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Apr 21 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

MOATS CONSTRUCTION, INC. Appellant,

v.

CITY COUNCIL OF THE CITY OF ANDERSON Respondent.

RETURN TO APPELLANT’S MOTION TO FILE AND
SERVE THE RECORD ON APPEAL OUT OF TIME

The City hereby opposes the Appellant’s Motion to File and Serve the Record on Appeal Out of Time, which was mailed to undersigned counsel on April 14, 2022 (and received on April 18, 2022), based upon the following:

Rule 210 of the S.C. Appellate Court Rules (“SCACR”) requires that the Appellant file and serve the Record on Appeal within thirty (30) days after service of the last brief. The last brief (the Respondent’s Initial Brief) was filed and served on February 2, 2022. Based thereon, the Record on Appeal was required to be filed by March 4, 2022. However, the Appellant did not file and serve the Record on Appeal until April 14, 2022,

which was over seventy (70) days later, and then only after the Court of Appeals emailed a letter dated April 13, 2022 advising them that the time had expired.¹

The undersigned attorneys do not relish calling “time” on opposing counsel, as we realize that mistakes do occur and deadlines can be inadvertently missed. However, the Appellant’s inability or unwillingness to meet deadlines is a recurrent problem in this case that should not be ignored, as it has repeatedly delayed the case and caused the Respondent to incur additional and unnecessary attorney fees and costs. In fact, missing or ignoring deadlines appears to be a habit of the Appellant. First, it is important to note that the case below was dismissed precisely for this reason: because the Appellant failed to file a timely appeal to the Circuit Court. Secondly, the Appellant did not file its Initial Brief or Designation of Matter within the 30-days required by SCACR 208(a)(1) and 209, instead filing a motion for extension of time some four (4) weeks after the deadline had expired.² In addition, the Appellant did not respond to the Respondent’s Motion to Strike within the time limits of the rule and, again, filed a belated Motion to Allow Late Filing related thereto.³

This is not the first or only time that the Appellant missed a deadline in this appeal, and the Appellant did not miss the latest deadline by just a few days. In fact, the Record on Appeal was over forty (40) days overdue and the Court had to advise the Appellant that the time for serving and filing it had expired. SCACR 260 provides that “[w]henver

¹ Note, as shown by the email attached hereto, that Respondent’s primary appellate counsel, Stacey Coffee, did not receive a copy of the April 13, 2022 letter from the Court of Appeals. She also did not receive hard copies of this and other letters and Orders from the Court.

² The Respondent objected to the extension at that time. *See* Respondent’s Return to Appellant’s Motion for Extension of Time to File Initial Brief and Designation of Matter.

³ Note that the Court granted the Respondent’s Motion to Strike numerous items from the Appellant’s Designation because such items had not been presented to the lower court.

Clark, Tyler P.

From: Clark, Tyler P.
Sent: Wednesday, April 13, 2022 4:32 PM
To: 'fmcclain@cityofandersonsc.com'; 'jgoodwyn@goodwynlaw.com';
'dbeale@goodwynlaw.com'
Cc: 'hmorgan@cityofandersonsc.com'; 'mbush@goodwynlaw.com';
'coydaavidbeale@gmail.com'
Subject: Moats Construction, Inc. v. City Council of the City of Anderson 2021-000285
Attachments: TC Moats v. City Council - Letter.pdf

Dear Counsel,

Please find correspondence from the Court of Appeals.

Sincerely,

Tyler Clark

Appeals Specialist
SC Court of Appeals
1220 Senate St.
Columbia, SC 29201
Ph. (803) 734-1890
F. (803) 734-1839

