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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

Hon. Jennifer B. McCoy, Circuit Court Judge

Case No. 2016-CP-10-4473

App. Case No.: 2022-000945

Atlas Events, LLC..... *Appellant*

v.

Moon Scientific Group, LLC & Christopher Moon..... *Respondents.*

APPELLANT'S PETITION FOR REHEARING

Andrew J. McCumber, Esquire
S.C. Bar No. 101559
SLOTCHIVER & SLOTCHIVER, LLP
751 Johnnie Dodds Blvd., Suite 100
Mount Pleasant, SC 29464
Charleston, SC 29401
Phone: (843) 577-6531
Facsimile: (843) 577-0261
COUNSEL FOR THE APPELLANTS

**LEGAL ARGUMENTS IN SUPPORT OF APPELLANTS’
PETITION FOR REHEARING**

Pursuant to Rules 221 and 240, SCACR, Appellant Atlas Events, LLC hereby respectfully and humbly petitions this honorable Court for a rehearing of this Order of Dismissal dated July 14, 2022. As is more fully detailed herein, Appellants respectfully assert the Appellate Court overlooked or misapprehended a critical points of law with respect to the issues present in the case at bar due to what appears to be a scrivener’s error.

I. The Order on Appeal was incorrectly identified.

The Appellate Court erred in holding this appeal should be dismissed as interlocutory. On or about July 14, 2019, this Court issued an Order finding that the appeal should be dismissed as interlocutory as an appeal of the denial of summary judgment is not immediately appealable. Appellant does not intend to, nor would Appellant have the standing to, appeal the denial of the Respondent’s motion.

On or about January 31, 2022 two orders were issued by the Court of Common pleas: (1) Denying Respondents Motion for Summary Judgment and (2) Granting the Respondents Motion to Dismiss / Transfer Venue. While the correct Order was filed in the Circuit Court (attached hereto as Exhibit A) and served on the parties, it appears that the incorrect January 31, 2022 order was attached to the Notice filed electronically with this Court. The Motion to Reconsider filed by Appellant in the underlying matter, which is also referenced in the Notice of Intent to appeal, directly references the subject matter jurisdiction arguments, and does not contest the ruling on the Motion for Summary Judgment. (Motion attached hereto as Exhibit B). Appellant respectfully contends that this Court

should rule on whether the Order that actually is on appeal, that is, the Motion to Dismiss / Transfer Venue granted in Respondents' favor is interlocutory and determine whether additional briefing on the matter is required.

Respectfully submitted this **28th** day of **July, 2022**.

By: SLOTCHIVER & SLOTCHIVER, LLP

/s/ Andrew J. McCumber, Esq.

Andrew J. McCumber, Esquire

751 Johnnie Dodds Blvd., Suite 100

Mount Pleasant, SC 29464

Phone: (843) 577-6531

Facsimile: (843) 577-0261

COUNSEL FOR THE APPELLANTS

Mount Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Jennifer B. McCoy., Circuit Court Judge

Case No. 2016-CP-10-4473
App. Case No.: Not yet assigned.

Atlas Events, LLCAppellant

v.

Moon Scientific Group, LLC &
Christopher MoonRespondents.

NOTICE OF APPEAL

Atlas Events, LLC, the Plaintiff in the above-referenced civil action hereby notices all Parties / Counsel of Record of their intent to Appeal the judgment in this matter, entered on January 31, 2022, along with the Order denying Plaintiffs' Motion for to Reconsider dated June 9, 2022. (A copy of these Orders is attached hereto.)

Respectfully submitted this 29th day of June, 2022.

By: /s/ Andrew J. McCumber _____
Andrew J. McCumber, Esquire
Slotchiver & Slotchiver, LLP
751 Johnnie Dodds Blvd., Suite 100
Mount Pleasant, South Carolina 29464
Telephone: (843) 577-6531
Facsimile: (843) 577-0261
andrew@slotchiverlaw.com

Atlas Events Llc
PLAINTIFF(S)

Moon Scientific Group Llc et al
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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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 Moon Scientific Group's Motion to Transfer Venue, filed September 8, 2021, was heard by this Court on November 29, 2021. This Court previously issued an Order, dated January 27, 2022, Denying Defendant Moon Scientific Group's Motion to Transfer Venue. This Order rescinds and replaces the Court's Order filed on January 27, 2022. Magistrate Court has proper jurisdiction when a contract dispute is for the recovery of money only and the sum claimed does not exceed \$7,500.00. S.C. Code §22-3-10(1). In determining the amount in controversy, punitive damages and attorney fees shall not be considered. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 331, 404 S.E.2d 200, 202 (1991). Defendant Moon Scientific Group's Motion to Transfer Venue is hereby GRANTED and transferred to Magistrate Court as the amount-in-controversy does not exceed \$7,500.00.

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 01/31/2022 .

Christopher Moon for Christopher Moon
Christopher Moon for Christopher Moon
Moon Scientific Group Llc for Moon Scientific Group Llc
Moon Scientific Group Llc for Moon Scientific Group Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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), SCRCP.

ELECTRONICALLY FILED - 2022 Jan 31 3:09 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1004473
ELECTRONICALLY FILED - 2022 Jun 29 1:57 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1004473



Charleston Common Pleas

Case Caption: Atlas Events Llc VS Moon Scientific Group Llc , defendant, et al

Case Number: 2016CP1004473

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2022-01-31 14:16:33 page 3 of 3

ELECTRONICALLY FILED - 2022 Jan 31 3:09 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1004473
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Atlas Events Llc
PLAINTIFF(S)

Moon Scientific Group Llc et al
DEFENDANT(S)

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- 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:

Plaintiff filed a Motion to Reconsider with this Court on February 10, 2022. "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This Court hereby DENIES Plaintiff's Motion to Reconsider without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRPC; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

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 06/09/2022 .

Christopher Moon for Christopher Moon
Christopher Moon for Christopher Moon
Moon Scientific Group Llc for Moon Scientific Group Llc
Moon Scientific Group Llc for Moon Scientific Group Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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), SCRCP.



Charleston Common Pleas

Case Caption: Atlas Events Llc VS Moon Scientific Group Llc , defendant, et al

Case Number: 2016CP1004473

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ATLAS EVENTS, LLC,

PLAINTIFF,

vs.

**MOON SCIENTIFIC GROUP, LLC AND
CHRISTOPHER MOON,**

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-4473

**PLAINTIFF'S MOTION TO
RECONSIDER**

TO: DEFENDANTS MOON SCIENTIFIC GROUP, LLC and CHRISTOPHER MOON

Plaintiff Atlas Events, LLC (hereinafter "Plaintiff") by and through its undersigned Counsel of Record hereby moves the Court to alter or amend its January 31st, 2022 Order granting Defendant Moon Scientific Group, LLC's (hereinafter Defendant) Motion to Dismiss / Transfer Venue pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure on the following grounds:

1. Defendant's Motion to Dismiss / Transfer Venue was heard on or about November 29, 2021.
2. Present at the hearing were counsel for all parties of record.
3. On or about January 31, 2022, this Court entered an order stating that "Defendant Moon Scientific Group's Motion to Transfer Venue is hereby GRANTED and transferred to Magistrate Court as the amount-in-controversy does not exceed \$7,500.00."
4. The Court's Order references only that "attorneys' fees and punitive damages" are not to be considered, however, it fails to address the additional arguments raised by counsel, nor does its ruling comport with the damages as plead.
5. This Court should alter or amend its Order to reflect damages properly plead in the case at bar.

6. In evaluating a motion to dismiss, the Court must base its decision solely upon the allegations set forth in the complaint. *Jarre v. Petoseed Co. Inc.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998).
7. That is, the motion must be granted if the facts alleged in the complaint and the inferences reasonably deducted therefrom do not entitle the Plaintiff to relief on any theory of the case." *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408,412. 574 S.E.2d 228,230 (Ct. App. 2002) (quoting Rule 12(b)(6), SCRCPP).
8. The question to be considered is whether in the light most favorable to the Plaintiff, and with every doubt resolved in its behalf, the complaint states any valid claim for relief." *Holy Loch Distrib., Inc. v. Hitchcock*, 332 S.C. 247, 252, 503 S.E.:2d 787, 790 (Ct. App. 1998). See also *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) (citation omitted).
9. "The motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case." *Id.*
10. "All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. at 413, 574 S.E.2d at 230
11. Plaintiff's complaint states that "As a direct and consequential result of Defendants' breach, Plaintiff experienced financial damages in the form of lost revenue from ticket sales, food and beverage sales, and merchandise sales."
12. Plaintiff's Complaint further states that "Defendants have failed to refund any of the fees owed to Plaintiff for the cancellation of the event as stipulated by the contract."
13. Plaintiff's wherefore clause requests reimbursement of the fees and "any other actual damages."
14. Therefore, based upon Plaintiff's filing in the Circuit Court, along with a properly plead complaint seeking actual damages as described above, in a light most favorable to the Plaintiff, and with

every doubt resolved in its behalf, the complaint a claim for relief which would satisfy the jurisdictional threshold of this Court.

15. Further, Defendant Moon Scientific Group, Inc. has counterclaimed for damages under the contract, including the payment of owed fees under the contract.
16. The contract specifically contemplates that any outstanding balance would accrue interest at a rate of 4% per month which equals an effective annual APR of 60%.
17. At the time the suit was filed, the amount allegedly owed by Plaintiff to Defendant would have exceeded the jurisdictional threshold of magistrate's court.
18. Further, Defendants participated in written discovery, specifically in responding to interrogatories in excess of the standard interrogatories found at Rule 30(b), SCRPC. Rule 30(b)(9) specifically contemplates that such interrogatories are only permitted in cases where the amount in controversy exceeds 25,000.
19. Defendants accordingly should be estopped from now claiming a contrary position to this Court.
20. In light of the foregoing, taking all inferences in a light most favorable to the Plaintiff, this Court should alter or amend its January 31, 2022 Order and DENY the Defendant's Motion to Dismiss.

WHEREFORE, Plaintiff respectfully moves this Court to reconsider its January 31st, 2022 Order granting Defendant Moon Scientific Group, LLC's Motion to Dismiss / Transfer Venue, along with such other and further relief as this Court may deem just and proper.

(signature block contained on the following page)

Respectfully submitted,

/s/ Andrew J. McCumber, Esquire
Andrew J. McCumber, Esquire
SC Bar No. 101559

Slotchiver & Slotchiver, LLP
751 Johnnie Dodds Blvd., Suite 100
Mount Pleasant, SC 29464
843-577-6531 (phone)
843-577-0261 (fax)
andrew@slotchiverlaw.com

COUNSEL FOR THE PLAINTIFF

Mount Pleasant, South Carolina

February 10, 2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Jennifer B. McCoy., Circuit Court Judge

Case No. 2016-CP-10-4473

App. Case No.: 2022-000945

Atlas Events, LLCAppellant

v.

Moon Scientific Group, LLC &
Christopher MoonRespondents.

PROOF OF SERVICE

I certify that I have served the **Petition for Rehearing** on the **Respondents** by emailing a copy of same to their counsel of record Alison E. Gutberlet of the firm **AG Brown Law Group, LLC** at her email of record. Further, copies of same were emailed and mailed to Christopher Moon, individually and as agent of Defendant Moon Scientific Group, LLC.

Respectfully submitted this **28th** day of **July 2022**.

By: /s/ Andrew J. McCumber _____

Andrew J. McCumber, Esquire

Slotchiver & Slotchiver, LLP

751 Johnnie Dodds Blvd., Suite 100

Mount Pleasant, South Carolina 29464

Telephone: (843) 577-6531

Facsimile: (843) 577-0261

COUNSEL FOR THE PLAINTIFFS/APPELLANTS

SLOTCHIVER & SLOTCHIVER, L.L.P.
ATTORNEYS AT LAW
EST. 1959

IRVIN J. SLOTCHIVER
DANIEL S. SLOTCHIVER
STEPHEN M. SLOTCHIVER

ANDREW J. McCUMBER
ANNA E. RICHTER

751 JOHNNIE DODDS BLVD, SUITE 100
MOUNT PLEASANT, SC 29464

TELEPHONE (843) 577-6531
FACSIMILE (843) 577-0261

July 28, 2022

VIA E-FILE AND US MAIL

THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK, SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29211

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Jul 28 2022

SC Court of Appeals

RE: Atlas Events, LLC v. Moon Scientific Group, LLC & Christopher Moon
Appellate Case No.: 2022-000945
Circuit Case No.: 2016-CP-10-4473
Our File No.: 2015-CV-025

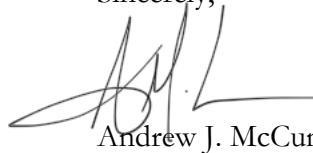
Dear Ms. Kitchings:

Enclosed for filing is a petition for rehearing in the above case. Also enclosed are the following:

- (1) Proof of service of the petition for rehearing on the respondent.
- (2) A copy of the petition for rehearing.
- (3) A filing fee of \$50.

If you should have any questions, or need anything further from me, please do not hesitate to contact me. I thank you in advance for your time and attention to this matter.

Sincerely,



Andrew J. McCumber

AJM/scm

Enclosure(s) as stated.

cc: Allison E. Gutberlet, Esquire