

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 17400

CHRISTENBURY EYE CENTER,)
P.A.,)
)
Plaintiff,)
)
v.)
)
MEDFLOW, INC. and)
DOMINIC JAMES RIGGI,)
)
Defendants.)
)

**ORDER GRANTING DEFENDANTS’
JOINT MOTION TO DISMISS
PLAINTIFF’S APPEAL**

THIS MATTER is before the Court on Defendants’ Joint Motion to Dismiss Plaintiff’s Appeal (“Motion”).

This Court “is held to a strict construction of Appellate Rule 3” and must dismiss untimely appeals. *Ehrenhaus v. Baker*, No. 08 CVS 22632, 2014 NCBC LEXIS 30, at *10 (N.C. Super. Ct. Apr. 30, 2008), *cert. denied and appeal dismissed*, __ N.C. App. __, 776 S.E.2d 699 (2015); *see also Am. Mech., Inc. v. Bostic*, __ N.C. App. __, 782 S.E.2d 344, 350, *disc. rev. denied*, __ N.C. __, 784 S.E.2d 472 (2016).

In this case, the Court entered a final judgment for Defendants on July 16, 2015. Plaintiff appealed to the North Carolina Court of Appeals. On March 15, 2016, the court of appeals dismissed Plaintiff’s appeal for lack of jurisdiction, because the appeal was improperly directed to the court of appeals rather than the North Carolina Supreme Court. Plaintiff electronically submitted an Amended Notice of Appeal on April 18, 2016, in which Plaintiff directs its appeal from this Court’s June 16, 2015 judgment to the supreme court.

The Court has no discretion to allow Plaintiff to amend its appeal; any discretion to rule on the appeal is reserved for the appellate courts.

Accordingly, the Motion is GRANTED without prejudice to any consideration by the appellate courts to excuse an untimely notice of appeal on the facts presented in support of the Motion.

IT IS SO ORDERED, this the 14th day of June, 2016.

/s/ James L. Gale

James L. Gale
Chief Special Superior Court Judge
for Complex Business Cases