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**Oct 08 2021**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE CITY COUNCIL  
OF THE CITY OF ANDERSON, SOUTH CAROLINA

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Case No. 2020-CP-04-01809  
Appellate Case No.: 2021-000285

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**MOATS CONSTRUCTION, INC.** ..... Appellant,

v.

**CITY COUNCIL OF THE CITY OF ANDERSON** ..... Respondent.

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RESPONDENT’S MOTION TO STRIKE MATTERS  
FROM APPELLANT’S DESIGNATION OF MATTER

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Respondent, by and through its undersigned counsel, hereby moves for an Order striking certain matters from Appellant’s Designation of Matter to be Included on Appeal based upon the failure to comply with Rules 209 and 210(c) of the South Carolina Appellate Court Rules. Appellant includes matters in its Designation that were not presented to the Circuit Court; thus, this Court must strike those matters from Appellant’s Designation.

This matter involves the timeliness of Appellant’s appeal to the Circuit Court from the Anderson City Council’s Determination in a procurement matter. Following a hearing on February 8, 2021, the Circuit Court granted the City’s Motion to Dismiss, finding that

the Appellant failed to file the appeal within thirty (30) days as required by Rule 74, SCRCF. (See Exhibits A-C.) The only issue before the Court in this appeal is whether the Appellant filed a timely appeal of the City Council Determination to the Circuit Court, and the September 29, 2020 Notice of Appeal to the Circuit Court acknowledges that the “Appellant received notice of the entry of this Decision and Order on March 23, 2021,” which was over six (6) months before the appeal was filed to the Circuit Court. (See Exhibits D and E.)

The following documents were neither presented to the Circuit Court nor admitted into evidence in the underlying proceedings and, therefore, are improperly included in the Appellant’s Designation:

- a. Appellant’s matter number 10, Letter from J. Franklin McClain to Moats Construction Co. dated March 19, 2020 (Exhibit F);
- b. Appellant’s matter number 11, Email between David Beale and Russell Moats dated March 11, 2020 (Exhibit G);<sup>1</sup>
- c. Appellant’s matter number 12, Email between Frankie McClain, Russell Moats and David Beale dated March 18, 2020 (Exhibit H);<sup>2</sup> and
- d. Appellant’s matter number 13, Email between Jeff Goodwyn, Russell Moats and David Beale dated March 23, 2020 (Exhibit I).<sup>3</sup>

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<sup>1</sup> Note that not only was this document not submitted to the Circuit Court below, as required to be part of the record, but the correspondence was between the Appellant and his attorney(s) only and did not include the Respondent. The Respondent had not seen the document until it was requested following filing of the Appellant’s Designation of Matter.

<sup>2</sup> Note that not only was this document not submitted to the Circuit Court below, it does not even pertain to the dispute at issue in this case but instead is related to an unrelated FOIA issue.

<sup>3</sup> See FN 1 hereinabove.

Appellant is attempting to include matters which were not presented to the Circuit Court nor admitted into evidence in the underlying action. In addition, matter numbers 11 and 13 are correspondence between the Appellant and his attorney which did not include the Respondent and were never in the Respondent's possession before the filing of this appeal. Based thereon, this Court must strike these matters pursuant to Rules 209 and 210(c), SCACR.

Based on the foregoing, the Respondent hereby moves this Honorable Court for an Order striking all improper matters as set forth above from the Appellant's Designation. Undersigned counsel consulted with the Appellant's attorney prior to the filing of this motion and attempted in good faith to resolve this matter. Based thereon, the Respondent also moves the Court for the costs and attorney's fees incurred in the filing of this motion.

By: s/Stacey Todd Coffee  
Stacey Todd Coffee (SC Bar No. 6525)  
Logan & Jolly, L.L.P.  
1805 North Boulevard  
Post Office Box 259  
Anderson, SC 29622  
(864)226-1910

J. Franklin McClain (SC Bar No. 3735)  
401 South Main Street  
Anderson, SC 29624

Attorneys for Respondent City of Anderson

Anderson, South Carolina  
Date: October 8, 2021

THE STATE OF SOUTH CAROLINA  
In the Circuit Court of Anderson County

APPEAL FROM THE  
CITY COUNCIL OF THE CITY OF ANDERSON  
Case Number : 2020-CP-04-01809

Moats Construction, Inc. ....Appellant,

v.

City Council of the City of Anderson .....Respondents,

NOTICE OF MOTION  
AND  
MOTION TO DISMISS APPEAL

TO: C. David Beale, Jr., Attorney for Appellant

You are hereby notified that the Respondent will move before the Honorable R. Scott Sprouse on February 8, 2021, for an Order of Dismissal of this appeal.

The Respondent moves for an Order of Dismissal of this appeal on the following grounds:

1. The Determination of City Council was filed on March 17, 2020. Appellant received written notice of the entry of its Decision and Order on March 23, 2020.
2. The Notice of Appeal by Appellant was filed on September 29, 2020 and served on the Respondent October 12, 2020.
3. Pursuant to SCRCF Rule 74 Procedure on Appeal to the Circuit Court (South Carolina Rules of Civil Procedure (2019 Edition)), "Notice of Appeal to the

Circuit Court must be served on all parties within 30 days after receipt of written notice of the judgment, order or decision appealed from. ^

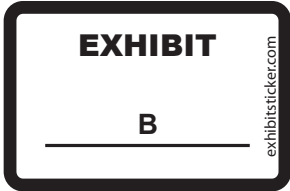
4. S.C. Appellate Court Rule 203 Notice of Appeal South Carolina Appellate Court Rule (2019 Edition) provides that the appeal shall be dismissed if it is not timely filed.

5. The Notice of Appeal in this case was filed approximately six months after receipt of the decisions appealed from.

Wherefore, Respondent prays for an Order of Dismissal of the appeal as a matter of law.

Respectfully submitted,

J. Franklin McClain



THE STATE OF SOUTH CAROLINA  
In the Circuit Court of Anderson County

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APPEAL FROM THE  
CITY COUNCIL OF THE CITY OF ANDERSON  
Case Number: 2020-CP-04-01809

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Moats Construction, Inc. ....Appellant,

v.

City Council of the City of Anderson .....Respondents,

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ORDER

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Presiding Judge: R. Scott Sprouse  
Hearing Date: February 8, 2020  
Appellant's Attorney: C. David Beale, Jr.  
Respondent's Attorney: J. Franklin McClain

This matter is before me upon Appellant's appeal from the Determination of City Council affirming the Decision of the City Manager in a procurement matter. The Respondent has filed a Motion to Dismiss the appeal.

FINDINGS OF FACT

Moats Construction Company requested a review of City Council Decision of the City Manager involving the award of a bid in a procurement matter. Pursuant to the City of Anderson Procurement Code, the decision of City Council is appealable to the Circuit Court.

The Determination of City Council was filed on March 17, 2020. Appellant received written notice of the Determination on March 25, 2020. The Notice of Appeal to the Circuit Court was filed on September 29, 2020, over six months after receipt of notice of the Determination.

CONCLUSION OF LAW

Rule 74 of the South Carolina Rule of Civil Procedure provides that "Notice of Appeal" to the Circuit Court must be served on all parties within 30 days after receipt of written notice of the judgment, order or decision appealed from. South Carolina Appellant Court Rule 203 provides that the appeal shall be dismissed if not timely filed.

Based upon the failure of Moats Construction Company to file the appeal in a timely manner, Respondent's Motion to Dismiss is hereby granted.

IT IS SO ORDERED

Date: \_\_\_\_\_

\_\_\_\_\_  
R. Scott Sprouse, Judge  
Tenth Judicial Circuit



Anderson Common Pleas

**Case Caption:** Moats Construction, Inc. VS City Council Of City Of Anderson  
**Case Number:** 2020CP0401809  
**Type:** Order/Dismissal

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2021-02-12 09:44:34 page 3 of 3

ELECTRONICALLY FILED - 2021 Mar 16 10:46 AM - ANDERSON - COMMON PLEAS - CASE#2020CP0401809  
ELECTRONICALLY FILED - 2021 Feb 12 9:49 AM - ANDERSON - COMMON PLEAS - CASE#2020CP0401809



1 In the Court of Common Pleas for the  
2 State of South Carolina, County of Anderson

3

4 Case No.: 2020CP04-1809

5 Moats Construction, Inc.,

6 Plaintiff(s),

7 vs. Transcript of Record

8 City Council of  
9 City of Anderson,  
Defendant(s).

10

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12 HEARING HELD VIA WEBEX/VIRTUAL COURTROOM

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15 February 8, 2021

16 Anderson, South Carolina

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21 BEFORE:

22 The Honorable R. Scott Sprouse

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APPEARANCES

REPRESENTING PLAINTIFF(S):

Coy David Beale, Jr., Esquire

2309 Devine Street

Columbia, SC 29205

803-251-4517

REPRESENTING DEFENDANT(S):

J. Franklin McClain, Esquire

Anderson City Attorney's Office

401 S. Main Street

Anderson, SC 29624

864-231-1137

## PROCEEDINGS

1  
2 THE COURT: All right. This is the case of Moats  
3 Construction, Inc. versus City Council of the City of  
4 Anderson, 2020CP04-809. This is an appeal from the  
5 City Council decision brought by the plaintiff,  
6 Mr. Beale. I'll be happy to hear from you.

7 MR. BEALE: Thank you, Your Honor. I am hoping  
8 this will not take too much of the Court's time.  
9 Mr. McClain, thanks for being here. This is pretty  
10 straightforward. I think Mr. McClain's motion to  
11 dismiss is pretty straightforward on its face.

12 My client filed an appeal pursuant to the Anderson  
13 City procurement code back on April 30th, 2019 to his  
14 denial of a bid of a project -- a project in the city  
15 of Anderson. That appeal was heard almost a year later  
16 by City Council on March the 9th, 2020.

17 We were somewhat involved with Moats at the time.  
18 We had not been necessarily retained or entered any  
19 kind of appearance in this case. The City Council  
20 denied Mr. Moats' motion. He was sent a letter that we  
21 were cc'd on back in March. The procurement code is  
22 very peculiar when it comes to appealing City Council,  
23 that the original decision must be given to the  
24 plaintiff and they must be given notice of a right to  
25 appeal, and they have 30 days to do that. You know,

1 that notice is required by the procurement code.

2 Additionally, the State procurement code  
3 Section 1135-4210 says that a posted decision must  
4 indicate the date of posting on its face and must be  
5 (inaudible) by a statement of the right to appeal  
6 provided in Section 1135-4210. We would just argue  
7 that the procurement code is ambiguous as to whether  
8 that notice is required from the City Council of a  
9 right to appeal, and no notice was given. There was no  
10 certified mail delivery of this decision, no certified  
11 mail delivery to us or our client.

12 We did file, and five, five months later there was  
13 some communication with our client. It was never clear  
14 whether he wanted to appeal. It was not clear to him  
15 that there was a 30-day limitation on that. So, in so  
16 much as the procurement code requires 30 days for other  
17 appeals during this -- or 30 days' notice that you have  
18 a right to appeal within 30 days, we would just argue  
19 that that same notice should be required under this  
20 circumstance as well.

21 THE COURT: When did your client receive --  
22 actually receive the notice?

23 MR. BEALE: The letter is dated March the 23rd. I  
24 spoke with him -- he does not have record of whether  
25 that was via mail. And Mr. McClain can probably speak

1 to that, whether it was via mail or by e-mail. He  
2 knows that it wasn't via certified mail.

3 The next, I guess, record of communication with  
4 him that we have about this matter happened in July.  
5 But in complete candor with the Court, we were aware  
6 that a letter had been sent by Mr. McClain in some form  
7 or another. I don't want to, you know, mislead the  
8 Court saying that we were not aware. We will just say  
9 that we had not been necessarily retained for  
10 representation in this particular matter.

11 We had worked with him on other matters, but there  
12 had been no discussion at that point of us retaining  
13 him -- or being retained by him. As a matter of fact,  
14 we were asked not to go to the City Council meeting  
15 pertaining to this issue.

16 THE COURT: Okay. All right. Thank you,  
17 Mr. Beale. Mr. McClain.

18 MR. MCCLAIN: Basically what Mr. Beale says is  
19 correct. And even on their notice of appeal they state  
20 on the face of it they received notice of the entry of  
21 the decision on March 23rd, 2020. I don't think that  
22 there is any question that they got notice of the  
23 decision of City Council. And also they were aware of  
24 the City Council hearing. I don't know why he wouldn't  
25 think he had a not -- he did appeal. He appealed the

1 City Manager's decision to City Council.

2 The City Council had the hearing within the time,  
3 I think, that they were supposed to, and everyone was  
4 aware of the hearing. Mr. Moats did not appear at  
5 that, at that hearing of City Council, which resulted  
6 in the order that is dated May the 17th and which he  
7 received on March the 20th.

8 Whether it is the procurement code or the rules of  
9 appellate procedure indicate any time that, unless the  
10 statute provides otherwise, you have got 30 days to  
11 appeal it once you receive the notice. They got the  
12 notice on March the 17th and they didn't appeal -- or  
13 March the 20th. They didn't appeal it until September.

14 And I think under the old rules this case would  
15 have been dismissed without even a hearing, you know.  
16 We would ask that it be -- that the appeal be  
17 dismissed.

18 THE COURT: I want to go read the statute. So,  
19 let me look at what you have filed and I will take this  
20 under advisement and I'll have my law clerk email you a  
21 decision.

22 MR. BEALE: Thank you, Your Honor.

23 MR. MCCLAIN: Thank you, Judge.

24 THE COURT: All right.

25 (Hearing concluded.)

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF OCONEE:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 23rd day of April, 2021.

*Mona L. Manley /s/*

MONA L. MANLEY  
Official South Carolina Court Reporter  
Circuit Reporter for the 10th Circuit  
(850) 893-6662  
mmanley@sccourts.org



ELECTRONICALLY FILED - 2020 Sep 29 9:41 AM - ANDERSON - COMMON PLEAS - CASE#20200CP0401809

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ANDERSON ) IN THE CITY OF ANDERSON

APPEAL OF NOTICE OF )  
 DECISION OF CITY MANAGER ) DETERMINATION  
 BY MOATS CONSTRUCTION ) OF  
 COMPANY ) CITY COUNCIL

Moats Construction Company filed an appeal and request for the review of the Notice of Decision of the City Manager dated April 30, 2019 pursuant to Article VII, 7-101 (4)(5)(6)(7) of the City of Anderson Procurement Code.

The Notice of Decision issued by the City Manager involved the procurement of bids for the demolition and site restoration of the building located at 600 S. Main Street. The bid was not awarded to Moats Construction Company based upon a Determination of Non-Responsible Bidder.

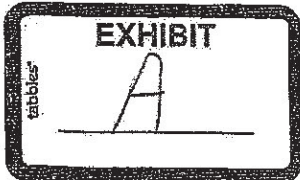
The matter was heard by City Council on March 9, 2020 in Council Chambers. No one appeared on behalf of Moats Construction Company.

City Council considered the appeal by Moats Construction and reviewed the Notice of Decision. Based upon the review, it is the finding by City Council that the bid by Moats Construction was significantly out of line with other bids and there have been significant problems in recent projects done by Moats Construction for the City, County and New Reach Construction Partners, Inc.

By unanimous vote, the Council for the City of Anderson affirms the determination of the City Manager.

Date: March 17, 2020

City Council of the City of Anderson  
 BY: [Signature]  
 Terence V. Roberts  
 ITS: Mayor





THE STATE OF SOUTH CAROLINA  
In the Circuit Court of Anderson County

APPEAL FROM THE  
CITY COUNCIL OF THE CITY OF ANDERSON

Moats Construction, Inc. ....Appellant,

v.

City Council of the City of Anderson.....Respondents.

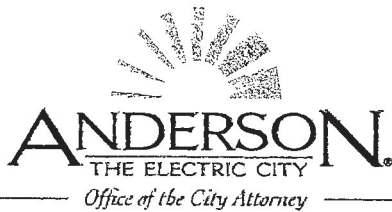
NOTICE OF APPEAL

The Plaintiff, Moats Construction, Inc., appeals the Determination of City Council filed on March 17, 2020, a copy of which is attached hereto. Appellant received written notice of the entry of this Decision and Order on March 23, 2020.

September 29, 2020

s/C. David Beale, Jr.  
T. Jeff Goodwyn, Jr. (9890)  
C. David Beale, Jr. (102917)  
2519 Devine Street  
Suite A  
Columbia, SC 29205  
[jgoodwyn@Goodwynlaw.com](mailto:jgoodwyn@Goodwynlaw.com)  
[dbeale@Goodwynlaw.com](mailto:dbeale@Goodwynlaw.com)  
Attorneys for the Appellant

Other Counsel of Record:  
J. Franklin McClain  
City Attorney  
City of Anderson, SC  
401 S. Main Street  
Anderson, SC 29624  
[fmcclain@cityofanderson.com](mailto:fmcclain@cityofanderson.com)



March 19, 2020

Moats Construction Company  
1523 Old Roberts Church Road  
Anderson, SC 29626

RE: Appeal of Notice of Decision – 600 S. Main Street

Dear Mr. Moats:

Enclosed please find a copy of the Determination of City Council in the above matter.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial "J" followed by a long, horizontal stroke.

J. Franklin McClain

JFM/hem

Enclosure

CC: C. David Beale, Jr.

**dbeale goodwynlaw.com**

---

**From:** dbeale goodwynlaw.com  
**Sent:** Wednesday, March 11, 2020 9:19 AM  
**To:** 'Rtmoats'  
**Cc:** jgoodwyn goodwynlaw.com  
**Subject:** Monday Night

Russell,

How did things go on Monday night?

C. David Beale, Jr.  
Goodwyn Law Firm, LLC  
2519 Devine Street  
Suite A  
Columbia, S.C. 29205  
Telephone: (803) 251-4517  
Facsimile: (803) 251-4527  
[www.Goodwynlaw.com](http://www.Goodwynlaw.com)  
Licensed in GA and SC

**dbeale goodwynlaw.com**

**From:** Frankie McClain <fmccclain@CITYOFANDERSONSC.com>  
**Sent:** Wednesday, March 18, 2020 1:32 PM  
**To:** Russell Email  
**Cc:** dbeale goodwynlaw.com  
**Subject:** FOI -City if Anderson  
**Attachments:** Executed Letter to Russell Moats.pdf; Executed Letter to Russell Moats 3.17.2020.pdf

Mr. Moats,

Please see the attached letters which have been sent by mail.

Regards,  
Frankie McClain

J. Franklin McClain  
City Attorney  
City of Anderson, SC  
401 S. Main Street  
Anderson, SC 29624  
(864) 231-1137  
(864) 231-5939

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**dbeale goodwynlaw.com**

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**From:** jgoodwyn goodwynlaw.com  
**Sent:** Monday, March 23, 2020 4:35 PM  
**To:** 'Rtmoats'  
**Cc:** dbeale goodwynlaw.com  
**Subject:** Decision from Anderson County  
**Attachments:** 20200323085845.pdf

Russell –

Attached is the decision from Anderson County. As you can see, they affirmed the decision to not award you the contract.

Give David or myself a call if you want to discuss further -

T. Jeff Goodwyn, Jr.  
Goodwyn Law Firm, LLC  
2519 Devine Street  
Suite A  
Columbia, S.C. 29205  
Telephone: (803) 251-4517  
Facsimile: (803) 251-4527  
[www.Goodwynlaw.com](http://www.Goodwynlaw.com)

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