

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 19 2022

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
CIRCUIT COURT

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

Appellate Case No. 2021-000285

Moats Construction, Inc..... Appellant,

v.

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

RECORD ON APPEAL

T. Jeff Goodwyn, Jr.
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Attorneys for Respondents

INDEX FOR RECORD ON APPEAL

I. ORDERS

Form 4 Order of R. Scott Sprouse, dated February 10, 2020.....1
Order of R. Scott Sprouse, dated February 12, 2020.....4
Determination of City Council, dated March 17, 2020.....7

II. PLEADINGS

Appellant’s Notice of Appeal, dated September 29, 2020.....8
Respondent’s Acceptance of Service, dated October 16, 2020.....9
Notice of Appearance, dated October 27, 2020.....10
Notice of Motion and Motion to Dismiss Appeal, dated January 21, 2021.....12
Notice of Appeal, dated March 16, 2021.....14

III. TRANSCRIPTS

Transcript of Hearing, dated February 8, 2021.....15

IV. CERTIFICATE OF COUNSEL

22



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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April 13, 2022

Mr. Thomas Jefferson Goodwyn, Jr., Esquire
2309 Devine St.
Columbia SC 29205

Mr. Coy David Beale, Jr., Esquire
1320 Richland Street
Columbia SC 29201

Re: Moats Construction, Inc. v. City Council of the City of Anderson
Appellate Case No. 2021-000285

Dear Counsel:

Our records reflect that the time for serving and filing the record on appeal has expired. Within ten (10) days of the date of this letter, you may serve and file the record on appeal, along with a motion requesting to serve and file the record on appeal outside of the filing deadlines set by Rule 210 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen

CLERK

cc: J. Franklin McClain, Esquire
Stacey Todd Coffee, Esquire

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NO. 2020CP0401809

Moats Construction, Inc.
PLAINTIFF(S)

City Council Of City Of Anderson
DEFENDANT(S)

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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- 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:

Defendant City of Anderson's Motion to Dismiss the Appeal is GRANTED due to the failure of Moat's Construction, Inc. to file the appeal in a timely manner.

Defense Counsel McClain is directed to prepare a Formal Order within 14 days setting forth findings of fact with applicable law.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/10/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2021 Feb 10 10:32 AM - ANDERSON - COMMON PLEAS - CASE#2020CP0401809

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ELECTRONICALLY FILED - 2021 Feb 10 10:32 AM - ANDERSON - COMMON PLEAS - CASE#2020CP0401809



Anderson Common Pleas

Case Caption: Moats Construction, Inc. VS City Council Of City Of Anderson
Case Number: 2020CP0401809
Type: Order/Electronic Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2021-02-10 10:29:26 page 3 of 3.

ELECTRONICALLY FILED - 2021 Feb 10 10:32 AM - ANDERSON - COMMON PLEAS - CASE#2020CP0401809

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 AndersonRespondents,

ORDER

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 Feb 12 9:49 AM - ANDERSON - COMMON PLEAS - CASE#2020CP0401809

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE CITY OF ANDERSON

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

DETERMINATION
OF
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: 

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
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jgoodwyn@Goodwynlaw.com
dbeale@Goodwynlaw.com
Attorneys for the Appellant

Other Counsel of Record:
J. Franklin McClain
City Attorney
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STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

) IN THE COURT OF COMMON PLEAS

Moats Construction, Inc.,)

Appellant,)

vs.)

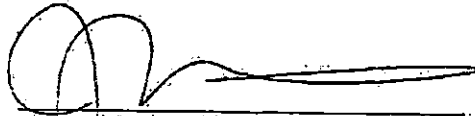
City Council of the City of Anderson,)

Respondents.)

Civil Action No.: 2020-CP-04-01809

ACCEPTANCE OF SERVICE

The undersigned hereby accepts service of the filed Notice of Appeal on behalf of the Respondents in regards to the above-captioned matter this 12th day of October, 2020.



J. Franklin McClain
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Attorney for Respondents

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP0401809

Official File Stamp:

10-27-2020 02:23:45 PM

Court:

CIRCUIT COURT

Common Pleas

Anderson

Case Caption:

Moats Construction, Inc. VS City Council Of City
Of Anderson

Event(s):

Notice/Notice of Appearance

Filed by or on behalf of:

J. Franklin McClain

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Coy David Beale, Jr. for Moats Construction, Inc.

Thomas Jefferson Goodwyn, Jr. for Moats
Construction, Inc.

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

City Council Of City Of Anderson

ELECTRONICALLY FILED - 2020 Oct 27 2:24 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401809

Certificate of Electronic Notification

Recipients

Thomas Goodwyn - Notification transmitted on 10-27-2020 02:24:02 PM.

Coy Beale - Notification transmitted on 10-27-2020 02:24:02 PM.

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 AndersonRespondents,

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 SCRCR 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,

s/J. Franklin McClain
S.C. Bar No. 003735
Attorney for Respondents
401 S. Main Street
Anderson, SC 29624
(864) 231-1137

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
CIRCUIT COURT

R. Scott Sprouse, Circuit Court Judge

Case No. 2020-CP-04-01809

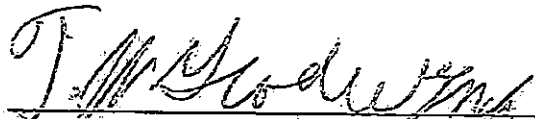
Moats Construction, Inc.....Appellant;

v.

City Council of the City of AndersonRespondent.

NOTICE OF APPEAL

Moats Construction, Inc. appeals the Order of the Honorable R. Scott Sprouse, Circuit Court Judge, dated February 12, 2021 denying Plaintiff's Appeal from the City Council of the City of Anderson. The Order dated February 12, 2021 is attached hereto.



T. Jeff Goodwyn, Jr., SC Bar No. 73789

C. David Beale, Jr., SC Bar No. 102917

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Attorneys for Appellant

Columbia, South Carolina
March 15, 2021

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

Case No.: 2020CP04-1809

Moats Construction, Inc.,

Plaintiff(s),

vs.

Transcript of Record

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

HEARING HELD VIA WEBEX/VIRTUAL COURTROOM

February 8, 2021

Anderson, South Carolina

BEFORE:

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@scccourts.org

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 19 2022

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
CIRCUIT COURT

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

Appellate Case No.: 2021-000285

Moats Construction, Inc.....Appellant,

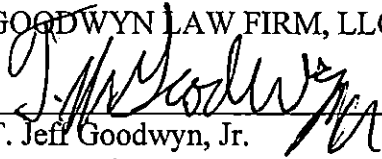
v.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal, submitted with the consent of all attorneys of record pursuant to Rule 212(b), SCACR, contains all materials proposed to be included by any of the parties and not any other material.

GOODWYN LAW FIRM, LLC


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Attorney for Appellant

Columbia, South Carolina
April 14, 2022