

FORM 18
PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS

RECEIVED
MAY 30 2023
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2021-000269
Unpublished Opinion No. 2021-UP-429 (Filed on December 7, 2022)
(Rehearing Denied February 10, 2023)

Bobby E. Leopard, Donna, and Luther Harris,

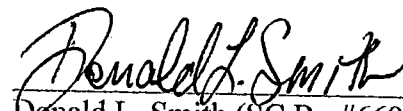
Petitioners,

v.

Perry W. Barbour,

Respondent.

PETITION FOR A WRIT OF CERTIORARI


Donald L. Smith (SC Bar#6699)
2722 W. Whitner St.
Anderson, SC 29626
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Petitioners

Other Counsel of Record:
David L. Moore, Jr. (4050)
P O Box 1509
Greenville SC 29602
Telephone: 864-552-4625
DMoore@turnerpadget.com
Attorneys for Respondent

CERTIFICATION OF COUNSEL

Counsel for Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on February 10, 2023. (App., p. 198).

QUESTIONS PRESENTED

- I. Whether the Court of Appeals affirmation of the lower court's decision to grant Respondent relief from default in defiance of the Supreme Court's holding in *Unisun v. Hawkins* is error.
- II. Whether the Court of Appeals violate established laws by affirming the lower court's dismissal of the Complaint?
- III. Whether the Court of Appeals' decision to uphold the lower court's refusal to apply the doctrine of unclean hands, contradicts established principles of justice?
- IV. Whether the Court of Appeals' affirmation of the lower court's failure to apply equitable estoppel and/or equitable tolling of the statute of limitation contradicts established principles of law and justice.
- V. Whether the facts of this case warrant the application of the "interest of justice" principle, thereby requiring the court to adjudicate the case based on its substantive merits.

STATEMENT OF FACTS

On June 10, 2016, Petitioners were traveling southbound on U.S. Interstate 85, when they came to a stop due to traffic which resulted from a motor vehicle accident further south on 85 in the County of Spartanburg, State of South Carolina. (App., p. 18.). Barbour, driving a truck owned by Southland, was also traveling southbound on U.S. 85 at that time. (App., p. 18). Without a warning, Barbour's truck smashed into the rear of Petitioners' vehicle. (App., p. 18). The impact was such that all four (4) occupants were knocked out and found by the trooper in the grass outside the vehicle. (App., p. 18-19). As a result of Respondents' negligence, gross negligence, and reckless acts, Petitioners sustained injuries that necessitated medical attention. Petitioners filed an action for damages for the injuries they sustained as a result of the wreck.

On June 7, 2019, Petitioners initiated a complaint for damages (referred to as the "Spartanburg action") against Southland Transportation (referred to as "Southland") and Perry Barbour (referred to as "Barbour") for a motor vehicle accident that occurred on June 10, 2016. (App., pp. 113-121). Due to lengthy negotiations between Petitioners and Southland's insurance company, Sentry, the Summons and Complaint were not served until October 4, 2019.

On October 4, 2019, Petitioners served the Summons and Complaint to Southland by mailing copies to the Secretary of State, as required by South Carolina Code Ann. § 15-9-245, and to Mr. RJ Cummings, who is the registered agent of service for Southland Transportation Company in North Carolina.

On the same date, Petitioners attempted to serve Barbour by Certified Mail/Return Receipt Requested at his last known address in Martinsville, Virginia, but the mail was returned undelivered. They then tried to serve him again at another address in Bassett, Virginia, but this attempt was also unsuccessful.

Petitioners then served Barbour a copy of the processes through the South Carolina Department of Motor Vehicle (referred to as "SCDMV"), as allowed by South Carolina Code Ann. § 15-9-370. SCDMV accepted the service on behalf of Barbour but the notice was also returned undelivered.

Because of the inaccurate information provided by Respondent regarding his address, the Summons and Complaint was not served within the specified time frame.

On November 8, 2019, Respondent Southland, represented by Alan G. Jones, Esquire, filed an Answer and Motion to Dismiss, arguing that Petitioners failed to properly and timely file their Summons and Complaint within the required time under Rule 3 of the South Carolina Rules of Civil Procedure (SCRCP). Petitioners opposed the motion.

On November 26, 2019, the Spartanburg court found Respondent Barbour in default and issued an Order of Reference to the Master-in-Equity.

On December 23, 2019, Counsel for Respondent Southland moved to dismiss the case against Respondent Barbour for failure to properly and timely serve the Summons and Complaint. Petitioners opposed both motions, citing good cause and equity considerations against Respondent Southland's motion, and waiver of affirmative defense for failure to file an answer or any responsive pleadings within thirty (30) days against Respondent Barbour's.

On January 17, 2020, the Spartanburg Court ruled that the matter was not properly referred to the Master-in-equity after Respondent Barbour moved to vacate the Order of reference to the Master-in-equity.

On March 10, 2020, the lower court granted Respondents' motion to dismiss based on Rule 12 (b) (2), (4), and (5). Petitioner moved for reconsideration of the Order, which was denied by the Court in its Order dated July 14, 2020. Petitioners perfected their appeal on August 3, 2020.

While the Spartanburg appeal was pending, Petitioners filed a Complaint against Respondent Barbour in Cherokee County on August 27, 2020, referred to as the "Cherokee action". (App., p. 17-24). On September 15, 2020, Petitioners served the Summons and Complaint on SCDMV. (App., p. 90).

The SCDMV accepted service on behalf of Respondent Barbour on September 14, 2020, and mailed the process to his last known address, but the mail was returned to the sender. (App., p. 88). After Respondent Barbour failed to respond to the lawsuit served upon him by and through the SCDMV, Petitioners filed an Affidavit of Default on November 10, 2020. (App., p. 26).

On November 28, 2020, Petitioners moved for an Order of Entry of Default (App., p. 28), which the Court granted in its Order dated December 16, 2020. (App., p. 13-15).

On February 11, 2021, defense counsel, after receiving a courtesy notice of the damages' hearing, moved to vacate the Entry of Default under Rule 55(c) SCRCF. (App., pp. 32-38). It should be noted Moore and his firm "represented" Barbour after learning of his default status in the Spartanburg case as well. He also filed an Answer and a Motion to Dismiss on the same date. (App., pp. 39-45). Petitioners filed their opposition to both the motion and answer. (App., pp. 47-60).

On February 16, 2021, the Cherokee Court granted Respondent's Motion to Vacate Entry of Default based on the WHAM factors, as well as Respondent's Motion to Dismiss the complaint on the basis of statute of limitations. (App., p. 6). Petitioners moved for reconsideration of such Order. (App., p. 62-81).

On March 9, 2021, the Cherokee Court denied Petitioners' motion for reconsideration. On March 11, 2021, Petitioners perfected their appeal (App., p. 83), and requested the Court to consolidate the two related appeals: the Spartanburg action and the Cherokee action, for judicial

economy. (App., p. 202-203). The Court of Appeals denied the Motion to Consolidate the related appeals on April 13, 2021. (App., p. 198).

The Court of Appeals rendered an opinion on the Spartanburg action on November 2, 2022, affirming the lower court's decision.

On November 18, 2022, Petitioners moved to allow late filing of their Petition for Rehearing in the Spartanburg action.

On November 21, 2022, Petitioners submitted their Petition for Rehearing for the Spartanburg appeal. The next day, the Court of Appeals issued a Deficiency Letter.

On December 7, 2022, a Decision was made in favor of Respondent Barbour in the Cherokee appeal.

On December 12, 2022, the Court of Appeals in the Spartanburg case issued a notification to Petitioners, indicating that their Petition for Rehearing was not acted upon due to failure to cure a deficiency (a \$50.00 filing fee). On the same date, the Court sent the remittitur to the lower court.

On December 28, 2022, Petitioners filed a Petition for Rehearing in the Cherokee case, which was denied by the Court of Appeals in its Order, dated February 10, 2023. (App., p. 181-196).

On February 21, 2023, Petitioners requested the recall of the remittitur in the Spartanburg case.

Petitioners requested an extension of time to file a Petition for Writ of Certiorari on the Cherokee appeal pending the resolution of their remittitur issue in the Spartanburg case. On March 16, 2023, this Court granted an abeyance for forty-five (45) days.

In their attempt to file a Petition for Certiorari, the Petitioners requested the Supreme Court's permission to consolidate their Petition for the Spartanburg and Cherokee action. (App.,

pp. 202-207). Respondent opposed this request in their Return, which was dated April 20, 2023. (App., pp. 208-212). On April 24, 2023, the Petitioners filed their Reply to the Return. (App., pp. 213-216). However, the South Carolina Supreme Court denied the Petitioners' Motion to Consolidate on May 17, 2023. (App., p. 217).

ARGUMENTS

I.

THE COURT OF APPEALS' AFFIRMATION OF THE LOWER COURT'S DECISION TO GRANT RESPONDENT RELIEF FROM DEFAULT IN DEFIANCE OF THE SUPREME COURT'S HOLDING IN *UNISUN V. HAWKINS* WAS ERROR.

The Circuit Court made a reversible error when it granted Respondent relief from an entry of default Respondent, citing both procedural and substantive laws.

A. The Circuit Court applied the incorrect standard.

The Court established a distinction in the standard for granting relief from judgment under Rule 55(c) and Rule 60(b) of the SCRCP in the case of Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 681 S.E.2d 885 (2009).

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the Circuit court must also consider: (1) the timing of the motion for relief; (2) whether the Respondent has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). The Circuit court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct. App. 1995). A motion under Rule 55(c) is addressed to the sound discretion of the Circuit court. *Williams v. Stalnaker*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994).

Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c). *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987). Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party." Rule 60(b), SCRPC. The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default.

Sundown, supra.

Based on the facts presented in the case, it is evident that a default order was issued against the Respondent on December 16, 2020 (App., pp. 14-15). Seeking relief from this judgment, the Respondent filed a motion to vacate the default order under Rule 55(c) SCRPC (App., pp. 32-33). However, given that an Order of Default had already been entered, the appropriate course of action for the Respondent should have been to apply Rule 60(b).

Consequently, the reliance on Rule 55(c) SCRPC and the application of the "good cause" standard by the Circuit Court were erroneous. The Court mistakenly applied an incorrect standard when it granted the Respondent relief and vacated the entry of default.

Furthermore, Respondent did not satisfy the prerequisites for obtaining relief from the default order under Rule 60(b), as this rule demands a more rigorous examination. Specifically in this case, Respondent has failed to present any valid grounds, such as mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or misconduct committed by the Petitioners, which would justify granting relief from the order in their favor. Respondent had also defaulted in the Spartanburg action; and had allegedly retained the same firm to represent him. The same firm allowed him to go into default twice.

B. The Circuit Court erred in granting relief based on the Wham factors.

Courts typically employ a two-step analysis to assess requests for relief from default. Firstly, the party seeking relief must provide a compelling "good cause" explanation for the default. Secondly, they must satisfy the three factors laid out in the Wham case: (a) timeliness, (b) meritorious defense, and (c) degree of prejudice to the opposing party. Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). Respondent failed to meet all three of the aforementioned factors.

Petitioners contend that Respondent's motion to vacate the entry of default was untimely based on the timeline of events in this case. Respondent took four (4) months to address Petitioners' Complaint and an additional two months to respond to the Petitioners' Affidavit and Motions. Such a significant delay raises concerns about timeliness.

While Rule 55(c) does not provide a specific time limit for filing a motion to set aside an entry of default, South Carolina courts have consistently held that a two-month gap between the entry of default and the motion to set aside is considered untimely. This position is supported by cases such as Consolidated Masonry & Fireproofing, Inc. v. Wagman 383 F.2d 249, 251 (4th Cir. 1967), Richardson v. P.V., 383 S.C. 610, 613 (S.C. 2009), and Rodriguez v. Gutierrez, 391 S.C. 323 (S.C. Ct. App. 2011).

Considering the circumstances and the established case law, Respondent's delay in seeking relief is significant. His failure to act promptly in addressing the entry of default undermines his claim for relief under Rule 55(c).

Respondent failed to establish a meritorious defense. His affirmative defenses, such as statute of limitations, pendency of an appeal, and failure of service, are not valid. Failure to file an Answer within the required time waives the statute of limitations defense. Relying on the appealed action contradicts his earlier position. Dismissal of the prior action without prejudice allows for

another filing, invalidating the pendency of an appeal defense. Petitioners properly served Respondent, and there is no obligation to provide a copy to an unauthorized representative. Imposing additional requirements burdens Petitioners unnecessarily.

Finally, Petitioners would suffer significant prejudice if the entry of default is set aside. It would prevent them from pursuing their claims against Respondent, despite the injuries and ongoing medical attention they require. Petitioners have endured physical pain, suffering, and financial difficulties throughout this prolonged litigation. Allowing Respondent to avoid liability while relying on procedural laws would be unjust and inconsistent.

In sum, the Circuit Court made an error by applying the wrong standard under Rule 55(c) instead of Rule 60(b) for relief. Even if Rule 55(c) is deemed applicable, Respondent has not satisfied the Wham factors necessary to justify relief from the default order. Furthermore, Respondent has failed to meet the requirements for relief under Rule 60(b) by providing adequate grounds. As a result, the default order against Respondent should be upheld.

II.

THE COURT OF APPEALS VIOLATED ESTABLISHED LAWS BY AFFIRMING THE LOWER COURT'S DISMISSAL OF THE COMPLAINT.

Under Rule 12(a) and (b), affirmative defenses must be raised either in a responsive pleading or by motion within the required 30-day period. Respondent failed to file an Answer within the prescribed time-period, resulting in default. The filing of an Answer at a later stage does not negate the default status. Furthermore, according to Rule 12(h) SCRCF, failure to raise objections under Rule 12(b)(2) through (5) in a responsive pleading or by motion waives the right to make such objections.

The Complaint was filed on August 27, 2020, and served on September 18, 2020. Respondent did not file any responsive pleadings within the 30-day timeframe. Consequently, on

December 16, 2020, an Order of Default was obtained.

On February 11, 2021, Counsel for Respondents filed motions on behalf of Respondent, raising the defenses of pendency of appeal and statute of limitations. He did this when he was alerted, by the undersigned, who provided him with a courtesy copy of the notice for the hearing on damages. This was a repeat of what happened in the Spartanburg action. Defense counsel for Southland learned of the default of Barbour; and he was suddenly representing him. Regardless, since these responses and affirmative defenses were filed well beyond the 30-day period, they are considered waived and should not have been considered by the lower court.

In this case, Respondent filed his Motion to Vacate or Set Aside Default Judgment, Motion to Dismiss, and Answer 168 days after the filing of the Complaint and 146-days after service of same, well beyond the required time period. By filing these pleadings late, Respondent has waived the defenses of pendency of action and the statute of limitations, which must be specifically pled as affirmative defenses according to Rule 8(c) SCRCF.

Respondent cannot now be granted relief based on defenses he has waived by failing to timely file his Answer and Motions. Rule 12(h) SCRCF explicitly states that these defenses are waived if not raised within the required time period.

Therefore, Respondent's claims and defenses, including pendency of action and the statute of limitations, should be considered waived, and the default order against Respondent should be upheld.

III.

**THE COURT OF APPEALS' DECISION TO UPHOLD THE LOWER COURT'S
ORDER FAILING TO APPLY THE DOCTRINE OF UNCLEAN HANDS,
CONTRADICTED ESTABLISHED PRINCIPLES OF JUSTICE.**

South Carolina Courts, and courts in general, have sought to allow litigants to have their day in court. As stated in *Herbert*, courts have long adhered to the "sound public policy of deciding cases on their merits."

As a result, we have long adhered to "the sound public policy of deciding cases on their merits," *Herbert v. Saffell*, 877 F.2d 267, 269 (4th Cir. 1989) (quotation omitted); *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978); *Reizakis v. Loy*, 490 F.2d 1132, 1135 (4th Cir. 1974), and not "depriving . . . part[ies] of [their] fair day in court." *Wilson v. Volkswagen of America, Inc.*, 561 F.2d 494, 504 (4th Cir. 1977) (quoting *Gill v. Stolow*, 240 F.2d 669, 670 (2d Cir. 1957) (Clark, J.)), cert. denied, 434 U.S. 1020, 98 S.Ct. 744, 54 L.Ed.2d 768 (1978). This policy of deciding cases on their merits is so strong that, when a plaintiff has committed a procedural error, we will allow a district court to impose on him the "harsh sanction" of prejudicial dismissal, *Herbert*, 877 F.2d at 269; *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982), only in the "extreme cases," *McCargo v. Hedrick*, 545 F.2d 393, 396 (4th Cir. 1976); 9 Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure: Civil* § 2369, at 193 (1971), where the plaintiff has shown "a clear record of delay" or has engaged in "contumacious conduct." *Dove v. CODESCO*, 569 F.2d 807, 810 (4th Cir. 1978).

Choice Hotels v. Goodwin Boone, 11 F.3d 469 (4th Cir. 1993)

The lower court and the Court of Appeals applied different standards to the parties involved in this case, raising concerns about fairness and consistency in the legal process. The courts were lenient toward Respondent Barbour, allowing his motions to dismiss and affirmative defenses in both cases in front of this court despite procedural prohibitions. Conversely, the courts were stricter towards Petitioners, refusing to apply the doctrines of equitable estoppel and equitable tolling of statute of limitations in them. Furthermore, both courts refused to recognize the doctrine of unclean hands prevented Respondent from benefitting from his dilatory responses.

Based on the presented facts, the doctrine of unclean hands can be invoked in this case. Respondent has exhibited a pattern of not only reckless driving but also intentionally providing incorrect mailing addresses or contact details on his driver's license to avoid prosecution. It is evident Respondent has been involved in numerous traffic incidents, with most of them tried in his

absence.

Date	City/County	State	Charge	Case Number	Outcome
9/20/08		Virginia	Failure to obey highway sign	071GT0800453100	Guilty in absentia
10/19/07	Henry	Virginia	Speeding 48/35	089GT0700797900	Guilty in absentia
10/19/07	Henry	Virginia	Seat belt violation	089GT0700798000	Guilty in absentia
8/28/07	Mecklenburg	Virginia	Brakes-inoperative or missing	117GT0701512200	Guilty in absentia
9/17/07	Montgomery	Virginia	Defective equipment generally	121GT0701637400	Guilty
9/30/03	Patrick	Virginia	Oper w/radar detect/jam device	141GT0300129200	Prepaid-Fine
5/28/04	Patrick	Virginia	Speeding 74/55	141GT0400068000	Guilty in absentia
5/2/06	Southampton	Virginia	Failure to obey highway sign sleep	175GT0600711000	Guilty in absentia
1/16/08	Danville City	Virginia	Speeding 55/40	590GT0800067700	Guilty
		Kentucky	Driving on suspended	10-T-00307	
6/16/16	Spartanburg	South Carolina	Driving vehicle at greater speed than is re	5102P0362799	Guilty in absentia
6/23/11		Virginia	No county or city tag	GT11004149-00	Guilty in absentia
5/2/06	Southampton	Virginia	Failure to obey high-sign sleep	175GT0600711000	Guilty in absentia
9/10/07	Mecklenburg	Virginia	Brakes-inoperative or missing	117GT0701512200	Guilty in absentia
6/12/15	DanvilleCity	Virginia	Speeding 53/40	590GT15006703-00	Guilty in absentia
1/21/15		Virginia	Illegal sun-shading	089GT9500043700	Guilty in absentia

These circumstances establish Respondent as a habitual traffic violator, which should have been known or discoverable by his employer, who entrusted him with operating a semi-truck—a potentially dangerous instrumentality. Petitioners and society in general deserve to have a jury, of

their peers, address Respondents' cavalier attitude when discussing his driving etiquette. The underlying wreck in this case could have been so much more devastating. Respondent has been "coddled" since he began driving. His indifference will seemingly catch up to him and his fellow drivers at the most inopportune time.

By working as a truck driver on South Carolina roads, Respondent is presumed to possess knowledge of and adhere to the state's laws. According to S.C. Code Ann. §§ 15-9-350 and 15-9-370, a non-resident driver who operates a motor vehicle anywhere within the state subjects themselves to the jurisdiction of the South Carolina Department of Motor Vehicles (SCDMV). Therefore, Respondent made himself subject to SCDMV's authority, particularly in the event of a motor vehicle accident. However, Respondent failed to provide correct contact details and neglected to update his mailing address. The fact that he never changed his address with the state DMV is an indication of his disregard for the responsibility and accountability he has to his fellow drivers including, and most importantly, South Carolina drivers as demonstrated in the Incident Report.

The doctrine of unclean hands is based on the principle that a party who comes to the court with unclean hands, meaning they have engaged in improper conduct related to the matter at hand, should not be entitled to equitable relief. This principle was established in the case of Wilson v. Landstrom (281 S.C. 260, 1984), which cited the precedent set by Arnold v. City of Spartanburg (201 S.C. 523, 23 S.E.2d 735, 1943).

In this case, Respondent's intentional misrepresentation of his contact information and his consistent violation of traffic laws indicate a willful disregard for the rules and safety of others. Consequently, Respondent's unclean hands may serve as a basis for denying him equitable relief or providing the bases for invoking certain equitable doctrines, such as estoppel or tolling of the

statute of limitations.

The lower court and, consequently, the Court of Appeals failed to consider Respondent's pattern of behavior and deliberate attempts to evade responsibility, thus neglecting to acknowledge his unclean hands. By overlooking these factors, the courts not only condoned Respondent's improper conduct but effectively rewarded it. As a result, justice was not served in a fair and equitable manner in this case.

IV.

THE COURT OF APPEALS' AFFIRMATION OF THE LOWER COURT'S REFUSAL TO APPLY EQUITABLE ESTOPPEL AND EQUITABLE TOLLING, RUN COUNTER TO CUSTOMARY PRINCIPLES OF LAW AND JUSTICE.

The circuit court erroneously disregarded the fact that statutes of limitation should not be viewed as an absolute bar to claims, but rather as affirmative defenses that can be waived and are subject to equitable doctrines such as estoppel and tolling. This interpretation is in line with well-established legal principles and promotes a nuanced consideration of the specific circumstances of each case, rather than a rigid adherence to strict time constraints.

Statutes of limitation are designed to promote the timely resolution of legal disputes. However, they should not be applied without considering the equitable principles that govern the administration of justice.

The facts presented indicate Respondent was subject to the laws of both Virginia and South Carolina. As a resident of Virginia, Respondent was legally obligated, under Virginia Code §46.2-324 (App., p. 107), to inform the Department of any change of address. Given that Respondent provided a driver's license with a Virginia address, it was reasonable for Petitioners (and the SCDMV) to assume Respondent can be located at that address.

Moreover, as a motorist frequently traveling on the roads of South Carolina, Respondent

was expected to comply with its laws. It is evident that Respondent was aware of his obligation to keep his contact information updated under both Virginia and South Carolina laws. However, the Respondent continuously violated these laws and evaded responsibility, as demonstrated by the numerous traffic infractions in which he was found guilty in absentia. (App., p. 110). Presumably, Petitioners were unable to establish communication with Respondent, contributing to his avoidance of accountability.

In light of these occurrences, the doctrines of equitable estoppel and tolling of the statute of limitations should be considered. Equitable estoppel comes into play when the actions or representations of a party induce another to delay pursuing a claim, and it would be unfair to allow the party responsible for the delay to invoke the statute of limitations as a defense. In this case, Respondent's failure to update his contact information, despite his obligations under both Virginia and South Carolina laws, has led Petitioners to reasonably believe he could be located at his registered Virginia address. As a result, Respondent's actions potentially give rise to an equitable estoppel argument.

Additionally, tolling the statute of limitations is appropriate in this situation. This can occur when a plaintiff is prevented from pursuing their claim due to circumstances beyond their control, such as fraud, concealment, or the plaintiff's incapacity. Tolling ensures that individuals are not unfairly deprived of their right to seek redress simply because of external factors. Tolling occurs when certain circumstances prevent the timely pursuit of a claim, such as Respondent's continuous violations of the law and his evasion of responsibility. These circumstances have hindered the Petitioners' ability to reach out to the Respondent and resolve the matter in a timely manner.

Given the Respondent's failure to fulfill his obligations, continuous violations of the law,

and the resulting inability of the Petitioners to establish communication, it would be just and equitable to consider the application of both equitable estoppel and tolling of the statute of limitations in this case. Doing so would ensure fairness and prevent the Respondent from unjustly benefiting from his own actions or inactions.

V.

THE FACTS OF THIS CASE JUSTIFY THE INVOCATION OF THE "INTEREST OF JUSTICE" PRINCIPLE, REQUIRING THE COURT TO ADJUDICATE THE CASE BASED ON ITS SUBSTANTIVE MERITS.

As stated previously, the purpose of courts is to allow grievances between members of the constituency to be played out in an amicable manner. The only way this objective can be met is if the parties have the opportunity to lay their cards on the table so that a resolution may be reached based on the facts presented to a neutral third party. That is why the interest of justice requires the merits to be the deciding factor in a dispute. It allows a matter to be adjudicated in total, providing closure to those who participate.

This policy ensures that parties are not deprived of their right to a fair day in court. However, in this case, the lower court and the Court of Appeals have disregarded this sound public policy by applying different standards to the parties involved and failing to recognize the Petitioners' substantial compliance with the rules on service of process. This departure from established law undermines the fundamental principle of deciding cases on their merits and deprives the parties of a fair and just resolution.

Furthermore, a number of out-of-state Courts have allowed the filing of Complaints beyond the statute of limitations in the interest of justice. One such case, the New York Supreme Court, using the "interest of justice" doctrine, permitted the filing of a third complaint when the plaintiff's initial complaint was filed within the Statute of Limitations but had defective service. In

Henneberry v. Borstein, 2012 NY Slip Op. 00235 [91 AD3d 493], the plaintiff brought a legal malpractice and breach of fiduciary duty claim against the Respondent attorneys and law firm. The plaintiff initially filed a summons with notice on November 19, 2007, well within the three-year statute of limitations. A licensed process server served the Respondents on March 13, 2008, within the 120-day timeframe. Two affidavits of service were filed with the court. On April 19, 2008, the Respondents appeared and requested a copy of the complaint, which the plaintiff served on April 28, 2008. The Respondents, alleging defective service and lack of personal jurisdiction, sought dismissal of the case on November 7, 2008, while the plaintiff moved for an extension of time to effect proper service. In order to safeguard her claims in case the first complaint was terminated, the plaintiff filed a second complaint in 2009, which contained essentially the same claims. The Respondents moved to dismiss the 2009 case, citing the identical action pending before the court. Both cases were dismissed: the first case due to improper service (dismissed without prejudice), and the 2009 action based on the existence of another identical action. It is worth noting that in the first case, although the court dismissed the complaint, it granted the plaintiff's motion for an extension of time to serve the complaint.

Following the dismissals of the first two actions, the plaintiff proceeded to file a third action on February 11, 2010, which was ultimately dismissed as untimely. The plaintiff appealed all three orders. In a favorable ruling for the plaintiff, the New York County Supreme Court applied the "interest of justice" principle and granted the plaintiff the opportunity to pursue her claims. The court took into account the plaintiff's attempt to serve the Respondents within the 120-day requirement by hiring a process server, the Respondents' knowledge of the action shortly after the complaint was filed, and the presence of actionable claims in the plaintiff's complaint.

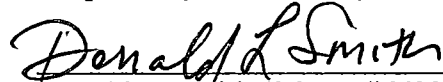
Based on the circumstances of this case, it is essential for this Court to consider the "interest

of justice" doctrine. The Petitioners have suffered injuries at the hands of a person with a demonstrated history of violating traffic laws; and illustrating disdain for the courts of this land. They have diligently followed all legal procedures regarding filing and serving processes, making every effort to serve the Respondent. Despite their best efforts, the Petitioners have been left with no recourse for seeking compensation for the injuries they have endured. By applying the "interest of justice" principle, the Court can ensure a fair resolution that takes into account the Petitioners' situation and provides them with the opportunity to seek the compensation they deserve.

CONCLUSION

From the foregoing, it is respectfully prayed that this Honorable Court grant the Petition for Writ of Certiorari. The circumstances of this case warrant the application of essential legal doctrines, including equitable estoppel, equitable tolling, unclean hands, and the interest of justice. At the very least, Petitioners respectfully pray for an application of the law as it is written. The previous courts have been quick to rigidly apply Respondent's statute defense, yet ignore the fact said defense was not available to him due to his failure to file his answer or a motion in the time allotted. Petitioners seek justice by way of having their claims adjudicated on their merits.

Respectfully submitted by:



Donald L. Smith (SC Bar#6699)

2722 West Whitner Street

Anderson, SC 29626

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

Attorney for Petitioner

Anderson, South Carolina
May 30, 2023.