

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SEP 28 2021

APPEAL FROM ANDERSON COUNTY  
CIRCUIT COURT

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**SC Court of Appeals**

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

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Appellant Case No. 2021-000285

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Moats Construction, Inc.....Appellant,

vs.

City Council of the City of Anderson.....Respondent.

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**INITIAL BRIEF OF APPELLANT**

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## TABLE OF CONTENTS

|  |    |
|--|----|
| Table of Authorities .....   | ii |
| Statement of the Case .....  | 1  |
| Argument .....   | 2  |
| I. Was Appellant’s Right to Due Process Violated when the City of Anderson failed to directly provide notice of their Decision to Moats in violation of the South Carolina Rules of Civil Procedure..... | 2  |
| Conclusion .....   | 4  |

**TABLE OF AUTHORITIES**

**CASES**

Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct.1187, 1191, 14 L. Ed. (2d) 62 (1965).....2

S.C. Nat’l Bank v. Central Carolina Livestock, 289 S.C. 309, 313, 345 S.E. (2d) 485, 488  
(1986).....2

**OTHER AUTHORITIES**

South Carolina Rules of Civil Procedure, Rule 5.....2

S.C. Code Ann. §1-23-350.....4

## STATEMENT OF THE CASE

This appeal arises out of the Circuit Court's dismissal of Appellant's appeal to the Circuit Court of the City Council of Anderson. Appellant filed their appeal to the Anderson County Circuit Court after the City of Anderson erroneously failed to award Appellant with a project on which they had bid. Appellant properly filed an appeal to the City of Anderson on April 30, 2019 based upon the City's failure to award properly award appellant a contract. The City Council held a hearing on March 9, 2020 in which they upheld their original decision. Counsel from the Goodwyn Law Firm, LLC did not attend as they were not directly involved in the matter. Nobody from Moats attended either. The City's attorney, Mr. J. Franklin McClain, emailed a copy of a letter dated March 19, 2020 to the Goodwyn Law Firm, LLC on March 23, 2020 informing Goodwyn Law Firm, LLC of the decision. (March 23, 2020 email). At that time, Goodwyn Law Firm, LLC had not been retained by Moats specifically to handle the City of Anderson matter. While the letter reflects that Moats Construction, LLC ("Moats") was carbon copied, there is no proof it was either sent via email to Moats nor was it sent to Moats via certified mail. No proof has ever been provided by the City showing it was in fact mailed directly to Moats.

The Goodwyn Law Firm, LLC did in fact provide Moats notice of the decision. (March 23, 2020 email). However, Moats never acknowledged receipt of the email and there is nothing showing Mr. McClain sent the Notice of Decision from City Council to Moats via email. This was not customary, as the City of Anderson, just one day prior to drafting the March 19, 2020 letter attached to the March 23, 2020 email to Goodwyn Law Firm the City emailed Moats directly informing him of decisions they made regarding a FOIA request and copied the Goodwyn Law Firm. (March 18, 2020 email).

As the Coronavirus Pandemic began to alter business and the Court system in extensive ways right around this time and throughout the coming months, no further discussions took place between counsel and Moats about possibly pursuing any type of appeal. Counsel and Moats did have a discussion in September regarding the matter and promptly filed their notice of appeal to the Circuit Court thereafter. Respondent filed a Motion to Dismiss. A hearing was held via Webex on February 8, 2021 and the Honorable R. Scott Sprouse granted Defendant's Motion to Dismiss. This appeal follows.

#### QUESTION PRESENTED

WAS APPELLANT'S RIGHT TO DUE PROCESS VIOLATED WHEN THE CITY OF ANDERSON FAILED TO DIRECTLY PROVIDE NOTICE OF THEIR DECISION TO MOATS IN VIOLATION OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE?

The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." S.C. Nat'l Bank v. Central Carolina Livestock, 289 S.C. 309, 313, 345 S.E. (2d) 485, 488 (1986), citing Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. (2d) 62 (1965). While due process does not mandate any particular form of procedure, the South Carolina Rules of Civil Procedure provide great guidance as to what constitutes due process. see S.C. Nat'l Bank v. Central Carolina Livestock.

"Parties shall be notified either personally or by mail of any decision or order." S.C. Code Ann. §1-23-350. "Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address." South Carolina Rules of Civil Procedure Rule 5. Rule 74 of the South Carolina Rules of Civil Procedure requires, "Notice of appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice of the judgment, order or decision appealed from." Service shall only be made upon the attorney where the party is represented by the attorney. See SCRCF Rule 5.

In this case, Respondents have not shown that they properly served notice of the City Council's decision upon Appellant Moats directly. They emailed a copy of a letter to counsel who has appeared on Moats' behalf in this matter. However, at that time, they were not directly involved in the ongoing litigation with the City of Anderson. They were specifically asked by Moats not to participate in the City Council's review hearing on March 9, 2020 in which City Council upheld the decision to deny Moats the bid. March 11 Email to Moats. No evidence has ever been provided by City Council or their attorney showing that any such letter was actually sent to Moats.

To the contrary, on March 18, 2020, the City of Anderson's attorney sent Moats an email and copied counsel. That email contained letters "which [were] sent by mail" related to a wholly separate matter. The next day, on March 19, 2020, the City of Anderson by and through their counsel, drafted a letter to Moats which was not emailed directly to him in the same manner as the March 18, 2020 letters. Through their due diligence, as the Goodwyn Law Firm, LLC received the March 18, 2020 despite not being specifically retained in this matter, they informed Moats of the City's decision affirming the decision not to award the original contract. March 23, 2020 Email.

None of what the City of Anderson did satisfies the requirements of due process and the South Carolina Rules of Civil Procedure. No evidence was presented by the City's counsel that Moats was directly informed of the decision via mail. In fact, contrary to the normal practice of following up with Moats through email to provide notice (as they did just one day before drafting the March 19, 2020 letter), the City of Anderson did not contact Moats directly via email. There

is no record showing delivery of the decision to Moats.<sup>1</sup> The only record is that it was sent to counsel whom had not been formally engaged or retained on this matter. That does not satisfy the requirements of S.C. Code Ann. §1-23-350 or South Carolina Rules of Civil Procedure Rule 5. Because service of the notice of the decision of City Council was never properly effectuated on Moats, the provision of Rule 74 was never triggered and the filing of the Appeal to the Circuit Court was not out of time. Therefore, this Court should reverse the finding of the Circuit Court.

### CONCLUSION

Based upon the foregoing reasons, Respondent never properly provided notice of the decision of the Circuit Court to Moats. Because of this, Moats was denied due process. As notice was never properly provided, Rule 74 was never triggered and Moats did not miss the deadline to file the Notice of Appeal of the City Council's decision. Therefore, Appellant prays this Court either reverse the Trial Judge's dismissal of the appeal to the Circuit Court.

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Dated September , 2021

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<sup>1</sup> Appellant cited to March 23, 2020 as the date they received written notice of the entry of the decision of City Council in their Notice of Appeal to the Circuit Court of Anderson County. Counsel for Respondent did receive notice. However, they had not made any entry of appearance for this matter and notice to them is not sufficient under Rule 5.

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY  
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R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

Appellant Case No. 2021-000285

Moats Construction, Inc.....Appellant,

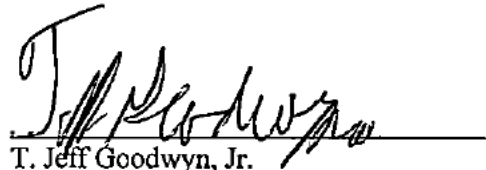
vs.

City Council of the City of Anderson.....Respondent.

**PROOF OF SERVICE**

I certify that I have served a copy of the **Initial Brief of Appellant and Designation of Matter to be Included on Appeal** upon J. Franklin McClain, Esquire, Counsel for the Respondent, at the address below by depositing a copy of same in the United States Mail, postage prepaid, on **September 28, 2021**.

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**VIA HAND DELIVERY**

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

RE: *Moats Construction, Inc. v. City Council of the City of Anderson*  
*Appellant No.: 2021-000285*  
*Our File No.: 3000-0519*

Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of the Initial Brief of Appellant and Designation of Matter to Be Included in the Record on Appeal, along with the Proof of Service, in regard to the above-referenced matter. Please return a clocked-in copy of same in the self-addressed stamped envelope provided.

By copy of this letter and as evidenced by the attached Proof of Service, I am serving a copy of the Initial Brief of Appellant and Designation of Matter on J. Franklin McClain, Esquire attorney for the Respondent.

Thank you for your attention to this matter and should you have any questions, please do not hesitate to contact me.

Sincerely,



T. Jeff Goodwyn, Jr.

TJG/msb  
Enclosures

cc: J. Franklin McClain, Esquire