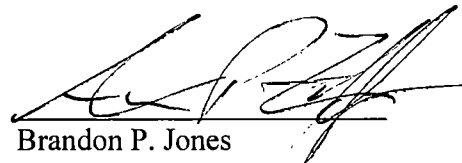
v.

Appellants.

**PROOF OF SERVICE**

I certify that I have served the Appellants' Return to Motion to Dismiss Appeal on Serena Green Grant by depositing a copy of it in the United States Mail, postage prepaid, on August 9, 2021, addressed to her attorney of record, James H. Moss, Post Office Box 507, Beaufort, South Carolina 29901-0501.

August 9, 2021



Brandon P. Jones  
Alexander P. Zuraff  
Post Office Box 7217  
Columbia, South Carolina 29202  
(803) 256-4546  
Attorney for Appellants

LETTER TO THE APPELLATE COURT  
CLERK FILING APPELLANTS' RETURN TO  
RESPONDENT'S MOTION TO DISMISS  
APPEAL

**RECEIVED**  
AUG 09 2021  
**SC Court of Appeals**

AUGUST 9, 2021

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

RE: Serena Green Grant, Respondent, v. Palbert Inc,  
Appellant, Case No. 2021-000750

Dear Ms. Kitchings:

Enclosed for filing is the Appellants' Return to Respondent's Motion to Dismiss Appeal. Also enclosed are the following:

- (1) Proof of service of the Appellants' Return to Motion to Dismiss Appeal and six (6) copies of the same; and
- (2) Filing fee in the amount of \$50.00.

Sincerely,  
s/Alexander P. Zuraff  
Brandon P. Jones  
Alexander P. Zuraff  
Post Office Box 7217  
Columbia, South Carolina 29202  
(803) 256-4546  
Attorney for Appellants

cc: James H. Moss  
Moss, Kuhn & Fleming, P.A.  
P.O. Box 507  
Beaufort, South Carolina 29901  
Attorney for Respondent

A. Zurek, Esq.  
The McKay Firm, PA  
P.O. Box 7218  
Columbia, SC 29202

VIA HAND DELIVERY

Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Ct. App.  
1220 Senate Street  
Columbia, SC 29201

RECEIVED  
AUG 09 2021  
SC Court of Appeals