IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE R. FERRELL COTHRAN, JR.

CASE NO.: 2019-CP-07-01995
APPELLATE CASE NO : 2022-001600

Ronnie L. Douglas,
Eric J. Douglas,
Jacqueline Walker,
Donna Harding, and
Diane Brenda Spears,

Appellants,

vs.

Kevin Holmes

Respondent.

FINAL BRIEF OF APPELLANTS

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II. **THE COURT ERRED IN FAILING TO FIND THAT NO NOTICE WAS GIVEN TO PARTIES AND ATTORNEYS OF A DAMAGES AND DEFAULT HEARING.**

I. STATEMENT OF THE CASE
A. PROCEDURAL BACKGROUND

The original lawsuit relating to these parties was filed on July 1, 2011, involves a shooting incident that occurred on or about July 5, 2008, and was entitled *Kevin Holmes v. Studio Seven Club, Inc., Eric Douglas, Clinton R. Douglas and Susie M. Douglas* under civil action number 2011-CP-07-02743. (ROA, pp. 148-159). The suit alleged that the Defendant, Studio Seven Club, Inc., was at all times material to the suit and was a corporation and/or business entity formed under the laws of the State of South Carolina and all Defendants were members/agents/servants and employees of Studio Seven Club, Inc. as set forth in the Complaint. A default judgment was obtained against the Defendants/Appellants who were not represented by counsel. (ROA, pp. 166-169).

Thereafter, Kevin Holmes/Respondent by and through his attorney Laura A. Gregg, Esquire, instituted an action entitled *Kevin Holmes v. The Estates of Clinton R. Douglas and Susie Douglas, John Doe and Richard Roe, as Representatives of all Heirs and Devisees of Clinton R. Douglas and Susie M. Douglas, and all persons entitled to claim under or through them; also, all other persons or corporations unknown claiming any right, title, interest in or lien upon the real estate described herein, any unknown adults, whose true names are unknown, being as a class designated as John Doe, and any unknown infants, persons under disability or persons in the Military Service of the United States of America, whose true names are unknown, being as a class designated as Richard Roe; Eric J. Douglas; Ronnie L. Douglas; Jacqueline Walker; Donna Harding; Brenda Spears; Darrell Douglas* under case number 2018-CP-07-00831 (ROA, pp. 186-193) to attempt to collect on the judgment previously returned as Nulla Bona in the 2011 matter referenced above. The Defendants in that action (now Appellants) filed a Notice of Motion and Motion to Appear

and Answer Complaint, which was granted in part by the Honorable Marvin H. Dukes, on January 13, 2020.

On August 29, 2019, the Plaintiffs/Appellants herein filed the instant case currently on appeal. (ROA, pp. 133-136). This action sets out the timeline from the previous actions and alleges that the Notice of hearing for Default Judgment was never served the Defendants/Appellants in the 2011 litigation, as set out therein, and that they had no knowledge of same until the 2018 matter was filed and served upon them, all of which are questions for a jury.

B. FACTUAL BACKGROUND

On or about July 18, 2011, the Beaufort County Sheriff's Office served the Summons and Complaint on Erica Brown, Daughter of Eric Douglas, "residing at Studio Seven Club, Inc." at **23** Donaldson Camp Rd **Burton, South Carolina.** [Emphasis added].

On or about July 25, 2011, Deputy Sheriff K. Knight of the Mecklenburg County Sheriff's Office stated that he served the Summons and Complaint on Donna Harding, daughter of Clinton Douglas and Susie Douglas at 5704 Beatties Ford Road, Mecklenburg County, North Carolina on behalf of Clinton Douglas and Susie Douglas.

On or about July 25, 2011, Deputy Sheriff K. Knight of the Mecklenburg County Sheriff's Office stated that he served the Summons and Complaint on Donna Harding, daughter of Clinton Douglas and Susie Douglas at 5704 Beattie Ford Road, Mecklenburg County, North Carolina on behalf of Susie Douglas. Of significant importance is the fact that Susie Douglas died on or about April 3, 2009, approximately two (2) years prior to the date of the alleged service and prior to the institution of this litigation. Of additional importance is that no personal representative was appointed to represent the Estate of Susie Douglas, nor was anyone served in that capacity.

Thereafter, on or about August 9, 2011, Michelle R. Gratz, Senior Claims Examiner of Colony Specialty Insurance Company forwarded a letter to Samuel L. Svalina, Esquire, counsel for Kevin Holmes, requesting an extension of time within which to answer the Complaint. (ROA, pg. 487). The extension was granted; and, responsive pleadings were due on September 16, 2011. (ROA, pg. 488).

On or about August 9, 2011, Duke R. Highfield, Esquire, of the firm Young, Clement Rivers, & Tisdale, LLP made an appearance in the case and forwarded a letter to Samuel S. Svalina, Esquire, requesting a thirty (30) day extension of time to forward responsive pleadings on or before September 16, 2011. (ROA, pg. 485). That extension request was granted.

On November 16, 2012, and based upon the misrepresentations of the Plaintiff/Respondent and/or counsel, the Honorable Jerri Roseneau as the Beaufort County Clerk of Court entered an "Entry of Default as to Defendant Susie M. Douglas", "Entry of Default as to Defendant Studio Seven Club, Inc.", "Entry of Default as to Defendant Eric Douglas", and "Entry of Default as to Defendant Clinton R. Douglas", all of whom were alleged to be employees of the corporation, Studio Seven Club, Inc. (ROA, pp. 166-169).

Nearly four (4) years later, on November 2, 2015, Kevin Holmes/Respondent, filed a Notice of Motion and Motion for Default Judgment against the now Appellants. On November 16, 2015, Kelli Phifer executed a Certificate of Filing and Service of the Motion and the Affidavit of Default by regular mail to Duke R. Highfield, Esquire, Eric Douglas at 23 Donaldson Camp Road, **Beaufort,** [emphasis added] South Carolina, Clinton R. Douglas, at 5704 Beatties Ford Road, Charlotte, North Carolina 28216, and Susie M. Douglas, at 5704 Beatties Ford Road, Charlotte, North Carolina 28216, who was deceased at the time.

On November 13, 2015, Plaintiff/Respondent forwarded their Notice of Motion and Motion for Default Judgment, Request for Damages Hearing, and Notice of Hearing by regular mail to Clinton R. Douglas in North Carolina, Studio Seven Club at 44 Donaldson Camp Road, **Beaufort, South Carolina** [Emphasis added], Eric Douglas at 23 Donaldson Camp Road, **Beaufort, South Carolina** [Emphasis added] , The Estate of Susie Douglas, in North Carolina (which did not exist) and Studio Seven Club at 23 Donaldson Camp Road, **Beaufort, South Carolina**, [emphasis added]. Rule 5(a) SCRCP states that notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action. Studio Seven Club, Inc., and Eric Douglas' last known address as shown above was Burton, South Carolina, and therefore Studio Seven Club, Inc. nor Eric Douglas were ever served with notice of the default hearing. As such the Default should be set aside to these parties due to misrepresentation and/or failure to receive notice. Again, a question for a jury to decide.

Most importantly, Duke Highfield, Esquire, who made an appearance as attorney for all the Defendants/Appellants in this matter, and did not move to be relieved of said responsibility, was never served with the Notice of Hearing as required pursuant to Rule 55(b)(2), SCRCP, which states in pertinent part as follows:

> … If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application. …Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party appeared in the action.

On November 23, 2015, the Plaintiff/Respondent obtained a Default Judgement against the Defendants/Appellants, Studio Seven Club, Inc., Eric Douglas, Clinton R. Douglas, and Susie Douglas in the amount of $483,000.00. (ROA, pg. 29).

No parties had actual notice of any proceeding until the 2018 case was filed in an effort to execute on a judgment against the individual Defendants/Appellants rather than the corporation without piercing the corporate veil. A factual question for a jury to decide.

On or about February 23, 2018, three (3) years after the obtained default judgment, Laura A. Gregg, Esquire, of the Gregg Law Firm forwarded an Execution of Judgment to the Office of the Sheriff of Beaufort County which she incorrectly stated that the judgment was entered on November 23, 2011, when in fact it was November 23, 2015. (ROA, pg. 45). Additionally, the Beaufort County Clerk of Court attempted to provide documentation to the Defendants/Appellants herein using the addresses provided by the Plaintiff/Respondent set forth above. Copies of the returned envelopes clearly marked "wrong address" and dated December 3, 2015, are on file with the Court. Notwithstanding, the Sheriff forwarded a "Nulla Bona" return and certified that after a diligent search, he was unable to locate any property in the names of the Defendants/Appellants.

The Court was made aware that prior to the Plaintiff's/Respondent's attempt to execute on the judgment, Clinton R. Douglas died on August 29, 2016, in the state of Georgia. His death certificate is on file with the Court and incorporated into the Record on Appeal. (ROA, pg. 145).

It should be noted that if the Estate of Clinton R. Douglas and Susie M. Douglas exists, it is located in Mecklenburg County, North Carolina, and that apparently, no claim regarding the $483,000.00 judgment was made. The Plaintiffs/Appellants stated that no ancillary administration was filed in Beaufort County, South Carolina for Susie M. Douglas nor was any estate filed in Mecklenburg County, North Carolina filed for Susie M. Douglas.

It appears that the properties at issue were jointly held in the names of Clinton R. Douglas and Susie M. Douglas, which were the subject of a quiet title action against the Heirs of Stephen Ramsey by virtue of an Amended Lis pendens on file with the Court. The sale of these properties was ordered in total disregard for the location of the corporate entity known as Studio Seven which was located on only one parcel and thereafter, an Order Vacating Foreclosure Judgement and Notice of Sale was entered April 23, 2019. (ROA, pg. 26-28).

Whether by intentional act or typographical error, the Defendants/Appellants in the 2011 action were not served with notice, but most importantly, their counsel, Duke Highfield, never received notice of said hearing when counsel knew that he represented the Defendants/Appellants.

The instant action was brought to set aside the judgment obtained in the initial action based upon fraud, misrepresentation or other misconduct of the Defendant/Respondent, Kevin Holmes. Respondents filed a Motion to Dismiss in this case which was heard by the Honorable D.L. Jefferson. Judge Jefferson's order clearly states the following:

> The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.... Viewed in the light most favorable to the non-moving party, the acts alleged and inferences deducible therefrom may entitle Plaintiff to relief on a theory of the case. Accordingly, the Motion is heard and respectfully Denied.

(ROA, pg. 19).

It was obvious to Judge Jefferson that there was enough evidence to allow this matter to proceed. Plaintiffs/Appellants also filed their brief in opposition to Defendant's Motion to Dismiss (ROA, pg. 562), and subsequent Supplement To Memorandum In Opposition to Defendant/Respondent's Motion to Dismiss. (ROA, pg. 611). The issues in the Motion for Summary Judgment filed by the Respondent are identical to those filed in their Motion to Dismiss. Appellant advised the Court of that fact. If Appellant made any error, it was failing to resubmit

the Memorandum in Opposition to Defendant's Motion to Dismiss as their response to the Summary Judgment that was already in the Court record.

The Appellant's Complaint in this action is very clear and sets forth proof that was given to the Honorable Marvin H. Dukes, III, Master-In-Equity, on May 20, 2019, in civil actions 2018-CP-07-00831 and 2011-CP-07-02743 pursuant to an action to foreclose on a judgment that was previously issued in the 2011-CP-07-02743 matter. As shown on the attached pages 151-153 (ROA, pp. 377-379) of the transcript of the hearing of May 20, 2019, relating to Susie Douglas and whether there was jurisdiction in South Carolina. This is not only an operation of law, but a question of fact for a jury to decide.

Judge Dukes initially granted the foreclosure of the property; however, the Plaintiffs would point out that Judge Dukes vacated that Order on April 23, 2019. (ROA, pg. 26-28.)

Further, Duke Highfield initially appeared for the Appellants in this case. Mr. Highfield requested an extension of time to respond to the pleadings from not only the insurance carrier for Studio Seven, Inc., but also from Samuel S. Svalina, Esquire, both of which were granted. Mr. Highfield never filed an Answer on behalf of Studio Seven and thereafter, the counsel for Respondent held Studio Seven in Default.

I. THE COURT ERRED IN FAILING TO FIND THAT THERE WERE ISSUES OF FACT FOR A JURY TO DECIDE AND GRANTING SUMMARY JUDGMENT IN FAVOR OF THE RESPONDENT.

The issue of non-service upon Susie Douglas, as she was deceased for some years prior to the time of the initial filing of the original complaint, of which the initial judgment was obtained, is an issue of fact. Further, she was also deceased at the time the Notice of Default hearing should have been sent, which it was not. See page 33 (ROA, pg. 259) of the hearing before the Honorable Marvin Dukes, Master In Equity, attached as exhibit to Respondents Motion for Summary Judgment.

Also, Appellant, Ronnie Douglas, testified that he, nor any of the heirs, were served with the original Summons and Complaint, to include his father, Charles Douglas, who was disabled at the time, which is also an issue of fact. See page 33 (ROA, pg. 259), hearing before the Honorable Marvin Dukes.

II. THE COURT ERRED IN FAILING TO FIND THAT NO NOTICE WAS GIVEN TO PARTIES AND ATTORNEYS OF A DAMAGES AND DEFAULT HEARING.

Duke Highfield, Esquire made an appearance in the case was given an extension of time to file responsive pleadings on behalf of the Appellants. Said counsel who was the attorney for the insurance carrier insuring Studio Seven Club, Inc. was never given any notice of the default/damages hearing which ultimately ended in judgment against the Appellants. Further, counsel for the carrier never answered the Complaint of which he requested the extension of time. Pursuant to Rule 5(a)(11) of the South Carolina Rules of Civil Procedure, he was entitled and required to receive notice of any default hearing as well as the other parties to the action. Susie Douglas was deceased at the time and could not have possibly received notice of a hearing as set forth in the Affidavit of Service on file with the Court.

C. STANDARD OF REVIEW

This action was brought for the purposes of setting aside a default judgment and sale of the Appellants' property.

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP.

In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Medical University of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004).* In other words, all ambiguities, conclusions, and inferences arising in and from the evidence must be viewed in the light most favorable to a nonmoving party. *Willis v. Wu, 362 S.C. 146, 607 S.E.2d 63 (2004).*

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005).* Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Nelson v. Charleston County Parks and Recreation Commission, 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004).*

The party seeking summary judgment has the burden of **clearly** establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mutual Auto Insurance Company, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004).*

Finally, because it is a "drastic remedy," summary judgment should be "cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." *Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (2005).*

CONCLUSION

It is respectfully submitted that the Trial Court erred in granting summary judgment to the Defendant as it is clear that factual questions exist for a jury to determine.

It is, accordingly, respectfully requested that the Order of the Honorable Ferrell Cothran, Jr. (ROA, pg. 1-11) be reversed, that the South Carolina Court of Appeals declare that summary judgment in this matter was not appropriate, that factual questions exist for a jury to decide, and together with such other and further relief as this Court may deem to be just and proper.

Respectfully submitted,

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September 12, 2023

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CERTIFICATE OF COUNSEL

Undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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