

MOTION IN THE SOUTH CAROLINA COURT OF APPEALS

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SC Court of Appeals

WILLENE JAMES

PLAINTIFF AND APPELLANT

COURT OF APPEAL

APPELLATE CASE NUMBER:2023-001324

LOWER COURT NO: 2022CP4006365

V.

RICHARD JOHNSON

DEFENDANT AND RESPONDENT

DEFENDANT'S MOTION TO RECALL THE REMITTITUR AND REINSTATE THE APPEAL

TO THE HONORABLE JUDGE, PRESIDING JUDGE OF THE STATE OF SOUTH CAROLINA

The Plaintiff, Willene James, hereby moves to recall the remittitur the court issued on October 11, 2023 and to reinstate my appeal. The grounds for this motion are that the staff of the appeals court failed to respond to my phone calls to clarify letters dated on August 25, 2023 and September 5, 2023 to verify submittal requirements for Rule 267. I left several messages, and none were returned I finally reached Ms. Tammy on 9/17/2023 and ordered the transcript. (See attached documents). This lack of response from the appeals staff caused an undue delay in me responding to the request and the ambiguous information in the letters to provide the transcript. I have obtained the transcript as of today 10/18/2023 which is attached and enclosed and proof of payment. Please reinstate the appeal.

Also, the notifications are being received by me a week or more after the date on the letters and this is not fair to me being penalized when I have not been given the proper amount of time to respond thru the postal delays which are beyond my control. I believe that I have not been given due process of law.

Dated: 10/18/2023

Respectfully submitted,

A handwritten signature in black ink that reads "Willene James". The signature is written in a cursive style with a large initial "W" and a long, sweeping underline.

Willene James

Plaintiff and Appellant

Enclosures



I N D E X

(There were no witnesses called)

E X H I B I T S

(There were no exhibits submitted)

P R O C E E D I N G S

1  
2 THE COURT: Ms. James, Mr. Johnson has not logged in,  
3 but you're the one that's filed the appeal, so tell me why  
4 you're appealing.

5 MS. JAMES: Yes, Your Honor. I'm here appealing  
6 because I owned a property at 1601 Hurricane Falls Lane.  
7 Mr. Johnson was the contractor that installed the well from  
8 Enegue Water Wells Company. There was a proper notice of  
9 intent for that company to install the well. Shortly after  
10 the well was installed, I called Mr. Johnson, at least, five  
11 times to come back, that the well wasn't functioning  
12 properly. He came back many times.

13 Finally, on July 4th, 2022, he came back and said that  
14 he installed a infiltration system. But prior to installing  
15 that, the water was black coming through the house and he  
16 said nothing was wrong with the wall -- with the well on  
17 many, many occasions. The tenants were complaining that  
18 they couldn't cook, couldn't take baths. I present it to  
19 the Judge that the water was black coming through the  
20 commode, coming through the sink, coming through every  
21 source for many, many months where the tenants had to go to  
22 another location that I own to take showers, to cook and to  
23 have normal life, daily life function.

24 In coming back on July 4th, the well got worse. And I  
25 got two more opinions. They said that the well was not

1 properly installed and the infiltration system that he put  
2 on was not done properly, therefore, I had to get another  
3 well installed July 2022 for \$10,185. The reason I sued him  
4 for 5,000 is because I wanted to work in good faith with him  
5 to try to see if he would come back and do whatever was  
6 necessary, but he did not.

7 Instead, when we went to court, he said that he didn't  
8 know I owned the property. I presented to the Judge proof  
9 that he had installed the septic system and he knew that I  
10 owned the property. He said that he thought another  
11 relative, my brother, owned the property. No, my brother  
12 did not own the property. He just resided there prior to  
13 his death.

14 But needless to say, I tried to work with him. I gave  
15 him written notification that the well was ineffective early  
16 on many, many times, many calls trying to get it rectified.  
17 It was never rectified, so, thus, I had to buy a new well.

18 It's breach of contract. It's what I feel is  
19 inappropriate, incomplete plumbing work, improper repairs,  
20 poor workmanship. He caused damage to the toilet, tub, hot  
21 water heater, washing machine. He never looked inside the  
22 proper at the damage upon leaving the job on July 4th. I'm  
23 citing negligence, unprofessional work. I've reported it to  
24 Atlanta Environmental. They have an investigation going on  
25 there and they have five other cases.

1           DHEC, I've reported to South Carolina Department of  
2 Health and Environmental Control, and we have a subsequent  
3 trial coming up with five other cases similar to mine,  
4 unprofessional work, installing wells without permit. He  
5 installed my brother's well next door without a permit.

6           So this contractor, also, put a hole in the filter,  
7 which is incompetent professional service. I've got two  
8 opinions -- here's the filter here -- saying that he was  
9 resolving the problem. I presented to the Judge that this  
10 made the problem worse by having sludge come into the house.  
11 I contacted two other contractors. They said that this was  
12 inappropriate that further caused the damage to the well.  
13 The well was irreparable, so I had to replace it out of my  
14 pocket.

15           I suspect that he would not appear because the levity  
16 of the case involving his license. And I spoke to an  
17 investigator yesterday and said that the trial will be  
18 coming soon and there would be grave consequences for his  
19 conduct in other cases, also.

20           THE COURT: So did he drill the well or did he damage  
21 the well?

22           MS. JAMES: He drilled it and subsequently came back  
23 and damaged it.

24           THE COURT: He said he didn't drill the well, though.  
25 Is that not true?

1 MS. JAMES: That's not true. He was the only person I  
2 ever had contact with. Mr. John Simons, he just filed for  
3 the notice of intent under his company. Mr. Johnson was the  
4 only person I ever met. When we went to trial, Mr. Simons  
5 came and testified that he had never been to the job. He  
6 doesn't know where the job is. Mr. Johnson was the only  
7 person I ever knew.

8 And during my open records request, that's when I found  
9 out Mr. Simons owned the company. He testified that he  
10 owned the company, Enegue, and I found out different through  
11 Mr. Simons and his wife, Barbara, coming to court that he  
12 did not own the company. He was just the person that worked  
13 for them. I never met Mr. Simons until we went to trial.  
14 Never seen him before or his wife.

15 THE COURT: So tell me what the magistrate did wrong?  
16 Did you tell all this to the magistrate?

17 MS. JAMES: I did. I produced the evidence. I had to  
18 go back 30 days. He didn't bring one piece of evidence at  
19 all, not one. And I had his boss, Mr. Simons, I subpoenaed  
20 him to be my witness. He even told the magistrate that Mr.  
21 Johnson was the only one involved with this property and he  
22 would have corrected the problem if Mr. Johnson had reported  
23 it to him, but Mr. Johnson did not report it to him. He  
24 just came back and tried to keep putting Band-aids on the  
25 problem, but it was a cancer problem and he could not fix it

1 because it initially was not done properly.

2 And I had two other opinions that came, professional  
3 well drillers from Sumter and Summerville, that said he did  
4 not do it properly. He didn't from the beginning, that's  
5 why I kept having so many problems. But he didn't tell his  
6 boss. He was just trying to rectify it on his own without  
7 telling his boss until I filed this suit. And the boss, Mr.  
8 John Simons, came and testified on my behalf that he would  
9 have fixed it if he knew of it.

10 THE COURT: Did he present any evidence to the  
11 magistrate?

12 MS. JAMES: Not one piece of paper, Your Honor. I  
13 presented pictures with the dirt, the sludge. I sent them  
14 to your clerk. I presented the hole in the filter, which is  
15 improper. I presented that he had installed my septic. I  
16 have the paperwork here. He had installed it several months  
17 before he installed the well. I presented, at least, 20  
18 pieces of evidence and I left them with the Court for 60  
19 days before I picked them up because they said they had to  
20 keep them.

21 I live in Georgia, Your Honor. I live in Stone  
22 Mountain, Georgia. I had to drive there several times  
23 because they kept changing the hearing -- they changed the  
24 hearing location. And I left the evidence with the clerk,  
25 but I didn't want it to stay there knowing that I needed

1           urgently to appeal it.

2           So I went back to pick up the evidence several months  
3 after the trial and I was appalled because under oath, he  
4 said, he didn't know I owned the house when he had to file a  
5 septic permit stating that three months before that that he  
6 put the septic system in.

7           I was appalled by the verdict and really, really  
8 disappointed that I had to come back to do an appeal when  
9 the evidence was so clear and I had two witnesses from  
10 Enegue Well Company saying that they didn't touch the  
11 project. He did it from beginning to end and did not tell  
12 them that he was having difficulty. They would have stepped  
13 in and rectified the problem. Subsequently, I had to pay to  
14 get a whole new well from Beard Well Drilling Company in  
15 Sumter.

16           It's just not right, Your Honor. I don't think that  
17 the decision from the Judge was appropriate. He lives in  
18 that county. I don't know if it's conflict of interest. He  
19 does a lot of work in that county where the case was heard.  
20 I don't understand. It appalls me the decision was made the  
21 way it was. It still appalls me.

22           THE COURT: When was the well drilled?

23           MS. JAMES: The well was drilled in 10/2018.

24           THE COURT: So I see when Mr. Simons testified, he said  
25 that some of those things, the sludge and all that, are

1 common problems with a well. And the well is out of  
2 warranty because you had no issues for more than three  
3 years. That's what happened, right?

4 MS. JAMES: No, ma'am.

5 THE COURT: I mean, that's what the testimony was?

6 MS. JAMES: The testimony, but I proved that I sent  
7 letters to him, telephone calls. And he came many, many  
8 times, Mr. Johnson, many, many times, but he did not tell  
9 Mr. Simons he was coming. And I went to two other experts  
10 and they said it's not common for you to have black sludge  
11 in a well and consistent problems with a well for that many  
12 years, for two years, and they not replace the well.

13 He kept trying to put a Band-aid, not to replace it and  
14 not to tell his boss that something was wrong. And I didn't  
15 know who the boss was. I just knew I dealt with Mr.  
16 Johnson. He did the septic. He did the plumbing. And then  
17 he went under oath and said he didn't know I was the owner  
18 when he had to get my permission to do the septic with DHEC.  
19 He had to certify that I was the owner. And I have the  
20 paperwork right here that he did the septic two months  
21 before he did the well. And there was problems. He came,  
22 at least, six, seven times to try to correct the well.

23 THE COURT: Why would your brother have testified that  
24 there were no problems with anything?

25 MS. JAMES: Because he tapped into the well and he

1        wanted to be adversarial with me. He tapped into my well  
2        without my permission and I have a case with him. He has a  
3        no trespass, no contact with me. He's from my mother's  
4        first husband. So it's retaliation because he cannot talk  
5        to me. Among many other injustices that his trial is coming  
6        up soon, also, for. And he has a litigation on him coming  
7        up that he tapped into my well without permission.

8                And Mr. Johnson installed his well without a well  
9        permit that's under review and investigation with the  
10       Environmental. And they gave me open records, freedom of  
11       records request I did that say that my brother didn't have  
12       -- Mr. Johnson didn't have a permit to do my brother's well  
13       next door.

14               So my brother is retaliating against me for me asking  
15       him over a year and a half to get his own well. And Mr.  
16       Johnson just politely went next door and installed the well  
17       without a notice of intent with DHEC. Now, he's in trouble  
18       and my brother, also. They lied under oath.

19               THE COURT: Okay.

20               MS. JAMES: I presented the freedom of request  
21       information from Columbia to the Judge in every aspect. She  
22       ignored it.

23               THE COURT: Okay. Well, let me look at everything and  
24       I'll get you my decision in writing.

25               MS. JAMES: Okay. Thank you very much.

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THE COURT: Thank you.

MS. JAMES: Bye-bye.

THE COURT: Bye.

CERTIFICATE OF TRANSCRIBER

1  
2  
3 I, PENNY M. JOHNSON, do hereby certify that the  
4 foregoing transcript is a true and correct record of the  
5 recorded proceedings; that said proceedings were transcribed  
6 to the best of my ability from the audio recording and  
7 supporting information; and that I am neither counsel for,  
8 related to, nor employed by any of the parties to this case,  
9 and I have no interest, financial or otherwise, in its  
10 outcome.

11  
12 October 18, 2023

13  
14  
15 Penny M. Johnson  
16 Penny M. Johnson  
17 Transcriber  
18  
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25



# CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

Pay to

*Penny Johnson*

Address

*405 Woodvale Lane  
Aiken SC 29824*

KEEP THIS RECEIPT FOR YOUR RECORDS

**NOT NEGOTIABLE**

Serial Number

28640102490

Year, Month, Day

2023-09-18

Post Office

300830

Amount

\$51.00

Clerk

5



## POSTAL MONEY ORDER

Serial Number

28640102490

Year, Month, Day

2023-09-18

U.S. Dollars and Cents

\$51.00

Fifty One Dollars and 00/100

Amount

Pay to

*Penny Johnson*

Address

*405 Woodvale Lane  
Aiken SC 29824*

From

*Willene James*

Address

*5757 Southland Dr. Stone Mtn GA 30087*

Memo

*2022CP 4006365 (transcript) Willene James vs Richard Johnson*

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28640102490

Willene James  
5458 Memorial Drive  
Stone Mountain, GA 30083

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7022 1670 0002 1602 7847

Retail



23211

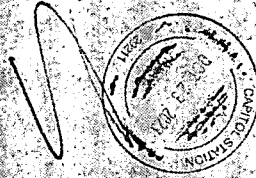
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GA 30083  
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