

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No.: 2022-CP-26-5492

Rose Bernard,)
)
Plaintiff,)
)
v.)
)
Lucas Green; Aperture Investigations,)
)
Defendant.)

**ORDER OF DEFAULT
AND ORDER OF JUDGMENT**

This matter is before me pursuant to Defendants’ Motion for a Default Judgment against Plaintiff Rose Bernard. After reviewing the Certificate of Service on Ms. Bernard as well as the Affidavit of Default against her, copies of which are attached hereto and incorporated herein by reference, I conclude that Defendants should be awarded judgment by default.

Plaintiff Rose Bernard was served with a copy of the Summons to Counterclaim and Amended Answer and Counterclaim via email and US Mail on October 19, 2022, pursuant to the Code of Laws of South Carolina (1976), as amended, and Rule 5(b)(1) of the South Carolina Rules of Civil Procedure. No Answer or other response to the Counterclaim has been received by Defendants’ attorney as required by the Summons in this action.

Further, on December 28, 2022, Plaintiff was served by counsel for Defendants with the Notices of Motion Scheduling as to the hearing on Plaintiff’s Motion for Exemption from ADR, Defendants’ Motions to Dismiss Defendant Lucas Green and Defendants’ Motion to Remand to Magistrate Court. These Notices of Motion Scheduling notified Plaintiff of the hearing to take place on January 23, 2023 at 1:30 p.m. via WebEx. Plaintiff appeared at the hearing and did admit she had received said documents.

On May 27, 2022, Plaintiff signed an Investigative Services Agreement (hereinafter the "Contract") with Defendant Aperture Investigations, LLC (hereinafter "Aperture") for a retainer of \$1,500.00 and provided an initial deposit on said retainer in the amount of \$700.00. A copy of the Contract is attached hereto incorporated herein by reference. There remains a balance of \$800.00 due and owing on the Contract. By her signature on the Contract, Plaintiff acknowledged that she understood and agreed with the terms in the Contract. Those terms included, but are not limited to:

1. the understanding that Defendants could make no guarantee of Plaintiff's desired results;
2. the understanding that Defendant Aperture would not be held liable for any failure or malfunction electronic equipment, that Defendant Aperture would make every effort to obtain the best quality video but that a number of factors could produce lower quality video results;
3. the understanding that the retainer fee is non-refundable and considered the minimum fee, even if case work had not actually started;
4. the understanding that Plaintiff was solely responsible for the use of the electronic equipment utilized and that Defendant Aperture would not be liable for anything related to the use, installation or removal of such equipment;
5. the understanding that in the event that the electronic equipment was lost, stolen, damaged or destroyed by any means during its use, Plaintiff would be responsible for the replacement cost of the equipment utilized;
6. the understanding that in the event of non-payment of monetary balances owed, relief will be sought in the courts of Horry County, South Carolina and that in the event of such legal action, Plaintiff agreed to be responsible for all collection costs, with open balances accruing interest

of 1.5% per month (18% per annum) and monthly late processing fees of \$45.00 until paid in full; and

7. the understanding that in the event of non-payment of monetary balances owed, relief would be sought in court in Horry County, and “client agrees to be responsible for all collections costs, including, but not limited to, attorney’s fee; accrued interest; lost wages, late fees and other associated collection costs. Open balances will accrue interest of 1.5% per month (18% per annum) and monthly late processing fees of \$45.00 until paid in full.”

By signing the Contract, Plaintiff further acknowledged that her case might require special electronic equipment and that she understood her responsibility for the applicable charges as well as the possibility of electronic malfunctions.

Plaintiff has failed to remit the balance of the retainer in the amount of \$800.00 in breach of the Contract with Defendant Aperture, and Plaintiff has failed to return Defendant Aperture’s electronic equipment, and Defendants have reason to believe that Plaintiff may have tampered with Defendant Aperture’s equipment. Defendants believe they have been damaged in an amount equal to the remaining balance of the balance of the retainer.

As part of Plaintiff’s Contract with Defendant Aperture, Aperture provided equipment for use in the home of the Plaintiff; namely, a Brinno TLC 200 Time Lapse video recording camera system (the “Video Camera”). Defendant Green, on behalf of Defendant Aperture, made requests, both by text message, voice mail message, and in person to Plaintiff for the return of the Video Camera. Plaintiff has failed and refused to return said camera system to Defendant Aperture upon request following her breach of said Contract. The Video Camera, at the time of purchase, was valued at \$200.00.

It also appears, from the Affidavit of Attorney's Fees and Costs filed simultaneously herewith, that a total of Eight Hundred Twelve and No/100s Dollars (\$812.00) have been expended related to the Counterclaim in this matter.

It appears that there is a liquidated sum of \$1,812.00 due and owing to Defendants for the following:

- A. The remaining balance of \$800.00 as called for under the Contract in this matter, with said amount being due and owing after all credits have been given;
- B. \$200.00 for the cost of the Brinno camera equipment left at Plaintiff's residence for use in the investigation at issue in this matter.
- C. \$812.00 for attorneys' fees and costs related to the Counterclaim of this matter.

Plaintiff has admitted to being served with the Summons, Amended Answer and Counterclaim in this matter and has failed to Answer the Counterclaim. Defendants Lucas Green; Aperture Investigations, LLC, are, therefore, entitled to a judgment in the amount of \$1,812.00 as set forth above.

It is, therefore, **ORDERED, ADJUDGED and DECREED** that Defendants, Lucas Green; Aperture Investigations, LLC, be, and are herein, granted a judgment by default against the Plaintiff, Rose Bernard, in the amount of One Thousand and 00/100 Dollars (\$1,812.00).

AND IT IS SO ORDERED.

_____, 2023
Conway, South Carolina

Presiding Judge, Fifteenth Judicial Circuit

UPON MOTION OF:

McCUTCHEN VAUGHT GEDDIE
& HUCKS, PA

s/ Luther O. McCutchen, III

Luther O. McCutchen, III (SC Bar #3763)

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Attorneys

for

Defendants

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022-CP-26-5492

Rose Bernard

Lucas Green

PLAINTIFF(S)

Aperture Investigations
DEFENDANT(S)

Submitted by: Luther O. McCutchen, III

Attorney for : [] Plaintiff [x] Defendant
or
[] Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- [] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
[x] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
[] ACTION DISMISSED (CHECK REASON): [] Rule 12(b), SCRPC; [] Rule 41(a), SCRPC (Vol. Nonsuit); [] Rule 43(k), SCRPC (Settled); [] Other
[] ACTION STRICKEN (CHECK REASON): [] Rule 40(j), SCRPC; [] Bankruptcy; [] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [] Other
[] STAYED DUE TO BANKRUPTCY
[] DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): [] Affirmed; [] Reversed; [] Remanded; [] Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: [x] See attached order (formal order to follow) [] Statement of Judgment by the Court:

ORDER INFORMATION

This order [] ends [x] does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below). Rows include Lucas Green vs Rose Bernard (\$1,812.00) and Aperture Investigations vs Rose Bernard (\$1,812.00).

If applicable, describe the property, including tax map information and address, referenced in the order:

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Horry Common Pleas

Case Caption: Rose Bernard VS Lucas Green , defendant, et al

Case Number: 2022CP2605492

Type: Order/Judgment by Default and Form 4

H. Steven DeBerry, IV

Circuit Court Judge 2771