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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

Appellate Case No. 2023-000246

James E. Fender,Appellant,

v.

Larry R. Hoffman and Allen Jackson Barnes, Defendants,
Of Whom Allen Jackson Barnes is theRespondent.

RECORD ON APPEAL

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

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PRO SE

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Certificate of Counsel

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-00438
)	
Plaintiff)	
)	
vs.	)	ORDER FOR SERVICE
	)	BY PUBLICATION
)	
Larry R. Hoffman and)	
Allen Jackson Barnes,)	
)	
Defendants)	

This matter comes before me upon the Motion of the attorney for Plaintiff, Desa Ballard, for an Order for Service by Publication pursuant to S.C. Code § 15-9-710.

It appears to the satisfaction of the Court that there is just cause for granting this Motion, therefore,

IT IS HEREBY ORDERED that service upon the Defendant Larry R. Hoffman be made by publication in the Sumter Item newspaper located in Sumter County, SC, once a week for three weeks.

IT IS SO ORDERED.

The Honorable
Presiding Judge

April __, 2022
Sumter, South Carolina



Sumter Common Pleas

Case Caption: James E. Fender VS Larry R. Hoffman , defendant, et al

Case Number: 2022CP4300438

Type: Order/Publication

So Ordered

s/James C. Campbell, Sumter County Clerk of
Court

Electronically signed on 2022-04-29 15:52:34 page 2 of 2

ELECTRONICALLY FILED - 2022 Apr 29 3:52 PM - SUMTER - COMMON PLEAS - CASE#2022CP4300438

ROA 0003

James E. Fender
PLAINTIFF(S)

Larry R. Hoffman et al
DEFENDANT(S)

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.
- 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: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant's Motion to Quash subpoena is DENIED.

Defendant Barnes' Motion to Dismiss is GRANTED as to Breach of Contract cause of action.
Defendant Barnes' Motion to Dismiss is DENIED as to Civil Conspiracy cause of action. Plaintiff has 15 days to file amended complaint clarifying allegations of Civil Conspiracy against the defendant Barnes.

Plaintiff's Motions to Compel are GRANTED. Defendant must produce complete responses or privilege log within 30 days.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/07/2022 .

Allen Jackson Barnes for Allen Jackson Barnes
Harvey M. Watson, III for James E. Fender
Desa Ballard for James E. Fender
Everett Joseph Mercer for Larry R. Hoffman

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Sumter Common Pleas

Case Caption: James E. Fender VS Larry R. Hoffman , defendant, et al

Case Number: 2022CP4300438

Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2022-09-07 17:12:49 page 3 of 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

James E. Fender,) Civil Action No.: 2022-CP-43-00438
)
 Plaintiff,)

vs.)

Larry R. Hoffman and)
 Allen Jackson Barnes,)
 Defendants.)

**ORDER GRANTING DEFENDANT
 ALLEN JACKSON BARNES'
 MOTION TO DISMISS
 THE AMENDED COMPLAINT**

This matter came before the Court via WebEx on November 7, 2022, on Defendant Allen Jackson Barnes’s Motion to Dismiss the Amended Complaint. Defendant Allen Jackson Barnes (“Barnes”) appeared pro se. Haley A. Hubbard appeared on behalf of Plaintiff James E. Fender (“Fender”). Everett J. Mercer appeared on behalf of Defendant Larry R. Hoffman (“Hoffman”). Having reviewed the filings by the parties, hearing the arguments at the hearing, and reviewing the applicable case law, Barnes’ Motion to Dismiss is GRANTED for the reasons set forth below.

In 2021, Fender and Hoffman were involved in litigation that ultimately resulted in the parties entering into a Settlement Agreement which resolved that case. This Settlement Agreement contained a confidentiality provision. Barnes was not involved in any way with the Settlement Agreement, nor did he know of the confidentiality provision contained within. However, Barnes eventually learned that the case between Fender and Hoffman had settled, and Barnes informed counsel for the Bank of Greeleyville, William Johnson

(“Johnson”), of this settlement. Johnson then inquired about the details of the settlement with Fender’s then attorney Nekki Shutt. Fender was then required to pay some of the settlement proceeds the Bank of Greeleyville. In 2022, Fender brought the present action against Hoffman and Barnes, alleging Breach of Contract against Hoffman and Civil Conspiracy against Hoffman and Barnes. Fender also made a claim for attorney’s fees against Hoffman.

Barnes argues that Fender has failed to sufficiently plead facts to establish a cause of action against him and moves to dismiss under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Under Rule 12(b)(6), SCRCPP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action. Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). The motion may not be sustained if the facts alleged in the complaint and the inferences that can be drawn therefrom would entitle the plaintiff to any relief under any theory. Doe v. Greenville Cnty. Sch. Dist., 375 S.C. 63, 66-67, 651 S.E.2d 305, 307 (2007).

The only cause of action against Barnes is one for Civil Conspiracy. In order to maintain a claim for civil conspiracy, a party must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774, 781 (2021). Barnes moves to dismiss, in

part, on the grounds that Fender has failed to plead he was damaged. The basis of Barnes' argument is that Fender received all the money he agreed to under the Confidential Settlement Agreement, but was required to pay a legitimate debt to the Bank of Greeleyville, a judgment creditor from prior litigation. Nowhere does Fender plead he did not receive all of the money agreed to under the prior litigation. Rather, Fender only plead that he did not get to maintain the proceeds of the prior litigation as a result of a legitimate debt.

It appears from the pleadings and the argument of the parties that Fender was paid all the money that he was owed under the settlement prior to his payment of his legitimate debt to the Bank of Greeleyville. Fender cannot, therefore, maintain he suffered any damages. As of result of damages being an essential element of Civil Conspiracy, the Amended Complaint must be dismissed against Barnes for failure to plead he was damaged.

Likewise, Fender has failed to plead that Barnes committed an unlawful act or a lawful act by unlawful means. Barnes reported to counsel for the Bank of Greeleyville that he believed Fender had settled the previous case with Hoffman and he would receive some money. While the Settlement Agreement between Fender and Hoffman was confidential, Barnes was not a party to that Agreement, either directly or as an agent of Hoffman or Fender. Nowhere does Fender plead such facts.

The pleading clearly shows that Barnes did not represent Hoffman or Fender at the time of the Settlement Agreement. Further, there was no prohibition from Barnes disclosing any information, even if he knew of the confidentiality provision. Barnes had

no knowledge of the Settlement Agreement or its terms, including the confidentiality provision, and there was no unlaw act or lawful act by unlawful means. As a result of this being an essential element of Civil Conspiracy, the Amended Complaint must be dismissed against Barnes.

The facts alleged in the Amended Complaint and the inferences that can be drawn therefrom do not entitle Fender to relief. In this instance, the Motion to Dismiss is justified. The Amended Complaint is dismissed against Barnes.

AND IT IS SO ORDERED.

R. Ferrell Cothran, Jr.
Circuit Court Judge

December _____, 2022
Sumter, South Carolina



Sumter Common Pleas

Case Caption: James E. Fender VS Larry R Hoffman , defendant, et al

Case Number: 2022CP4300438

Type: Order/Dismissal

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2023-01-03 09:09:57 page 5 of 5

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	Case No. 2022-CP-43-00438
)	
James E. Fender,)	
)	
)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION TO RECONSIDER
vs.)	
)	
Larry R. Hoffman and)	
Allen Jackson Barnes)	
Defendant.)	

This matter is before the Court pursuant to Rule 59(e) SCRPC. The Plaintiff seeks an Order of this Court amending or altering its Order of January 3, 2023.

Pursuant to Rule 59(f) SCRPC, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Plaintiff, this Court has determined that its original Order dated January 3, 2023 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore **DENIED**.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated: January 18, 2022

R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit



Sumter Common Pleas

Case Caption: James E. Fender VS Larry R Hoffman , defendant, et al

Case Number: 2022CP4300438

Type: Order/Other

So Ordered

R. Ferrell Cothran, Jr.

Electronically signed on 2023-01-18 10:40:19 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-_____
)	
Plaintiff)	
vs.)	
)	
	)	SUMMONS
Larry R. Hoffman and)	
Allen Jackson Barnes,)	
)	
Defendants)	

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR ATTORNEYS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 226 State Street, West Columbia, South Carolina 29169, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)

BALLARD & WATSON
226 State Street
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ATTORNEYS FOR PLAINTIFF

March 22, 2022

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-_____
)	
Plaintiff)	
vs.)	
)	
Larry R. Hoffman and	)	COMPLAINT
Allen Jackson Barnes,	)	(Jury Trial demanded)
)	
)	
Defendants)	

Plaintiff James E. Fender (hereafter “Fender”) brings this action for breach of contract, negligence and conspiracy, and in support of the claim for actual and punitive damages and attorney’s fees set forth herein, alleges as follows:

1. Plaintiff Fender is a citizen and resident of the County of Sumter, State of South Carolina.
2. On information and belief, Defendant Larry R. Hoffman (hereafter “Hoffman”) is a citizen and resident of the County of Hillsborough County, State of Florida, and Johnson County, Wyoming, who has recently lived in South Carolina and has regularly conducted business in the State of South Carolina and has been a defendant in litigation in South Carolina Courts before, *see* Case No. 2018-CP-43-1703 (Sumter County), which action was ended in 2021.
3. On information and belief, Defendant Allen Jackson Barnes (hereafter “Barnes”) is a citizen and resident of the County of Sumter, State of South Carolina.
4. Fender and Hoffman previously engaged in business together and when their relationship ended, Hoffman owed Fender a substantial amount of money.
5. Fender and Hoffman worked together under several corporate structures, including Strategic Energy Services Inc., a Florida Corporation the name of which was changed to

Energy Constructor Services Inc. (hereafter “Strategic”) in 2013, and Power Construction Services Inc., a Wyoming corporation created in 2015 which became authorized to do business in South Carolina on or about September 30, 2015.

6. Unknown to Fender, when Hoffman created Power Construction Services Inc. in Wyoming in 2015, Hoffman listed only himself as an owner and did not name Fender as an owner or officer of Power Construction Services Inc.
7. Business documents for Power Construction Services Inc. listed Fender as 50% owner and Fender was treated as an equal owner at all times, other than the disputes which arose regarding funds due to Fender.

FIRST CAUSE OF ACTION
(Breach of Contract)

8. Each and every allegation set forth above is fully incorporated herein as fully as if repeated herein verbatim.
9. Fender and Hoffman developed numerous projects together under the umbrella of Power Construction Services Inc.
10. In or about 2014, Hoffman and Barnes began doing business together and Hoffman retained Barnes as counsel for Power Construction Services Inc.
11. Despite Fender’s continued work on the multiple projects Fender and Hoffman did together, on several occasions, Hoffman refused to pay Fender for his work.
12. Hoffman’s failure to pay Fender for work he had performed and funds which were due to Fender became a continuing theme during their work together.
13. Fender filed suit against Hoffman and his company Power Construction Services, Inc. in Sumter County, Case No. 2018-CP-43-1703¹ (hereafter “the prior lawsuit”) in an effort

¹ The action was initially filed in magistrate’s court and removed to circuit court. Case No. 2018CV4310103852.

to collect funds due to him as a result of commercial construction work they had done together.

14. Barnes was a fact witness to some of the business dealings between Fender and Hoffman which led to the dispute.
15. Hoffman was initially represented by Barnes in defending the prior lawsuit. Barnes withdrew as counsel for Hoffman on or about September 4, 2019 because he was a necessary witness to the dispute between Fender and Hoffman and was expected to testify as a witness in that prior lawsuit.
16. Unknown to Fender, during the prior litigation, Power Construction Services Inc. was administratively dissolved by the State of Wyoming and its authority to do business in South Carolina ceased sometime in 2018.
17. Also unknown to Fender, during the prior litigation, Barnes represented Hoffman in South Carolina for the purposes of creating a South Carolina corporation called Power International LLC, which was filed with the South Carolina Secretary of State on December 19, 2016.
18. Hoffman and his company owed Fender large sums of money as a result of Hoffman's refusal to pay Fender for work he had performed in conjunction with Hoffman and Hoffman's company.
19. On information and belief, the creation of Power International LLC in 2016 in conjunction with the dissolution of Power Construction Services Inc. in 2018 was intended to and did reduce the assets against which Fender would be able to collect should he obtain a judgment against Hoffman and Hoffman's company Power Construction Services Inc.

20. Hoffman repeatedly refused to engage in discovery, and specifically refused to appear for his deposition and be placed under oath during the prior litigation.
21. In an effort to resolve the matter without suffering further financial loss, Fender chose to accept a settlement offer from Hoffman and his company Power Construction Services Inc. to try to resolve all issues in dispute between them.
22. The prior litigation was resolved by an agreement, the terms of which were confidential. On March 7 and 8, 2021, the parties signed a settlement agreement which included the following language:

The terms and conditions of this Agreement are confidential and the Parties shall not disclose the terms or conditions of this Agreement to any person or entity other than their spouses, partners, accountants and tax professionals, who also should be advised of and bound by the terms of confidentiality. . .
23. The confidentiality agreement was a material term of the settlement agreement.
24. On information and belief, on or about late October, 2021, Defendants Hoffman and Barnes breached the agreement of confidentiality and revealed to third parties the terms and conditions of the confidential settlement agreement, including specifically information regarding certain funds that were being paid by Hoffman to Fender.
25. As a direct and proximate result of the breach of confidentiality by Defendants, Fender's counsel was contacted and a third-party claim was asserted against funds which were expected to be paid by Hoffman to Fender.
26. On information and belief, it was the specific intention of Hoffman and Barnes to cause financial damage to Fender by revealing terms of the confidential settlement agreement.
27. As a direct and proximate result of the breach of confidentiality by Defendants, Fender was required to negotiate a settlement with the third party, which caused the settlement

funds paid by Hoffman to Felder to serve as even less compensation than the amount Fender had agreed to receive to resolve his dispute with Hoffman.

28. The acts and omissions of Defendants Hoffman and Barnes, Fender sustained actual and consequential damages in an amount to be determined by the trier of fact.

SECOND CAUSE OF ACTION
(Conspiracy)

29. Each and every allegation set forth above is incorporated herein where relevant as fully as repeated herein verbatim.
30. On information and belief, the decisions to administratively dissolve Power Construction Services Inc. to divest it of assets in favor of a new company owned exclusively by Hoffman, and the intentional breach of the settlement agreement were the result of a knowing and intentional conspiracy among Hoffman and Barnes to deprive Fender of compensation to which he was entitled from the prior litigation.
31. On information and belief, the conspiracy between Hoffman and Barnes did, in fact, cause substantial financial harm to Fender, who had to compromise the claims asserted by a third party after Hoffman and/or Barnes breached the confidentiality agreement in the settlement agreement.
32. The conspiracy and overt acts of Defendants Hoffman and Barnes in hiding assets for which collection could be obtained in the underlying litigation, and in intentionally revealing terms of the confidential settlement agreement with Fender caused Fender substantial financial loss.
33. Since the acts of Defendants Hoffman and Barnes were knowing and intentional, and were intended to and did harm Fender, Fender is entitled to recover actual and punitive damages against Defendants Hoffman and Barnes for their conspiracy to harm Fender.

34. On information and belief, Fender is entitled to an award of actual and punitive damages, jointly and severally, against Hoffman and Barnes.

FOR A THIRD CAUSE OF ACTION
(Attorney's Fees and Costs – against Hoffman only)

35. Each and every allegation set forth above is incorporated herein where relevant as fully as if repeated herein verbatim.
36. The settlement agreement between Hoffman and Fender included, by way of Paragraph 11, a provision exists which provides for Fender to recover reasonable attorney's fees and costs incurred by him as a result of any breach of the settlement agreement by Hoffman, including the term regarding confidentiality.
37. The attorney's fee provision is triggered and operative by any breach of the settlement agreement from the prior litigation.
38. Fender has incurred attorney's fees and costs as a direct consequence of the breach of the settlement agreement by Hoffman, which fees Hoffman is required to pay as part of his damages for breach of the settlement agreement.
39. On information and belief, Fender is entitled to judgment in his favor against Hoffman for the attorney's fees and costs he has incurred as a result of Hoffman's breach of the settlement agreement.

WHEREFORE, having fully set forth the grounds for the relief sought herein, Fender moves for the following relief:

- A. Judgment in his favor against Defendants Hoffman and Barnes for actual damages, jointly and severally, for breach of contract in an amount to be determined by the trier of fact;

- B. Judgment in his favor against Defendants Hoffman and Barnes for actual and punitive damages in an amount to be determined by the trier of fact;
- C. Judgment is his favor against Defendant Hoffman for the reasonable attorney's fees and costs he has incurred as a result of Hoffman's breach of contract as set forth above; and
- D. Such other and further relief as may be sought by way of amended and supplemental pleadings or by order of the court.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)

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226 State Street
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harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

March 22, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

James E. Fender,) Case No.: 2022-CP-43-00438
)

Plaintiff,)

vs.)

**DEFENDANT ALLEN JACKSON
BARNES' MOTION TO DISMISS**

Larry R. Hoffman and)
Allen Jackson Barnes,)

Defendants.)
)

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure the Defendant, Allen Jackson Barnes (“Barnes”), hereby moves to dismiss the Complaint in this matter against him on the grounds that Plaintiff has failed to state facts sufficient to constitute a cause of action against him. Plaintiff has failed to state any facts which allege Barnes was a party to or otherwise bound, as a lawyer or otherwise, by any confidentiality provision of a settlement agreement or that he knew even knew about the settlement agreement or its terms.

ALLEN JACKSON BARNES ATTORNEY AT LAW LLC

By: s/ Allen Jackson Barnes
A. Jackson Barnes
Post Office Box 2838
Sumter, South Carolina 29151
803-840-6327 (Phone)
877-565-7367 (Fax)

Pro Se

Sumter, South Carolina
April 11, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-00438
)	
Plaintiff)	
)	
vs.	)	MOTION FOR SERVICE
	)	BY PUBLICATION
)	
Larry R. Hoffman and)	
Allen Jackson Barnes,)	
)	
Defendants)	

The undersigned, as counsel for Plaintiff, moves this Court for an Order for Service by Publication as to the Defendant Larry R. Hoffman pursuant to South Carolina Code of Laws, §15-9-710. Plaintiff shows the following in support of the Motion:

1. The Defendant Larry R. Hoffman (hereafter “Defendant Hoffman”) cannot, after due diligence, be found within the State of South Carolina.
2. On information and belief, Defendant Hoffman has left the State of South Carolina, his last known address being 106 Mason Croft Drive Sumter, SC 29150. On information and belief Defendant Hoffman vacated those premises on or about June 2021.
3. A cause of action exists against Defendant Hoffman because he is a party to a confidential settlement agreement with Plaintiff from previous litigation, the violation of which by Defendants is the basis for Plaintiff’s breach of contract and conspiracy actions against Defendant Hoffman.
4. A copy of the Summons and Complaint in the above-captioned matter, which more particularly describes the allegations made and relevant parties, is of record, having been filed on March 22, 2022.
5. Defendant Larry R. Hoffman is a necessary and proper party to this action.

6. Plaintiff, through his undersigned counsel, has attempted personal service on Defendant Hoffman through his former counsel, Everett J. Mercer, who initially indicated that he expected to speak with Defendant Hoffman about accepting service. Mr. Mercer has since ignored Plaintiff's multiple efforts to reach him regarding his ability to accept service on behalf of Defendant Hoffman. Attached to this motion as **Exhibit A** are emails documenting Plaintiff's multiple attempts to contact Mr. Mercer regarding acceptance of service.
7. Defendant Hoffman's former counsel and current co-defendant, Allen Barnes, has declined to assist in providing current address information for Defendant Hoffman. Attached to this motion as **Exhibit B** are emails documenting Plaintiff's unsuccessful attempt to retrieve information on Defendant Hoffman's whereabouts from Mr. Barnes.
8. Plaintiff learned of two addresses in Florida where it was believed that Defendant Hoffman resided.
9. On or about March 30, 2022, Front Range Legal Process Service ("Front Range") attempted service on Defendant Hoffman at 10212 Douglas Oakes Circle, Apt. 302 Tampa, FL 33610 without success. Front Range was informed that Defendant Hoffman was not known by the current residents living at that address, but the current residents had previously received mail addressed to Defendant Hoffman.
10. On or about April 7, 2022, Front Range attempted service on Defendant Hoffman at 520 Kensington Lake Circle Brandon, FL 33511 without success. Front Range attempted service on Defendant Hoffman again on April 8, 2022, at the same address, at which time Defendant Hoffman's adult son informed Front Range that Defendant Hoffman lived in another state.

11. Attached to this motion is the Affidavit of Haley Hubbard which includes documents showing attempted service provided by Front Range Legal Process Service, whose multiple efforts to attempt service on Defendant Hoffman were unsuccessful, even though it reached Hoffman's adult son and was able to obtain no information about his father's whereabouts.

Exhibit C.

12. Service by publication is therefore justified and authorized pursuant to S.C. Code Ann. § 15-9-710(2) and (3).

WHEREFORE, the Plaintiff prays that the Court allow service upon Larry R. Hoffman by way of publication, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

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West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

April 29, 2022

ATTORNEYS FOR PLAINTIFF

From: [Desa Ballard](#)
To: [Everett Mercer, Esq \(ejmfirm@yahoo.com\)](mailto:ejmfirm@yahoo.com)
Cc: [Beth Cogan](#)
Subject: Larry Hoffman
Date: Friday, April 8, 2022 1:41:50 PM

We have attempted service on Mr. Hoffman at 2 addresses in Florida and have not been able to locate him. Can you accept service of the complaint for him?

db

Desa Ballard
Ballard & Watson
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com
Web: desaballard.com

Beth Cogan

From: EJ Mercer <ejmfirm@yahoo.com>
Sent: Monday, March 28, 2022 4:38 PM
To: brendamfirm@yahoo.com; Beth Cogan
Cc: Desa Ballard
Subject: Re: Larry Hoffman

AmicusId: 457719
AmicusStatus: Saved
AmicusFileName: Fender, James "Ed"
AmicusFilelds: 4013

Larry was out of town country last week and I could not reach him. I will try to talk with him this week.

Everett J. Mercer

Everett J. Mercer, Esq.



Mercer Law Firm
P.O. Box 1347
Sumter, SC 29151
803-883--5163
803-883-5166 (Fax)

CONFIDENTIALITY NOTE: THIS E-MAIL HAS BEEN SENT FROM A LAW FIRM. IT CONTAINS CONFIDENTIAL AND PRIVILEGED INFORMATION AND IS INTENDED SOLELY FOR THE USE OF PERSON OR PERSONS NAMED ABOVE. IF YOU ARE NOT AN INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E-MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE OR CONFIDENCE BY YOUR RECEIPT OF THIS TRANSMISSION. THIS LAW FIRM EXPRESSLY RESERVES ANY AND ALL PRIVILEGES AND CONFIDENCES CONCERNING THIS E-MAIL. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US BY TELEPHONE CALL TO THE NUMBER INDICATED ABOVE.

On Thursday, March 24, 2022, 12:50:51 PM EDT, Beth Cogan <beth@desaballard.com> wrote:

Mr. Mercer,

May we hear from you regarding the email below?

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, March 22, 2022 4:23 PM
To: ejmfirm@yahoo.com; brendamfirm@yahoo.com
Cc: Beth Cogan <Beth@desaballard.com>
Subject: Larry Hoffman

Are you authorized to accept service for Mr. Hoffman? We filed the pleadings today and just got them back.

db

Desa Ballard

Ballard & Watson

226 State Street

West Columbia, SC 29169

Telephone 803.796.9299

Facsimile 803.796.1066

Email: desab@desaballard.com

Web: desaballard.com

ELECTRONICALLY FILED - 2022 Apr 29 2:44 PM - SUMTER - COMMON PLEAS - CASE#2022CP4300438

From: [Allen J. Barnes](#)
To: [Desa Ballard](#)
Cc: [Beth Cogan](#); [Haley Hubbard](#)
Subject: RE: Fender v. Hoffman
Date: Wednesday, April 27, 2022 1:46:29 PM

Mr. Hoffman is not my client anymore than apparently I am yours. I do not have his address.

From: Desa Ballard <desab@desaballard.com>
Sent: Wednesday, April 27, 2022 1:12 PM
To: Allen J. Barnes <abarnes@sumtercountysc.gov>; Allen J. Barnes <abarnes@sumtercountysc.gov>
Cc: Beth Cogan <Beth@desaballard.com>; Haley Hubbard <haley@desaballard.com>
Subject: Fender v. Hoffman

We have not been successful in serving Mr. Hoffman. If you are able to send us an address for him we would appreciate it. E. J. is also attempting to reach him.

However, in the absence of personal service, we are going to have to ask the court for permission to serve by publication.

I'll leave to your discretion whether Rule 1.6 allows you to share his current address. I hope that you conclude it does.

Thanks so much.

db

Desa Ballard
Ballard & Watson
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com
Web: desaballard.com

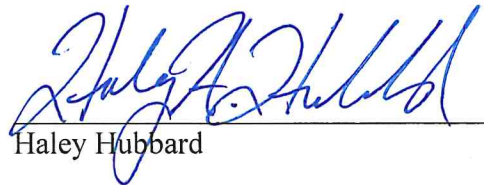
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-00438
)	
Plaintiff)	
)	
vs.	)	AFFIDAVIT OF
	)	HALEY HUBBARD
)	
Larry R. Hoffman and)	
Allen Jackson Barnes,)	
)	
)	
Defendants)	

Personally appeared before me, Haley Hubbard, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters stated, except as to those matters stated upon information and belief, and as to those, I have a good faith basis for believing them to be true.
2. I am and employee of the law firm Ballard & Watson, who represent the Plaintiff James Fender in the above-captioned action.
3. Upon information and belief, the last known address of Defendant Larry Hoffman (hereafter "Defendant Hoffman") is 106 Mason Croft Drive Sumter, SC 29150. That address is located in the county of Sumter.
4. Upon information and belief, Defendant Hoffman vacated those premises on or about June 2021, and relocated to Tampa, Florida.
5. Upon information and belief, on March 25, 2022, our office forwarded a copy of the filed Summons and Complaint in this action to Front Range Legal Process Service for personal service upon Defendant Hoffman at 10212 Douglas Oakes Circle, Apt. 302 Tampa, FL 33610.

6. On or about March 31, 2022, I received an email notification from Front Range Legal Process Service advising that service was attempted on Defendant Hoffman. Attached as **Exhibit A** are email notifications regarding the three (3) attempts made at personal service by Front Range Legal Process Service.
7. I have located a newspaper in Sumter County, the Sumter Item, which would be suitable for service and be most likely to give notice to the Defendant to be served.


Further affiant sayeth not.



Haley Hubbard

April 29, 2022

SWORN to and Subscribed before me,
This 29 day of April, 2022



Mara Ballard
Notary Public for South Carolina.
My Commission expires: 11.2.2027

From: WSP Server <DBSServer@dbsinfo.net> **On Behalf Of** Front Range Legal Process Service
Sent: Thursday, March 31, 2022 1:14 PM
To: Beth Cogan <Beth@desaballard.com>
Cc: Front Range Legal Process Service <frlps970@gmail.com>
Subject: FRS Status on (Hoffman, Larry)

To: Ballard & Watson

This is an automated message relating to:

Our Job Number: 2022002814
Your Reference Number:
Party To Be Served: Hoffman, Larry
Documents To Be Served: Cover Letter; Summons; Complaint And Jury Demand
Case Info: South Carolina Sumter 2022-CP-43-00438
Case Style: JAMES E. FENDER vs. LARRY R. HOFFMAN AND ALLEN JACKSON BARNES

Original Service Address: Larry Hoffman, 10212 Douglas Oaks Cir, Apt 302, Tampa, FL 33610

Latest Status: Updated Client 3-31 Attempted service on 3/30/2022 @ 7:25 PM - The Callan family lives at this location. The defendant is unknown. They have seen mail for him so he may have lived here before.

Thank you,
Front Range Legal Process Service
frlps970@gmail.com
Phone: (888) 387-3783

More detailed status is available at www.PstProStatus.net

From: WSP Server <DBSServer@dbsinfo.net> **On Behalf Of** Front Range Legal Process Service
Sent: Friday, April 8, 2022 9:34 AM
To: Beth Cogan <Beth@desaballard.com>
Cc: Front Range Legal Process Service <frlps970@gmail.com>
Subject: FRS Status on (Hoffman, Larry)

To: Ballard & Watson

This is an automated message relating to:

Our Job Number: 2022003058

Your Reference Number:

Party To Be Served: Hoffman, Larry

Documents To Be Served: Cover Letter; Summons; Complaint And Jury Demand

Case Info: South Carolina Sumter 2022-CP-43-00438

Case Style: JAMES E. FENDER vs. LARRY R. HOFFMAN AND ALLEN JACKSON BARNES

Original Service Address: Larry Hoffman, 520 Kensington Lake Cir, Brandon, FL 33511

Latest Status: Latest Status: 4/7/2022 11:00 am 520 Kensington Lake Cir, Brandon, FL 33511. NO CAR. NO ANSWER. Continuing efforts.

Thank you,
Front Range Legal Process Service
frlps970@gmail.com
Phone: (888) 387-3783

More detailed status is available at www.PstProStatus.net

From: WSP Server <DBSServer@dbsinfo.net> **On Behalf Of** Front Range Legal Process Service
Sent: Monday, April 11, 2022 12:22 PM
To: Beth Cogan <Beth@desaballard.com>
Cc: Front Range Legal Process Service <frlps970@gmail.com>
Subject: FRS Status on (Hoffman, Larry)

To: Ballard & Watson

This is an automated message relating to:

Our Job Number: 2022003058

Your Reference Number:

Party To Be Served: Hoffman, Larry

Documents To Be Served: Cover Letter; Summons; Complaint And Jury Demand

Case Info: South Carolina Sumter 2022-CP-43-00438

Case Style: JAMES E. FENDER vs. LARRY R. HOFFMAN AND ALLEN JACKSON BARNES

Original Service Address: Larry Hoffman, 520 Kensington Lake Cir, Brandon, FL 33511

Latest Status: Updated Client 4-11 Attempted service on 4/8/2022 @ 6:25 PM - Brandon Hoffman lives at this location. He stated that Larry Hoffman is his father and that he lives in another state. The last time he spoke to him was a few weeks ago.

Thank you,
Front Range Legal Process Service
frlps970@gmail.com
Phone: (888) 387-3783

More detailed status is available at www.PstProStatus.net

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

James E. Fender,)
)
Plaintiff)
)
v.)
)
Larry R. Hoffman and)
Allen Jackson Barnes,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Docket #2022-CP-43-00438

**DEFENDANT HOFFMAN’S ANSWER
TO COMPLAINT**

**TO: JAMES E. FENDER, ABOVE-NAMED PLAINTIFF, AND HIS ATTORNEY
DESA BALLARD, ESQUIRE:**

Defendant Larry R. Hoffman answering the Complaint of the Plaintiff would allege and show unto this Honorable Court the following:

1. Each and every allegation in the Plaintiff’s Complaint which is not admitted or otherwise qualified is specifically denied and strict proof is demanded from the Plaintiff.

FOR A FIRST DEFENSE
(GENERAL DENIAL FOR ALL CAUSES OF ACTION)

2. Defendant Hoffman (hereinafter “Hoffman”) admits the allegations of paragraphs 1, 3, 10, 13, 22, 23, 36, and 37.

3. Defendant Hoffman denies the allegations of paragraphs 4, 7, 11, 12, 14, 18, 19, 20, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 36, 38, and 39.

3. Defendant denies paragraphs 8, 29, and 35 to the same extent he has denied the allegation set out in the prior paragraphs.

4. Hoffman denies he is a citizen and resident of Florida but would admit the remaining allegations of paragraph 2.

5. Hoffman admits any allegation in paragraph 5 that may allege Fender only had an employment relationship with Hoffman (and his companies) but would deny the remainder of the paragraph.

6. Hoffman admits paragraph 6 except to the allegations of Fender's knowledge.

7. Hoffman admit any allegation in paragraph 8 that may allege Fender only had an employment relationship with Hoffman (and his companies) and would admit the remaining allegations of the paragraph.

7. Hoffman admit any allegation in paragraph 9 that may allege Fender only had an employment relationship with Hoffman (and his companies) and would admit the remaining allegations of paragraph 9.

8. Hoffman admits the allegations of paragraph 15 regarding Jack Barnes represented him and his companies in the prior litigation but denies the remainder of the paragraph.

9. Hoffman admits the allegations of paragraph 16 with regards to the dissolution of the company but lacks sufficient knowledge or information regarding Fender's knowledge to admit the remaining allegations.

10. Hoffman admits the allegations of paragraph 17 regarding the formation of the company but lacks sufficient knowledge or information regarding Fender's knowledge to admit the remaining allegations.

11. Hoffman admits the allegations of paragraph 21 regarding the settlement but lacks sufficient knowledge of information to admit the remaining allegations.

12 Hoffman is entitled to an order from this court dismissing this action as well as an award of costs and attorney's fees for defending this action.

FOR A SECOD DEFENSE
(SCRPC 12(b)(6) FAILURE TO STATE A CAUSE OF ACTION)

13. Hoffman re-alleges the allegations of paragraphs 1 through 12.
14. Fender has failed to state facts sufficient to constitute a cause of action.
15. Hoffman is entitled to an order from this court dismissing this action as well as an award of costs and attorney's fees for defending this action.

FOR A THIRD DEFENSE
(PAYMENT)

16. Hoffman re-alleges the allegations of paragraphs 1 through 15.
17. Hoffman has made all payments due under the settlement agreement.
18. Hoffman is entitled to an order from this court dismissing this action as well as an award of costs and attorney's fees for defending this action.

WHEREFORE Defendant Hoffman having fully answered and pled to Plaintiff's Complaint seeks an order from this court dismissing this action as well as an award of costs and attorney's fees for defending this action.

s/Everett J. Mercer
EVERETT J. MERCER
SC BAR NO.: 64249
324-B North Main Street
Post Office Box 1347
Sumter, SC 29151
(803) 883-5163
Fax: (803) 883-5166
Attorney for Defendant Hoffman

Sumter, South Carolina

June 8, 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
)
James E. Fender,)
)
)
Plaintiff,)
)
v.)
)
Larry R. Hoffman and)
Allen Jackson Barnes,)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Docket #2022-CP-43-00438

**NOTICE OF MOTION AND
MOTION TO QUASH SUBPEONA**

You will take notice that Defendant Hoffman, by and through his attorney Everett Mercer, will move for an order from this Honorable Court quashing the subpoena issued and served upon Everett Mercer. The basis for this motion is that the information sought to be subpoenaed by Plaintiff is privileged and contains attorney client information.

Counsel for Defendant Hoffman attempted to resolve this matter by consulting with opposing counsel prior to filing this motion.

Defendant therefore seeks an Order from this Court quashing the subpoena issued and served upon him by Plaintiff plus costs and fees for filing this motion.

RESPECTFULLY SUBMITTED

s/Everett J. Mercer
EVERETT J. MERCER
SC BAR NO.: 64249
324-B North Main Street
Post Office Box 1347
Sumter, SC 29151
(803) 883-5163
Fax: (803) 883-5166
Attorney for Defendant Hoffman

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-00438
)	
Plaintiff)	
)	
vs.)	
)	
Larry R. Hoffman and	)	MOTION TO COMPEL
Allen Jackson Barnes,	)	ANSWERS TO DISCOVERY
)	
)	
Defendants)	

Counsel for the Plaintiff, James E. Fender, moves for an order compelling Defendant, Larry R. Hoffman, to provide full and complete responses to discovery in this matter and also seeks appropriate sanctions, including but not limited to attorney’s fees, allowable under Rule 37, SCRPC.

In support of this motion, Mr. Fender will show:

1. On June 14, 2022, Mr. Fender served Defendant Hoffman with Interrogatories and Requests for Production. Copies of these requests are attached herein as **Exhibit A**.
2. On July 14, 2022, counsel for Mr. Fender contacted counsel for Defendant Hoffman to inquire about the status of the discovery responses.
3. On July 18, 2022, counsel for Defendant Hoffman requested a two-week extension to provide their discovery responses, which counsel for Mr. Fender granted. This extension would make discovery responses due on July 28, 2022.
4. Defendant Hoffman did not provide any discovery responses by July 28, 2022.
5. On August 5, 2022, counsel for Mr. Fender advised counsel for Defendant Hoffman that Defendant’s responses were overdue, and requested that Defendant submit responses by August 9, 2022, so as to avoid the necessity of filing a motion to compel. **Exhibit B**.
6. Defendant Hoffman did not provide any discovery responses by August 9, 2022.

7. As of the date of this motion, Defendant Hoffman has yet to respond to Plaintiff's Interrogatories to Defendant or Plaintiff's Requests for Production to Defendant.

Plaintiff's counsel hereby certifies that she attempted to resolve this issue with counsel for Defendant Hoffman but was unsuccessful.

WHEREFORE, Plaintiff James E. Fender respectfully requests that this honorable Court issue the following orders:

- A. An order compelling Defendant Hoffman to fully respond to Plaintiff's discovery requests within ten days of notice of entry of the Order;
- B. An order compelling Defendant Hoffman to pay Plaintiff's reasonable attorneys' fees and costs associated with bringing this motion; and
- C. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

s/ Haley Hubbard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

August 10, 2022



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-00438
)	
)	
vs.)	
	)	PLAINTIFF'S FIRST REQUEST FOR
	)	PRODUCTION, COPYING AND
Larry R. Hoffman and	)	INSPECTION OF DOCUMENTS
Allen Jackson Barnes,	)	TO DEFENDANT
	)	LARRY R. HOFFMAN
)	
Defendants)	

TO: E. J. MERCER, ESQUIRE, ATTORNEY FOR DEFENDANT HOFFMAN:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Plaintiff requests that the Defendant respond within thirty (30) days from date of service to the following Requests and that the Defendant produce and permit the Plaintiff to inspect and copy each of the following items, regardless of whether they exist in hard or electronic format. As to any item which exists in both hard or electronic formats, produce¹ both.

1. All written or recorded statements of witnesses, potential witnesses and any persons who are believed to have knowledge of the facts related to this case.
2. All materials and communications, including electronic messages sent by Defendant or received from any other individual or entity regarding Plaintiff, the subject of this litigation, or any individual or entity the Defendant believed to be associated with the Plaintiff. As to any item to which you object and assert a privilege, provide sufficient information regarding each item sufficient to enable a court to determine (with or without *in camera* review) whether the privilege applies, including whether

¹ Electronic data should be produced in a format that can be accessed in readily-available electronic formats, such as .pdf, .jpg, .doc, etc.

the item has been provided to third parties (and if so, who) or filed in any forum or jurisdiction.

3. All emails to which Defendant was a party concerning the Plaintiff or the subject matter of this litigation. As to any item to which you object and assert a privilege, provide sufficient information regarding each item sufficient to enable a court to determine (with or without *in camera* review) whether the privilege applies, including whether the item has been provided to third parties (and if so, who) or filed in any forum or jurisdiction.
4. Any and all documents and writings in the possession, custody, or control of Defendant that Defendant contends are relevant to the case or are intended to be produced in the trial of the case.
5. Any and all judgments that exist against Defendant.
6. Any and all emails with Jack Barnes after September 9, 2021 on any topic.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

June 14, 2022

I, Beth Cogan, an employee of the Ballard & Watson Attorneys at Law certify that I have this date served a copy of First RFP to Hoffman on all counsel of record and Pro Se parties by depositing a copy properly addressed, ~~with sufficient First Class postage affixed, to each, in the United States Mail.~~ via email.
Date: 6/14/2022 Signed: Beth K Cogan

ROA 0042

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-00438
)	
)	
Plaintiff)	
vs.)	
)	
Larry R. Hoffman and	)	PLAINTIFF'S FIRST SET OF
	)	INTERROGATORIES
Allen Jackson Barnes,	)	TO DEFENDANT
	)	LARRY R. HOFFMAN
)	
Defendants)	

TO: E. J. MERCER, ESQUIRE, ATTORNEY FOR DEFENDANT HOFFMAN:

YOU ARE HEREBY SERVED the following written Interrogatories to be answered separately and in writing within thirty (30) days from the date of service, pursuant to and in accordance with the provisions of Rule 33 of the South Carolina Rules of Civil Procedure:

1. Give the names and addresses of persons known to the parties or counsel to have knowledge concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the persons and indicate who has possession of such statements.
2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statement taken from such witness.
3. For each document, electronically stored information, or any other tangible thing that was requested by the Plaintiff in Plaintiff's Request for Production which is no longer in the possession and control of Defendant, identify (a) the reason that

it is no longer in the possession and control of the Defendant; (b) when the item left Defendant's possession; (c) whether or not the document was lost, discarded or destroyed, d) and who had control of the document when it was lost, discarded, or destroyed.

4. Describe in detail all circumstances surrounding Defendant's professional and business relationships with Defendant Allen Jackson Barnes, including identification of any matter in which Barnes served as counsel for Plaintiff or a business entity in which Plaintiff held an interest at any time and the date(s) upon which such relationship began and ended, if any.
5. Describe in detail Defendant's business relationship with Defendant Barnes, when it began, and whether Defendant's business relationship continued after Defendant Barnes was relieved as counsel in the underlying case. Include all business relationships including those associated with but not limited to Power International LLC, a South Carolina Corporation, Strategic Energy Services LLC, a South Carolina Corporation, and Power Construction Services Inc., a Wyoming Corporation authorized to do business in South Carolina,
6. For all judgments against Defendant or any corporate entity in which Defendant has or has ever held an interest, set forth the amount of each judgment, the county and state in which they exist, and the case or judgment number for each judgment.
7. Identify any and all businesses, limited liability companies, and corporations that Defendants owns, is a member of, or has interests in.

8. Identify all persons who assisted in providing substantive responses to these discovery requests.
9. Identify by case title, case number, and venue all lawsuits filed at any time after 2012 in which you or any business with which you now have or have in the past owned a interest.
10. State your current home address. If you have multiple residences, provide all addresses at which you domicile either full or part time.
11. State the name and address of any and all employers and/or business entities for which you are currently providing professional or consulting services, including all persons or entities from which you expect to receive a W-2, K-1 for 2022 or payment of compensation of any kind.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)

Harvey M. Watson III (S.C. Bar No. 74053)

Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON

226 State Street

West Columbia, South Carolina 29169

Telephone 803.796.9299

desab@desaballard.com

harvey@desaballard.com

haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

June 14, 2022

3

I, Beth Cogan, an employee of the Ballard & Watson Attorneys at Law certify that I have this date served a copy of First set of 2065 to Hoffman on all counsel of record and Pro Se parties by depositing a copy properly addressed, ~~with sufficient First Class postage affixed, to each, in the United States Mail.~~ via email.

Date: 6/14/2022 Signed: Beth Cogan

ROA 0045



ELECTRONICALLY FILED - 2022 Aug 10 12:08 PM - SUMTER - COMMON PLEAS - CASE#2022CP4300438

From: [Haley Hubbard](#)
To: [Brenda Hamm](#)
Cc: [Beth Cogan](#)
Subject: RE: (Fender v. Hoffman, et al.) Ltr to Mercer encl ROGS and RFP (Hoffman)
Date: Friday, August 5, 2022 10:14:58 AM
Attachments: [image001.png](#)

Good Morning Brenda,

The discovery responses in this matter were due on July 28 considering the 2-week extension. As of yesterday, 3 weeks have passed since the original deadline. I will be filing a motion to compel if we have not received responses by Tuesday, August 9.

Best,

Haley A. Hubbard
Associate
Ballard & Watson
226 State Street
West Columbia, SC 29169
Telephone 803-796-9299
Email: haley@desaballard.com

From: Brenda Hamm <brendamfirm@yahoo.com>
Sent: Monday, July 18, 2022 12:53 PM
To: Haley Hubbard <haley@desaballard.com>
Cc: Beth Cogan <Beth@desaballard.com>; Desa Ballard <desab@desaballard.com>
Subject: Re: (Fender v. Hoffman, et al.) Ltr to Mercer encl ROGS and RFP (Hoffman)

Thanks.

Brenda E. Hamm
Paralegal for Everett J. Mercer



Mercer Law Firm
324-B N. Main Street
Post Office Box 1347
Sumter, SC 29151
(803) 883-5163

ROA 0046

Fax (803) 883-5166
brendamfirm@yahoo.com

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On Monday, July 18, 2022 at 12:50:49 PM EDT, Haley Hubbard <haley@desaballard.com> wrote:

Hi Brenda,

I will agree to a two-week extension.

Best,

Haley A. Hubbard

Associate

Ballard & Watson

226 State Street

West Columbia, SC 29169

Telephone 803-796-9299

Email: haley@desaballard.com

From: Brenda Hamm <brendamfirm@yahoo.com>

Sent: Monday, July 18, 2022 11:53 AM

To: Haley Hubbard <haley@desaballard.com>

Cc: Beth Cogan <Beth@desaballard.com>; Desa Ballard <desab@desaballard.com>

Subject: Re: (Fender v. Hoffman, et al.) Ltr to Mercer encl ROGS and RFP (Hoffman)

ROA 0047

ELECTRONICALLY FILED - 2022 Aug 10 12:08 PM - SUMTER - COMMON PLEAS - CASE#2022CP4300438

Haley:

We are in the process of answering the discovery and would request a two-week extension to answer.

Thanks.

Brenda E. Hamm

Paralegal for Everett J. Mercer



Mercer Law Firm

324-B N. Main Street

Post Office Box 1347

Sumter, SC 29151

(803) 883-5163

Fax (803) 883-5166

brendamfirm@yahoo.com

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On Thursday, July 14, 2022 at 12:31:58 PM EDT, Haley Hubbard <haley@desaballard.com> wrote:

ROA 0048

Good Afternoon,

The discovery referenced below were sent on June 14. We haven't received any responses. Please advise when those will be submitted.

Best,

Haley A. Hubbard

Associate

Ballard & Watson

226 State Street

West Columbia, SC 29169

Telephone 803-796-9299

Email: haley@desaballard.com

From: Beth Cogan <Beth@desaballard.com>

Sent: Tuesday, June 14, 2022 4:49 PM

To: brendamfirm@yahoo.com

Cc: abarnes@sumtercountysc.gov; Haley Hubbard <haley@desaballard.com>; Desa Ballard <desab@desaballard.com>

Subject: (Fender v. Hoffman, et al.) Ltr to Mercer encl ROGS and RFP (Hoffman)

Good afternoon,

Please see the attached correspondence, Interrogatories and Requests for Production for the above-referenced matter.

Kindest Regards,

-Beth

ROA 0049

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-00438
)	
Plaintiff)	
vs.)	
	)	MOTION TO COMPEL
	)	RESPONSE TO SUBPOEANA
Larry R. Hoffman and)	
Allen Jackson Barnes,)	
)	
Defendants)	

Counsel for the Plaintiff, James E. Fender, moves for an order denying witness Everett J. Mercer’s motion to quash subpoena and compelling Mr. Mercer to produce documents as commanded by Plaintiff’s subpoena served on May 23, 2022. In support of this motion, Plaintiff will show:

On May 23, 2022, Plaintiff’s counsel properly served Mr. Mercer with a subpoena commanding that he produce any and all email communications between himself and Defendant Allen Jackson Barnes from September 2019 to the present. A copy of this subpoena is attached herein as **Exhibit A**. The deadline to provide Plaintiff’s counsel with the requested documents was June 6, 2022. Mr. Mercer failed to respond by June 6, 2022, by either producing the documents or filing a timely objection to the subpoena. On June 7, 2022, Mr. Mercer contacted Plaintiff’s counsel by telephone and advised Mr. Barnes had asserted attorney-client privilege as to Mr. Barnes’ communications with Mr. Mercer. Plaintiff’s counsel asked Mr. Mercer if Mr. Barnes had consulted his client before asserting the privilege (which belongs to the client) and Mr. Mercer did not know. Mr. Mercer stated his intent to file an objection based on Mr. Barnes’ objection. There was no discussion of extending the time to respond or modifying the subpoena. More than a month later July 18, 2022, Mr. Mercer filed a motion to quash Plaintiff’s subpoena, claiming that the communications requested were privileged.

Rule 45(3)(A), SCRCF provides, “on *timely* motion, the court by which a subpoena was issued...shall quash the subpoena if it requires disclosure of privileged matter.” (Emphasis added). Mr. Mercer should be compelled to respond to Plaintiff’s subpoena for two reasons: 1) his objection to Plaintiff’s subpoena is untimely, and 2) the information requested is not privileged material.

Rule 45(c)(2)(B), SCRCF provides that a person served with a subpoena “may, within 14 days after service of the subpoena or before the time specified for compliance” serve a written objection upon the party or attorney designated in the subpoena. (Emphasis added). Generally, counsel must move to quash or modify a subpoena before the subpoena’s return date. See *William v. Big Picture Loans, LLC*, 303 F. Supp. 3d 434 (E.D. Va. 2018) (denying motion to quash filed over a month after return date). Courts have held that a party waives all objections to a subpoena, including privilege, if the party who objects to the subpoena fails to file a timely objection. See *Bell Inc. v. GE Lighting, LLC*, No. 6:14-CV-00012, 2014 WL 1630754, at *9 (W.D. Va. Apr. 23, 2014); see also *In re Motorsports Merch. Antitrust Litig.*, 186 F.R.D. 344, 349 (W.D. Va. 1999). The return date for Plaintiff’s subpoena was June 6, 2022. Mr. Mercer filed his motion to quash on July 18, 2022, over a month after the return date. Plaintiff asserts that Mr. Mercer’s motion is untimely, and as such, he has waived all objections to the subpoena.

Mr. Mercer objects to Plaintiff’s subpoena because he claims that the communications requested are privileged material. Plaintiff seeks communications between Mr. Mercer and Defendant Barnes from September 2019 to the present. At all times relevant to Plaintiff’s complaint in this matter, Defendant Barnes served as counsel to Defendant Hoffman. When Plaintiff filed this lawsuit naming both Hoffman and Barnes as Defendants, Mr. Mercer took over as counsel for Defendant Hoffman whose interests are now adverse to his previous attorney,

Defendant Barnes. Rule 1.6(6), SCRPC provides that a lawyer may reveal information relating to the representation of a client “to establish a defense to a civil claim against the lawyer based upon conduct in which the client was involved.” Plaintiff asserts that Mr. Mercer is a witness to the conduct in which his client, Defendant Hoffman was involved, therefore, the communications sought are excepted from a claim of privilege. Assuming arguendo that these communications are privileged, Mr. Mercer has failed to provide Plaintiff with a privilege log pursuant to Rule 26(5)(A), SCRCP so that Plaintiff can assess the applicability of the privilege or protection.

Wherefore, Plaintiff James Fender requests that this court issue an order deny Mr. Mercer’s Motion to Quash Subpoena and compelling witness Everett J. Mercer to respond to Plaintiff’s subpoena.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
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ATTORNEYS FOR PLAINTIFF

August 10, 2022



ELECTRONICALLY FILED - 2022 Aug 10 12:10 PM - SUMTER - COMMON PLEAS - CASE#2022CP4300438

STATE OF SOUTH CAROLINA

ISSUED BY THE Common Pleas COURT IN THE COUNTY OF Sumter

James E. Fender, Plaintiff

SUBPOENA IN A CIVIL CASE

Larry R. Hoffman and Allen Jackson Barnes, Defendant

Case Number: 2022-CP-43-00438

Pending in Sumter County

TO: E.J. Mercer

YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY _____	COURTROOM _____
_____	DATE AND TIME _____, _____

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION _____	DATE AND TIME _____, _____
---------------------------	----------------------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

Any and all email communications between you and Allen Jackson Barnes from September 2019-present.

PLACE <u>Ballard & Watson</u> <u>226 State Street, West Columbia, SC 29169</u>	DATE AND TIME <u>Monday, June 6, 2022,</u> <u>5:00 pm</u>
---	---

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES _____	DATE AND TIME _____, _____
----------------	----------------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES

Haley A. Hubbard 5/23/2022 Haley Hubbard
 Attorney/Issuing Officer's Signature Date Print Name
 Indicate if Attorney for Plaintiff or Defendant
 Attorney's Address and Telephone Number :

Plaintiff Attorney
226 State Street, W Columbia, SC 29169
803 796 9299

 Clerk of Court/Issuing Officer's Signature Date Print Name
 Pro Se Litigant's Name, Address and Telephone Number :

PROOF OF SERVICE

SERVED	DATE <u>5/23/2022</u>	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$
	PLACE <u>Post Office Box 1347 Sumter, SC 29151</u>	
SERVED ON	<u>E.J. Mercer</u>	MANNER OF SERVICE <u>Certified mail, RRR, restricted delivery</u>
SERVED BY	<u>Beth Cogan</u>	TITLE <u>paralegal</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 5/23/22 Beth K Cogan
SIGNATURE OF SERVER

226 State Street, West Columbia, SC 29169
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena:

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

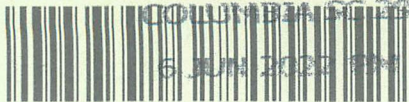
(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

USPS TRACKING#



COLUMBIA SC 29169

6 JUN 2022 9:42 A



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Ballard & Watson, Attorneys at Law
226 State Street
West Columbia, SC 29169

220002-001 (bc)

ROA 0057



ELECTRONICALLY FILED - 2022 Aug 10 12:10 P

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-00438
)	
Plaintiff)	
vs.)	
)	
	)	SUMMONS
Larry R. Hoffman and)	
Allen Jackson Barnes,)	
)	
Defendants)	

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR ATTORNEYS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 226 State Street, West Columbia, South Carolina 29169, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

s/ Haley Hubbard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
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harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

September 22, 2022

Energy Constructor Services Inc. (hereafter “Strategic”) in 2013, and Power Construction Services Inc., a Wyoming corporation created in 2015 which became authorized to do business in South Carolina on or about September 30, 2015.

6. Unknown to Fender, when Hoffman created Power Construction Services Inc. in Wyoming in 2015, Hoffman listed only himself as an owner and did not name Fender as an owner or officer of Power Construction Services Inc.
7. Business documents for Power Construction Services Inc. listed Fender as 50% owner and Fender was treated as an equal owner at all times, other than the disputes which arose regarding funds due to Fender.

FIRST CAUSE OF ACTION

(Breach of Contract – against Hoffman only)

8. Each and every allegation set forth above is fully incorporated herein as fully as if repeated herein verbatim.
9. Fender and Hoffman developed numerous projects together under the umbrella of Power Construction Services Inc.
10. In or about 2014, Hoffman and Barnes began doing business together and Hoffman retained Barnes as counsel for Power Construction Services Inc.
11. Despite Fender’s continued work on the multiple projects Fender and Hoffman did together, on several occasions, Hoffman refused to pay Fender for his work.
12. Hoffman’s failure to pay Fender for work he had performed and funds which were due to Fender became a continuing theme during their work together.
13. Fender filed suit against Hoffman and his company Power Construction Services, Inc. in Sumter County, Case No. 2018-CP-43-1703¹ (hereafter “the prior lawsuit”) in an effort

¹ The action was initially filed in magistrate’s court and removed to circuit court. Case No. 2018CV4310103852.

to collect funds due to him as a result of commercial construction work they had done together.

14. Since Barnes was counsel for Power Construction Services Inc., Barnes had personal knowledge and was a fact witness to some of the business dealings between Fender and Hoffman which led to the dispute.
15. Hoffman was initially represented by Barnes in defending the prior lawsuit. Barnes withdrew as counsel for Hoffman on or about September 4, 2019, after Fender's counsel pointed out his role as a necessary witness to the dispute between Fender and Hoffman and was expected to testify as a witness in that prior lawsuit.
16. Unknown to Fender, during the prior litigation, Power Construction Services Inc. was administratively dissolved by the State of Wyoming and its authority to do business in South Carolina ceased sometime in 2018. On information and belief, this was accomplished by Hoffman and Barnes without Fender's knowledge and for purposes of interfering with Hoffman's ability to recover for fees due him by Hoffman and Power Construction Services Inc.
17. Also unknown to Fender, during the prior litigation, Barnes represented Hoffman in South Carolina for the purposes of creating a South Carolina corporation called Power International LLC, which was filed with the South Carolina Secretary of State on December 19, 2016. Barnes was listed as the registered agent for Hoffman's corporation, and Barnes continues to serve in this capacity presently. Pursuant to 10(c), SCRCF, a copy of the filed Articles of Organization for Power International LLC is attached hereto and incorporated herein by reference as **Exhibit A**.

18. Fender lacks sufficient information know whether Hoffman and Barnes siphoned assets or income of Power Construction Services Inc. to Power International LLC.
19. Hoffman and at least one of his companies owed Fender large sums of money as a result of Hoffman's refusal to pay Fender for work he had performed in conjunction with Hoffman and Hoffman's companies.
20. On information and belief, the creation of Power International LLC in 2016 in conjunction with the dissolution of Power Construction Services Inc. in 2018 was intended to and did reduce the assets against which Fender would be able to collect should he obtain a judgment against Hoffman and Hoffman's company Power Construction Services Inc.
21. During the prior litigation, Hoffman repeatedly refused to engage in discovery, and specifically refused to appear for his deposition and be placed under oath during the prior litigation. Hoffman was sanctioned in the prior litigation for his refusal to cooperate in discovery.
22. In an effort to resolve the dispute regarding funds due to Fender from Hoffman and one or more of his companies, and because of Hoffman's repeated violation of discovery orders in the litigation, Fender chose to accept a compromise settlement offer from Hoffman and his company Power Construction Services Inc. to try to resolve all issues in dispute between them.
23. The prior litigation was resolved by an agreement, the terms of which were confidential. On March 7 and 8, 2021, the parties signed a settlement agreement which included the following language:

The terms and conditions of this Agreement are confidential and the Parties shall not disclose the terms or conditions of this Agreement to any person or entity

other than their spouses, partners, accountants and tax professionals, who also should be advised of and bound by the terms of confidentiality. . .

24. The confidentiality agreement was a material term of the settlement agreement.
25. On information and belief, on or about late October, 2021, Defendants Hoffman, by and through his agent Barnes, breached the agreement of confidentiality and revealed to unrelated third parties the terms and conditions of the confidential settlement agreement, including specifically information regarding certain funds that were being paid by Hoffman to Fender as a result of the settlement of the 2018 case
26. As a direct and proximate result of the breach of confidentiality by Defendants Hoffman and his agent Barnes, a third-party claim was asserted against funds which were expected to be paid by Hoffman to Fender.
27. On information and belief, it was the specific intention of Hoffman and Barnes to divert the funds due to Fender by Hoffman by revealing terms of the confidential settlement agreement to an unrelated third party.
28. As a direct and proximate result of the breach of confidentiality by Defendant Hoffman, by and through his agent Barnes, the damages money due to Fender from Hoffman was diverted to a third party, which caused the settlement funds paid by Hoffman to Fender to deprive Fender of the benefit of the settlement funds Fender had agreed to receive to resolve his dispute with Hoffman.
29. The acts and omissions of Defendants Hoffman, by and through his agent Barnes, Fender sustained actual and consequential damages in an amount to be determined by the trier of fact and Fender is entitled to an award of actual and consequential damages for the breach of contract which Hoffman accomplished through his agent Barnes

SECOND CAUSE OF ACTION
(Conspiracy – both Defendants)

30. Each and every allegation set forth above is incorporated herein where relevant as fully as repeated herein verbatim.
31. On information and belief, Hoffman and Barnes conspired, schemed, and planned together for the sole purpose of depriving Fender of funds to which he was entitled by the settlement of the 2018 case, which in fact caused Fender significant financial harm.
32. On information and belief, the decisions to administratively dissolve Power Construction Services Inc. to divest it of assets in favor of a new company owned exclusively by Hoffman, and the intentional breach of the settlement agreement were the result of a knowing and intentional conspiracy among Hoffman and Barnes to deprive Fender of compensation to which he was entitled from the prior litigation.
33. On information and belief, Hoffman revealed to Barnes the details of the confidential settlement agreement between himself and Fender in violation of the confidentiality agreement. Plaintiff is informed and believes that Hoffman intentionally disclosed the settlement agreement to Barnes with the expectation that Barnes would inform an interested third party, which Barnes did.
34. On information and belief, on or about late October 2021, Barnes, acting for his own purposes and as an agent of Hoffman, intentionally contacted William Johnson, attorney for Bank of Greeleyville,² to inform Mr. Johnson of the settlement agreement between

² Fender was previously involved in litigation with Bank of Greeleyville which resulted in a judgement being issued against Fender. Hoffman had no knowledge of the earlier litigation or the judgment. The judgment in favor of Bank of Greeleyville was about to expire. On information and belief, Barnes, acting for his own interests and to further the interests of himself and Hoffman, searched public records prior to entering into the 2018 settlement, in an effort to find a way for Hoffman to breach his settlement agreement with Fender after it was entered, which they did by revealing the private settlement agreement to the unrelated third party and informing the third party of information the third party would not otherwise have had available to it.

Fender and Hoffman and Fender's expected compensation. It was the intention of Barnes and Hoffman to prevent Fender from collecting the funds Hoffman had agreed to pay Fender in the settlement of the 2018 case. It had been the intent of Barnes and Hoffman to prevent Fender from collecting on the settlement of the 2018 case at the time the settlement of the 2018 case was made.

35. On information and belief, when Barnes and Hoffman settled the 2018 case with Fender, it was their specific intention to reveal the private settlement to the unrelated third party so that Fender would not receive some or all of the funds due to Fender under the 2018 settlement agreement. But for the revelation by Hoffman, by and through his agent Barnes, of the existence of the 2018 private settlement, the unrelated third party would have had no knowledge of the private settlement and no way to divert the settlement proceeds from Fender to itself.
36. On information and belief, Mr. Johnson and his client Bank of Greeleyville had no knowledge of the litigation or the confidential settlement agreement until Barnes acting for his own purposes and as an agent of Hoffman, informed him. Mr. Johnson's sworn affidavit attesting to his conversation with Barnes is attached and incorporated herein as **Exhibit B**.
37. As a result of Barnes's overt actions, Mr. Johnson contacted Fender's counsel of record at the time seeking to attach settlement proceeds on behalf of the Bank of Greeleyville. A copy of this correspondence is attached hereto and incorporated herein as **Exhibit C**.
38. The result of the conspiracy between Hoffman and Barnes were unlawful conspiracy to commit fraud against Fender, which did in fact damage Fender and defraud him. Fender has been damaged as a result of the conspiracy between Barnes and Hoffman.

39. On information and belief, the conspiracy between Hoffman and Barnes as intended to and did, in fact, cause substantial financial harm to Fender, whose settlement proceeds from the 2018 settlement had to be diverted to the Bank of Greeleyville after Hoffman by and through Barnes breached the confidentiality agreement in the settlement agreement.
40. The conspiracy and overt acts of Defendants Hoffman and Barnes in affirmatively entering into the 2018 settlement while knowing they had no intention of paying the funds to Fender because they had already arranged a way to divert money due to Fender under the 2018 settlement to an unrelated third party constituted an intentional and specific conspiracy to harm Fender. The overt act which completed the conspiracy was Hoffman, through Barnes, in intentionally revealing terms of the confidential settlement agreement for the sole purpose of depriving Fender of the benefit of his settlement of the 2018 case.
41. As a direct and proximate result of the intention conspiracy between Barnes and Hoffman, Fender sustained substantial financial loss.
42. Since the acts of Defendants Hoffman and Barnes were knowing and intentional, and were intended to and did harm Fender, Fender is entitled to recover actual and punitive damages against Defendants Hoffman and Barnes for their conspiracy to harm Fender.
43. On information and belief, Fender is entitled to an award of actual and punitive damages, jointly and severally, against Hoffman and Barnes.

FOR A THIRD CAUSE OF ACTION
(Attorney's Fees and Costs – against Hoffman only)

44. Each and every allegation set forth above is incorporated herein where relevant as fully as if repeated herein verbatim.
45. The settlement agreement between Hoffman and Fender included, by way of Paragraph 11, a provision which provides for Fender to recover reasonable attorney's fees and costs

incurred by him as a result of any breach of the settlement agreement by Hoffman, including the term regarding confidentiality.

46. The attorney's fee provision is triggered and operative by Hoffman's breach of the settlement agreement from the prior litigation.
47. Fender has incurred attorney's fees and costs as a direct consequence of the breach of the settlement agreement by Hoffman, which fees Hoffman is required to pay as part of his damages for breach of the settlement agreement.
48. On information and belief, Fender is entitled to judgment in his favor against Hoffman for the attorney's fees and costs he has incurred as a result of Hoffman's breach of the settlement agreement.

WHEREFORE, having fully set forth the grounds for the relief sought herein, Fender moves for the following relief:

- A. Judgment in his favor against Defendants Hoffman for actual damages, for breach of contract in an amount to be determined by the trier of fact;
- B. Judgment in his favor against Defendants Hoffman and Barnes on the conspiracy action for actual and punitive damages, jointly and severally, in an amount to be determined by the trier of fact;
- C. Judgment in his favor against Defendant Hoffman for the reasonable attorney's fees and costs he has incurred as a result of Hoffman's breach of contract as set forth above; and
- D. Such other and further relief as may be sought by way of amended further and supplemental pleadings or by order of the court.

Respectfully submitted,

s/ Haley Hubbard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
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harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

September 22, 2022

Mar 18 2022
REFERENCE ID: 997853

Mark Hammond
Secretary of State of South Carolina

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF ORGANIZATION
Limited Liability Company – Domestic
Filing Fee - \$110.00



FILED - 2022 Sep 22 3:10 PM - SUMTER - COMMON PLEAS - CASE#2022CP4300438

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws §33-44-202 and §33-44-203.

1. The name of the limited liability company (Company ending must be included in name*)

Power International LLC

***NOTE: The name of the limited liability company must contain one of the following endings: "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C." "LC", or "Ltd. Co."**

2. The address of the initial designated office of the limited liability company in South Carolina is

1200 Broad St #169

Street Address

Sumter

29150

City

Zip Code

3. The initial agent for service of process is

Allen Jackson Barnes

Name

Allen Jackson Barnes
Signature of Agent

and the street address in South Carolina for this initial agent for service of process is

529D Oxford Street

Street Address

Sumter

29150

City

Zip Code

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

- (a) Larry L. Hoffman

Name

1200 Broad St. #169

Street Address

Sumter

SC

29150

City

State

Zip Code

- (b)

Name

Street Address

City

161219-0066

FILED: 12/19/2016

POWER INTERNATIONAL LLC

Filing Fee: \$110.00 ORIG



Mark Hammond

South Carolina Secretary of State

ROA 0069

Mar 18 2022
REFERENCE ID: 997853

Name of Limited Liability Company Power International LLC

Mark Hammond
Secretary of State of South Carolina

- 5. Check this box only if the company is to be a term company. If the company is a term company, provide the term specified. _____

- 6. Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.
 - (a) _____
Name
 - _____
 - Street Address
 - _____
 - City State Zip Code

 - (b) _____
Name
 - _____
 - Street Address
 - _____
 - City State Zip Code

- 7. Check this box only if one or more of the members of the company are to be liable for its debts and obligations under §33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.

- 8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.

- 9. Any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.

- 10. Each organizer listed under number 4 must sign.

Lang A Hoffman
Signature of Organizer

12-19-16
Date

Signature of Organizer

Date



STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

AFFIDAVIT OF WILLIAM H. JOHNSON

PERSONALLY APPEARED before me, William H. Johnson, who being first duly sworn, testifies as follows:

1. My name is William H. Johnson, and I am a resident of Clarendon County, South Carolina.


2. I am over 18 years old, and I have personal knowledge of the truth and the facts stated herein.

3. I am a licensed attorney in South Carolina. One of my clients is the Bank of Greeleyville. In 2013, I brought suit on behalf of the bank against Strategic Energy Services, LLC and James E. Fender after they defaulted on a debt. This resulted in a judgment against both the company and Fender.

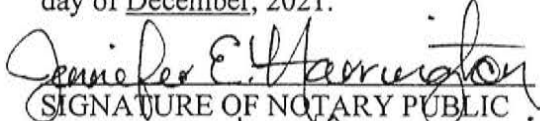
4. I was not aware of the lawsuit brought by Fender against Larry Hoffman and Power Construction Services, Inc. until Attorney Jack Barnes contacted me. He advised me of the existence of the litigation, and his understanding that Mr. Fender was expected to receive funds resulting from the settlement of it. I do not remember the precise date of his call, but, based upon the call, I searched the case records found on the South Carolina Judicial Department website, and found the case name, number, parties, and counsel of record.

5. As a result of Attorney Barnes' contacting me and my review of the public information available on the South Carolina Judicial Department website, I wrote a letter dated November 1, 2021, to Mr. Fender's counsel of record in the Hoffman case, seeking to attach settlement proceeds on behalf of the Bank of Greeleyville.

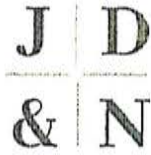
FURTHER AFFIANT SAYETH NOT.


William H. Johnson

Sworn to before me this 15
day of December, 2021.


SIGNATURE OF NOTARY PUBLIC
Printed Name: Jennifer E. Harrington
Notary Public for South Carolina
My Commission expires: 09/26/2028

Jennifer E. Harrington
Notary Public, State of South Carolina
My Commission Expires September 26, 2028



JOHNSON, DURANT
& NESTER, LLC
ATTORNEYS AT LAW



ELECTRONICALLY FILED - 2022 Sep 22 3:10 PM - SUMTER - COMMON PLEAS - CASE#2022CP4300438

William H. Johnson*
Christopher R. DuRant

*Also licensed in North Carolina

411 North Brooks St.
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T 803-435-0909 F 803-435-2858

November 1, 2021
(Via Email)

Nekki Shutt, Esquire
Grant Burnette LeFever, Esquire
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Everett J. Mercer, Esquire
Everett J. Mercer Law Firm
324 N. Main Street
Sumter, SC 29150
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RE: Bank of Greeleyville v. Strategic Energy Services, LLC and James E. Fender
Sumter County Docket No. 2013-CP-43-388

Dear Counselors:

Please be advised that I represent the Bank of Greeleyville, in connection with the above referenced judgment. It has come to our attention that either of you may be in possession of funds owned by James E. Fender. Please accept this letter as notice of attachment of the above- referenced lien to any funds held by either of you. Please refrain from disbursement of any funds to or for the benefit of Mr. Fender, and hold those funds in trust until an agreement may be reached or an order entered regarding the funds.

If you will contact this office with the details of the funds being held, it will serve to reduce the time and effort involved in this process.

Thank you for your attention to this matter.

Sincerely,

William H. Johnson

WHJ/jeh
Attachment(s)

Johnson, DuRant & Nester, LLC
(also located in Santee, SC)

ROA 0073

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

James E. Fender,) Case No.: 2022-CP-43-00438
)

Plaintiff,)

vs.)

Larry R. Hoffman and)
Allen Jackson Barnes,)

Defendants.)
)

DEFENDANT ALLEN JACKSON
BARNES' MOTION TO DISMISS
THE AMENDED COMPLAINT

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure the Defendant, Allen Jackson Barnes (“Barnes”), hereby moves to dismiss the Amended Complaint against him on the grounds that Plaintiff has failed to state facts sufficient to constitute a cause of action for civil conspiracy against him:

Plaintiff’s allegations regarding Power International cannot be the basis for a cause of action because in the March 2021 settlement agreement Plaintiff released Defendant Larry R. [sic] Hoffman (“Hoffman”) from any and all claims that could have been brought during the course of that ligation. While Barnes was not a party to that agreement, Hoffman was. If Hoffman cannot be liable for any claims arising out of Power International then that leaves facts that only Barnes could, in theory, be liable for. A conspiracy requires more than one person. In this instance there is only, at best, Barnes.

Plaintiff admits and attaches a letter from his judgment creditor’s lawyer regarding an unpaid judgment. Plaintiff legitimately owed the money and does not

dispute that. In fact, Plaintiff received the money from the settlement, but it wasn't disbursed to him because he owed the Bank of Greeleyville money. If client had received the money himself, he would have presumably paid, at least in part, his debts with that money. There are no damages here. Plaintiff received the money. He just had to pay it to a legitimate creditor. If Plaintiff is allowed to recover for such acts, he will be allowed to perpetrate a fraud on one his lienholders. This cannot be the basis for a civil conspiracy claim. Plaintiff is the wrongdoer here.

Finally, Plaintiff has failed to plead special damages. The only damages Plaintiff claims he suffered is the loss of the money he didn't get from the settlement proceeds, which is also the same damages claimed for the breach of contract action. Failing to plead special damages in addition to the damages for the alleged breach of contract requires dismissal. Special damages must be specifically pleaded and are not implied in law.

ALLEN JACKSON BARNES ATTORNEY AT LAW LLC

By: s/ Allen Jackson Barnes

A. Jackson Barnes
Post Office Box 2838
Sumter, South Carolina 29151
803-840-6327 (Phone)
877-565-7367 (Fax)

Pro Se

Sumter, South Carolina
October 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
)	
James E. Fender,	)	Civil Action No.: 2022-CP-43-00438
)	
Plaintiff)	
vs.)	
)	
Larry R. Hoffman and	)	MOTION TO RECONSIDER
Allen Jackson Barnes,)	
)	
Defendants)	

Pursuant to Rule 59(e), SCRCPP, Plaintiff James E. Fender (hereafter “Fender”) seeks reconsideration of this Court’s Order granting Defendant Allen Jackson Barnes’ Motion to Dismiss which was filed January 3, 2023, in the above-captioned matter. In support thereof, Fender will show:

1. The Court erred in dismissing the claim against Barnes under Rule 12(b)(6), SCRCPP because the Court considered material outside of the pleadings in reaching its decision.
2. The Court erred in finding that Fender did not set forth sufficient facts to support a cause of action for civil conspiracy against Barnes.
3. The Court erred in dismissing the claim against Barnes under Rule 12(b)(6), SCRCPP because the facts alleged in the complaint and the inferences that can be drawn therefrom entitle Fender to relief under any theory, specifically civil conspiracy.
4. The Court erred in finding that Fender failed to plead that he was damaged as a result of Hoffman and Barnes’ conspiracy. As set forth in the complaint, Fender sustained substantial financial loss as a proximate result of the conspiracy between Barnes and Hoffman.
5. The Court erred in finding that Fender failed to plead that he did not receive all the money agreed to under the settlement agreement when Fender specifically alleged that money due

to him under the settlement agreement was diverted to a third party through acts of the conspirators and not received by Fender.

6. The Court erred in finding that Barnes had no knowledge of the settlement agreement because the Court considered material outside the record.
7. The Court erred in finding that Fender failed to plead that Barnes committed an unlawful act or a lawful act by unlawful means. Specifically, Barnes used information about the settlement agreement that was disclosed to him in violation of the confidentiality agreement and in furtherance of the conspiracy between Barnes and Hoffman. Barnes then revealed this ill-gotten information to a third-party ultimately causing Fender's expected settlement funds to be diverted to that third-party.

For the reasons set forth above, Mr. Fender respectfully seeks reconsideration of the Court's order.

Respectfully submitted,

s/Haley Hubbard

Desa Ballard (S.C. Bar No. 498)

Harvey M. Watson III (S.C. Bar No. 74053)

Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON

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ATTORNEYS FOR PLAINTIFF

January 13, 2023

RECEIVED
Feb 16 2023
SC Court of Appeals

ELECTRONICALLY FILED - 2023 Feb 17 3:24 PM - SUMTER - COMMON PLEAS - CASE#2022CP4300438

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
R. FERRELL COTHMAN, JR., CIRCUIT COURT JUDGE
Case No. 2022-CP-43-00438

James E. Fender,Appellant,

v.
Larry R. Hoffman and Allen Jackson Barnes, Defendants.

Of Whom Allen Jackson Barnes is theRespondent.

NOTICE OF APPEAL

Appellant James E. Fender appeals from the trial court’s Order that granted Defendant Allen Jackson Barnes’ Motion to Dismiss Amended Complaint filed January 3, 2023, that was received by Appellant on January 3, 2023. Appellant also appeals from the trial court’s Order that Dismissed Plaintiff’s Motion for Reconsideration filed January 18, 2023, that was received by Appellant on January 18, 2023. Copies of the orders are attached hereto as **Exhibit A and Exhibit B.**

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

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ATTORNEYS FOR APPELLANT

February 16, 2023

Other counsel of record:

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215 North Harvin Stret, Room #15
Sumter, South Carolina 29150
Telephone 803.436.2424
abarnes@sumtercountysc.gov

PRO SE DEFENDANT

RECEIVED

Feb 16 2023

SC Court of Appeals



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ELECTRONICALLY FILED - 2023 Jan 03 10:11 AM - SUMTER - COMMON PLEAS - CASE#2022CP4300438

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

James E. Fender,) Civil Action No.: 2022-CP-43-00438

Plaintiff,)

vs.)

Larry R. Hoffman and
Allen Jackson Barnes,)

Defendants.)

**ORDER GRANTING DEFENDANT
ALLEN JACKSON BARNES'
MOTION TO DISMISS
THE AMENDED COMPLAINT**

This matter came before the Court via WebEx on November 7, 2022, on Defendant Allen Jackson Barnes’s Motion to Dismiss the Amended Complaint. Defendant Allen Jackson Barnes (“Barnes”) appeared pro se. Haley A. Hubbard appeared on behalf of Plaintiff James E. Fender (“Fender”). Everett J. Mercer appeared on behalf of Defendant Larry R. Hoffman (“Hoffman”). Having reviewed the filings by the parties, hearing the arguments at the hearing, and reviewing the applicable case law, Barnes’ Motion to Dismiss is GRANTED for the reasons set forth below.

In 2021, Fender and Hoffman were involved in litigation that ultimately resulted in the parties entering into a Settlement Agreement which resolved that case. This Settlement Agreement contained a confidentiality provision. Barnes was not involved in any way with the Settlement Agreement, nor did he know of the confidentiality provision contained within. However, Barnes eventually learned that the case between Fender and Hoffman had settled, and Barnes informed counsel for the Bank of Greeleyville, William Johnson

(“Johnson”), of this settlement. Johnson then inquired about the details of the settlement with Fender’s then attorney Nekki Shutt. Fender was then required to pay some of the settlement proceeds the Bank of Greeleyville. In 2022, Fender brought the present action against Hoffman and Barnes, alleging Breach of Contract against Hoffman and Civil Conspiracy against Hoffman and Barnes. Fender also made a claim for attorney’s fees against Hoffman.

Barnes argues that Fender has failed to sufficiently plead facts to establish a cause of action against him and moves to dismiss under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Under Rule 12(b)(6), SCRPC, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action. Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). The motion may not be sustained if the facts alleged in the complaint and the inferences that can be drawn therefrom would entitle the plaintiff to any relief under any theory. Doe v. Greenville Cnty. Sch. Dist., 375 S.C. 63, 66-67, 651 S.E.2d 305, 307 (2007).

The only cause of action against Barnes is one for Civil Conspiracy. In order to maintain a claim for civil conspiracy, a party must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774, 781 (2021). Barnes moves to dismiss, in

part, on the grounds that Fender has failed to plead he was damaged. The basis of Barnes' argument is that Fender received all the money he agreed to under the Confidential Settlement Agreement, but was required to pay a legitimate debt to the Bank of Greeleyville, a judgment creditor from prior litigation. Nowhere does Fender plead he did not receive all of the money agreed to under the prior litigation. Rather, Fender only plead that he did not get to maintain the proceeds of the prior litigation as a result of a legitimate debt.

It appears from the pleadings and the argument of the parties that Fender was paid all the money that he was owed under the settlement prior to his payment of his legitimate debt to the Bank of Greeleyville. Fender cannot, therefore, maintain he suffered any damages. As of result of damages being an essential element of Civil Conspiracy, the Amended Complaint must be dismissed against Barnes for failure to plead he was damaged.

Likewise, Fender has failed to plead that Barnes committed an unlawful act or a lawful act by unlawful means. Barnes reported to counsel for the Bank of Greeleyville that he believed Fender had settled the previous case with Hoffman and he would receive some money. While the Settlement Agreement between Fender and Hoffman was confidential, Barnes was not a party to that Agreement, either directly or as an agent of Hoffman or Fender. Nowhere does Fender plead such facts.

The pleading clearly shows that Barnes did not represent Hoffman or Fender at the time of the Settlement Agreement. Further, there was no prohibition from Barnes disclosing any information, even if he knew of the confidentiality provision. Barnes had

no knowledge of the Settlement Agreement or its terms, including the confidentiality provision, and there was no unlaw act or lawful act by unlawful means. As a result of this being an essential element of Civil Conspiracy, the Amended Complaint must be dismissed against Barnes.

The facts alleged in the Amended Complaint and the inferences that can be drawn therefrom do not entitle Fender to relief. In this instance, the Motion to Dismiss is justified. The Amended Complaint is dismissed against Barnes.

AND IT IS SO ORDERED.

R. Ferrell Cothran, Jr.
Circuit Court Judge

December _____, 2022
Sumter, South Carolina



Sumter Common Pleas

Case Caption: James E. Fender VS Larry R Hoffman , defendant, et al
Case Number: 2022CP4300438
Type: Order/Dismissal

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2023-01-03 09:09:57 page 5 of 5

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ROA 0084



Sumter Common Pleas

Case Caption: James E. Fender VS Larry R Hoffman , defendant, et al
Case Number: 2022CP4300438
Type: Order/Other

So Ordered

R. Ferrell Cothran, Jr.

Electronically signed on 2023-01-18 10:40:19 page 2 of 2

ELECTRONICALLY FILED - 2023 Feb 17 3:24 PM - SUMTER - COMMON PLEAS - CASE#2022CP4300438
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ROA 0086

State of South Carolina)
) Court of General Sessions
County of Sumter) 2022-CP-43-00438

James E. Fender)
)
 vs.) Transcript of Record
)
Larry R. Hoffman, et al.)

November 7, 2022
Sumter, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran Jr, Judge.

A P P E A R A N C E S (All present by video or telephone):

Haley Hubbard
Attorney for the Plaintiff

Allen J. Barnes
Pro se

Everett J. Mercer
Attorney for the Defendants

Gabrielle Eason
Transcriber

1 THE COURT: Okay. Now I'm done to number 38, which is
2 Fender v. Hoffman, et al.

3 MS. HUBBARD: Good afternoon, Your Honor. This is Haley
4 Hubbard on behalf of the plaintiff, Mr. Fender.

5 THE COURT: I see Mr. Barnes.

6 MR. BARNES: Yes, sir, Your Honor.

7 THE COURT: Okay.

8 MR. BARNES: And I am a named defendant, and I am pro se.

9 THE COURT: Okay. So whose motion is it?

10 MR. BARNES: It's my motion to dismiss.

11 THE COURT: All right. Tell me your grounds.

12 MR. BARNES: Yes, sir.

13 Just by way of a little bit of background. There was a
14 lawsuit involving the co-defendant, or the other defendant in
15 this case, Larry Hoffman, between Mr. Fender, the plaintiff,
16 in this case.

17 I initially represented him in that case, Mr. Hoffman.
18 And then sometime in the litigation I withdrew because --
19 well, the order says because I was a material witness. I
20 probably should have objected to that because I don't believe
21 I was a material witness. But the long and short of it is
22 that I had become a full-time public defender at that point.
23 And so I was not able to continue representing him.

24 Anyway, at some point, they settled. Mr. Mercer, who
25 represents -- who's on the line now -- and who represented Mr.

1 Hoffman in that case and represents him in this case; he and
2 Ms. Shutt, Nekki Shutt, who represented Mr. Fender in the
3 original lawsuit, entered into a settlement agreement. And
4 the settlement agreement contained a confidentiality provision
5 in it.

6 That confidentiality agreement -- I was not a party to
7 the agreement. I wasn't his lawyer at the time. They had
8 originally sued me for breach of contract, along with Mr.
9 Hoffman. That cause of action was dismissed because I was not
10 an agent. I was not a lawyer. I was not a party. I didn't
11 even know the terms of the settlement.

12 And so now they have alleged -- they were given an
13 opportunity to revise their complaint so that they might more
14 particularly plead a cause of action for civil conspiracy
15 against me and Mr. Hoffman.

16 And so we are now here on my motion to dismiss the
17 conspiracy claim against me. Although truthfully, if Your
18 Honor were to grant it, it would probably also then require a
19 dismissal of the conspiracy claim against Mr. Hoffman, as well
20 as the breach of contract.

21 I've actually made several grounds for the motion, but I
22 think the most important one goes to the fact that the
23 plaintiff has not suffered any damages.

24 What happened was he entered into a settlement, the terms
25 of which I still do not know, and I informed -- I found that

1 out. There's no allegation in the -- well, the allegation is
2 that me and Mr. Hoffman conspired. That he told me, and we
3 conspired. That's actually not true but that's what they
4 allege upon information, I believe.

5 I did find out about the settlement through another way.
6 And I informed Mr. William Johnson (phonetic), who represented
7 the Bank of Greeleyville in a previous case involving Mr.
8 Hoffman, and for which they had, like, a 325,000-dollar
9 judgment, I think it was.

10 I mentioned to Mr. Hoffman that -- I mean, Mr. Johnson --
11 that I understood Mr. Fender had entered into a settlement and
12 that I didn't know the terms of the agreement, I didn't know
13 how much money, I didn't know anything. I just knew that they
14 had agreed on a settlement. And that was a matter of public
15 record at that point.

16 Mr. Johnson then looked in the public index and found
17 that indeed there was a settlement of the case. And he
18 reached out to Ms. Shutt, Mr. Fender's then lawyer, to inquire
19 as to whether or not he would be getting any money and if so,
20 he demanded that she hold the only because Mr. Fender owed
21 Bank of Greeleyville several hundred thousand dollars.

22 I assume because we're here that Mr. -- I never had
23 another conversation with Mr. Johnson. So I assume because
24 we're here, that some of the money that Mr. -- some of all, I
25 don't know -- of money that Mr. Fender got from Mr. Hoffman as

1 part of the settlement was required to go to the Bank of
2 Greeleyville.

3 So their allegation is that Mr. Hoffman and I conspired
4 together to somehow interfere with Mr. Fender's getting the
5 money. But Mr. Fender got the money. It just had to go to
6 one of his creditors, who had a legitimate claim against the
7 estate.

8 I mean, had Mr. Fender decided to pay the judgment on his
9 own without my having informed Mr. Johnson of it, he couldn't
10 complain that he hadn't received the damages. He can't
11 complain in this case. I mean, he got a credit for paying off
12 a judgment that he owed. That is a financial benefit. It is
13 the same financial benefit that he would have gotten had he
14 gotten the money directly and then paid the Bank of
15 Greeleyville.

16 So they are not damaged. He entered into the settlement
17 agreement and got some money. And apparently, some of that
18 money had to go pay the Bank of Greeleyville, and yet it was
19 still his. He received the benefit of -- and I don't know the
20 terms of the agreement between the Bank of Greeleyville and
21 Mr. Fender either. I suspect that they allowed the payment --
22 well, I don't know this for a fact. They allowed the payment
23 to satisfy the entire judgment, so that he actually obtained a
24 benefit above and beyond the amount.

25 But even if he didn't, he got the money. But it was paid

1 to a judgment creditor. No dispute that he owed the money.
2 No question about that. But somehow my telling a creditor
3 judgment that I believed he had settled a case and might be
4 getting some money, is somehow grounds for a civil conspiracy.
5 I just -- if you don't have any damages, you don't have a
6 cause of action.

7 So that's the first ground, Your Honor.

8 The second ground is that in the complaint, and we are
9 because this is a 12(b)(6) motion, we are confined to the four
10 corners of the complaint. I'm sorry -- yeah, of the
11 complaint. I have not answered the complaint yet.

12 Their allegations with regard to the civil conspiracy go
13 back to -- go back to allegations arising out of the previous
14 lawsuit. Well, that previous lawsuit was resolved, and all
15 causes of actions that could have, should have, again, I
16 wasn't a party to it. I don't know this to be the fact, but I
17 assume that Mr. Fender waived all other facts and causes of
18 action regarding the previous lawsuit as a basis for the
19 additional grounds for settlement. So those allegations
20 cannot now afford or be the basis for another lawsuit out of
21 that.

22 So that's really the crux of my argument, Your Honor.
23 The only thing, I guess that -- I mean, they've made several
24 allegations that form the basis of it. Two of them had to do
25 with facts would be essentially res judicata or waived, or

1 estopped because they settled the previous lawsuit.

2 The other one, as I said, is this conspiracy, or this
3 agreement to harm Mr. Fender by letting a judgment creditor
4 know that he was entering into a settlement. And that's not
5 unlawful. I didn't breach anything. I didn't breach any duty
6 to him whatsoever.

7 And in addition to that, as I previously said, he's not
8 damaged. He got the money. It just went to a judgment
9 creditor.

10 I mean, you know, he's arguing that he essentially should
11 have been able to defraud his creditors. I mean, this is the
12 same guy who went to prison for extorting 825,000 dollars from
13 the First National Bank. I mean, he went to federal prison.
14 And now he's trying to get away with the same thing.

15 And there are judgments a mile long against him. And if
16 he were to get any money in this case too, I can promise you
17 that every single one of those judgment creditors will know
18 about it, and they will come after his money. He owes
19 hundreds and hundreds of thousands of dollars.

20 And he's simply asking Your Honor to find me and Mr.
21 Hoffman guilty of a civil conspiracy so he can further defraud
22 his judgement creditors. And that can't be the basis of a
23 civil conspiracy. He got the money.

24 THE COURT: All right. Who wants to respond?

25 MS. HUBBARD: Thank you, Your Honor. Haley Hubbard again

1 for Mr. Fender. Just wanted to address Mr. Barnes' argument.

2 So as far as the previous lawsuit is concerned, there was
3 a settlement agreement signed where they did agree to release
4 all claims but that would not have been in anticipation of
5 someone breaching the contract.

6 What we have alleged is that Mr. Hoffman has breached the
7 contract, or the settlement agreement, by breaching the
8 confidentiality portion by their revealing the settlement
9 terms or the fact that he was getting a settlement with Mr.
10 Barnes. Mr. Hoffman was not supposed to do that. There was a
11 confidentiality clause in the agreement.

12 That is not something that could have been brought up in
13 the previous litigation. They could not have litigated that
14 in the previous litigation because the settlement agreement
15 finished that litigation and then there was a subsequent
16 breach. So that argument, I believe, fails because this isn't
17 something that could be addressed in the previous litigation.

18 Additionally, we were given the opportunity to amend our
19 previous complaint as it pertains to the civil conspiracy
20 claim and Mr. Barnes has been dismissed from the breach of
21 contract claim.

22 We pled and properly pled the civil conspiracy. I
23 believe that Mr. Barnes claims that we have not pled damages
24 and we have not pled special damages. I do want to point out
25 that special damages are not required pursuant to *Paradis v.*

1 Charleston County which was decided in 2021, where the Supreme
2 Court specifically said that special damages are not required
3 to be pled for civil conspiracy.

4 Additionally, we have pled damages. The main issue here
5 is when they were in the previous litigation between Mr.
6 Fender and Mr. Hoffman, it was very clear that Mr. Hoffman did
7 not want to be really involved in litigation. He didn't want
8 to pay Mr. Fender. I believe there was some bad blood at the
9 time that this happened. They were previous business partners
10 and then ceased business together. I think there was a bit of
11 a falling out. Then a lawsuit came, and Mr. Hoffman didn't
12 want to participate in the lawsuit. He didn't want to pay Mr.
13 Fender but he did eventually agree to the settlement terms and
14 cut a check.

15 But we have alleged, and we believe that there was a
16 conspiracy between Mr. Hoffman and Mr. Barnes -- and I'm not
17 saying that Mr. Barnes knows every single detail of the
18 settlement reach, but what's clear is Mr. Hoffman did reveal
19 some elements of the settlement agreement and Mr. Barnes then
20 subsequently told a creditor.

21 Now, Mr. Fender is not in any way trying to defraud his
22 creditor. We acknowledge that it is a legitimate creditor.
23 We placed the letter from Bank of Greeleyville in our
24 complaint, actually. If the Bank of Greeleyville had found
25 out this information on their own, that's perfectly fine. But

1 the fact that Mr. Hoffman's former attorney, Mr. Barnes,
2 advised Mr. Johnson about this creditor -- I mean, about
3 expected settlement, that's a problem. Because one, Mr.
4 Barnes wasn't supposed to have that information in the first
5 place. It was supposed to be confidential.

6 We believe that Mr. Hoffman informed Mr. Barnes with the
7 intent that he would inform an interested third party, which
8 is what occurred. And that is what we have alleged in the
9 civil conspiracy, which has been properly pled.

10 So Your Honor, we do request that this motion
11 respectfully be dismissed -- not granted. We believe that we
12 are firmly within the law to plead the civil conspiracy case.

13 THE COURT: Okay. The settlement agreement that you
14 mentioned that it was confidential. Was it in writing?

15 MS. HUBBARD: Yes, Your Honor. It is in writing.

16 THE COURT: Okay. And was there consideration attached
17 to the confidentiality portion of it?

18 MS. HUBBARD: I think we had it in our -- wait. Hold on
19 just one second.

20 All right, Your Honor. The paragraph regarding
21 confidentiality reads: "The terms and conditions of this
22 agreement are confidential and the parties shall not disclose
23 the terms or conditions of this agreement to any person or
24 entity, other than their spouses, partners, accountants, and
25 tax professionals who also should be advised of and bound by

1 the terms of confidentiality."

2 THE COURT: And so --

3 MS. HUBBARD: That was material agreement in this
4 settlement agreement.

5 THE COURT: So part -- and whatever -- I assume that some
6 money passed hands as a result of this agreement. Was any
7 portion of this settlement assigned as consideration of
8 confidentiality?

9 MS. HUBBARD: Let me see if I can --

10 THE COURT: You know, is it a situation where it was
11 settled for 100,000 dollars? 75 of it was the result of a
12 suit and 25 would be keep it confidential. Is there anything
13 like that in it?

14 MR. BARNES: Your Honor, Mr. Mercer might be able to
15 answer that.

16 MR. MERCER: Your Honor, there -- E. J. Mercer. I
17 represented Mr. Hoffman.

18 A little further backstory. When Mr. Barnes took the job
19 at the solicitors -- Public Defenders Office -- I keep doing
20 that -- Public Defenders Officer and this litigation -- the
21 underlying litigation continued, Mr. Barnes approached me
22 about representing Mr. Hoffman. I assumed the defense of Mr.
23 Hoffman's case. It was negotiated. An amount was agreed upon
24 and there were installments -- I think there were four
25 installments made on the settlement.

1 After the -- I want to say the second installment -- I
2 could be wrong. There may have been more than four. But at
3 one point, I was delivering a -- one of the settlements
4 proceeds that had come through my trust account to Ms. Shutt.
5 It was made to Mr. Fender, and she made an inquiry as to
6 whether I had received an email from Mr. Johnson or not.

7 I said no, or I had not checked my email at that point,
8 and I tendered the, I'm going to say it was the second to the
9 last payment, to Ms. Shutt.

10 Then the final payment arrived, and I did have an
11 opportunity to see an email that was sent to both Ms. Shutt
12 and to me that came almost the same time as the prior payment.
13 And I, after seeking some ethical guidance, notified Ms. Shutt
14 that I had money in my trust account but that I also had
15 received sort of a notice of a judgment that may attach to any
16 payments. And at that point, until I received something from
17 Mr. Johnson authorizing me to finalize the last payment, I did
18 not intend to turn over the money that was being held in my
19 trust account.

20 So once I received that, I gave the final payment to Ms.
21 Shutt for Mr. Fender. And that's when I was informed that
22 there was a breach of contract and a civil conspiracy cause of
23 action that was brought against my client and against Mr.
24 Barnes.

25 THE COURT: Okay.

1 MR. MERCER: So that's my background on this matter.

2 I am representing Mr. Hoffman in this matter as well.

3 But I would have to agree with Mr. Barnes that all the money
4 was paid to Mr. Fender. And if all the money was paid under
5 the agreement to Mr. Fender, that he did not suffer any
6 damages if one of the judgement creditors stepped forward and
7 made a claim against any of the proceeds.

8 Now, there was, to my recollection, no independent
9 consideration attached to any particular part of the
10 settlement agreement in particular to the confidentiality part
11 of it. So that may help the Court a little bit more, but I do
12 agree with Mr. Barnes that all the money was paid to Mr.
13 Hoffman and that I, like Mr. Barnes, have no idea what, if
14 any, was paid to a judgment creditor for Mr. Fender.

15 THE COURT: So the money that you received from your
16 client, you held in escrow and notified the plaintiff's
17 attorney that you'd received some -- when you cut the last
18 check, did you cut it to the Bank of Greeleyville or did you
19 cut it to Mr. Fender?

20 MR. MERCER: No, no, Your Honor. There were actually
21 four payments -- I'm going to say four payments -- and they
22 had specific payment dates on it. Made the first payment.
23 Made the second payment. I want to say that I was making the
24 third payment, delivering it to Ms. Shutt, and she asked me at
25 that point if I had seen an email from William Johnson, who at

1 that point -- I lived in Columbia. I was dropping the check
2 off at Ms. Shutt's law office.

3 So I delivered it. She asked me about it. I said no,
4 here is the check. I didn't have any notice from Mr. Johnson
5 at that point, other than Ms. Shutt saying that there was an
6 email, and did I see it.

7 I'm going to say it was two months later, because the
8 payments that were made were a couple of months apart. When I
9 got back to the office -- when I arrived at my office the day
10 of the delivery of the third check, I did see that there was
11 an email from Mr. Johnson, but there was nothing I could do
12 about that because I did not see it before I tendered the
13 second to the last payment.

14 When the last payment came in, I notified Ms. Shutt that
15 it, in fact, arrived but because of my notice of a judgment
16 from Mr. Johnson of a judgment creditor's claim, that I needed
17 something from Mr. Johnson before I could release those funds.

18 I did get something; an email authorizing me to release
19 those funds. Those funds were paid to Mr. Fender. Not to the
20 Bank of Greeleyville, but to Mr. Fender. And then as far as I
21 was concerned, the entire matter was over.

22 THE COURT: Okay.

23 MS. HUBBARD: And Your Honor --

24 THE COURT: Does anyone want to tell me anything else?

25 Ms. Hubbard?

1 MS. HUBBARD: Your Honor, the only thing I would respond
2 with is Mr. Mercer states that a judgment creditor stepped up
3 when, in fact, it was only because of Mr. Barnes that a
4 judgment creditor was notified.

5 And as I previously said, if that had just been something
6 that Mr. Johnson found out naturally on his own, that's one
7 thing. But this information was provided to the judgment
8 creditor by Mr. Barnes, who was affiliated with Mr. Hoffman at
9 the time and that would have been within Mr. Hoffman's
10 interest not to -- have to make complete payments to Mr.
11 Fender or to prevent him from receiving the full amount of
12 that settlement and left it up to him to make that payment to
13 the judgment creditor. Which, as I said again, he's not
14 trying to defraud anyone here, but that would have been left
15 to his discretion rather than an involved party or third
16 party, Mr. Barnes, informing the judgment creditor. And Mr.
17 Johnson attached his affidavit testifying to that, that the
18 only reason he knew was because Mr. Barnes called and told him
19 that.

20 MR. BARNES: But, Your Honor, it's also important to know
21 that in Mr. Johnson's affidavit, he points out that he, after
22 receiving information from me, he, in fact, went to the public
23 index -- I don't know if it was the filing system or the
24 public index -- and indeed discovered that the case had been
25 resolved by way of a settlement. And at that point is when he

1 reached out to Ms. Shutt. This was a matter of public record.

2 And Mr. Johnson does not allege that I told him he was
3 getting money. I think it says something along the lines of,
4 I said they had entered into an agreement, and I assumed he
5 would be getting money. I mean, he was the only one with
6 claims, as I recall. So it wouldn't be that Mr. Hoffman would
7 be getting money. I assumed that Mr. Fender would be getting
8 money, and I told that to Mr. Johnson.

9 So he then looked on the public index and reached out to
10 Ms. Shutt. At the end of the day, no, he may not have
11 stumbled on it, but it was a matter of public record that the
12 case had been settled. All he had to do was call Ms. Shutt
13 and say, hey, I see the case is settled; did he get any money,
14 which is what I think he did because I certainly didn't know
15 how much or if he did get money.

16 THE COURT: Okay. So at the time that the settlement was
17 reached and this confidential agreement was entered into, you
18 agree that Mr. Barnes was not representing Mr. Hoffman nor did
19 he have any privileged information resulting from that, right?

20 MS. HUBBARD: Your Honor, my understanding is that Mr.
21 Barnes was relieved in, I think it was, 2019 and this
22 settlement agreement was signed, I think, in 2021, if I'm not
23 mistaken.

24 THE COURT: Okay.

25 MS. HUBBARD: Now he wouldn't have been his attorney.

1 Mr. Mercer would have been his attorney at the time.

2 THE COURT: Okay. Okay. Thank y'all. Let me read the
3 file. I'll get back with you.

4 But you agree there was no compensation paid specifically
5 for the confidentiality agreement?

6 MS. HUBBARD: I agree and defer to Mr. Mercer.

7 THE COURT: Okay.

8 MS. HUBBARD: I did review the settlement agreement just
9 now and I don't see anything that indicates that
10 consideration.

11 THE COURT: Okay. Because I had a case years ago where I
12 was in a situation. And the IRS stepped in because any money
13 paid for confidentiality agreement is taxable. It was a
14 nightmare because the law firm, to make the confidentiality a
15 contract, they had to put consideration with it. And when you
16 put consideration with it, you've got to advise the client
17 that that consideration is taxable unlike maybe the other
18 (audio interference) amount was not taxable.

19 So that's why I asked that because it was a terrible case
20 to deal with over the years to try to figure all that out and
21 the IRS involved in it and everyone else.

22 Okay. Thank y'all.

23 MR. BARNES: Thanks, Your Honor.

24 MR. MERCER: Thanks for your time, Your Honor.

25 (End of Transcript of Record)

From: Cothran, Ralph F. Jr., Law Clerk (James Land) <rcothranlc@sccourts.org>
Sent: Tuesday, November 8, 2022 2:14 PM
To: Desa Ballard <desab@desaballard.com>; Haley Hubbard <haley@desaballard.com>; Allen J. Barnes <abarnes@sumtercountysc.gov>; Harvey Watson <harvey@desaballard.com>
Subject: 2022CP4300438, James E. Fender VS Larry R Hoffman , defendant, et al

Good Afternoon,

Judge Cothran has requested that the parties send me a copy of the confidential settlement agreement that was discussed during the hearing for the above referenced matter yesterday.

Thanks,

James "Jamie" Land
**Law Clerk for the
Honorable R. Ferrell Cothran, Jr.
3rd Judicial Circuit**
Phone: 803-435-2450
Clarendon County Court House
P.O. Box 32
3 West Keitt Street
Manning, South Carolina 29102

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**From:** Haley Hubbard <haley@desaballard.com>

**Sent:** Tuesday, November 8, 2022 5:46 PM

**To:** Cothran, Ralph F. Jr., Law Clerk (James Land) <rcothranlc@sccourts.org>; Desa Ballard <desab@desaballard.com>; Allen J. Barnes <abarnes@sumtercountysc.gov>; Harvey Watson <harvey@desaballard.com>

**Cc:** Beth Cogan <Beth@desaballard.com>

**Subject:** RE: 2022CP4300438, James E. Fender VS Larry R Hoffman , defendant, et al

Good Afternoon,

Please see the attached copy of the confidential settlement agreement.

Best,

Haley A. Hubbard  
Associate  
Ballard & Watson  
226 State Street  
West Columbia, SC 29169  
Telephone 803-796-9299  
Email: [haley@desaballard.com](mailto:haley@desaballard.com)

**From:** Cothran, Ralph F. Jr., Law Clerk (James Land) <rcothranlc@sccourts.org>  
**Sent:** Monday, November 21, 2022 10:07 AM  
**To:** Haley Hubbard <haley@desaballard.com>; Desa Ballard <desab@desaballard.com>; Allen J. Barnes <abarnes@sumtercountysc.gov>; Harvey Watson <harvey@desaballard.com>  
**Cc:** Beth Cogan <Beth@desaballard.com>  
**Subject:** RE: 2022CP4300438, James E. Fender VS Larry R Hoffman , defendant, et al

Mr. Barnes,

Judge Cothran has asked me to ask you...

- (1) Whether you were still representing Mr. Fender at the time that the confidential settlement agreement was entered into (May 7/8, 2021)? And
- (2) Whether your knowledge of the existence of the confidential settlement agreement stemmed from your representation of Mr. Fender or whether you learned about it through some independent means?

Thanks,

*James "Jamie" Land*  
**Law Clerk for the  
Honorable R. Ferrell Cothran, Jr.  
3<sup>rd</sup> Judicial Circuit**  
Phone: 803-435-2450  
Clarendon County Court House  
P.O. Box 32  
3 West Keitt Street  
Manning, South Carolina 29102

**From:** Allen J. Barnes <abarnes@sumtercountysc.gov>

**Sent:** Monday, November 21, 2022 2:40 PM

**To:** Cothran, Ralph F. Jr., Law Clerk (James Land) <rcothranlc@sccourts.org>

**Cc:** Beth Cogan <Beth@desaballard.com>; Haley Hubbard <haley@desaballard.com>; Harvey Watson <harvey@desaballard.com>; Desa Ballard <desab@desaballard.com>; ejmfirm@yahoo.com

**Subject:** RE: 2022CP4300438, James E. Fender VS Larry R Hoffman , defendant, et al

Jamie:

I never represented Mr. Fender. I represented some companies that Mr. Fender initially partially owned and a company he was later employed by. Mr. Fender never controlled anything I did, nor did I ever really talk to him. I took my direction solely from Mr. Hoffman. My representation of those companies terminated in 2019 when Mr. Mercer took over. The settlement agreement came into being in 2021, some two years later.

I never had knowledge of a confidential settlement agreement. I never saw it or knew any terms and conditions until Ms. Hubbard forwarded it to us a week or so ago. I never talked to Mr. Hoffman about it. I passed Mr. Mercer in the hall in the courthouse one day in 2021 and he told me the case had settled but no details. It was a passing in the hall "oh by the way that case with Larry Hoffman and Ed Fender settled" kind of thing. He didn't tell me who was paying whom, any terms, nothing. The case had settled that was it. I later checked the efilng system and saw where it had resolved. At that point I reached out to Mr. Johnson and told him that case had settled, and he might want to check into it. I gave him the name of Mr. Mercer and Ms. Shutt I believe. I didn't tell him any facts as is represented in his affidavit Ms. Hubbard attached to her Amended Complaint. I still did not know if Mr. Fender was getting paid, although I assumed he was to be honest.

I would say one further thing, having now just looked at the settlement agreement for the first time it says "The terms and conditions of this Agreement are confidential and the Parties shall not disclose the terms or conditions of this Agreement..." A party did not disclose the fact that the case had settled. Mr. Mercer disclosed that to me in the hall of the Sumter Court house. And he didn't disclose any "terms or conditions" just that it had settled which I then verified on the efilng system, which is public knowledge.

Please let me know if you need anything else.

Regards,

Jack

**RECEIVED**  
**Oct 30 2023**  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM SUMTER COUNTY  
R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

---

Appellate Case No. 2023-000246

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James E. Fender, .....Appellant,

v.

Larry R. Hoffman and Allen Jackson Barnes, Defendants,  
Of Whom Allen Jackson Barnes is the .....Respondent.

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**CERTIFICATE OF COUNSEL**

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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.

Respectfully submitted,

s/ Haley Hubbard

Desa Ballard (SC Bar No. 498)

Harvey M. Watson III (SC Bar No.74053)

Haley Hubbard (SC Bar No. 103195)

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October 9, 2023