

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2011-CP-40-3456

David Barnhill,

Appellant,

v.

Lesa Michelle Gaffney and
Jimmy Emmanuel Dessaure,
III,

Defendants,

Of Whom Jimmy Emmanuel
Dessaure, III is

Respondent.

RECORD ON APPEAL

RECEIVED

JUN 04 2013

SC Court of Appeals

Paige B. George
Law Office of Barry B. George
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222
Attorney for Appellant

William H. Bowman, III
Rogers Townsend and Thomas, PC
Post Office Box 100200
Columbia, South Carolina 29202
(803) 771-7900
Attorney for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

David Barnhill,

Plaintiff,

v.

Lesa Michelle Gaffney and Jimmy Emmanuel
Dessaure, III,

Defendants

Civil Action #2011-CP-40-3456

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Barry B. George
SC Bar No.: 2417
Address: 1419 Bull Street
Columbia, SC 29201

Defendant's Attorney:
SC Bar No.:
Address:

Telephone: 254-7222 Fax: 779-9351
E-mail: Other:

Telephone: Fax:
E-mail: Other:

JEANETTE W. McBRIDE
C.C.P. & G.S.S.

2012 FEB -9 AM 10:50

FILED
RICHLAND COUNTY

- MOTION HEARING REQUESTED (attach written motion & complete Sections I and III)
- FORM MOTION, NO HEARING REQUESTED (complete Sections II and III)
- PROPOSED ORDER/CONSENT ORDER (complete Sections II and III)

SECTION I: Hearing Information

Nature of Motion: Default

Estimated Time Needed: 15 minutes Court Reporter Needed: Yes No

SECTION II: Motion/Order Type

- Written Motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed Order.

[Signature]
Signature of Attorney for Plaintiff

9-19-11
Date submitted

SECTION III: Motion Fee

- Paid - Amount: \$25.00
- Exempt:
 - Rule to Show Cause in Child or Spousal Support
 - check reason Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the order.
- Other:

JUDGE
CODE: DATE:

CLERK'S VERIFICATION

Date filed:

- Collected by: [Signature]
- MOTION FEE COLLECTED: 25
- CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

David Barnhill,

Plaintiff,

v.

Lesa Michelle Gaffney and Jimmy Emmanuel Dessauere, III,

Defendants

IN THE COURT OF COMMON PLEAS

Civil Action #2011-CP-40-3456

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: Barry B. George
SC Bar No.: 2417
Address: 1419 Bull Street
Columbia, SC 29201
Telephone: 254-7222 Fax: 779-9351
E-mail: Other:

Defendant's Attorney:
SC Bar No.:
Address:
Telephone:
E-mail:
Fax:
Other:

JEANEITE W. McPHEE
C.C.P. & G.S.

2012 FEB - 9 AM 8:50

RICHLAND COUNTY
FILED

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FORM MOTION, NO HEARING REQUESTED (complete Sections II and III)
PROPOSED ORDER/CONSENT ORDER (complete Sections II and III)

SECTION I: Hearing Information

Nature of Motion: Default

Estimated Time Needed: 15 minutes Court Reporter Needed: Yes No

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- Written Motion attached
Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed Order.

Signature of Attorney for Plaintiff

9-19-11
Date submitted

SECTION III: Motion Fee

- Paid - Amount: \$25.00
Exempt: Rule to Show Cause in Child or Spousal Support
Domestic Abuse or Abuse and Neglect
Indigent Status State Agency v. Indigent Party
Sexually Violent Predator Act Post-Conviction Relief
Motion for Stay in Bankruptcy
Motion for Publication Motion for Execution (Rule 69, SCRCF)
Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the order.
Other:

JUDGE

CODE:

DATE:

CLERK'S VERIFICATION

Date filed:

Collected by:

- MOTION FEE COLLECTED:
CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

David Barnhill,) Case #2011-CP-40-3456
)

Plaintiff,)

vs.)

ORDER OF DEFAULT)

Lesa Michelle Gaffney and **Jimmy Emmanuel Dessaure, III,**)

Defendants.)

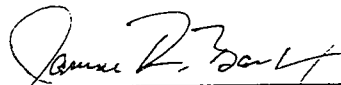
RICHLAND COUNTY
FILED
2012 FEB -9 AM 8:50
JEANETTE W. McBRIDE
C.C.P. & G.S.

It appears from the U.S. Postal Service "restricted return receipt" card that the Summons and Complaint in this action were personally served on Defendant, **Jimmy Emmanuel Dessaure, III**, on the 16nd day of June 2011. It also appears from the Affidavit of Plaintiff's attorney that no Answer or motion to the Complaint has been served on the Plaintiff's attorney as required by law, and that Defendant, **Jimmy Emmanuel Dessaure, III**, has not otherwise appeared. Furthermore, it appears that Defendant is not entitled to relief under the Soldiers' & Sailors' Relief Act and that Plaintiff's damages are unliquidated.

NOW, ON MOTION of Plaintiff's attorney, it is ordered and adjudged that Defendant, **Jimmy Emmanuel Dessaure, III**, is in default and that Plaintiff is awarded judgment against Defendant for damages to be determined at a non-jury hearing held in accordance with applicable law.

Finally, the Clerk of Court is directed to schedule a hearing during the next available non-jury term at which the extent of Plaintiff's damages shall be determined.

AND IT IS SO ORDERED.



JUDGE, FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina
Dated: 2/8/12

I MOVE FOR DEFAULT JUDGMENT;



BARRY B. GEORGE
Attorney for the Plaintiff
1419 Bull Street
Columbia, South Carolina 29201

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

David Barnhill,) Docket #2011-CP-40-3456
)
)

Plaintiff,)
)

vs.)

AFFIDAVIT OF DEFAULT)
)

Lesa Michelle Gaffney and Jimmy)
Emmanuel Dessaure, III,)
)

Defendants.)
)

RICHLAND COUNTY
FILED
2012 FEB -9 AM 8:50
JEANETTE W. McBRIDE
C.C.P. & G.S.

PERSONALLY, appeared before me, Barry B. George, who being duly sworn, says that he is the attorney for the Plaintiff in the above entitled action; that the Summons and Complaint therein were duly served on the Defendant, **Jimmy Emmanuel Dessaure, III**, on the 16th day of June 2011, as shown by the U.S. Postal Service's "restricted return receipt" card; that more than thirty (30) days exclusive of the day of service has elapsed since the service of said Summons and Complaint; and no Answer, Demurrer, Notice of Appearance or other pleading has been served on the Plaintiff's attorney, as required by said Summons and Complaint, and that said Defendant is now in default. That said Defendant is not a member of the Armed Services of the United States, as is contemplated under the Soldiers' & Sailors' Relief Act, as amended.



BARRY B. GEORGE
PAIGE B. GEORGE
ATTORNEY FOR THE PLAINTIFF
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222

SWORN to & subscribed before me this

19th day of Sept., 2011.

Charlene M. Dunlap Sloan
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 03-06-17

FILED

CERTIFICATE OF MAILING

I, the undersigned employee of BARRY B. GEORGE, ESQUIRE, do hereby certify that I have served the foregoing document(s) by personally mailing a copy of the same, postage prepaid, on the date shown below as follows:

RESTRICTED DELIVERY
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jimmy Emmanuel Dessauere, III
 36 Roosevelt Street
 Estill, SC 29918



COPY

2011 APR 23 AM 9:47
 CHARLES STAN
 HIGHLAND COUNTY
 1111

6-1-11

Charles Stan

COMPLETE THIS SECTION ON DELIVERY

A. Signature Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

B. Received by (Printed Name) Agent
 Jimmy Emmanuel Dessauere, III

C. Date of Delivery
 APR 23 2011

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:
 ESTILL, SC

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7010 2780 0001 5441 4257
 Domestic Return Receipt 102595-02-MF-1540

1. Article Addressed to:
 Jimmy Emmanuel Dessauere, III
 36 Roosevelt St.
 Estill, SC 29918

7010 2780 0001 5441 4257

US Postal Service
CERTIFIED MAIL RECEIPT
 (Postage, National and International Certified Mail)

OFFICIAL USE

Postage \$.64
 Certified Fee 2.85
 Return Receipt Fee (Endorsement Required) 2.30
 Restricted Delivery Fee (Endorsement Required) 4.50
 Total Postage & Fees \$ 10.29

UNIV OF SC CPN
 POSTMARK Here 01 2011
 COLUMBIA SC 29208

Sent by J. E. Dessauere, III
 Street, Apt. No. or P.O. Box No. 36 Roosevelt St
 City, State, ZIP+4 29918

Record on Appeal -- 4

2011-CP-40-3456

BARRY B. GEORGE
ATTORNEY AT LAW
1419 BULL STREET
COLUMBIA, S. C. 29201

(803) 254-7222

(803) 779-9351 Fax

May 31, 2011

 COPY

RESTRICTED DELIVERY
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jimmy Emmanuel Dessaure, III
36 Roosevelt Street
Estill, SC 29918

RE: DAVID BARNHILL v. LESA MICHELLE GAFFNEY and JIMMY EMMANUEL
DESSAURE, III
Docket #2011-CP-40-3456

Dear Mr. Dessaure:

I enclose herewith and serve upon you by mail, certified copy of Summons and Complaint in the above matter.

Yours very truly,

Barry B. George

BBG/cs

Enclosure

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

David Barnhill,

Plaintiff,

Vs.

Lesa Michelle Gaffney and Jimmy
Emmanuel Dessaure, III,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER: 11-CP-40-3456

ORDER VACATING DEFAULT
JUDGMENT AGAINST JIMMY
EMMANUEL DESSAURE III

2012 SEP 10 PM 3:54
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

This matter came before the Court on August 14, 2012, on the motion of the Defendant Jimmy Emmanuel Dessaure, III ("Dessaure"), pursuant to Rule 60(b) of the *South Carolina Rules of Civil Procedure*, seeking relief from a default judgment.

Defendant Dessaure contends that the judgment should be vacated because an Answer was filed on his behalf on June 27, 2011, within thirty (30) days of service.

This lawsuit arises out of an automobile accident October 17, 2010, wherein Plaintiff was a passenger in an automobile driven by Defendant Dessaure on Colony Drive in Richland County, South Carolina, that was struck by an automobile operated by Defendant Lesa Michelle Gaffney ("Gaffney"). Plaintiff sustained bodily injuries as a result of the accident and filed the Summons and Complaint against both Defendants on May 26, 2011. Defendant Gaffney was served by personal service on June 2, 2011, and Defendant Dessaure was served by certified mail on June 16, 2011.

M. Rita Metts, Esquire served an Answer on behalf of both Defendants on June 27, 2011. On October 21, 2011, Ms. Metts filed an Amended Answer on behalf of

Defendant Gaffney only. The original Answer that was filed on behalf of Defendant Dessaure was not withdrawn.

On February 9, 2012, Plaintiff filed an Affidavit of Default seeking an entry of default against Defendant Dessaure, alleging service was perfected on June 16, 2011, and that no Answer had been served on Plaintiff's attorney as required by law. A damages hearing was scheduled for June 6, 2012, at which time the Court awarded Plaintiff a default judgment of \$15,000.00 against Defendant Dessaure.

On June 22, 2012, upon learning of the default judgment, Defendant Dessaure, through his attorney, immediately filed this Motion for Relief from Default Judgment. Defendant Dessaure asserts that the judgment should be set aside for mistake, inadvertence, surprise, or excusable neglect pursuant to Rule 60(b)(1), SCRPC. This rule is an appropriate remedy where there is a good faith mistake of fact and there has been no attempt to thwart the judicial system. *Williams v. Watkins*, 384 S.C. 319; 681 S.E.2d 914 (Ct.App. 2009); *Microtronics, Inc. v. S.C. Dept. of Revenue*, 345 S.C. 506; 548 S.E.2d 223 (Ct.App. 2001). Relevant factors in determining whether a default judgment should be set aside are (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense; and (4) the prejudice to the other parties. *McClurg v. Deaton*, 380 S.C. 563, 671 S.E.2d 87 (Ct.App. 2008); *Hill v. Dotts*, 345 S.C. 304, 547 S.E.2d 894 (Ct. App. 2001).

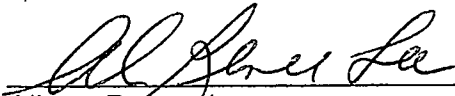
In this case, there has been a good faith mistake of fact in that an Answer was timely filed on Defendant Dessaure's behalf and never withdrawn. Once Defendant Dessaure received the default judgment, his undersigned counsel immediately filed this motion for relief. Defendant Dessaure has a meritorious defense in that there is

evidence from which a jury could conclude that Defendant Gaffney was solely or primarily negligent in causing the automobile accident. Plaintiff will not suffer any prejudice if this relief is granted to Defendant Dessauere in that the litigation is ongoing with Defendant Gaffney and the parties have thus far engaged in minimal discovery.

South Carolina has a policy favoring disposition of issues on their merits rather than on technicalities. *Watkins; Micronics, Inc.* Given the good faith mistake, the immediate motion for relief, the existence of a meritorious defense, and the lack of prejudice to Plaintiff, the relief to Defendant Dessauere should be granted.

IT IS THEREFORE ORDERED, ADJUGED AND DECREED; that the entry of judgment filed on February 9, 2012 shall be and the same is hereby vacated and Defendant Dessauere shall have twenty (20) days from receipt of the notice of this Order to serve an Amended Answer to the Complaint.

AND IT IS SO ORDERED.



Alison Renee Lee
Circuit Court Judge

~~September~~ 7, 2012
~~August~~

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

David Barnhill,

Plaintiff,

v.

Lesa Michelle Gaffney and Jimmy
Emmanuel Dessauré, III,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-3456

ORDER

JEANETTE W. McBRIDE
C.C.P. & G.S.


2012 OCT 12 PM 4:27

RICHLAND COUNTY
FILED

This matter comes before the Court by way of a Rule 59(e) SCRPC motion filed by Plaintiff to alter or amend this Court's September 7, 2012 Order. The Motion for Reconsideration was filed with the Clerk of Court on September 24, 2012.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any new material fact or any principle of law that was either overlooked or disregarded in the previous Order. Accordingly, this Court hereby **DENIES** Plaintiff's Motion to Reconsider the Order Vacating Default Judgment against Jimmy Emmanuel Dessauré, III filed September 24, 2012. Pursuant to Rule 59(f), oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
October 12, 2012

Order of June 8, 2012

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND)
 David Barnhill,) Civil Action #2011-CP-40-3456
)
 Plaintiff,)
)
 vs.)
)
 Lesa Michelle Gaffney and Jimmy)
 Emmanuel Dessaure, III,)
)
 Defendants.)

ORDER

RICHLAND COUNTY
 FILED
 2012 JUN - 8 AM 8:45
 JEANETTE M. GEORGE
 C.C.P. & G.S.

A Damages Hearing was held before me at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on June 6, 2012 in Courtroom 2-C at 2:00 p.m. against the Defendant, Jimmy Emmanuel Dessaure, III. Present at this hearing was the Plaintiff, David Barnhill, and his attorney, Barry B. George. The Defendant, Jimmy Emmanuel Dessaure, III, was/was not present at the hearing.

Evidence was presented at the hearing on behalf of the Plaintiff. The Plaintiff testified that he was injured in an automobile accident on October 17, 2010 when he was a passenger in a vehicle driven by the Defendant, Jimmy Emmanuel Dessaure, III, when the car was struck by a vehicle driven by the Defendant, Lesa Michelle Gaffney. The Plaintiff testified that the Dessaure vehicle was backing into a driveway at the time of the accident.

The Plaintiff testified that he was injured in this accident. The Plaintiff testified that he injured his neck and lower back in the accident. The Plaintiff further testified that he was treated by Main St. Back & Neck from November 10, 2010 until January 5, 2011. The Plaintiff further testified that he continues to have trouble with his lower back as a result of the accident. The Plaintiff testified that he takes over the counter medicine for the pain from the injuries sustained in the above accident.

The Plaintiff presented to the Court the following medical information: Main St. Back & Neck in the amount of \$4,540.00.

Barry B. George, Attorney for the Plaintiff, presented to the Court a letter dated May 22, 2012 wherein the Defendant, Jimmy Emmanuel Dessaure, III, was notified of the Damages Hearing scheduled for June 6, 2012 at 2:00 p.m. in Courtroom 2-C of the Richland County Judicial Center.

After considering the evidence presented, I FIND:

A) That an Order of Default was signed against the Defendant, Jimmy Emmanuel Dessaure, III, on February 8, 2012 by the Honorable James R. Barber, III.

B) That the Plaintiff, David Barnhill, was injured in the automobile accident on October 17, 2010, when he was a passenger in a vehicle driven by the Defendant, Jimmy Emmanuel Dessaure, III, and that the Dessaure vehicle was struck by another vehicle while backing in the roadway.


C) That the Plaintiff, David Barnhill, was injured in the accident on October 17, 2010 and had the following medical expenses: Main St. Back & Neck in the amount of \$4,540.00.

D) That the Plaintiff, David Barnhill, testified that he still suffers pain in his neck and lower back and takes over the counter medication for the pain.

E) That Barry B. George, Attorney for the Plaintiff, presented to the Court a letter dated May 22, 2012 wherein the Defendant, Jimmy Emmanuel Dessaure, III, was notified of the Damages Hearing scheduled for June 6, 2012 at 2:00 p.m. in Courtroom 2-C.

THEREFORE, IT IS ORDERED that the Plaintiff, David Barnhill, have judgment against the Defendant, Jimmy Emmanuel Dessaure, III, for actual damages for personal injury in the amount of \$15,000.⁰⁰ Dollars.

AND IT IS SO ORDERED.



HONORABLE L. ERNEST KINARD, JR.
JUDGE, FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina

Dated: 6/6/12

Complaint

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
David Barnhill,)	Civil Case #
)	
Plaintiff,)	
)	
vs.)	<u>COMPLAINT</u>
)	(Jury Trial Requested)
Lesa Michelle Gaffney and Jimmy Emanuel)	
Dessaure, III,)	
)	
Defendants.)	

JEANETTE
C.C.P. HAMPTON
2011 MAY 26 AM 11:20

The Plaintiff, complaining of the Defendants herein, alleges:

1. That the Plaintiff is a citizen and resident of the County of Richland, State of South Carolina; that, upon information and belief, the Defendant, Lesa Michelle Gaffney, is a resident of the County of Richland, State of South Carolina; and that, upon information and belief, the Defendant, Jimmy Emanuel Dessaure, III, is a resident of the County of Hampton, State of South Carolina.

2. That on or about October 17, 2010, the Plaintiff, David Barnhill, was a passenger in a 1999 Ford automobile being operated by the Defendant, Jimmy Emanuel Dessaure, III, on Colony Drive, in the County of Richland, State of South Carolina; that the Defendant, Lesa Michelle Gaffney, was operating a 1996 Chevrolet automobile east on Colony Drive, in the County of Richland, State of South Carolina and crashed into the vehicle in which the Plaintiff was a passenger, throwing the Plaintiff in and about the interior of said vehicle, thus causing him severe and painful bodily injuries.

3. That as a result of the above, the Plaintiff suffered injuries in and about his body, all of which has and will cause him to undergo much physical pain and suffering, has and will cause him to have to spend money on medical services, and has and will cause him to lose money in the nature of wages and earnings.

4. A) That the Defendant, Lesa Michelle Gaffney, was willful, wanton, negligent, grossly negligent, careless and reckless in the following particulars, to-wit:

- a) in failing to maintain a proper lookout;
- b) in failing to keep her vehicle under proper control;
- c) in driving too fast for conditions;
- d) in failing to yield the right-of-way;
- e) in failing to apply her brakes, if any she had;

- f) in failing to sound her horn;
- g) in driving while under the influence of intoxicants or narcotics;
- h) in failing to take evasive action of any kind to avoid the accident.
- i) in failing to use the degree of care and caution that a reasonable and prudent person would have used under the same or similar circumstances; and,
- j) such other particulars as the evidence at trial may show;

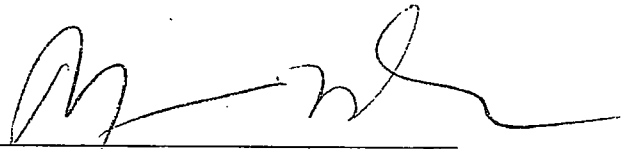
B) That the Defendant, Jimmy Emanuel Dessauere, III, was willful, wanton, negligent, grossly negligent, careless and reckless in the following particulars, to-wit:

- a) in failing to maintain a proper lookout;
- b) in failing to keep his vehicle under proper control;
- c) in driving too fast for conditions;
- d) in failing to yield the right-of-way;
- e) in improperly backing his automobile;
- f) in failing to take evasive action of any kind to avoid the accident.
- g) in failing to use the degree of care and caution that a reasonable and prudent person would have used under the same or similar circumstances; and,
- h) such other particulars as the evidence at trial may show;

All of which were the direct and proximate cause of the damages suffered by the Plaintiff herein, said acts being in violation of the case and statute laws of the State of South Carolina.

5. That the Plaintiff is informed and believes he is entitled to judgment against the Defendants for actual damages in the amount to be determined by a jury; and an appropriate amount of punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages in the amount to be determined by a jury; an appropriate amount of punitive damages; for the costs of this action; and for such other and further relief as this Court may deem just and proper.



BARRY B. GEORGE
PAIGE B. GEORGE
ATTORNEY FOR THE PLAINTIFF
1419 Bull Street
Columbia, SC 29201
(803) 254-7222

May 24, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

David Barnhill,)
)
Plaintiff,)

CA No. 2011-CP- 40-3456

vs.)

ANSWER
(JURY TRIAL REQUESTED)

Lesa Michelle Gaffney and)
)
Jimmy Emanuel Dessausure, III,)
Defendants.)

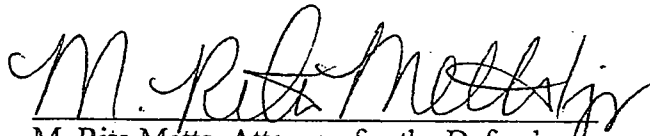
RICHLAND COUNTY
FILED
2011 JUN 30 AM 11:11
JEANETTE M. HOBRIE
CLERK, S.C.

TO: Plaintiff and his attorney, Barry George, Esquire:

The Defendants, answer the Plaintiff Complaint as follows:

FOR A FIRST DEFENSE

1. The Defendants would admit the allegations in paragraph 1 of the Complaint.
2. The Defendant is without sufficient information to admit or deny the allegations.
3. The Defendant is without sufficient information to admit or deny the allegations.
4. The Defendant is without sufficient information to admit or deny the allegations.
5. The Defendant is without sufficient information to admit or deny the allegations.



M. Rita Metts, Attorney for the Defendants
Metts Law Firm, LLC
3531 River Drive
Columbia, South Carolina 29201
(O) 803-929-0577
(F) 803-929-0578

Columbia, South Carolina

June 27, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

David Barnhill,
Plaintiff,

CA No. 2011-CP-40-3456
AMENDED ANSWER
(JURY TRIAL REQUESTED)

vs.

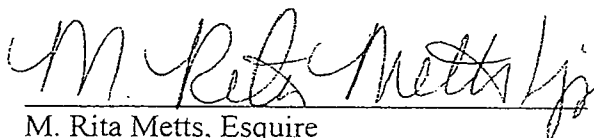
Lesa Michelle Gaffney and
Jimmy Emanuel Dessausure, III,
Defendants.

TO: Plaintiff and his attorney, Barry George, Esquire:

The Defendant Lesa Gaffney, answers the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. The Defendant would admit the allegations in paragraph 1 of the Complaint.
2. The Defendant is without sufficient information to admit or deny the allegations.
3. The Defendant is without sufficient information to admit or deny the allegations.
4. The Defendant is without sufficient information to admit or deny the allegations.
5. The Defendant is without sufficient information to admit or deny the allegations.



M. Rita Metts, Esquire
Attorney for Gaffney
Metts Law Firm, LLC
3531 River Drive
Columbia, South Carolina 29201
(O) 803-929-0577
(F) 803-929-0578

Columbia, South Carolina

October 21, 2011

Defendant Dessaure's Motion to be Relieved of Default

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

David Barnhill,

Plaintiff,

Vs.

Lesa Michelle Gaffney and Jimmy
Emmanuel Dessaure, III,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER: 12-CP-40-3456

NOTICE OF MOTION
AND
MOTION TO BE RELIEVED OF
DEFAULT

TO: BARRY B. GEORGE, ATTORNEY FOR THE PLAINTIFF:


PLEASE TAKE NOTICE that the Defendant, through his undersigned attorney, on the tenth (10th) day after service hereof at 10:00 AM or as soon thereafter as counsel may be heard will move before the Judge, Court of Court Of Common Pleas for Richland County, Fifth Judicial Circuit, Richland County Judicial Center, Columbia, South Carolina for an Order of the Court pursuant to Rule 60(b) of the *South Carolina Rules of Civil Procedure*, as applicable, relieving this Defendant from a final judgment and granting this Defendant an extension of time within which to Answer the Plaintiff's Complaint.

This Motion is made on the ground that good cause exists for the setting aside of the final judgment which has been rendered through this Defendant's mistake, inadvertence or excusable neglect.

The undersigned attorney certifies, on information and belief, that consultation with opposing counsel in an effort to attempt a good faith resolution of the matter

contained in the within Motion would serve no useful purpose or could not be timely held.

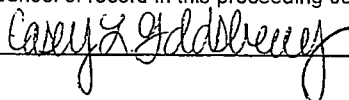
ROGERS TOWNSEND & THOMAS, PC

By: 
William H. Bowman, III
P. O. Box 100200, Columbia, SC 29202
(803)771-7900; bbowman@rtt-law.com
Attorney for Jimmy Emmanuel Dessauere, III

Columbia, South Carolina
June 21, 2012

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding June 21, 2012.



Defendant Dessaure's Amended Motion to be Relieved of Default

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

David Barnhill,

Plaintiff,

Vs.

Lesa Michelle Gaffney and Jimmy
Emmanuel Dessaure, III,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER: 11-CP-40-3456

AMENDED
NOTICE OF MOTION
AND
MOTION TO BE RELIEVED OF
DEFAULT


TO: BARRY B. GEORGE, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, Jimmy Emmanuel Dessaure, III, through his undersigned attorney, on the tenth (10th) day after service hereof at 10:00 AM or as soon thereafter as counsel may be heard will move before the Judge, Court of Court Of Common Pleas for Richland County, Fifth Judicial Circuit, Richland County Judicial Center, Columbia, South Carolina for an Order of the Court pursuant to Rule 60(b) of the *South Carolina Rules of Civil Procedure*, or otherwise, relieving this Defendant from a final judgment and granting this Defendant an extension of time within which to Answer the Plaintiff's Complaint.

This Motion is made on the ground that an Answer was served on behalf of this Defendant on June 27, 2011, and filed with the Court on June 30, 2011, and this Defendant is not in Default and the Judgment rendered against him is void. Alternatively, this Defendant alleges that good cause exists for the setting aside of the final judgment which has been rendered through this Defendant's mistake, inadvertence or excusable neglect.

The undersigned attorney certifies, on information and belief, that consultation with opposing counsel in an effort to attempt a good faith resolution of the matter contained in the within Motion would serve no useful purpose or could not be timely held.

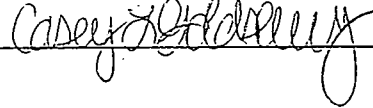
ROGERS TOWNSEND & THOMAS, PC

By: 
William H. Bowman, III
P. O. Box 100200, Columbia, SC 29202
(803)771-7900; bbowman@rtt-law.com
Attorney for Jimmy Emmanuel Dessaure, III

Columbia, South Carolina
June 22, 2012

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding June 22, 2012.



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

David Barnhill,

Plaintiff,

Vs.

Lesa Michelle Gaffney and Jimmy
Emmanuel Dessauere, III,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER: 11-CP-40-3456

AFFIDAVIT OF
JIMMY EMMANUEL DESSAURE, III

PERSONALLY APPEARED BEFORE ME, Jimmy Emmanuel Dessauere, III, who being duly sworn, deposes and states the following:

1. My name is Jimmy Emmanuel Dessauere, III and I am a named Defendant in the above entitled action. I am 23 years of age and of sound mind.
2. On October 17, 2010, I was involved in an accident with Lesa Michelle Gaffney. The Plaintiff, David Barnhill, was a passenger in the vehicle I was driving.
3. At the time of the accident I was driving a vehicle owned by Keyon Jornell Council on Colony Drive and was backing into a private drive from Colony Drive at a speed of 3-5 miles per hour and at least half of my vehicle was out of the traveled portion of the roadway.
4. At the same time and place, Lesa Michelle Gaffney operating her vehicle east on Colony Drive struck the driver's side front quarter panel of the vehicle I was driving as I was completing my reverse movement.
5. I am informed and believe I was not at fault in the Accident.

6. I am informed and believe that Lesa Michelle Gaffney while driving under the influence of alcohol or drugs, was traveling too fast for conditions, failed to maintain control of her vehicle, apply her brakes, or keep a proper lookout, all of which caused the accident.

7. I am informed and believe that Lesa Michelle Gaffney was arrested at the scene of the accident for driving under the influence.

8. As a result of the accident on October 17, 2010, I retained Attorney J. Todd Rutherford, Esquire, to represent me (see exhibit A) and I was under the impression that this matter had been taken care of and was concluded.

FURTHER AFFIANT SAYETH NOT.


Jimmy Emmanuel Dessaure, III
Jimmy Emmanuel Dessaure, III

SWORN TO AND SUBSCRIBED
before me this 21 day of August 2012.

DW McDaniel
Notary Public for South Carolina

My Commission Expires: 08.17.2021

DANNY W. Mc DANIEL
ROADSIDE ST. ANDREWS ROAD
AT BROWN RIVER ROAD
BILLO. DWAN.

THE RUTHERFORD LAW FIRM, LLC

2113 PARK STREET
P.O. BOX 1452
COLUMBIA, SC 29202

TELEPHONE: (803) 256-3003
FACSIMILE: (803) 256-9698

ALEXANDRA BENEVENTO
ATTORNEY OF COUNSEL

VICTOR LI
ATTORNEY OF COUNSEL

November 19, 2010

Via Facsimile: (202) 621-1320

GEICO Insurance
Attn: Jennifer Bandows
One Geico Center
Macon, GA 31296

Re: **My Clients:** Jimmy Dessasure and David Branhill
Your Claim No.: 0392336190101034
Date of Injury: October 17, 2010
Your Insured: unknown at this time

Dear Ms. Bandows:

Please be advised I have been retained to represent Mr. Dessasure and Mr. Branhill with regard to personal injuries they sustained as a result of an automobile accident with your insured on October 17, 2010. Please direct all future correspondence and inquiries to my attention at the above address and phone number.

My clients are currently receiving medical treatment for their injuries. Upon completion of this treatment, I will forward you a copy of their medical records and expenses along with a settlement demand.

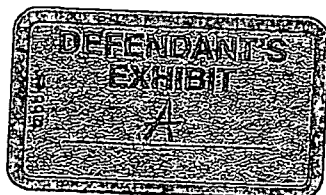
At this time, I would also like to request that a copy of your insured's policy information be forwarded to our office.

I look forward to working with you in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

J. Todd Rutherford, Esquire

JTR/saj



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

David Barnhill,

Plaintiff,

Vs.

Lesa Michelle Gaffney and Jimmy
Emmanuel Dessaure, III,

Defendants.

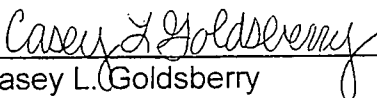
IN THE COURT OF COMMON PLEAS

DOCKET NUMBER: 11-CP-40-3456

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Rogers, Townsend & Thomas, PC, attorneys for the Defendant, Jimmy Emmanuel Dessaure, III, do hereby certify that I have served the within and foregoing AFFIDAVIT OF JIMMY EMMANUEL DESSAURE, III, this 10 August 2012, on Plaintiff Counsel by personally depositing a copy of same in a United States Postal Service mailbox, postage pre-paid, addressed as follows:

Barry B. George, Esquire
1419 Bull Street
Columbia, SC 29201


Casey L. Goldsberry

Columbia, South Carolina
August 10, 2012

Transcript of Proceedings

State of South Carolina) In The Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2011-CP-40-3456

David Barnhill,)

Plaintiff,)

vs.)

Transcript of Record

Lesa Michelle Gaffney and)

Jimmy Emmanuel Dessaure, III,)

Defendants.)

August 14, 2012
Columbia, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge

A P P E A R A N C E S:

Barry B. George, Esquire
Attorney for the Plaintiff

William H. Bowman, III, Esquire
Attorney for Defendant Dessaure

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

Record on Appeal -- 24

I N D E X

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<u>Description</u>	<u>Page No.</u>
Motion by Mr. Bowman	4
Certificate Page	11

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
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No Exhibits Introduced.

1 THE COURT: Good afternoon, everyone. The first
2 matter I have is *David Barnhill vs. Lesa Gaffney and Jimmy*
3 *Dessaure*. It's docket number 2011-CP-40-03456. The
4 plaintiff is represented by Barry George. The defendant is
5 represented by?

6 MR. BOWMAN: William Bowman.

7 THE COURT: Thank you. William Bowman, and we are
8 here on Mr. Bowman's motion to set aside the default. Is
9 that correct?

10 MR. GEORGE: Yes, Your Honor.

11 MR. BOWMAN: Yes, Your Honor. It's a default.

12 THE COURT: And Rita Metts represents Michelle
13 Gaffney. Is that ---

14 MR. GEORGE: That case is settled, Your Honor.

15 THE COURT: Okay. So, that portion of the case is
16 settled?

17 MR. GEORGE: Yes, ma'am.

18 THE COURT: So, it's now just Mr. Barnhill against Mr.
19 Dessaure?

20 MR. GEORGE: That's correct, Your Honor. Your Honor,
21 would the record reflect also that David Barnhill is in
22 court today?

23 THE COURT: And he's present here with you. All
24 right.

25 MR. GEORGE: Yes, ma'am. Thank you, ma'am.

1 THE COURT: Thank you.

2 Yes, sir, Mr. Bowman.

3 MR. BOWMAN: Thank you, Your Honor. May it please the
4 court? I represent Jimmy Emmanuel Dessaure, III. The
5 action arises out of an automobile accident. Mr. Barnhill
6 was a passenger in Mr. Dessaure's car, my client's car,
7 when the accident occurred, and he filed a lawsuit against
8 his host driver, my client, Mr. Dessaure, and the other
9 driver, Gaffney.

10 Gaffney was DUI, whatever. I think she was
11 responsible. Anyway, she's -- her company has paid. She's
12 being dismissed.

13 We -- the judgment was entered, Your Honor, on -- and
14 they highlighted June 22nd. Damages was -- hearing was
15 held on June 6, 2012, and a \$15,000 judgment was entered
16 against Dessaure. The basis, Your Honor, of the motion by
17 Dessaure is that there is good cause for setting aside the
18 default judgment and that he has a meritorious defense.

19 And the factual basis of that is that he was served by
20 certified mail. I don't think that's in controversy. He
21 was served, but M. Rita Metts, Esquire, filed an answer on
22 his behalf on June the 27, 2011, and on October the 21,
23 2011, Ms. Metts filed an amended answer in which she did
24 the Gaffney only. She did not withdraw the answer for
25 Dessaure. There is an answer on record in my client's

1 name; it has never been withdrawn.

2 We take the position that this constitutes good cause
3 and a mistake of fact upon which Mr. Dessaure can rely in
4 his motion before the court to set aside the judgment
5 against him.

6 Furthermore, Your Honor, we have filed an affidavit of
7 Mr. Dessaure that is in the court record. And he, when he
8 was in this accident, he turned the matter over to an
9 attorney, Mr. Todd Rutherford, and Mr. Rutherford's letter
10 of representation is attached to my client's affidavit as
11 Exhibit A.

12 THE COURT: Can you tell me when that was filed
13 because I don't have a copy of that.

14 MR. BOWMAN: Of the affidavit?

15 THE COURT: Yes. Yes, sir.

16 MR. BOWMAN: If I may approach the bench, I'll hand up
17 a clocked copy.

18 (A PAUSE.)

19 MR. BOWMAN: In summary, Judge, we think that there's
20 been a good faith -- a good cause showing -- let's take it
21 back. The answer was filed on behalf of my client. Is
22 not, is not technically been withdrawn. We could have come
23 before the court asking the court to void the judgement
24 because there is answer of record. It has never been
25 withdrawn.

1 But based upon that, based on the fact that my client
2 turned his case over to an attorney licensed in South
3 Carolina to represent him, left it in his hands to take
4 care of, we believe that this in total constitutes a good
5 cause to set aside the judgment under Rule 60.

6 We immediately filed when -- when we learned the
7 judgement was filed in June, we immediately filed a motion
8 to set aside the judgment. But in June I think as well we
9 had -- in the affidavit of Mr. Dessaure, you will note that
10 he was in a driveway when he was hit by the co-defendant.
11 Ms. Gaffney has essentially conceded fault. She was DUI
12 and pled guilty to DUI, but she hit my client. Mr.
13 Barnhill was in my client's car.

14 He has a meritorious defense. There would be no
15 prejudice. There's been no discovery done in the case. It
16 was settled by Gaffney without engaging in any discovery.
17 No doubt that was their decision. So, it's as if the case
18 were in the initial stages.

19 We see no prejudice to Mr. Barnhill, should the court
20 see fit to grant the motion. In fact, he, he's been
21 compensated by Ms. Gaffney for what they believe to be an
22 adequate settlement by her carrier. So, we don't see any
23 prejudice.

24 South Carolina has a policy of favoring disposition of
25 issues on their merits rather than on mere technicalities,

1 and we believe there's been a good-faith mistake, and that
2 the motion should be granted. And we ask the court to
3 please consider the motion and grant the relief sought by
4 Dessaure to have an opportunity to come in and defend his
5 case, which is defensible. Thank you, Your Honor.

6 THE COURT: Mr. George.

7 MR. GEORGE: Your Honor, the answer, Ms. Metts put in
8 an answer amending -- to amend her answer. Mr. Dessaure
9 does not have an answer now since there's been an amended
10 answer filed. Ms. Metts through error answered for both
11 defendants.

12 Mr. Dessaure has never turned his complaint when he
13 was served personally over to anyone. He did not turn the
14 complaint. What's, what's important in this case, as I see
15 it, Mr. Dessaure had a lawyer, Todd Rutherford, who Mr.
16 Rutherford represented him in the accident. And this
17 affidavit, I want the court to understand that Mr. Dessaure
18 did not take the summons and complaint and take it to Mr.
19 Rutherford and ask him what to do with it. He just didn't
20 do anything with it.

21 And far as the facts of the accident, Mr. Dessaure was
22 backing down the road and had got halfway into a driveway
23 when another car coming down the road hit him. He was not
24 completely -- he was backing. In other words, he failed to
25 yield to the car coming down the road. They settled for --

1 the amount of money he got from the other car was a
2 compromise, not a full settlement.

3 So, we had filed. We served the guy. No question
4 he'd been served. He was notified of the damages hearing.
5 He didn't answer it.

6 The summons are fairly clear when you get a summons if
7 you will take the time to read them. It says you have
8 thirty days in which to answer this. You don't answer it,
9 they're going to find you in default and ask for damages.
10 That's fairly clear, and all he had to do was pick up the
11 telephone, call Mr. Rutherford, and say I got this summons
12 and complaint.

13 A lot of times, I have people call me once they get
14 served and ask me what to do with them. He didn't do
15 anything. He just, he just trash canned it, and now
16 they're up here for asking relief, and I think it's too
17 late.

18 We ask you not to set aside what we have. Judge
19 Kinard heard it. He didn't overpay us. I'll promise you
20 that.

21 THE COURT: I'm sorry, you -- and just to make sure.
22 You're saying that the answer that was filed by Ms. Metts
23 was as to both defendants?

24 MR. GEORGE: The original was, and then when she found
25 out she had made a mistake, she amended it to answer just

1 for the other defendant. Mr. Dess -- she didn't answer
2 because Mr. Dessaure took the papers to anybody. She just
3 answered it out of hand for both defendants, and then she
4 amended it.

5 THE COURT: All right, I'll look at the documents. In
6 particular, I'll need to spend a little bit more time
7 looking at the affidavit.

8 Is this just -- this is your copy?

9 MR. BOWMAN: That's my copy of the affidavit, Your
10 Honor. You can have it if you wish.

11 THE COURT: If the clerk's office has one in their
12 file, I will return this one to you.

13 MR. BOWMAN: Okay.

14 THE COURT: Since it's your -- it looks like it's a
15 duplicate original.

16 MR. BOWMAN: All right.

17 THE COURT: But I want to make sure. I had not seen
18 this. Thank you.

19 MR. GEORGE: Thank you, Your Honor.

20 MR. BOWMAN: Briefly? Judge, briefly, let me just --
21 I don't want to -- other people are waiting.

22 THE COURT: Yes, sir. I'm sorry.

23 MR. BOWMAN: I don't know what my client told Mr.
24 Rutherford, but that's not part of the record. I know Mr.
25 Rutherford represented my client for the accident.

1 THE COURT: Okay.

2 MR. BOWMAN: And, Judge, the answer on behalf of my
3 client has never been withdrawn.

4 MR. GEORGE: It's just been amended.

5 MR. BOWMAN: Well, it's been amended where she said
6 she was appearing for another defendant. She did not
7 withdraw the answer for my client. We take the position
8 that that's void alternatively.

9 THE COURT: All right.

10 MR. BOWMAN: That the judgment void alternatively,
11 that certainly that's good, good cause.

12 THE COURT: I'll look at it all.

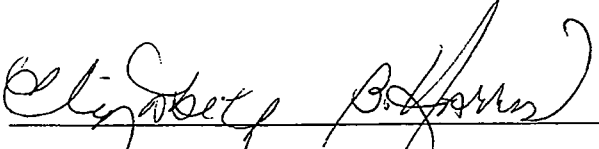
13 MR. GEORGE: Your Honor, if what Mr. Bowman is saying
14 is true, then Ms. Metts would have a problem of conflict of
15 interest representing two defendants.

16 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 14TH DAY OF AUGUST, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JANUARY 13TH, 2013

Traffic Collision Report

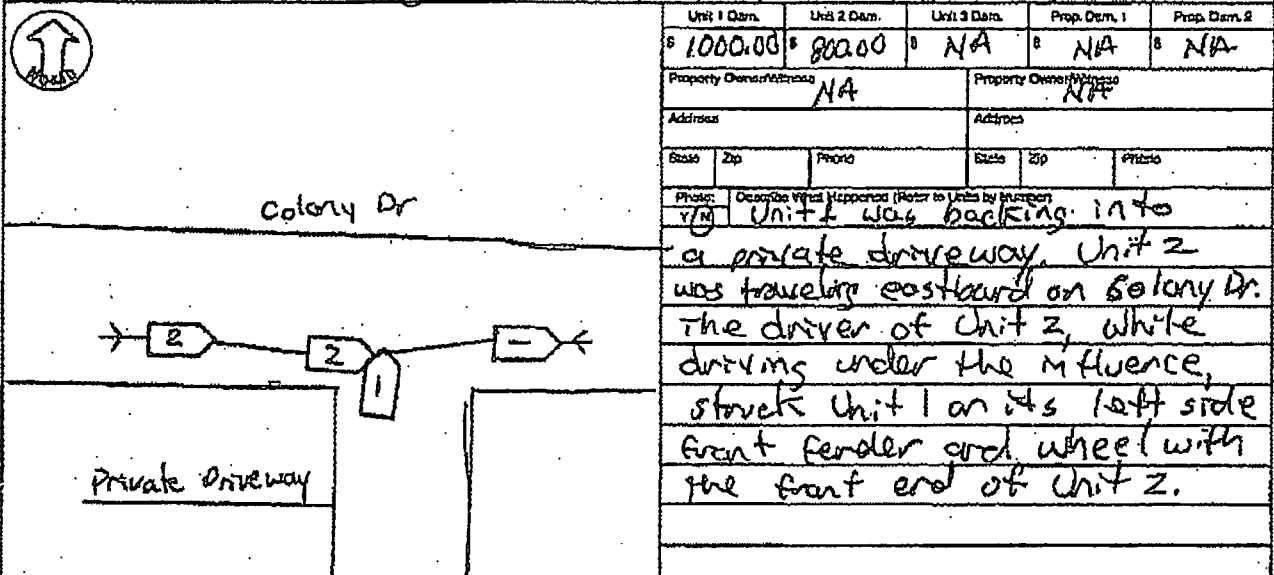
OCT 25 2010

ORIGINAL

D.P.S. USE ONLY 10116019		Page # 1	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-216 (REV. 01-2009)		# of Units 2	Admitted - Attach Copy of Original Report Corrected	Notified 0205	Arrived 0212	
Date 10-17-2010	Time 0200	County 40	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Collision Location (Rt. # / Name) 6 Colony Dr		7- Business 8- Spur	9- Connection 10- Other	11- Near City or Town of: Columbia
Lane # / Dir. 1 / 2	Distance Offset 25	Direction N W	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Basic Intersection (Rt. # / Name) 219/Mason Rd		7- Business 8- Spur	9- Connection 10- Other	ABFM Code MP/Code
R.A. Id. NA	Front: N E S W	Ramp Only 1- Entrance 2- Exit	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Second Intersection (Rt. # / Name) Woodale Cir		7- Business 8- Spur	9- Connection 10- Other	Latitude 34° 04' 03.20"
B-154291					B-154292				

Driver/Participant Full Name Dessaure - Jimmy Emanuel III					Driver/Participant Full Name Gateney - Lesca Michelle				
Unit # 1	Sex M	Race B	Street/R.F.D. 36 Roosevelt ST	City, State, & Zip Estill, SC 29918	Unit # 2	Sex F	Race W	Street/R.F.D. 708 Baffin Bay Rd	City, State, & Zip Columbia, SC 29212
State SC	Year 1989	Body 4S	Vehicle Make Ford	VIN # 1FAFP5356XA64542	State SC	Year 2008	Body 4S	Vehicle Make Chevy	VIN # 2G1WN52M9T917649Z
Driver's License # 100983331(D)	Insurance Company GEICO	Home Telephone (803) 542-5536	Owner's Full Name Council - Keyon Jomell	Contributed To Collision Yes (No)	Driver's License # 008657469(D)	Insurance Company Allstate	Home Telephone (803) 424-3719	Owner's Full Name Cape - Jeff Wayne	Contributed To Collision Yes (No)
Street/R.F.D. 209 Cecelia ST	City, State, & Zip Santee, SC 29142	Street/R.F.D. 708 Baffin Bay Rd	City, State, & Zip Columbia, SC 29212	Estimated Speed 3	Speed Limit 25	C.D.L. Reg. Yes (No) NA	T/B S Reg. Yes (No) NA	Alc/Drg Into (see back): Yes (No) NA	Summary # NA

B-154293					B-154294				
Unit # NA	Sex NA	Race NA	Street/R.F.D. NA	City, State, & Zip NA	Unit # NA	Sex NA	Race NA	Street/R.F.D. NA	City, State, & Zip NA
State NA	Year NA	Body NA	Vehicle Make NA	VIN # NA	State NA	Year NA	Body NA	Vehicle Make NA	VIN # NA
Driver's License # NA	Insurance Company NA	Home Telephone NA	Owner's Full Name NA	Contributed To Collision Yes (No)	Driver's License # NA	Insurance Company NA	Home Telephone NA	Owner's Full Name NA	Contributed To Collision Yes (No)
Street/R.F.D. NA	City, State, & Zip NA	Street/R.F.D. NA	City, State, & Zip NA	Estimated Speed NA	Speed Limit NA	C.D.L. Reg. Yes (No) NA	T/B S Reg. Yes (No) NA	Alc/Drg Into (see back): Yes (No) NA	Summary # NA



Unit 1 Dam. \$ 1000.00	Unit 2 Dam. \$ 800.00	Unit 3 Dam. NA	Prop. Dam. 1 NA	Prop. Dam. 2 NA
Property Owner/Witness NA		Property Owner/Witness NA		
Address NA		Address NA		
State NA	Zip NA	Phone NA	State NA	Zip NA
Photo Y/N	Describe What Happened (Refer to Units by Number) Unit 1 was backing into a private driveway. Unit 2 was traveling eastward on Colony Dr. The driver of Unit 2, while driving under the influence, struck Unit 1 on its left side front fender and wheel with the front end of Unit 2.			

Investigating Officer's Name Ball - R. L.	Rank P/C	Badge # 436	File # 10100	Report # 1077-2010	Reviewing Officer's Name Terry - Dk	Rank Sgt	Badge # 1080	File # 209602
--	-------------	----------------	-----------------	-----------------------	--	-------------	-----------------	------------------

Unit	Date of Birth	Sex	Race	DU	Dist	HRD	A.S.O.	Effect	LA	Tran	Alcno	Current Address	Zip Code
1	07-10-1988	M	B	a	01	13	4:3	1	1	2			
1	08-18-1981	M	B	a	03	13	8:3	1	1	2			
2	02-01-1969	F	W	0	01	13	4:3	1	1	2			

Race	A - African American B - African American C - African American or American Indian D - Other	W - Caucasian M - Hispanic O - Other	Injury Status	1 - Possible 2 - Not Injured 3 - Inoperating 4 - Fatal	Non-Incorporating	1 - Possible 2 - Not Injured 3 - Inoperating 4 - Fatal	Posting Loc.	01 02 03 04 05 06 07 08 09	60 - Pedestrian 61 - Pedestrian 62 - Pedestrian 63 - Pedestrian	64 - Steeper of Curb 65 - Steeper of Curb 66 - Steeper of Curb 67 - Steeper of Curb	Restrained/Restraint Device	00 - None Used 01 - Child 02 - Child 03 - Child 04 - Child
1 - Deployed Front 2 - Deployed Side 3 - Deployed Both 4 - Not Deployed 5 - Not Applicable 6 - Not Applicable	1 - Not Ejected 2 - Ejected 3 - Ejected 4 - Ejected	1 - Not Ejected 2 - Ejected 3 - Ejected 4 - Ejected	1 - Not Trapped 2 - Trapped (Mechanical Release) 3 - Trapped (non-mech.) 4 - Not Applicable	1 - Not Trapped 2 - Trapped (Mechanical Release) 3 - Trapped (non-mech.) 4 - Not Applicable	1 - Not Trapped 2 - Trapped (Mechanical Release) 3 - Trapped (non-mech.) 4 - Not Applicable	1 - Yes 2 - No 3 - Unknown	1 - EMS 2 - Police 3 - Other 4 - Unknown	1 - Yes 2 - No 3 - Unknown	1 - EMS 2 - Police 3 - Other 4 - Unknown	1 - Yes 2 - No 3 - Unknown	1 - EMS 2 - Police 3 - Other 4 - Unknown	

Meaner of Collision (Struck Veh.)	00 - Not Coll. W/Other Veh. 01 - Front End 02 - Rear End 03 - Head On	30 - Rear-to-Rear 41 - Angle (>14°) 42 - Angle (<14°) 43 - Angle L-RTK	60 - Side/Side Same Dir. 61 - Side/Side Opposite Dir. 62 - Unknown	1st/2nd	1 - Deformed 2 - Deformed 3 - Deformed 4 - Deformed	Most Deformed	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
Vehicle Type	01 - Automobile 02 - Pickup/Truck 03 - Truck Tractor 04 - Other Truck	10 - Full Size Van 11 - Mini Van 12 - Sport Utility 13 - Motorcycle 14 - Other Motorcycle	20 - Pedestrian 21 - School Bus 22 - Armed Comm. Veh. 23 - Armored (Pickup) 24 - Pedestrian 25 - Train	01 - School Bus 02 - Passenger Bus 03 - Other 04 - Pedestrian 05 - Unknown (Hd. and Run Only)	01 - Pedestrian 02 - None 03 - Pedestrian 04 - Pedestrian	01 - None 02 - Pedestrian 03 - Pedestrian 04 - Pedestrian	01 - Pedestrian 02 - None 03 - Pedestrian 04 - Pedestrian

Weather Condition	1 - Clear (no adverse conditions) 2 - Rain 3 - Snow 4 - Fog, Smog, Br. Smog 5 - Haze 6 - Other 7 - Unknown	01 - Backing 02 - Changing Lanes 03 - Entering Traffic Lane 04 - Leaving Traffic Lane 05 - Moving Up/Lane 06 - Merging/Changing Lanes 07 - Overtaking/Passing	01 - Approaching/Leaving Vehicle 02 - Entering/Changing Location 03 - Playing/Working on Vehicle 04 - Pushing Vehicle 05 - Stopping 06 - Unknown	01 - Flashing Traffic Signal 02 - RR (X-bucks & Lights) 03 - RR (X-bucks Only) 04 - Flashing Traffic Signal 05 - RR (X-bucks & Gates) 06 - RR (X-bucks & Gates) 07 - RR (X-bucks & Gates) 08 - RR (X-bucks & Gates)	01 - Flashing Traffic Signal 02 - RR (X-bucks & Gates) 03 - RR (X-bucks Only) 04 - Flashing Traffic Signal 05 - RR (X-bucks & Gates) 06 - RR (X-bucks & Gates) 07 - RR (X-bucks & Gates) 08 - RR (X-bucks & Gates)	01 - Flashing Traffic Signal 02 - RR (X-bucks & Gates) 03 - RR (X-bucks Only) 04 - Flashing Traffic Signal 05 - RR (X-bucks & Gates) 06 - RR (X-bucks & Gates) 07 - RR (X-bucks & Gates) 08 - RR (X-bucks & Gates)
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Certificate of Mailing

CERTIFICATE OF MAILING

I, the undersigned employee of BARRY B. GEORGE, ESQUIRE, do hereby certify that I have served the foregoing document(s) by personally mailing a copy of the same, postage prepaid, on the date shown below as follows:

RESTRICTED DELIVERY
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jimmy Emmanuel Dessauere, III
 36 Roosevelt Street
 Estill, SC 29918

6-1-11

Charles Sloan

COPY
 JUN 04 2011 9:07 AM
 MAIL ROOM
 CHARLES SLOAN

RECEIVED
 JUN 04 2013
 SC Court of Appeals

<p>SENDER COMPLETE THIS SECTION</p> <p>1. Article Addressed to: Jimmy Emmanuel Dessauere, III 36 Roosevelt St. Estill, SC 29918</p> <p>2. Article Number (Transfer from service label) 7010 2780 0001 5441 4257</p> <p>PS Form 3811, February 2004</p>	<p>COMPLETE THIS SECTION ON DELIVERY</p> <p>A. Signature X Jimmy Dessauere 81667 Agent</p> <p>B. Received by (Printed Name) Jimmy Dessauere 71153 Addressee</p> <p>C. Date of Delivery MM/PP/YY</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below: 71153</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>
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7010 2780 0001 5441 4257

Postage	\$ 64
Certified Fee	2.85
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	4.50
Total Postage & Fees	\$ 10.29

UNIV OF SC CPU
 JUN 01 2011
 COLUMBIA SC 29208
 POSTOFFICE
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OFFICIAL USE

USPS Retail Service
CERTIFIED MAIL RECEIPT
 MAIL SERVICE (REGISTRATION REQUIRED)

Record on Appeal -- 37

#2011-CP-40-3456

BARRY B. GEORGE
ATTORNEY AT LAW
1419 BULL STREET
COLUMBIA, S. C. 29201

(803) 254-7222

(803) 779-9351 Fax

May 31, 2011

 COPY

RESTRICTED DELIVERY
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jimmy Emmanuel Dessaure, III
36 Roosevelt Street
Estill, SC 29918

RE: DAVID BARNHILL v. LESA MICHELLE GAFFNEY and JIMMY EMMANUEL
DESSAURE, III
Docket #2011-CP-40-3456

Dear Mr. Dessaure:

I enclose herewith and serve upon you by mail, certified copy of Summons and Complaint in the above matter.

Yours very truly,

Barry B. George

BBG/cs

Enclosure

Affidavit of Personal Service

STATE OF SOUTH CAROLINA

- IN THE COURT OF COMMON PLEAS
- IN THE FAMILY COURT
- GENERAL SESSIONS
- IN THE PROBATE COURT
- IN THE MAGISTRATE'S COURT

COUNTY OF RICHLAND

DAVID BARNHILL

PLAINTIFF

-v-
LESA MICHELLE GAFFNEY,
et al.

AFFIDAVIT OF PERSONAL SERVICE

Docket # 2011CP40-3456

DEPENDANT(S).

 COPY

RECEIVED
COURT CLERK
JUN 21 9:23 AM
2011

THE UNDERSIGNED, W. ADUCOTE, being duly sworn, deposes and says that he served the:

- | | |
|--|--|
| <input checked="" type="checkbox"/> SUMMONS and COMPLAINT | <input type="checkbox"/> NOTICE |
| <input type="checkbox"/> SUMMONS | <input type="checkbox"/> LIS PENDENS |
| <input type="checkbox"/> COMPLAINT | <input checked="" type="checkbox"/> COVER SHEET IN CIVIL ACTIONS |
| <input type="checkbox"/> MOTION | <input type="checkbox"/> RULE TO SHOW CAUSE |
| <input type="checkbox"/> PLAINTIFF'S INTERROGATORIES TO DEFENDANT | <input type="checkbox"/> CERTIFICATE OF EXEMPTION/ WITHDRAWAL FROM ARBITRATION and MEDIATION |
| <input type="checkbox"/> PLAINTIFF'S REQUEST FOR PRODUCTION TO DEFENDANT | <input type="checkbox"/> OTHER: _____ |

in this action on the Defendant(x) LESA MICHELLE GAFFNEY by delivering same to:

THE DEFENDANT, LESA MICHELLE GAFFNEY personally;

_____ (relation) _____
a person of discretion residing at the Defendant's residence;

Military Status: _____ Military/Non-Military _____ Branch of service: _____

_____ the _____ at its
(Person served if Corporate Defendant) place of business;

and leaving with ~~him~~ her 1 copy of the same at 99 FOX RUN LN, LEXINGTON, S.C

on the 2ND day of JUNE, 2011 at 2:52 ~~AM~~ PM and that he knows the person so served to be the Defendant mentioned and described in the pleading(s) served, and that the Deponent is not a party to nor interested in the action.

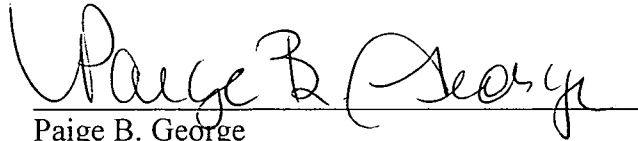
SWORN to before me this 2nd day of JUNE, 2011.
W. Aducote

Charlene M. Dunlap-Swan
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 03-06-17

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 3, 2013



Paige B. George
Law Office of Barry B. George
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222
Attorney for Appellant

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JUN 04 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2011-CP-40-3456

David Barnhill,

Appellant,

v.

Lesa Michelle Gaffney and
Jimmy Emmanuel Dessaure,
III,

Defendants,

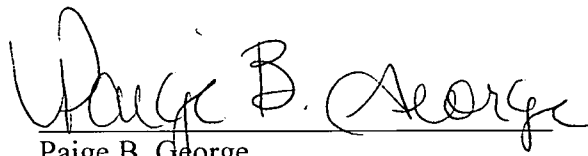
Of Whom Jimmy Emmanuel
Dessaure, III is

Respondent.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Jimmy Emmanuel Dessaure, III by depositing a copy of it in the United States Mail, postage prepaid, on May 15, 2013, addressed to his attorney of record, William H. Bowman, III, Esquire, Rogers Townsend and Thomas, P.C., Post Office Box 100200, Columbia, South Carolina 29202.

May 15, 2013



Paige B. George
Law Office of Barry B. George
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222
Attorney for Respondent

RECEIVED

MAY 16 2013

SC Court of Appeals