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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Teasa K. Weaver
Master-In-Equity

Case No. 2020-CP-46-3434

John Patton and Tara Patton (*Plaintiffs*),

Appellants,

v.

Palmetto Contracting Services of York County, LLC and Lester Van Epps (*Defendants*),

Respondents.

RECORD ON APPEAL

Appellate Case No.: 2023-000740

Charles B. Burnette IV
414 E. Main St.
Rock Hill, SC 29730
Attorney for Appellants

Dan D'Agostino
1171 Market Street #102
Fort Mill, SC 2970
Attorney for Respondents

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ELECTRONICALLY FILED - 2021 May 05 3:11 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA
COUNTY OF YORK
COMMON PLEAS COURT

CASE NO. 2020-CP-46-03434

John Patton et al — Plaintiff(s)

VS

Palmetto Contracting Services Of York County LLC — Defendant(s)

I find that this case should be referred to a master-in-equity or special referee because:

___ All parties, not in default, consent to the reference.

___ This is an action of foreclosure.

X This is a default case.

__ _____
_____
_____
_____
_____

Accordingly, this matter is referred to the master-in-equity or _____ _____ as a special referee to:

___ Hold a hearing(s) and file a report. Any review of this report shall be in the manner prescribed by Rule 53(e)(2), SCRCP.

_X_ Hold a hearing(s) and enter final judgment in this matter. Any appeal from an order of judgment of the master-in-equity or special referee shall be directly to the Supreme Court. See S.C. Code Ann. S 14-11-85 (Supp. 1994).

IT IS SO ORDERED.

_____
CLERK OF COURT

Charles Baxter Burnette IV

ELECTRONICALLY FILED - 2021 May 05 3:11 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

York Common Pleas

Case Caption: John Patton , plaintiff, et al VS Palmetto Contracting Services Of York County Llc , defendant, et al

Case Number: 2020CP4603434

Type: Order/Other

So Ordered

s/David Hamilton York County Clerk of Court by LS

ELECTRONICALLY FILED - 2021 Oct 05 3:55 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
	)	
John Patton and	)	
Tara Patton,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	**ORDER FOR DEFAULT JUDGMENT**
	)	
	)	Case No. 2020-CP-46-3434
	)	
Palmetto Contracting Services of	)	
York County, LLC and	)	
Lester Van Epps,	)	
Defendants.	)	

THIS MATTER came before me on August 31, 2021, for a hearing to ascertain damages following an entry of default filed on April 29, 2021. Representing the Plaintiffs was Charles Baxter Burnette, IV. No one appeared on behalf of the Defendants.

BACKGROUND

Plaintiffs brought this action against Defendants on multiple theories including, breach of contract, negligence, fraud, and violation of the South Carolina Unfair Trade Practices Act (SCUTPA). Plaintiffs entered into a contract with Defendants in which Defendants would perform renovation/landscaping work on the Plaintiffs' home and property. The Defendants performed defective work, and abandoned the project before the contracted services were completed. Additionally, Defendants falsely represented to Plaintiffs that Van Epps was a licensed contractor. Plaintiffs seek actual damages, damages allowed under SCUPTA, including attorney's fees, and punitive damages. Plaintiffs presented testimony and exhibits in support of these claims. Based on the testimony, exhibits, and arguments of counsel, I make the following findings of fact and

conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As the Defendants failed to plead or other respond, the allegations contained in the Amended Complaint are deemed admitted, and as such, the Defendants are liable for breach of contract, negligence, fraudulent misrepresentation, and are in violation of the South Carolina Unfair Trade Practices Act (SCUTPA). Further, I find the Defendants' actions and conduct were the direct and proximate cause of Plaintiffs' actual damages, of which they are joint and severally liable for each cause of action.

At the hearing, Plaintiffs presented evidence, through the testimony of John Patton and other exhibits, of the damages caused by the Defendants' defective work, and the state of the home and property after it was abandoned by the Defendants. The documentary evidence included photographs, invoices, statements, cancelled checks, and an affidavit of attorney's fees. The exhibits also demonstrated the Defendants' lapsed general contractor's license, which was expired at the time the contract was entered into, as well as representations on the Defendants' website where the Defendants advertise to be licensed contractors. Based on the evidence, I find that the costs necessary to remedy the Defendants' defective work is $72,903.91. Thus, Plaintiffs have proved that they have suffered actual damages in the sum of $72,903.91.

Concerning the SCUTPA claim, I find that the false representation regarding licensing was knowing and willful. I also find that the Defendants were directly involved in the profession of renovating homes to the public at large, and their conduct is capable of repetition and affects the public interest. Thus, I conclude that Plaintiffs are entitled treble damages in the amount of $218,711.73, plus the reasonable attorney's fees of $6,209.37 as shown in counsel's affidavit. S.C. Code Ann. § 39-5-140 (1976, as amended).

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Moreover, I find that the actions of the Defendants were willful and knowing failures to perform work by acceptable construction standards, done with a reckless disregard for Plaintiffs' rights. Additionally, the economic impact on Plaintiffs, and potentially to others similarly situated, warrants a finding of the need for deterrence of future similar conduct. Thus, Plaintiffs are entitled to punitive damages. In considering such an award, I considered the factors as discussed by the Court in *Gamble v. Stevenson*, 305 S.C. 104,111-112, 406 S.E.2d 350, 354 (1991). Accordingly, I find that Defendants' conduct demonstrates a high degree of culpability, and full awareness. Given these factors, I conclude, based upon clear and convincing evidence, that an award of punitive damages of $70,000.00 is appropriate under the circumstances. Further, the award takes into consideration my view of the reprehensibility of Defendants' conduct and the ratio of the actual harm or damages to the punitive damage award given. *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 586-587, 686 S.E.2d 176, 184-185 (2009).

Based on the findings of fact and conclusions of law contained herein,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs are granted judgment against Defendants, jointly and severally, as follows:

1. Actual damages in the amount of $72,903.91;

2. Treble damages for violation of SCUTPA in the amount of $218,711.73, plus reasonable attorneys' fees of $6,209.37; and

3. Punitive damages in the amount of $70,000.00.

The judgment, as set forth hereinabove, is hereby made the Order of this Court and is hereafter enforceable through the contempt powers of the Court.

Judge's Electronic Signature Page to Follow

ELECTRONICALLY FILED - 2021 Oct 05 3:55 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 **CP-**46-3434

John Patton	Palmetto Contracting Services of York County, LLC
Tara Patton	Lester Van Epps
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
John Patton and Tara Patton	Palmetto Contracting Services of York County, LLC and Lester Van Epps	$367,825.01
		$

ELECTRONICALLY FILED - 2021 Oct 05 3:55 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2021 Oct 05 3:55 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

York Common Pleas

Case Caption: John Patton , plaintiff, et al VS Palmetto Contracting Services Of York County Llc , defendant, et al

Case Number: 2020CP4603434

Type: Order/Judgment by Default and Form 4

So Ordered

s/ Teasa K. Weaver 3084

ELECTRONICALLY FILED - 2022 Sep 15 1:00 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA COUNTY OF YORK John Patton and Tara Patton, Plaintiffs, v. Palmetto Contracting Services of York County, LLC and Lester Van Epps, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO. 2020CP4603434 **ORDER DENYING DEFENDANTS' MOTION TO SET ASIDE JUDGMENT**

This matter came before me for a hearing on June 30, 2022 upon a Motion to Set Aside Judgment as void. Daniel D. D'Agostino appeared on behalf of the Defendant Palmetto Contracting Services of York County, LLC (" Palmetto") and Lester Van Epps ("Epps"). Charles Burnette, IV appeared for Plaintiffs. Based on the record, motion, and arguments of the parties, I make the following findings and conclusions.

FINDINGS OF FACT

According to the affidavits of service filed by Plaintiffs, the "Summons and Complaint" were served upon Palmetto by certified mail, and upon Epps by personal service. The mailing for Palmetto was addressed to United States Corporation Agents ("USCA"). The parties do not dispute that USCA is not an agent authorized to accept service for Palmetto. The registered agent for Palmetto is Epps. Throughout this action, Plaintiffs served notices upon USCA and Epps.

Entry of default was entered against the Defendants on April 29, 2021. Shortly thereafter, Plaintiffs filed a motion for a damages hearing. A copy of the motion was mailed to Epps. The Clerk of Court scheduled the motion before the Circuit Court, which was held on July 28, 2021. Notice of the hearing was mailed to Epps. Epps appeared at the hearing, pro se, and identified himself to the Court as "Lester Van Epps. I'm the owner". (Plaintiff's Pre-Hearing Brief, p.5). The Circuit judge continued the hearing as this matter had been referred. The damages hearing was held before me on August 31, 2021. Notice of the hearing was sent to Epps. Epps did not appear. No one appeared on behalf of Palmetto.

CONCLUSIONS OF LAW

Palmetto argues the judgment is void due to insufficient service of process. A defendant may be relieved from judgment or order, if the judgment is void. Rule 60(b)(4), SCRCP. A

judgment is void if the court lacked personal jurisdiction. *McDaniel v. U.S. Fidelity and Guar. Cp.,* 324 S.C. 639, 478 S.E.2d. 868 (Ct. App. 1996).

In this case, Palmetto's registered agent, Epps, received a copy of the pleadings, and Epps attended a July hearing before the Circuit Court. Rule 4(d)(3), SCRCP allows a business to be served through an agent authorized by appointment or law. Moreover, our Supreme Court in *Roche v. Young Bros. Inc.*, 318 S.C. 207, 456 S.E.2d 897 (1995) found that exact compliance is not required; instead, the inquiry is whether plaintiff sufficiently complied, and the defendant had notice of the action. Based on this standard, I conclude that Plaintiffs sufficiently complied with rules regarding service, and that Palmetto had notice of the action.

Palmetto also requests the judgment be set aside because the contract that was the subject of this action shows that Plaintiffs contracted with "Palmetto Contracting Services", and not the Defendant LLC. Having found that Palmetto was properly served in this action, Palmetto should have raised the issue in a responsive pleading. *See* Rule 8(b), SCRCP ("A party ... shall admit or deny the averments upon which the adverse party relies").

Epps asserts that the judgment is void against him due to a misnomer, as his name is "Lester Van Epps, III". A court will not set aside a default judgment in a case where the defendant is sued by a wrong name, and fails to plead in abatement. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.,* 303 S.C. 237, 399 S.E.2d 779 (1990); *Waldrop v. Leonard*, 22 S.C. 118 (1885). Epps, who was properly served with the pleadings, did not raise this issue in a responsive pleading. He also appeared at a hearing before the Circuit Court and identified himself as "Lester Van Epps".

ORDER

Based on the foregoing findings of fact and conclusions of law, it is ordered that the Defendants' motion be DENIED.

Judge's Signature Page to Follow

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York Common Pleas

Case Caption: John Patton , plaintiff, et al VS Palmetto Contracting Services Of York County Llc , defendant, et al

Case Number: 2020CP4603434

Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4603434

John Patton et al
PLAINTIFF(S)

Palmetto Contracting Services Of York County Llc 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

Order Vacating Order Denying Defendants' Motion to Set Aside Judgment.
See page 2 for order details.

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 11/15/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Nov 16 8:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

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.

ORDER

This matter came before me for a hearing on November 1, 2022, upon Defendants' Motion to Alter or Amend. Present at the hearing: Daniel D. D'Agostino for Defendants; and Charles B. Burnette, IV for Plaintiffs.

As part of the basis for denying Defendants' motion to set aside the judgment, the Court relied on a transcript of a hearing before a Circuit judge. The transcript was offered by Plaintiffs. Defendants received a copy of this transcript one day prior to the hearing. Defendants assert that they were not provided sufficient notice to respond. I agree.

THEREFORE, IT IS ORDERED that the September 15, 2022 order is vacated. Defendant's motion to set aside judgment shall be scheduled for a re-hearing. Any exhibit that is a part of the record does not need to be re-filed. The parties may present other exhibits or witnesses. This hearing shall also address Plaintiffs' Motion to Correct Clerical Mistake filed on October 25, 2022.

Judge's Signature Page to Follow

ELECTRONICALLY FILED - 2022 Nov 16 8:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

ELECTRONICALLY FILED - 2022 Nov 16 8:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603434



York Common Pleas

Case Caption:	John Patton , plaintiff, et al VS Palmetto Contracting Services Of York County Llc , defendant, et al
Case Number:	2020CP4603434
Type:	Order/Electronic Form 4

So Ordered

s/ Teasa K. Weaver 3084

ELECTRONICALLY FILED - 2023 Apr 06 4:32 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA	)	IN THE MASTER OF EQUITY COURT
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
John Patton and Tara Patton,	)	
Plaintiffs,	)	
	)	ORDER ON PLAINTIFF'S MOTION TO ALTER OR
Vs.	)	AMEND HEARING 1/31/2023
	)	
Palmetto Contracting Services of York County, LLC and Lester Van Epps,	)	C.A. No.: 2020-CP46-03434
Defendants.	)	

The above-entitled matter came before the court pursuant to the Plaintiffs' Motion to Alter or Amend the Order which was issued by this court on January 31, 2023. The Plaintiffs filed and served their motion on February 1, 2023. At this hearing, both parties were present and argued their respective positions.

The case has previously been before this court on several different occasions, all of which are documented in this file. The Plaintiffs had proper notice of the prior Order of the court and hearing. The Plaintiffs had noticed they were required to submit anything to the court prior to the hearing and consistent with the rules. The Plaintiffs, at this hearing, submit that this court failed to consider a transcript from a hearing which was scheduled on July 28, 2021, before the Honorable Daniel D. Hall at the Moss Justice Center. Plaintiffs have attempted to submit that transcript at this motion to alter or amend arguing they thought the court had the order. The Plaintiffs failed to properly submit the transcript prior to the scheduled hearing.

A Motion to Alter or Amend is for the court to address a matter it failed to address or to request the court to change its decision based upon the evidence of record. The motion is not a

time to introduce new evidence or new theories. "A party cannot use a motion to alter or amend a judgment to present to the lower court on an issue the party could have raised prior to judgment but did not. Gartside v Gartside, 383 S.C. 35, 677 S.E. 2d 621 (Ct. App. 2009).

Even if the court were to have considered the transcript, the transcript does not provide a basis which would substantiate this court to modify its order filed January 31, 2023. The transcript does not establish that either Defendant was ever served with the pleadings. The court order of January 31, 2023, set forth that the issue was whether either Defendant was ever served. Neither Defendant was served with the pleadings and Plaintiffs do not demonstrate the court failed to consider any facts in entering this order of January 31, 2023.

The court, after considering the Plaintiffs' arguments and Defendant's arguments at this hearing on the Motion to Alter or Amend, denies this motion.

Judge's Signature Page to Follow

ELECTRONICALLY FILED - 2023 Apr 06 4:32 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

ELECTRONICALLY FILED - 2023 Apr 06 4:32 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

York Common Pleas

Case Caption: John Patton , plaintiff, et al VS Palmetto Contracting Services Of York County Llc , defendant, et al

Case Number: 2020CP4603434

Type: Order/Other

So Ordered

s/ Teasa K. Weaver 3084

ELECTRONICALLY FILED - 2023 Jan 31 8:23 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS CASE NO. 2020CP4603434
John Patton and Tara Patton, Plaintiffs, v. Palmetto Contracting Services of York County, LLC and Lester Van Epps, Defendants.	**ORDER GRANTING DEFENDANTS' MOTION TO SET ASIDE JUDGMENT AND DENYING PLAINTIFF'S MOTION TO CORRECT A CLERICAL MISTAKE**

This matter came before me on January 10, 2023 for a re-hearing upon Defendants motion to set aside the October 5, 2021 Order for Default Judgment. Also heard was Plaintiffs' Motion to Correct a Clerical Mistake. Present at the hearing: Daniel D. D'Agostino for Defendants; and Charles B. Burnette IV for Plaintiffs.

The Defendants assert that the judgment should be set aside as void because the Defendants have not been served with the summons and complaint, and that Plaintiffs failed to properly name Lester Van Epps, III by omitting the suffix. Plaintiffs argue that any misnomer or defects in service of process were waived or cured because the Defendants had actual notice of the proceedings. Plaintiffs request that Defendants' motion be denied, and that the pleadings be corrected to add the suffix ("III").

FINDINGS OF FACT

As proof of service, Plaintiffs filed an Affidavit of Personal Service and an Affidavit of Mailing. In the latter, the affiant states that service was made by certified mail to United States Corporation Agents. Plaintiffs agree that all service upon United States Corporation Agents was improper because it is not an authorized agent to accept service for either Defendant. The other affidavit was executed by private process server, Sheila Dover. Dover attests that the pleadings were delivered to "Lester Van Epps" at an address in Catawba, S.C. Plaintiffs' counsel references other proof in his pre-trial brief, but the Defendants objected. The pre-trial brief was not accompanied by testimony, affidavit or exhibit, so it can only be considered as argument. Therefore, the only proof of service provided by Plaintiff is Dover's affidavit.

ELECTRONICALLY FILED - 2023 Jan 31 8:23 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

In rebuttal, the Defendants offered a copy from the South Carolina Secretary of State website, which lists Lester Van Epps, III as the registered agent for the Defendant LLC, at an address in Edgemoor. (Defendants' exhibit B). Plaintiffs do not dispute this fact. Defendants also presented copies of various forms of identification for Lester Van Epps, III, including his North Carolina Driver's License, which lists an address in Washington, N.C. (Defendants' exhibit E).

CONCLUSIONS OF LAW

A plaintiff bears the burden of showing that a court has personal jurisdiction over a defendant. *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996). An affidavit is prima facie evidence of service, but it may be impeached by extrinsic evidence. *Richardson Const. Co., Inc. v. Meek Engineering and Const., Inc.*, 274 S.C. 307, 262 S.E.2d 913 (1980). If the court lacks personal jurisdiction, the judgment is void and should be vacated. *McDaniel v. U.S. Fidelity and Guar. Cp.*, 324 S.C. 639, 478 S.E.2d. 868 (Ct. App. 1996); Rule 60(b)(4), SCRCP.

The parties agree that Lester Van Epps, III, is the correct name of the individual Defendant. The parties also agree that Lester Van Epps, III, is the registered agent for the Defendant LLC. Therefore, personal service upon Lester Van Epps, III, would be proper service for both Defendants.

As stated before, the only proof of service before the Court is Dover's affidavit. The Defendants do not contest that Dover served some individual, but argue that the affidavit falls short of showing that service was made upon Lester Van Epps, III. I agree.

Dover did not use a suffix. She did not detail what steps, if any, she took to determine the person's identity. She listed no physical description. She did not include details regarding the service address in Catawba, S.C., or note what connection it had to the individual. Plaintiffs could have called her as a witness or offered other exhibits. They did not.

Based on the foregoing, Plaintiffs have failed to show that the Defendants have been served with the pleadings; and thus, the judgment should be vacated. Since the orders granting default and judgment will be vacated, Plaintiffs may amend the pleadings as needed.

THEREFORE, IT IS ORDERED:

1. The Defendants' motion is GRANTED;
2. The April 29, 2021 Order of Default and the October 5, 2021 Order for Default Judgment are VACATED;

3. Plaintiffs motion to correct a clerical error is DENIED. Plaintiffs may amend the pleadings as needed prior to service.

Judge's Signature Page to Follow

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York Common Pleas

Case Caption: John Patton , plaintiff, et al VS Palmetto Contracting Services Of York County Llc , defendant, et al

Case Number: 2020CP4603434

Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084

State of South Carolina	)	Court of Common Pleas
County of York	)	Seventh Judicial Circuit
John Patton, Plaintiff, vs. Palmetto Contracting Services of York County, LLC, Defendant.	)	Transcript of Record 2020-CP-46-03434

July 28, 2021
York, South Carolina

B E F O R E:

The Honorable Daniel D. Hall, Judge

A P P E A R A N C E S:

Charles Baxter Burnette, IV, Esquire

On behalf of the Plaintiff

Lester Van Epps, Pro Se

On behalf of Palmetto Contracting

Reported by: Stacy S. Johnson,
Circuit Court Reporter

I N D E X

PAGE

Certificate of Reporter 8

E X H I B T S

NO EXHIBITS WERE INTRODUCED

(The following proceedings were held July 28, 2021, beginning at 2:43 PM.)

THE COURT: John Patton versus Palmetto Contracting. The parties here for that, y'all come forward.

All right. This is 2020-CP-46-03434. John Patton versus Palmetto Contracting. Representing the plaintiff, John Patton, is Charlie Burnette the Fourth of Rock Hill.

And Palmetto Contracting. It's an LLC. And your name, sir?

MR. VAN EPPS: Lester Van Epps. I'm the owner.

THE COURT: Lester Bennett?

MR. VAN EPPS: No, Van Epps.

THE COURT: I'm sorry, help me pronounce your last name -- I mean, spell your last name.

MR. VAN EPPS: V-A-N E-P-P-S.

THE COURT: E-T-T-S?

MR. VAN EPPS: P-P.

THE COURT: Two P's as in Paul?

MR. VAN EPPS: Yes, sir.

THE COURT: All right. Mr. Burnette, I'll be glad to hear from you.

MR. BURNETTE: Thank you, Your Honor.

This is a damages hearing and the action's -- is a construction action. It's a breach of contract and negligence and for those damages most of them are

liquidated, not all of them, and to prove those I intend to have John Patton testify as to the authenticity of checks -- cancelled checks, statements and invoices and things of that matter. That's the majority of the items that we'll have to prove the damages.

There's also a cause action for fraudulent misrepresentation under the South Carolina Unfair Practices Act and we'll get around to those. Those are not liquidated invoices, so we'll have to wait for those to be in.

But first I'd like to go ahead and pass up a chart that I prepared.

THE COURT: Well, let me do this. Explain to me why -- the case was referred to the master in equity on May the 5th. Why is -- why are we here today in front of the circuit court?

MR. BURNETTE: I did file a motion to hold the defendant in default to the master in equity and ultimately a damages hearing and that was filed at the proper office and this was the hearing that was set, Your Honor.

THE COURT: Well, I guess, you know, I'm lost a little bit. Did you -- did you agree for the master to hear the damages?

MR. BURNETTE: The motion was filed to the master's

office and the hearing was subsequently scheduled for this courtroom. I'm not sure exactly --

THE COURT: Yeah, well, that -- then it is not properly in front of me. It needs to be in front of the master in equity.

MR. BURNETTE: It was filed in front of him, Your Honor. I assumed he referred back to you or this was the proper venue for it. That's just where it was filed and how it was scheduled.

THE COURT: Probably just a --

MR. BURNETTE: And it may have ended up that way, Your Honor, because the defendant was in default before the case was referred there, so there may be some crossover there and perhaps this was scheduled before that happened and that's why it ended up here.

THE COURT: Okay. I signed an order of default on April the 29th and then the case was referred to the master on May the 5th.

MR. BURNETTE: All right. There may be some crossover there.

THE COURT: Well, I think the reality is --

THE CLERK: There's a code that's supposed to be entered in for Robin to accept it and it doesn't look like it's been accepted. That's a clerical issue.

THE COURT: I don't know why they wouldn't have

accepted it.

THE CLERK: It may have not been sent to them.

THE COURT: Okay.

All right. Well, I'm not gonna hear it today. You know, we have an order that -- that it was referred to the master. I'm not here to undo that order. In fact, I think once I signed that order referring it to the master -- and it appears that that was probably a clerical error why it was docketed here for this court today.

And so, Donna, what is it we need to do as far as to ensure this gets sent to the master?

THE CLERK: I will make sure that Robin gets it.

THE COURT: Okay.

All right. You should get notice from the master in equity about a hearing date for the damages.

Yes, sir. Mr. Patton {sic}, anything you want to say?

MR. EPPS: In regards to jurisdiction, my company is located in Chester county, I live in Chester county, the plaintiff is in Fairfield county where the job took place.

THE COURT: Well, we're not -- we're not here to hear that. In fact, what -- the case now has been sent to the master in equity, which is another part of the

circuit court. There was a default judgment signed. You may -- have you talked to an attorney?

MR. VAN EPPS: That's what I was gonna ask the Court, if they would allow time for me to get representation.

THE COURT: Well, you've got between now and whenever the hearing date's scheduled. It probably won't be scheduled for the next few weeks at the earliest. In fact, I think I can tell you as a corporation or LLC you may be required to have a lawyer to represent you.

MR. VAN EPPS: Yes, sir.

THE COURT: So Donna will straighten it out with the master and make sure that they get it on their docket. They'll notify you of the date of the hearing, all right?

Thank y'all.

MR. BURNETTE: Thank you, Your Honor.

(Whereupon, the proceedings were concluded at 2:50 PM.)

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 28th day of July, 2021.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

June 27, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

JOHN PATTON,
PLAINTIFF,
-VS-
PALMETTO CONTRACTING SERVICES,
DEFENDANT.

) CA. NO: 2020-CP-46-03434

JOHN PATTON vs PALMETTO CONTRACTING SERVICES
Hearing on 11/01/2022

TRANSCRIPT OF TESTIMONY

YORK, SOUTH CAROLINA

NOVEMBER 1, 2022

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Appearances:

Representing the Plaintiff -

Charles B. (Bax) Burnette, IV, Esquire
Burnette and Payne
414 East Main Street
Rock Hill, South Carolina
803-328-1800
bburnette@burnettelaw.com

Representing the Defendant -

Daniel D. D'Agostino, Esquire
D'Agostino Law Firm
25 W. Liberty Street
York, South Carolina 29745
803-628-6509
dan@ddllplaw.com

JOHN PATTON vs PALMETTO CONTRACTING SERVICES
Hearing on 11/01/2022

TRANSCRIPT OF PROCEEDINGS

11:00 A.M.

BEFORE THE HONORABLE TEASA WEAVER

****

THE COURT: Case Number 2020-CP-46-3434. John Patton and Tara Patton versus Palmetto Contracting Services of York County, LLC, and Lester Van Epps. This is defendant's motion to alter or amend an order issued by me denying the motion to set aside a judgment. Present on behalf of the defendants is Mr. Dan D'Agostino. Present on behalf the plaintiffs is Mr. Bax Burnette?

MR. BURNETTE: Yes, Your Honor.

THE COURT: Whenever you're ready, Mr. D'Agostino.

MR. D'AGOSTINO: Thank you, Your Honor. May it please the court, Your Honor. When we had this hearing, the original hearing, we had it on June 30, 2022.

At that hearing, I had received that night before the hearing, a pre-hearing brief, and I had received some documents from plaintiff's counsel including a partial or a transcript from a hearing that actually did not take place but a hearing that was originally scheduled on July 28th, 2021.

At the hearing on June 30th, 2022, I moved, and I asked the court to not accept and to strike any of the documents which the plaintiff's counsel had submitted to the court including that transcript, and the court granted the motion because under the rules, under Rule 6 they had to provide that several days before the hearing. So that transcript should not have been -- It was not part of the record because you sustained my objection. It was my understanding you weren't going to consider it.

In your order, I believe you actually referred to that transcript and that transcript hearing. Your Honor, I also want to point out I'm asking the court to alter or amend your judgment denying the defendant's motion to set aside the judgment.

In your order, you set forth that the parties do not dispute that USCA is not the agent authorized to accept service for Palmetto. The registered agent for Palmetto is Epps. I have submitted that with my submittal for a motion to alter or amend.

Your Honor, that was accurate. The problem is is that the registered agent for Palmetto was Lester Van Epps, III, and the address was 2532 Killian Road, Edgemoor, South Carolina, 29712, according to the Secretary of State's website.

The plaintiff, in their affidavit of service as it relates to the summons and complaint, first, they served the wrong registered agent for Palmetto Contracting Services of York County, LLC. So there was no service upon the corporation. Even if the court were going to say, okay, the defendant, Van Epps, was served, there is no evidence that the registered agent was served at the registered address with the Secretary of State. The registered address with Secretary of State, the registered agent is Lester Van Epps, III, and the address is 2532 Killian Road, Edgemoor, South Carolina, 29712.

The pleadings in this case always refer to Lester Epps, no II or III. The affidavit of service is not the address with the Secretary of State for the registered agent but 4663 Catawba River Road, Catawba, South Carolina.

So even if the court were to say, well, Mr. Van Epps got served, there is no evidence of record that existed that he, individually, was served or that the corporation through him was served because the address isn't right. Had they been trying to serve Mr. Van Epps, III, the registered agent for the company, they were had been serving Mr. Van Epps, III, not Mr. Van Epps.

Your Honor, as it relates to the lawsuit, the court also -- The reason I brought up the transcript, the court in its decision, in this decision said the Clerk of Court scheduled a motion before the Circuit Court which was held on July 28, 2021. Notice of the Hearing was mailed to Van Epps. Van Epps appeared at the hearing pro se and identified himself to the court as Lester Van Epps. I'm the owner.

Well, Your Honor, that hearing never took -- I mean that was a hearing that was scheduled, but it never took place. It was cancelled. That transcript should not have been considered by this court because it wasn't provided timely to this court. So that transcript -- You sustained the objection in not accepting that transcript.

As it relates to service of process, there still is no evidence that Mr. Van Epps, III, which is the registered agent for the corporation, was served with the pleadings or that they have the right defendant in this lawsuit. That was the other thing.

It's clear that Mr. Van Epps, III, that's public record, is the owner of the company. They did not sue Mr. Van Epps, III. They sued Mr. Van Epps which brings us to the other thing that was scheduled for today.

What I'm asking the court to do is alter or amend your judgment, your decision, and set aside the judgment and allow the parties to just litigate this case and allow him to serve or if he wants to ask me accept service for the defendants now at that time then so be it. Send me the acceptance of service for each defendant, and we can proceed on from there. Clearly, I represent Mr. Epps, III, and I represent -- I'll be representing the corporation if the judgment is set aside.

As it relates to the motion that was sent to me yesterday, day before yesterday, I believe, or sometime. It was last week. We were supposed to have this hearing last week, and it was sent to me the day before. They've made a motion under Rule 60-A to correct the name of the defendant saying it's a clerical mistake.

Your Honor, Lester Van Epps and changing it to Lester Van Epps, III, cannot be a clerical error. Nowhere in the record for this case until now, is Lester Van Epps, III, named. Clerical error -- I pulled up the various cases. The one that's the most succinct, as applied to judgment and decrees, clerical mistake is mistake or omission by clerk, counsel, judge or printer, so clerk, counsel, judge

or printer, that is not the result of exercise of judicial function. While the court may correct mistakes for clerical errors on its own process to make it conform to the record, it cannot change the scope of the judgment.

Why then is the plaintiff seeking to put the name Lester Van Epps, III? He is trying to name a different person. Your Honor, all this would be much more difficult for me to argue to the court if -- if at the time this case was proceeding, there was not a public record that had Lester Van Epps, III, in the public record. That was submitted at the first hearing. If there was not a record from the corporation, the United States Corporation Agents that sent this court a letter and filed with this court a letter saying you're not serving -- we're not the registered agent for Palmetto Contracting Services of York County, LLC.

Had plaintiff looked at that and gone back and looked to see, now, wait a minute. Palmetto Contracting Services of York County, LLC, the registered agent is Lester Van Epps, III. We've named the wrong person. We've named the wrong corporation. They could have corrected it and done whatever they wanted to, but they didn't.

Palmetto Contracting Services of York, LLC, which is a totally separate company, which has nothing to do with my client. My client has nothing to do with that corporation. It's a totally separate corporation, no relationship.

Your Honor, it's unfortunate that they did not catch this, but that doesn't change the fact that there's nothing of record to substantiate that the corporation was served, and it served the registered agent at the registered agent's address. That's why we have all that information from the Secretary of State, and you're required to register and have a registered agent with the Secretary of State whenever you incorporate.

Your Honor, for those reasons, we respectfully request that you alter your judgment and your decision and set aside the default and default judgment and allow reservice and allow the parties to litigate this case as it should be litigated at this time. Thank you.

THE COURT: Mr. Burnette?

MR. BURNETTE: Thank you, Your Honor. The first point, I think it is clear that this judgment is not based on the transcript. As far as its admissibility, that's fair, whether it was admissible

or not. The fact is -- I think the judgment is clearly based on the fact that reasonable notice, which is the standard, was provided. Actual notice was provided to Lester Van Epps, III, as an individual and on behalf of the corporation.

We showed both the affidavits of service that Lester Van Epps, III -- At the time, he represented himself as Lester Van Epps. He sent me correspondence that he had with my client, he had with me was Lester Van Epps.

MR. D'AGOSTINO: I object, Your Honor. There is no evidence of record as it relates to correspondence with Lester Van Epps and Mr. Burnette or Lester Van Epps and anybody. The only thing that exists that I'm aware of of record are the pleadings, the affidavit of defaults that plaintiff's counsel has filed and the transcript which I objected to and which he's conceding should not have been considered. There's nothing of record to demonstrate -- I object to anything outside the record. That's the problem, why we're here today is there's stuff that he's relying upon that's not part of the record, in his arguments. It's not appropriate to do that. Thank you.

MR. BURNETTE: He did represent himself as being

Lester Van Epps. This did not become an issue until this argument came up after a judgment was awarded, after he had appeared on behalf of the party that was named in the lawsuit, which he received service of.

It's seems that his argument is essentially that he did not receive service on behalf of the corporation, but I think there very much is proof that we served him twice, the same two pleadings. One was personally served individually, and one was sent by certified mail on behalf of the corporation.

What's so strange about this situation, Your Honor, is that there are three -- If you serve Palmetto Contracting Services on the Secretary of State website, you'll see three corporations all created by the defendant. One which --

MR. D'AGOSTINO: Wait a minute. It's not in the record. He's arguing stuff that's not part of the record, and it's not appropriate so I do have to object for my record.

MR. BURNETTE: The party that was named was Palmetto Contracting Services of York County, LLC. That was served on Lester Van Epps as the registered agent. It was served at his residential address, which ever address was on there, it was not the address anymore. I believe that his old residential

address.

There's two other corporations. One is Palmetto Contracting Services, LLC. One is Palmetto Contracting Services of York, LLC. If you look at past lawsuits as well, it's all public record.

MR. D'AGOSTINO: It's not part of this record, Judge.

THE COURT: I understand.

MR. BURNETTE: He has appeared in the past on behalf of Palmetto Contracting Services of York County, LLC. He also appeared in this lawsuit on behalf of Palmetto Contracting Services, LLC.

MR. D'AGOSTINO: I assume my objection is going to continue throughout this whole argument because none of this is of record.

THE COURT: I understand.

MR. BURNETTE: Regardless of the content of the transcript, whether that's admissible, the point is he did appear on behalf of himself and that corporation. That is public record. There's no dispute -- I don't believe that that's a contest here.

Looking into the case law research, Your Honor, there is a legal concept that has been recognized as of 2018 called amalgamation. Essentially, it's when

multiple businesses or LLCs are created to create a legal ambiguity. Considering the fact that there were three essentially identical businesses with one name different that are filed with the Secretary of State, I think that's what happening here. He's appeared as defendant on the corporation that was named in the past. Now he's saying he's a different one. He also filed an insurance claim on behalf of this corporation in this lawsuit.

THE COURT: I understand.

MR. BURNETTE: The point is he appeared on behalf of both of these parties. I don't see how he can say he did not service when we have affidavits of service, plenty of notice as himself and the corporation, Your Honor.

As far as amending the name on the Rule 60-A motion, I believe that now that the judgment has been rendered and Now it's challenged, I think that's when this argument that he's III is coming up. That was never an issue when he appeared before. That was never an issue as he answered throughout the lawsuit. It's just a last pitch defense.

Given that he's the one who has created all this legal ambiguity, by doing that you're not changing the party. It's the same party that the court has

already determined this judgment is enforceable against. I'm asking that the court allow the name of the party to be amended to Lester Van Epps, III.

As far as the corporations, my take away is that he's created multiple corporations. None of them have any assets. As far as which one is being enforced against, I'm fine with the one that is on the record. I'm not asking anything to be changed in that regard. I'm asking that the individual name be changed to Lester Van Epps, III, Your Honor.

MR. D'AGOSTINO: Your Honor, I have looked, I believe, at every affidavit of service that the plaintiff has filed in this case. Not a single one of them refers to Lester Van Epps, III. Not a single one of them was sent to the address with the Secretary of State which is 2532 Killian Road, Edgemoor, South Carolina, 29712, not a single one. Not a single one served Lester Van Epps, III.

How can they now can come in and say it's a clerical error when this was public record for the name of the company. Your Honor, the other problem I have, and I have asked plaintiff's counsel. It's not part of the record. I've objected numerous times. He's making -- Subject to my objection, I feel I have to address this.

He says there are three other corporations that were created. There's a Palmetto Contracting Services of York County, which is an LLC, which was incorporated on January 12th, 2005. There's a Palmetto Contracting Services of York, LLC, which is who they served. He's saying that's just an alter ego amalgamation. There's no evidence of any amalgamation. There's no evidence that's been presented at a default hearing or anything else of any amalgamation or any other corporations. So how do they come in today and try to argue a whole different theory is beyond belief.

That company, contrary to what counsel says, that company was created on October 22, 2013. It wasn't created at the same time. It's created by somebody entirely different. The registered agent for that company is United States Corporation Agents, Inc., out of Charleston. It has nothing to do with my client.

There is a Palmetto Contracting Services, Inc., of North Charleston that was created in 1985. There is a Palmetto Contracting Services, LLC, that was created in 2017. So when plaintiff's counsel says there were three other corporations created at the same time, there's no other corporations created in

2005. To come in here and say there were three others created at the same time, two others created at the same time and it's amalgamation. There's no evidence in the record -- It should not even be argued to this court.

I'm know I'm getting passionate about this, but they have basically unfettered ability to present evidence -- The problem is they weren't serving the registered agent for the corporation that my client was the registered agent for, and they weren't serving Lester Van Epps, III. Names matter. That III matters and, obviously, it matters because he's arguing that the judgment has to be changed. It changes the scope of the judgment. They're not asking to change -- It's not a clerical error. When you read all these cases and the footnotes or the case notes under Rule 60 under Clerical Error, Note Number 3. None of them that I can see deal with adding or changing basically the identify. Obviously, they're trying to change the identify because his argument is -- He started talking about corporations and what corporations own and all this other stuff. Again, not part of the record.

Your Honor, the rules are here for us to go by as attorneys. I made my motion to set aside the

judgment. I presented the information to the court in the form of an affidavit. There was nothing timely provided opposing it. Counsel acknowledges -- He says even if you don't consider the transcript. Well, if you don't consider the transcript, there's nothing because my client -- It did nothing for my client period.

There's nothing upon which to base an assertion that Lester Van Epps, III, ever received any pleadings or was ever served with anything because he wasn't. He's not properly named. They could have taken depositions. They could do a lot of things.

Unfortunately, for the plaintiffs, I believe they should be required to litigate this case, serve it, allow the defendants to file their answers and proceed accordingly.

Again, Your Honor, this is why we have a Secretary of State, and this is why we have to have affidavits of service and things of that nature. For those reasons, I ask you to alter or amend your decision, set aside the judgment, set aside the default and allow the parties to litigate this case in due course. Thank you.

THE COURT: Thank you, Mr. D'Agostino. The last hearing I know that there was some evidence that

I was not inclined to hear particularly regarding the North Carolina Supplement Proceedings. There was nothing really that I felt that would be relevant to hear. I did not remember making that same ruling as to the transcript. If I did, I believe I have the authority to reconsider that before issuing my final order so I do consider it. I do think it's important what transpired at that appearance before the Circuit Court whether it's considered an appearance just that he showed up. It's important to me regarding -- to set aside the judgment because what did Mr. Van Epps have notice of? I don't think there was any objection or at least no denial from Mr. Van Epps that he did not appear on that date before the circuit court.

MR. D'AGOSTINO: What he did -- If the court reads the transcript, what he did was say I got notice or I'm here as the owner. The court cut him off. He said I want time to hire an attorney. So the court -- There's no evidence that he was served with any pleadings, any summons and complaints, anything. For all we know, he got that notice to be there in the mail, and he showed up that day. There's no evidence of anything being served on him properly.

Your Honor, while respectfully I understand, you're saying --

THE COURT: Here's the importance of that. His notice for that hearing was sent by the clerk of court to the same address that a Lester Van Epps was personally served with the pleadings. That, to me, is very important. If Mr. Epps appeared at that hearing before the circuit court for notice to the same address that the pleadings --

MR. D'AGOSTINO: Your Honor --

THE COURT: There was no affidavit from Mr. Epps that he was not served with the pleadings.

MR. D'AGOSTINO: Your Honor, the problem that exists is that I filed my motion, and I believe I attached an affidavit to my motion at the time I filed my motion to set aside everything, motion to set aside.

THE COURT: I think You did a good job, Mr. D'Agostino, coming in at the time that you did and making a point that plaintiff had not shown that Mr. Epps was served, but the affidavit speaks for itself. An affidavit says a Lester Van Epps was served at that address. He later appears at a hearing before the circuit court based upon service of a notice of hearing to that same address.

Based upon the record, what I have before me, is service upon Lester Van Epps, who is the registered agent of defendant, Palmetto Contracting Services. Exact compliance with the rules is not required. It is all about reasonable notice or notice. I'm just at a -- Just what's before me in the record shows that Mr. Epps had notice of this action, was served with the pleadings and delayed in getting counsel to represent him and litigate these matters.

MR. D'AGOSTINO: Your Honor, my problem or concern is accepting that transcript because I never asked my client to give an affidavit as it relates to those issues because it wasn't timely served. When I objected to it at the first hearing, it was the same objection so I didn't bother getting an affidavit today either. I followed the rules as it relates to what existed, what to consider.

THE COURT: Take the transcript out of it. Mr. Burnette could stand up and say, and I think he did that day, that he saw your client appear at the hearing.

MR. D'AGOSTINO: That's not evidence. That hearing didn't occur. That hearing was a nullity. That was called, and the judge says it shouldn't even been here because it had been referred to you.

That's what Judge Hall or Judge McKinney said. That did not exist.

THE COURT: Just because the hearing didn't proceed doesn't mean that's not notice. That wasn't notice -- Or at least it is evidence that Mr. Epps was aware of the action.

MR. D'AGOSTINO: He was aware that there was a hearing that day. That's not evidence that they served the corporation by serving the registered agent at his address. Mr. Burnette filed affidavits with this court asserting he served the registered agent for the corporation and said it was that corporation down in Charleston when it wasn't. This court had that as part of its record, that it wasn't.

THE COURT: The registered agent, Mr. Epps, had notice of the action.

MR. D'AGOSTINO: Your Honor, I will tell you, and I will acknowledge that they have an affidavit of service saying Mr. Van Epps. They don't have anything saying Van Epps, III, who is the registered agent. That's the problem. They could have served his daddy. They could have served the II. My client is Mr. Lester Van Epps, III. That's on his license. That's on everything I've provided to this court. That's with the Secretary of State, public record.

They didn't serve Lester Van Epps, III, the registered agent. They served Lester Van Epps. There obviously is a Lester Van Epps. There's a Lester Van Epps, II. If they served Lester Van Epps, does that mean Lester Van Epps, III, is served?

I can't serve a corporation -- If I'm required to serve the registered agent, John Doe, at this address as the registered agent for the corporation, I've got to give it to that registered agent. I can't just leave it with anybody. If I'm serving an individual at their home, I can leave it with somebody over the agent of 18 of suitable age and discretion, and that's good service.

For corporations, you've got to serve the registered agent. They don't have anything to demonstrate they served Lester Van Epps, III, who is of public record and the registered agent, and they didn't serve him at the address with the secretary of state. They don't have anything to say they served Lester Van Epps, III. They provided documents saying they served Lester Van Epps.

It's not incumbent upon me to do their homework. They haven't provided anything that they're relying upon affidavit of service, some of which we know are inaccurate because the affidavit of

service saying they served Palmetto Contracting Services of York County asserting that they served the registered agent in North Charleston or Charleston, that's not accurate. So now that we know that's not accurate, what do we do with that? It's clearly not an accurate affidavit of service because that corporation specifically says we're not the registered agent for this corporation. That's in this file. So what are we going to do with that document? Do we give it legal effect?

THE COURT: In this case, according to the record, which is for the motion to set aside, all I had before me was the record. The only thing in addition was the transcript of the hearing that did not proceed before the circuit court.

Whether or not he's Lester Van Epps, III, or goes by Lester Epps, Lester Van Epps was served, and there's nothing before me to show -- I know there's arguments that maybe his dad was served, maybe this was served. There's nothing before me to say other than your client was served. There is an affidavit before me, a Lester Van Epps was served at that address. It is important. If I said at the prior hearing that I wouldn't couldn't consider the transcript, then it's within my discretion to go back

on that ruling because I do think it's important to note what your client, Mr. Epps, III, that he appeared at the hearing, expressed himself as Lester Van Epps before a circuit court, regardless if the hearing went through or not, which proves notice upon him at that time. If he's the registered agent, then the business had notice at that point. I think all that is important. That's what's before the court.

I don't have anything else before me that somebody else was served or that he's not Lester Van Epps or hasn't represented himself to be Lester Van Epps. If someone else was served, then maybe that's where the North Carolina judge for the supplemental proceedings are. What I have before me is I have an affidavit of service upon a Lester Van Epps at an address in which the clerk of court then sent a notice of hearing to that Lester Van Epps at that address, and the person that appeared at that hearing was your client.

MR. D'AGOSTINO: Who is the judgment against? Lester Van Epps or Lester Van Epps, III?

THE COURT: Lester Van Epps at this point.

MR. D'AGOSTINO: Lester Van Epps and only Lester Van Epps, not Lester Van Epps, III.

THE COURT: That's not -- I don't think that

determination is for me, who is Lester Van Epps other than your client.

MR. D'AGOSTINO: I represent Lester Van Epps, III. My position is is that they're taking the position that Lester Van Epps, III --

THE COURT: So you don't represent the defendant?

MR. D'AGOSTINO: I represent Lester Van Epps, but they're taking the position that Lester --

THE COURT: Well, if your client is not the defendant in this case then you don't represent Lester Van Epps.

THE COURT: But they're taking the position that he is, based upon their motion. I just want to be clear that --

THE COURT: That's an argument for the North Carolina judge. If he's not the defendant in this case, that's for another court.

MR. D'AGOSTINO: Is he the defendant in this case because they're taking the position in North Carolina --

THE COURT: You tell me. Either you're here representing defendant, Lester Van Epps, or you represent non-defendant Lester Van Epps, III.

MR. D'AGOSTINO: The questions is, Your Honor, is they're taking the position, and they've asserted

in North Carolina that this judgment is against Lester Van Epps, III. They've tried to --

THE COURT: That's not before me.

MR. D'AGOSTINO: It is indirectly because they've represented to North Carolina that the judgment really is against Lester Van Epps, III.

THE COURT: That issue is before that North Carolina judge. What's before me is whether or not to set aside a judgment against defendant, Lester Van Epps.

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MR. D'AGOSTINO: I'm going to ask you to set aside the judgment against Lester --

THE COURT: Is that your client though?

MR. D'AGOSTINO: Lester Van Epps is my client.

THE COURT: The defendant, Lester Van Epps?

MR. D'AGOSTINO: The defendant, Lester Van Epps, is my client. The defendant Lester Van Epps, III, is my client. They're two different people. I don't know if they are or not. I'm just protecting my client --

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THE COURT: You don't know if you're representing defendant, Lester Van Epps --

MR. D'AGOSTINO: I don't know who they're saying. They've filed a motion with the court to say Lester Van Epps and Lester Van Epps, III, are one

and the same. That's why I'm -- That motion is before this court today. That motion and that's why I want to be clear, and I want to understand who this judgment is against, Lester Van Epps or Lester Van Epps, III. They're asking you to change the judgment to Lester Van Epps, III. If you're saying, that judgment, I'm not doing that. That's not a clerical mistake. They've got to correct what they've done in North Carolina as well and specifically say it's not Lester Van Epps, III. That's incumbent on them. My position is, is that judgment, because of what they're doing in North Carolina, has effect here. That's why I've been so clear to say what's of public record in South Carolina is Lester Van Epps, III. He's the registered agent for this corporation, and he's the registered agent for this corporation at this address, Lester Van Epps, III. They take the position that Lester Van Epps -- They have a judgment against Lester Van Epps, III.

That's the problem I've got. They have asserted in North Carolina that this judgment really is against Lester Van Epps, III, and they're now asking you to correct what's of public record as it relates to this judgement to show that it's Lester Van Epps, III.

That's what they're trying to do, and that creates a problem. I don't think you can suddenly say, I've got a judgment against Lester Van Epps, III, when it says Lester Van Epps.

THE COURT: Again, I think that issue is for North Carolina.

MR. D'AGOSTINO: They're asking you to rule on it, too.

THE COURT: There is a judgment against a Lester Van Epps. You tell me that you represent defendant, Lester Van Epps, who is the client -- the gentleman who appeared with you at the motion to set aside judgment.

MR. D'AGOSTINO: I'm here because they're taking the position in North Carolina and today in this court that Lester Van Epps and Lester Van Epps, III, are one and the same. They filed a motion asking you to correct it. If your order is going to deny that motion, that's important. It's very important to the overall scheme of this entire case because they have to correct what they've said in North Carolina. That's incumbent on them. I understand that. They've put that squarely before you, not me. They have put that squarely before you.

THE COURT: Right. I understand your response to

whether or not it's a clerical error. I'm going to review that. I'm not quite sure of the answer to that yet or what I'm going to decide. Do you represent the defendant, Lester Van Epps?

MR. D'AGOSTINO: Your Honor, I filed the motion on behalf of the two defendants asking the court to clarify all this, to set aside the judgment as it relates to both defendants. I don't believe the court has a judgment against Lester Van Epps, III. I think the judgment is only against Lester Van Epps if the court is going to say that Lester Van Epps was served. That's my client's father, grandfather, whatever, as to Lester Van Epps. It's not the Lester Van Epps, III, unless the court is going to say Lester Van Epps and Lester Van Epps, III, are one and the same. That's where we are. That's where I have a problem. That's what generated all of this. I don't think it can be clerical. That's why I provided all my client's identifications in the original motion to set it aside because he is Lester Van Epps, III.

I think plaintiff's counsel can confirm to the court that they've taken the position in North Carolina that Lester Van Epps and Lester Van Epps, III, are one and the same. They've represented

that to the court in North Carolina that this judgment really is against Lester Van Epps, III, as it relates to real estate owned by Lester Van Epps, III. That's the problem.

THE COURT: Anything further, Mr. Burnette?

MR. BURNETTE: Just briefly. The transcript aside, we have proof that his client, Lester Van Epps, was personally served as an individual. We have proof that his client, Lester Van Epps, was served by certified mail as the registered agent for Palmetto Contracting Services of York County, LLC.

We are saying that they are the same individual. He appeared, after receiving service, on behalf of Lester Van Epps. He's now making the argument that he is Lester Van Epps, III. His client is the same individual. We are making that position. I think it's obvious this is the same person he's talking about, he's representing. It was based on an oversight or omission which is the standard of the amending the name of the party that his name was not Lester Van Epps, III. Now that argument is being made, I think that we have proper grounds to have Lester Van Epps ---

THE COURT: This is what I've got. There's an affidavit of service upon a defendant, Lester Van

Epps. A notice of hearing is sent to that same address addressed to Lester Van Epps, and your client appears. That is the only thing that is before the court, not that he's anybody else or that someone else was served or this is his father. There's nothing else of record that is before me.

MR. D'AGOSTINO: You're not going to amend the judgment and say Lester Van Epps and Lester Van Epps, III, are one in the same. It's the court's error. You can't come into court and say I made an error in who I named to try to fix something. If an attorney makes a mistake, there are consequences for the attorney. If there's a clerical mistake, there's a method to fix that. Everybody has clerical mistakes. Leaving off III is not a clerical mistake, and it was done throughout this entire case. It was of public record.

I just want to be clear where we are because I want to make sure the record is clear of where we are. There is a big issue, a problem with coming here and getting the judgment and then going to North Carolina and saying, oh, this is really Lester Van Epps, III, when your judgment is clear it's against Lester Van Epps. I've had to take this position because of the position they've taken in North

Carolina, which isn't a part of the record but we've all argued it now. I don't think it's appropriate especially considering all the evidence I've put in the record that Lester Van Epps, III, is a different person than Lester Van Epps. I can't help it that they sent something just addressed to Lester Van Epps.

What is public record is Lester Van Epps, III, as a registered agent. That's not who they've named. They didn't serve that person as the registered agent. They served the corporation in Charleston as a registered agent. There's no affidavit saying they served Lester Van Epps as the registered agent even though the registered agent was Lester Van Epps, III.

I understand - With all due respect, I understand what plaintiff's counsel's argument is. I don't agree with it, and I don't agree with the outcome because of the requirements as it relates to service and notice. It's unfortunate. I understand. It's really unfortunate.

The thing is, is could have been corrected in 2021 or 2020 had the documents and the records from the public record been looked at or had counsel paid attention to what the corporation was sending to it, that they looked up the wrong corporation when they

were serving the corporation. It's clear they looked up the wrong corporation.

THE COURT: My confusion, Mr. D'Agostino, is why your client appeared as defendant, Lester Van Epps, to set aside a judgment if it's not him. If this his dad or this is some other family member or somebody else, why even make the motion? It's not him, right?

MR. D'AGOSTINO: The reason my motion is being made is because plaintiff's counsel has gone to North Carolina saying we have a judgment against Lester Van Epps, III.

THE COURT: I understand but that's an issue for that court to decide. That's not Lester Van Epps, III. Do you see what I'm saying? Your client hired you, filed a motion to set aside a judgment for somebody that's not him when the argument is this is not him, and he was not served.

MR. D'AGOSTINO: The problem is they've taken the position in other courts and in this court that it is him. What am I supposed to do? Turn a blind eye to that? They haven't served the right person as the registered agent, and they say they served a corporation in Charleston as the registered agent. So we're mixing who the registered agent is for purposes of having service of process with a default

judgment.

We're assuming Lester Van Epps and Lester Van Epps, III, are one and the same. All of this was public record. There are a lot of allegations and assertions made by plaintiff's counsel that just don't exist, like all three corporations are the same. That's just not true. They're not owned by him. He filed the affidavit. It's his responsibility. He provided the information to this court. It's his responsibility, not mine, not yours, his.

THE COURT: I'm going to take both motions under advisement. Thank you.

WHEREUPON: Hearing concluded at 11:45 a.m.

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, do hereby certify that I placed under oath the aforesaid deponent; that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages are a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

In witness my hand and official seal this the 9th day of November, 2022,in the City of Chester, County of Chester, State of South Carolina.

Shirley Dallas-Gerrald

Shirley Dallas-Gerrald, CVR-CM
Court Reporter/Notary Public

My Commission Expires:
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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

JOHN PATTON,)
)
PLAINTIFF,)
) CA. NO: 2020-CP-46-03434
-VS-)
)
PALMETTO CONTRACTING)
SERVICES,)
)
DEFENDANT.)
)

JOHN PATTON vs PALMETTO CONTRACTING SERVICES
Hearing on 01/11/2023

TRANSCRIPT OF TESTIMONY

YORK, SOUTH CAROLINA

JANUARY 11, 2023

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Appearances:

Representing the Plaintiff -

Charles B. (Bax) Burnette, IV, Esquire
Burnette and Payne
414 East Main Street
Rock Hill, South Carolina
803-328-1800
bburnette@burnettelaw.com

Representing the Defendant -

Daniel D. D'Agostino, Esquire
D'Agostino Law Firm
25 W. Liberty Street
York, South Carolina 29745
803-628-6509
dan@ddlllplaw.com

TRANSCRIPT OF PROCEEDINGS

12:35 P.M.

BEFORE THE HONORABLE TEASA WEAVER

****

THE COURT: This is case Number 2020-CP-46-3434. John Patton and Tara Patton versus Lester Van Epps and Palmetto Contracting Services of York County, LLC.

This is defendant's motion to set aside judgment. Defendants are represented by Dan D'Agostino. Plaintiffs are represented by Bax Burnette. Mr. D'Agostino whenever you're ready.

MR. D'AGOSTINO: Thank you, Your Honor. I do want to put some things on the record, Your Honor, if I may.

Your Honor, as the court recalls we had a motion to set aside the judgment on June 30, 2022. We appeared for that hearing. We had arguments. I objected to certain evidence coming in from the plaintiffs because it was not served pursuant to the rules. The court ruled on that motion. Denied them introducing evidence at that hearing. The court subsequently entered -- Took the matter under advisement.

An order from that hearing was filed on

September 15th, 2022. Subject to that, I filed a motion to alter or amend that judgment because the court considered documents that I objected to, the court sustained my objection to, and included that in the decision.

We appeared before the court on November 1, 2022, as it relates to that motion. The court took that matter under advisement on November 1, 2022, and issued an order basically setting this hearing. I'm not sure exactly where we are. From the order it seems that you're saying we're going to start all over and do everything all over.

THE COURT: That's correct. Basically, a take two. Which allowed you an opportunity to present any additional evidence that you felt might be required regarding the transcript.

MR. D'AGOSTINO: I guess my question is, I didn't have anything additional. I was relying upon what the record existed at the time of the hearing that occurred on June 30, 2022, what the plaintiffs presented and failed to present.

For the record, I'm not quite sure where we are as to what the court is going to consider. I don't believe, and I would object to the court considering information that the plaintiffs did not

timely provide on June 30, 2022, when we had the initial hearing, when we came here for the initial hearing. I just don't believe the plaintiffs should get basically a second or third bite at the apple, which is what -- if we're doing everything all over again. I don't know what record is even going to be included. I don't know what the court would include. The court is going to say, we're going to redo that hearing based on what was properly admitted at that time.

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After the hearing on November 1, when I asked for a copy of the transcript, there was a problem with the recording equipment, so there was no transcript or record of the June 30th, 2022, hearing.

If we're going to the hearing based -- I just don't believe it's appropriate to basically redo everything all over again. There was never a motion for a new trial, a new hearing or anything else. I think where we were was, the court had the information based upon my motion that I had filed in May. We had a hearing on June 30.

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The plaintiffs did not present of this -- transcripts or anything else at that hearing. That should not be part of the record. In fact, that transcript shouldn't be a part of the record in any

event because that's a hearing that didn't occur. I'll go into that if we end up arguing that.

I believe the judgment should have been set aside as I set forth the first time I appeared before the court. I'll be glad to make a record of all of those again. I don't believe it's appropriate for the plaintiffs to have a second or third bite of the apple. I don't know what they're going to rely upon if we do have this hearing all over again.

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That's where I am. I'll be glad to set forth my reasons as I set forth back in May or June, June 30, as to why I believe the order -- the judgment should be set aside. I'll be glad, subject to my objections, go ahead and do that for the record if you'd like for me to, Your Honor.

THE COURT: Whatever you want to place on the record.

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MR. D'AGOSTINO: Thank you, Your Honor. Your Honor, this action was commenced by the plaintiffs. The plaintiffs sued Palmetto Contracting Services of York, LLC and Lester Van Epps. I'm going to deal with Palmetto Contracting Services of York County, LLC. I'm going to address them first.

The plaintiffs, under the rules, have to serve the defendant. Palmetto Contracting Services of

York County, LLC, is a corporation that was registered to do business in South Carolina and had a registered agent. I provided that to the court when I filed my motion.

The registered agent was Lester Van Epps, III. Let me get it. I don't want to say it wrong because that's part of the whole problem. The registered agent for Palmetto Contracting Services of York County, LLC, which is the named defendant, is Lester Van Epps, III, and specifically says that. It has 2532 Killian Road, Edgemoor, South Carolina, 29712. So public records list Lester Van Epps, III, and lists my client, Lester Van Epps, III.

The plaintiffs did not serve Palmetto Contracting Services of York County, LLC. The plaintiffs served Palmetto Contracting Services of York, LLC, which is an entirely different corporation which my client has nothing to do with. Palmetto Contracting Services of York, LLC, has a registered agent of United States Corporation Agents, Inc., out of Charleston, South Carolina. So they proceed to serve that corporation, pursuant to the statue, a certain way you serve corporations.

Sometime between serving the pleadings and getting the default judgment or getting the judgment,

plaintiff's counsel was notified by United States Corporations Agents that they are not the registered agent for Palmetto Contracting Services of York County, LLC. They sent something to the court notifying the court that they're not the registered agent for this corporation. That's part of the record as well, Your Honor.

THE COURT: I don't think there's any dispute -- Mr. Burnette, correct me if I'm wrong. I don't think there's any dispute that plaintiff did not serve the appropriate registered agent for Palmetto. They served an entity that was not a registered agent of the defendant, Palmetto Contracting Services of York County, LLC. I'm not saying that it's not plaintiff's argument that they were still properly served. I don't think plaintiffs are contesting that United States Corporation Agents is not a registered agent of Palmetto Contracting Services of York County, LLC.

MR. D'AGOSTINO: I don't know because even after they got that letter from that company, they continued to serve Palmetto Contracting -- They continued to use that registered agent for serving the defendant corporation.

THE COURT: I don't think -- Mr. Burnette, are

you contesting that, that entity is not a registered agent?

MR. BURNETTE: That entity is a registered agent of Palmetto Contracting Services of York.

THE COURT: Which is not a defendant in this case?

MR. BURNETTE: That is correct. After then that letter was served the defendant individually with the summons and complaint by certified mail as a corporation. So we actually served both of those entities. We did serve the correct one after getting that letter, Your Honor.

THE COURT: Again, you're not contesting that United States Corporate Agents is not a registered agent of --

MR. BURNETTE: No.

THE COURT: So that matter is not contested.

MR. D'AGOSTINO: I need to get the Affidavit for Default Judgment then. I don't recall seeing Affidavit of Service for the corporation as it relates to the service of the Summons and Complaint after they were notified. The Entry of Default of April 29, 2021, is what I need to put my hands on, Your Honor. On May 21, 2021, they sent Palmetto Contracting -- They served -- They alleged to have

served Palmetto Contracting Services of York County, LLC, with an Affidavit of Default, Motion for Default Order and Order of Default by mailing it by certified mail to this corporation, not to my client, not to Lester Van Epps, III.

As of that time, they were still using that. Your Honor, as it relates to the -- I don't recall. Maybe it's in the file. I don't recall an Affidavit of Service showing service of process on the corporation asserting that the defendant, Lester Van Epps, III, was served as the registered agent for the corporation.

THE COURT: I think the question before me at this point is all the documents that were served upon the United States Corporation Agents were served upon Lester Van Epps. Is that service sufficient to also provide notice to defendant, Palmetto Contracting Services of York County, LLC? In other words, the proper registered agent -- What's arguable is that the proper registered agent was served during this entire action and is that sufficient service?

MR. D'AGOSTINO: I'm going based upon what the plaintiff has provided to the court as it relates to their Affidavits of Service, everything they have asserted for purposes of serving service of process

upon the corporation, asserts that they have been serving the registered agent in Charleston, whoever that was. If their position is -- That's even what -- If I remember correctly, that's even what the Affidavit of Default says.

The next question then becomes, my position that they never served the corporation appropriately. Everything they provided this court asserted that they served the Summons and Complaint upon the registered agent of the corporation. Those are the affidavits that they filed with the court.

Now, as it relates to Lester Van Epps, Your Honor, what's important to note is the public documents identify Lester Van Epps, III, as the registered agent. They didn't serve Lester Van Epps, III. Their affidavits show that they served Lester Van Epps. That's what they filed. Now it's not a matter of a clerical error. They are two entirely separate people.

It would be a different matter if the documents with the Secretary of State lists Lester Van Epps, III, as the registered agent. It lists Lester Van Epps, III. Lester Van Epps is a different person than Lester Van Epps, III. It specifically says Lester Van Epps, III. Their Affidavits of Service

say Lester Van Epps. They've done nothing to demonstrate who they've actually served, if they served Lester Van Epps, III. According to what they've filed, it's Lester Van Epps, which is a different person.

The reason why all this is important, Your Honor, is that the plaintiff this whole time, from the time of filing this lawsuit all the way through the time of getting the judgment had total control of everything.

They were notified that they were serving the wrong registered agent for the corporation yet they continued to provide documents to the court and assert that they were serving the corporation through a corporation that was not the registered agent for that corporation.

They had notice that the proper name for Lester Van Epps, III, that the defendant was Lester Van Epps, III. They served Lester Van Epps. They could have corrected it. They could have done whatever they needed to do to file and serve the right defendant, but they didn't. What they provided the court, the documentation showing Lester Van Epps.

Today we have nothing different. Your Honor, it's important -- The other thing I want to point

out for this record is that - and the reason why I ended up getting a copy of the transcript. When we were in court on November 1 for the hearing, Mr. Burnette, and I would continuously object, would talk about other corporations.

He talked about Palmetto Contracting Services of York, LLC, not of York County. He made the statements that it is one and the same. My client has been sued numerous times because of his association with that company.

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My client has nothing to do with this other company, never has. Yet the argument has continued to be that my client should because he's associated with this other company. All this is important because these specific facts matter as it relates to the judgment and the representations to the court.

For instance, at Page 11 from the hearing on November 1st it says, what's so strange about this situation, Your Honor, is that there are three -- If you serve Palmetto Contracting Services on the Secretary of State website, you'll see three corporations all created by the defendant. If you go back and look at it, they're not all created by the defendant. They're created at different times, different years.

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			Connectors	
	08-04-2020	SCP	20 pc of Travertine Pavers, 12 pc of Coping for Main Terrace	$659.99
	08-06-2020	Centurion Stone	10 pc of Travertine Coping	$160.88
YES	07-23-2020	Fwd: Shipping Notice For Release# 11473212-1 (CHESTER POOL) SCP	Pool Equipment	$12,928.67
YES	07-29-2020	SCP	4- 18" LED Sheers, 1- 5' Sheer, Universal Control Box	$1940.88
YES	8/28/20	Centurion Stone	Travertine ordered by Jeff but never picked up	$6,042.50
	7/19/20	Herc Rentals	Rented Equipment-Track Loader and Mini-Excavator	$347.22
YES	6/30/2022	TruGuard	Repairs to the back of house	$10,803.72
YES		Louco Pools	Retaining Wall Demo Upper Terrace	$18,500.00
	Spring 2021		Demo of Pool	$12,000.00
As of July 2023		Lawyer Fees		$33,109.04
			Total	$193,830.68

--

Have the best day ever,

THE COURT: I didn't take any of that into consideration.

MR. D'AGOSTINO: I understand that and that's not why I'm arguing that. What I'm pointing out to the court is that these bland, blanket statements with not paying attention to details of who you're serving and what you're doing is important.

As it relates to this lawsuit, it's important. If he's taking the position there are three corporations that are all related -- Apparently, that's what he did because he served Palmetto Contracting Services of York and not of York County. It's in black and white on the Secretary of State's website that it's Lester Van Epps, III.

Now, all this has been pointed out. He's done nothing to correct, to show that they've served the right person, nothing at all. What's really concerning and the reason why all this comes up is because of the motion that they have filed that is now before the court as well because your order says you're going to address that motion.

They have filed a motion to correct a clerical mistaken. A clerical mistake is not a mistake dealing with the name of a person. A clerical mistake is something that an I wasn't dotted, a T

wasn't crossed. What they're asking you to do is to substitute in when they've never listed Lester Van Epps, III, as a defendant. What they're asking you to do is change the name of the defendant so they can go into North Carolina and execute on a judgment in North Carolina because they've got a problem because the judgment only lists Lester Van Epps, not Lester Van Epps, III.

I understand the rules allow the court to correct clerical errors, but the name of the defendant is not a clerical error. Again, they've presented no evidence, nothing to demonstrate it was a clerical error. This was, all the way up through today, the fact that they weren't paying attention to the details, and it matters. Believe me, I didn't want to have to argue this motion, but I have to because it's the right thing to do as it relates to what's happened.

As it relates to where we are today, Your Honor, if you look at the defendants as it relates to the corporation, the documents they provided to this court that they've relied upon to get the judgment was that they served the registered agent for the corporation when they did not, and that's clear. They were told they weren't serving the right

corporation, that the corporation they were serving was not the registered agent for that corporation. They continued to do so anyway.

As it relates to the defendant, who the proper defendant is, the Secretary of State's website lists Lester Van Epps, III, like I said. That's not who they served. That's not who they named. They named his father or his grandfather. They named Lester Van Epps.

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I provided the court, attached to my original motion back in May, the documentation showing my client's license. I provided the court a copy of his license and his other documents, legal documents, that he relies upon to show that his name is Lester Van Epps, III. This isn't something he just concocted or came up with. It is what he is known by. It is the document he's used. I provided the United States Passport Card, the voter registration card that shows Lester Vernon Van Epps, III; the United States of America Passport Card lists Lester Vernon Van Epps, III. North Carolina drivers license, Lester Vernon Van Epps, III. These are all legal documents that show his name is Lester Van Epps, III, and that's what he goes by.

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Your Honor, for those reasons, I request the

court to set aside the judgment so that my client can litigate these matters. As I previously said, they can send over -- If they're substituting Lester Van Epps, III, amend their pleadings and name Lester Van Epps, III, and name the right corporation and say they never served the right corporation. They can get proper service, and we can go from there and litigate the case.

The reason we have all these rules and statutes that deal with the service of process is for the purpose of enabling people and ensuring that people have rights and days in court. The Affidavit of Service that they filed for the Summons and Complaint that they rely upon shows that the Summons and Complaint was served upon the registered agent. The court jurisdiction is the service of the Summons and Complaint.

Finally, as it relates to this transcript, partial transcript of whatever was presented, that was a hearing that never happened. Again, the plaintiff scheduled at hearing at the Moss Justice Center. The judge said this hearing is not properly before me. It's supposed to be in front of the Master in Equity.

As it relates to my client, Lester Van Epps,

III, being there, he was there. Now they're saying -- - Everybody wants to rely and say since he was there he had notice of everything. The only thing we know, because there's no record -- The only thing is that they have a record where he says something to the court, and the court says don't worry about it. They have to reschedule everything in front of the master.

The only thing we know that Lester Van Epps, III, got was some notice to be at that hearing on that date. They didn't say they served him with a Summons and Complaint, the Judgment or anything else for that date. All that was served on him or what he got -- We don't even know that he got -- How he got it. All that he received was the notice of that hearing. He came there for that hearing, and that hearing didn't happen. Part of that transcript was, he was going to contest everything.

Your Honor, as it relates to the rules for service of process, statutes for serving the registered agent, I submit that the judgment should be set aside and that they need to properly serve the defendants, and this case proceed from there. Thank you.

THE COURT: Before you proceed, Mr. Burnette, Mr. D'Agostino, I just want to clarify your arguments.

So your arguments are Palmetto Contracting Services were not properly served. Lester Van Epps, III, was not properly served; therefore, this motion should be set aside just based on service alone?

MR. D'AGOSTINO: Yes, Your Honor. As it relates to the corporation, yes. As it relates to Lester Van Epps, III, he wasn't properly named, and he wasn't properly served.

THE COURT: And your proof that he was not properly served are the three identifications that you filed along with your motion?

MR. D'AGOSTINO: That's proof that they did not serve -- that Lester Van Epps, III, is a different person from Lester Van Epps.

THE COURT: But you're not contesting that Lester Van Epps was the one that appeared at the hearing before the circuit court? I think it was about June 16th.

MR. D'AGOSTINO: Lester Van Epps, III, was at that hearing.

THE COURT: At that hearing.

MR. D'AGOSTINO: He did come to a hearing that did not happen. Yes, Your Honor. I don't contest those things. That's clear. His identification cards that I've provided the court, those are clear

as well. The big problem is where they're trying to substitute in and say Lester Van Epps -- We served Lester Van Epps. We really meant to serve Lester Van Epps, III, because the Affidavit of Service just shows Lester Van Epps, not Lester Van Epps, III.

THE COURT: Also, you're not contesting what Mr. Burnette included in his pre-trial brief because the transcript is not part of the record in his pre-trial brief regarding the transcript as far as what Lester Van Epps, III, said at the hearing?

MR. D'AGOSTINO: I am contesting that that shouldn't be part of the record at all. I'm just addressing that matter if the court were to consider that. I don't believe that transcript should be considered by the court because when you had your original hearing on June 30, you excluded that. I don't think that the plaintiff should be able to come in, and we re-do everything and then the court give the plaintiff the opportunity to put that transcript in. You asked -- I'm addressing the issue of that transcript --

THE COURT: Let's take the transcript out of it. What about Mr. Burnette, as an officer of the court, telling the court, Lester Van Epps, III, appeared at hearing and here's what he said.

MR. D'AGOSTINO: That's not part of the record because Mr. Burnette cannot be testifying and asserting that as a matter of fact for the court to rely upon as a finding of fact. Whether he wants to argue it, whether -- That's not the facts that exist in the record. Lawyers arguments, I don't believe, are facts that the court can rely upon because there's no evidence, and that hearing did not occur.

What I'm telling you is, you've asked me if Mr. Van Epps, III, was at that hearing. Mr. Van Epps, III, was at that hearing. As an officer of the court, I have to acknowledge that. There's no question about it. But can the court rely upon what an attorney says for a finding of fact when there's no evidence to support it?

It's kind of like if you have a car wreck case, I'll equate it to, and the attorney says, well, the light was red. The court can't rely upon what the attorney said for making a finding of fact if the light was red, and the defendant ran the red light. We have to get some evidence and then we argue the facts to the court.

If the court is relying upon that as a fact for the purpose of making a determination of an issue in controversy, I don't believe the court can rely upon

-- I'm not calling the question of Mr. Burnette telling the court that Lester Van Epps, III, was at that hearing. He was. I don't believe, since it wasn't part of the record, wasn't part of the record the first time, that's not evidence to rely upon. I don't know if I've answered the court's question.

THE COURT: Yes, you did. Mr. Burnette?

MR. BURNETTE: Yes, Your Honor. Under Rule 60-A, a clerical mistake is defined as an oversight or an omission. That's what this is, Your Honor. I would argue it's a very excusable oversight because the defendant, Lester Van Epps, III, held himself out to be Lester Van Epps in all three of these --

MR. D'AGOSTINO: I'm going to have to object again, Your Honor. He's sitting here saying Lester Van Epps held himself out in all the communications as Lester Van Epps when there's no evidence to support that. It's the same thing as him saying he was associated with these other corporations. He hasn't brought in any evidence to demonstrate Mr. Van Epps has ever done that.

THE COURT: Mr. D'Agostino, let him argue. If there's no evidence to support then there's no evidence to support it. You may proceed, Mr. Burnette.

MR. BURNETTE: As for service, this individual was personally served and accepted service on behalf of Lester Van Epps. He acknowledged to our service processor that his name was Lester Van Epps. He appeared in court on behalf of Lester Van Epps. Whether or not the transcript is admissible, as a opponent party admission, he admitted that quote, I'm Lester Van Epps. I am the owner. Only after default judgment was entered does he come back and argue his name is Lester Van Epps, III.

If anything, this is an oversight and Rule 60-A allows a motion to be made by a party that an oversight was made, and the court may correct it under 60-A.

As far as notice, I mean, there's really no meaningful argument or legitimate argument that he didn't have actual notice. I don't think anyone is contending that this individual did accept service, did appear on behalf of Lester Van Epps and this is the party that we're dealing with. I don't think that under Rule 4 which the standard is quote, assures the defendant of reasonable notice of the action; that he did have reasonable notice of the action; had actual notice of the action, is this the individual. There's really no argument to that, and

I think there was an oversight of whether his name was the III based on the information available at the time. This is the appropriate time for the court to correct the clerical mistake and enter the name as Lester Van Epps, III.

THE COURT: Anything further, Mr. D'Agostino?

MR. D'AGOSTINO: Yes, Your Honor. I need to clarify what Mr. Burnette just now said. Just give me one moment. I just want to make sure I properly refer to things.

Your Honor, may it please the court, Mr. Burnette just said, and he wanted to argue to the court that he was served, and he identified himself to the process server.

Your Honor, the only thing of record as it relates to Affidavit of Service that I have -- I just looked through my file carefully. The only Affidavit of Personal Service I have is the one from where the Summons and Complaint was served. It's filed on November 24, 2020, signed by Sheila Dover. I just want to make sure that's the only Affidavit of Personal Service that exists in the file. Am I incorrect?

THE COURT: Of the Summons and Complaint?

MR. D'AGOSTINO: Of the Summons and Complaint

for personal service.

THE COURT: That is the only one I reviewed.

MR. D'AGOSTINO: Is there anything else for personal service for either party other than that? I don't know of anything else for personal service.

MR. BURNETTE: There's personal service and this is all filed --

MR. D'AGOSTINO: The Summons and Complaint. That's what I just now said.

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MR. BURNETTE: That's correct. There's one for the Summons and Complaint --

THE COURT: It appeared to me that several things were personally served.

MR. BURNETTE: There is personal service here for the Affidavit of Default --

MR. D'AGOSTINO: Okay. Let me just make sure we're all talking about the same thing.

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MR. BURNETTE: There is an Order of Personal Service for a Default Judgment, Affidavit of Personal Service for the Default Judgment. That's it.

MR. D'AGOSTINO: So there are three documents that assert that there was personal service. All three of them say basically the same thing. They start off by saying, personally appeared before me, Sheila Dover, who being duly sworn, says that she

served the following. It lists the documents. It says a copy of each document was served on personally Lester Van Epps, delivering the same to Lester Van Epps on the following address. For all three of them, it lists 4663 Catawba River, Catawba, South Carolina, and it lists the date each one was served, November 17, 2020, for the Summons and Complaint. May 5, 2021 for the Affidavit of Default and October 8, 2021, for the Order of Default Judgment. Nowhere in these affidavits does it say anything about Mr. Van Epps identifying himself or doing anything. They don't have anything else from the process server to support what Mr. Burnette just now said. He came out and identified himself. None of that exists. It's a form Affidavit of Service.

As it relates to the Affidavit of Service for the Summons and Complaint, it doesn't say that they served the corporation with the Summons and Complaint by serving Lester Van Epps, III. It says that they served the registered corporation. Nowhere exists an Affidavit of Service in this file showing that they served Lester Van Epps, III, with the Summons and Complaint as the registered agent for the corporation.

Your Honor, as it relates to the clerical

mistake, I'm just going to go back to that again. It's kind of glossed over. He says it's just a clerical mistake, it's something that should be corrected.

Your Honor, again, they're arguing that they served Lester Van Epps, and service upon a corporation should be good because he's the registered agent for the corporation. However, what they leave out is the registered agent is listed as Lester Van Epps, III. This is a document that exists of public record showing that Lester Van Epps, III, is the individual who should be sued and who should be served as the registered agent for the corporation.

This is similar to a case that I have in North Carolina right now where I asked the defense attorney what is the proper name for the proper corporation that I need to name because you keep telling me -- all you keep doing is filing motions saying I'm serving the wrong corporation. What is the proper name of the corporation who your client, the doctor, works for because it's not of record anywhere. The response I go was, I'm a defense attorney. It's not my responsibility to tell you who to serve. You have to figure that out for yourself.

I'm not doing that to Mr. Burnette, but in this situation it's public record that Lester Van Epps, III, is his proper name, and Lester Van Epps, III, is the registered agent for the corporation.

A clerical mistake under the rules is not the name of somebody. If the clerical error -- A clerical error in judgments, orders or other parts of record arising from oversight or omission may be corrected by the court at any time as a mistake or omission by a clerk, counsel, judge or printer, which is not the result of the exercise of judicial function. A clerical error is a mistake or omission by a clerk, counsel, judge or printer -- Excuse me. The court can correct only what was done, not what should have been done.

That's what I'm saying, Judge. If it's a clerical error, it's something that is easily corrected. It's not going to change the outcome. It's not going to change the name of the identify of the party.

In this situation, what he's asking is to change what should have been done, which has been the basis of my argument since I filed the motions back in May of last year. So for those reasons, I submit to you the clerical error should not change the name on that

judgment, and the court should set aside that judgment and allow the plaintiff to move forward with his lawsuit as if he started anew with proper service and proper name of the defendant. Thank you.

THE COURT: Mr. D'Agostino, I know you've pointed out the Affidavits of Service but what about the Notice of Hearing that your -- Lester Van Epps, III, appeared at, that notice from the clerk of court was sent to the same address with the same name as --

MR. D'AGOSTINO: He received some type of notice. If the court looks at the transcript, if you're going to consider the transcript, and we go back to that transcript --

THE COURT: It's not the transcript. It's part of the record. The clerk of court filed their Notice of Hearing.

MR. D'AGOSTINO: The clerk of court filed -- Subsequent to being notified that the Palmetto Contracting Services of York County was not --

THE COURT: I'm not talking about Palmetto. I'm talking about Lester Van Epps. They sent notice of that hearing that Lester Van Epps, III, appeared at to the same name and address that the Summons and Complaint was served.

MR. D'AGOSTINO: He came to that hearing. Yes,

Your Honor, he did. That doesn't mean that they got the Summons and Complaint served on the right person. It doesn't change the fact that the wrong person is named. Just because he came to that hearing does not establish that they had the right defendant in the lawsuit. It does not establish service of process. It doesn't establish anything. That transcript -- Let me make sure I've got the right one. The transcript -- He appeared there --

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THE COURT: The transcript is not part of the record. Are you talking about the transcript of the hearing before the circuit court?

MR. D'AGOSTINO: Correct. If you're asking me about that hearing --

THE COURT: I was just asking about the notice of the hearing that Lester Van Epps, III, appeared at was sent to the same name and address as the service of the Summons and Complaint.

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MR. D'AGOSTINO: It was sent to the same address that the -- Let me just make sure. It was sent to 4663 Catawba River Road, Catawba, South Carolina. That doesn't mean Lester Van Epps, III, was properly notified. He showed up. His grandfather or father could have said go there and figure it out.

THE COURT: And you don't think that Lester Van

Epps, III, appearing at that hearing was sufficient notice --

MR. D'AGOSTINO: I don't think that's sufficient to cure any of the default defects that exist prior to that date. I don't think him showing up for a hearing cures anything. What happens if he would have hired an attorney to go to that hearing? Would that attorney showing up at the hearing saying I'm here on behalf of a Lester Van Epps. Does that suddenly cure everything that was defective and deficient up through that time? I don't think it does. That's why we have the rules and the statutes. The reason why he showed up was to say you guys are suing the wrong person in the wrong county. It just continued on. You can't cure all of this by just saying, oh, he showed up. That doesn't cure these defects with service of process and/or the name of the defendant. It doesn't fix it. It was incumbent upon the plaintiffs, who are seeking a large, monetary judgment against the defendant, to do what they needed to do pursuant to the statute and the rules. That's what we as the attorneys and officers of the court have to do. That's where we are. That's my position.

THE COURT: Anything further, Mr. Burnette?

MR. BURNETTE: I'll just restate that the correct party was identified, the correct party had sufficient notice, understood himself to be the correct party, appeared on behalf of Lester Van Epps. Now, the defendant argues that his name is Lester Van Epps, III. That was an oversight. That was an omission, and I ask the court for it to be corrected under Rule 60-A.

THE COURT: There's a few things I want to review before making a final decision. I'll take this under advisement. Thank you.

THE COURT: Let's go back on the record. Mr. D'Agostino, when this hearing first began, you had an objection regarding the transcript. Since that has not been made a part of the record, any further objection regarding -- There's nothing -- There's not a transcript for the court to consider because it's not been made a part of the record.

MR. D'AGOSTINO: That transcript from the hearing that did not occur? That's not part of the record.

THE COURT: I hear your argument that it's not hearing -- but you have admitted on behalf of Mr. Lester Van Epps, that he appeared before the circuit court on that date.

MR. D'AGOSTINO: I admitted as it relates to a question relating to that hearing. I acknowledge that he was there. I said that wasn't appropriate to be considered a fact because that transcript should have never been presented to the court. That should not be an issue. That should not be something upon which this court relies because there's no record of it. When we're talking and discussing the issue of that hearing, I was basing those discussions upon the issue of whether the court was going to consider that or not. If the court is going say that that's not properly before the court and maintain the ruling that it made back in June of last year, then everything about that hearing should not exist as it relates to any decisions from this hearing, even the fact that Lester Van Epps was there because there would be no record of it, and it wasn't properly before the court.

THE COURT: Anything further on that issue, Mr. Burnette.

MR. BURNETTE: Nothing further, Your Honor.

THE COURT: This hearing is concluded.

WHEREUPON: Hearing concluded at 1:20 p.m.

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, do hereby certify that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages are a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

In witness my hand and official seal this the 25th day of January, 2023,in the City of Chester, County of Chester, State of South Carolina.

Shirley Dallas-Gerrald

Shirley Dallas-Gerrald, CVR-CM
Court Reporter/Notary Public

My Commission Expires:
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JOHN PATTON vs PALMETTO CONTRACTING SERVICES
Hearing on 01/11/2023

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JOHN PATTON vs PALMETTO CONTRACTING SERVICES
Hearing on 01/11/2023
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JOHN PATTON vs PALMETTO CONTRACTING SERVICES
Hearing on 01/11/2023

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
JOHN PATTON,	)	
PLAINTIFF,	)	
	)	CA. NO: 2020-CP-46-03434
-VS-	)	
PALMETTO CONTRACTING SERVICES,	)	
DEFENDANT.	)	

JOHN PATTON vs PALMETTO CONTRACTING SERVICES
Transcript of Testimony on 03/01/2023

TRANSCRIPT OF TESTIMONY

YORK, SOUTH CAROLINA

MARCH 1, 2023

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Appearances:

Representing the Plaintiff -

Charles B. (Bax) Burnette, IV, Esquire
Burnette and Payne
414 East Main Street
Rock Hill, South Carolina
803-328-1800
bburnette@burnettelaw.com

Representing the Defendant -

Daniel D. D'Agostino, Esquire
Jacqueline Davis, Esquire
D'Agostino Law Firm
25 W. Liberty Street
York, South Carolina 29745
803-628-6509
dan@ddllplaw.com

TRANSCRIPT OF PROCEEDINGS

10:35 A.M.

BEFORE THE HONORABLE TEASA WEAVER

****

THE COURT: This is Case Number 2020-CP-46-3434, John Patton, Tara Patton versus Palmetto Contracting Services of York County, LLC, and Lester Van Epps.

This is Plaintiff's Motion to Alter or Amend an Order I issued setting aside default judgment. Present on behalf of plaintiff is Mr. Bax Burnette. Present on behalf of defendants is Mr. Dan D'Agostino. Mr. Burnette, whenever you're ready.

MR. D'AGOSTINO: Your Honor, before we start the arguments, so that I'm not jumping up and down as I've done on various occasions on these motions before, there are things that are in the Returns and alleged that is not evidence in the record anywhere. I would like an objection to be noted on the record for two things, for a number of things so I don't have to keep interrupting Mr. Burnette.

Number 1, to the extent that all this information that he's arguing, these documents were not part of the record or not properly made part of the record, I object to them. I object to arguing things outside the record.

Your Honor, also for the record, this is -- We had the original motion. We had the second one. The court set aside the order and scheduled the third one. I don't even know that a motion to alter or amend again is proper to come before the court. I would object to that for the record. I understand we are all here. I won't further elaborate. I know, with our rules, if I don't put something on the record in the beginning I have an issue. Thank you, Your Honor.

THE COURT: Thank you, Mr. D'Agostino. Mr. Burnette.

MR. BURNETTE: Your Honor, a housekeeping before we begin. I have the next day hearing fee.

This ruling as to whether this judgment gets thrown out or not comes down to whether this transcript is admissible.

Plaintiff's contention here is that it is difference between whether it will be thrown out or not because the original Rule 60 Motion, it was submitted as an exhibit to a pre-hearing brief. It wasn't said in that decision not to throw out the judgment. A Rule 55 Motion was brought to alter or amend that, and it was not considered there.

I think this comes down to whether it was

submitted as part of the record, whether it was proper to be considered as a part of the record.

Your Honor, plaintiffs really do have a lot of prejudice here if it is not considered as part of the record. This is a three hundred and six or seven thousand judgment that has been dismissed based on that ground. One, it's of public record. This is something that the defendant had access to, the defendant could find it all along, the defendant did have it. Defendants presented it and within two days after we received it -- there wasn't any hiding the ball on that. It was submitted connected to a brief a day before the hearing which in many courts that is proper.

The only rule under the South Carolina Rules of Evidence about any time notice is with affidavits in regard to that. This is not an affidavit, Your Honor. The rule to be considered then would be Rule 403, which is whether, one, is it relevant evidence? I believe it is.

Two, is it substantially more prejudicial and probative to introduce the evidence. I would argue that it is the opposite here, Your Honor. This is very probative evidence. It shows that the defendant, the owner of the business that's referred

to as Palmetto Contracting Services, an individual who lives at 4663 Catawba River Road, had notice and appeared in court.

Rule 4 says that voluntary appearance equates personal service. If the defendant shows up in court and doesn't contest service and appears, essentially in response to receiving summons, then they waive their right to contest any deficiency in service, Your Honor.

That's really what's happening here is that the defendant is claiming that it wasn't served. The plaintiff did submit that evidence, and it is very crucial evidence here, Your Honor.

I'd also point to this Graham versus Fuller (phonetic) Logistics case. I think it is a very helpful reference because it is essentially the same argument that's made here, Your Honor.

There was essentially a defendant that put into default. It was an auto accident case. There was a hearing for damages. The defendant appeared at that hearing, really exactly what happened in this case. Stated on the record that, you know, I'm the defendant in this action, appeared and identified himself.

The court, on that ground, did not dismiss that

action because -- for the same reason. If you read this opinion they cite -- Rule 4 says voluntary appearance is equal to personal service.

Also, something else that court did that should be considered here is that the burden of proof in a Rule 60 Motion to dismiss a judgment is on the moving party, which would be the defendant here. The defendant is essentially burden shifting by saying that we have to prove that service was properly performed.

The certificates of service do say Lester Van Epps was served at his correct residential address. There isn't any question about that, and the transcript is what clears that up because the individual that did appear in court, in response to that address being served, stated that I'm the defendant. I'm owner. It's one person, this individual.

We have the paper trail showing that he lives at 4663 Catawba River Road. That was also in the pre-hearing packet. The defendant has now sold that residence, bought property up in North Carolina and has actively litigated up there over the last year.

Another standard of this Rule 60 Motion that the defendant originally brought, that there has to be

this mistake, inadvertence, excusable neglect or surprise. Your Honor, the defendant has been well aware, based on the evidence in this transcript and this action has been going on since at least that date right there, which is 2021. We're now in 2023. The defendant -- Essentially, after all that happened, after all this litigation in North Carolina, now claims that it wasn't served when it has appeared in court before and refuted that.

The plaintiffs need the evidence to be considered. I really can see what happened here as far as exhibits being emailed as opposed to being filed. The plaintiffs contend that's part of the discretion to accept exhibits in that matter. It is rather confusing and inconsistent how a lot judges have done that recently, why the judges prefer exhibits to be emailed before a hearing. Some prefer it during a hearing.

There's kind of some discrepancies between virtual hearings and in person hearings and how evidence is submitted before that. The bottom line is the court has the discretion based on the Supreme Court's order that since 2020 exhibits can be transferred, accepted and submitted via email and electronic methods. It is up to the court whether it

considers that. Concerning the prejudicial effect of not considering it, I believe that the court should consider that evidence and that is very important to this case.

Another matter, Your Honor, is that -- The plaintiffs have established a prima facie case that Lester Van Epps at 4663 Catawba River Road was served. It is the defendant's proof here to prove that there was some kind of prejudicial deficiency that wouldn't have allowed the defendant to know that he was the party served.

The plaintiff's have the evidence that suggest just the opposite. I think the transcript along with the defendant showing up in the court that day along with paper trail records showing that he lives at 4663 Catawba River Road, it all establishes well beyond preponderance of the evidence this was the individual that was served. You can ask him whether he received these documents.

I don't think that it's a genuine argument to be frank. I think he's well aware that he was served. We have the evidence for it. His only objection is that he didn't have enough notice for this transcript. The other court considered the transcript I submitted the day before the hearing. I

would ask this court to do the same.

THE COURT: Before we get to you, Mr. D'Agostino, I just have some questions for Mr. Burnette so we can walk through this. You can remain seated if you'd like so that you can look at your paperwork.

So service -- Walk me through. We have two defendants. We have Palmetto Contracting and Lester Van Epps. What evidence was presented that Lester Van Epps and Palmetto Contracting Services were served? Let's start with that.

MR. BURNETTE: Yes, Your Honor. That's where the transcript is the evidence and --

THE COURT: Before we get to the transcript. I'm talking about filed. So what evidence have plaintiffs filed regarding service upon the defendants? That's what we'll start with right now.

MR. BURNETTE: So the pre-hearing brief that was filed, it references all of these exhibits. All these exhibits were too large to be uploaded to the e-filing system. For that reason, plaintiff emailed these exhibits. I do agree that plaintiff should have been more -- It was up to me to submit the exhibits in this manner.

THE COURT: You agree that when you emailed those exhibits, were you not instructed to file those

exhibits by the court?

MR. BURNETTE: Yes, Your Honor. That's when the plaintiff did go and file the brief. The exhibit packet was too large to file. Other courts have the discretion, have in the past of accepting exhibits via email in that circumstance.

In this instance, plaintiff essentially cut the exhibit files in pieces and filed it that way. Beforehand the plaintiffs did submit the exhibits that way. I understand the court's point that it wasn't filed on the e-filing system.

THE COURT: My point is you emailed it and then you were instructed by the court to file it.

MR. BURNETTE: Yes, Your Honor, and --

THE COURT: So this isn't a reverse situation where you email it, and I say that that was sufficient filing. You were instructed to file it after you emailed it.

MR. BURNETTE: Yes, Your Honor. Plaintiff filed the brief after emailing it. Again, the exhibits would not upload. In the past, exhibits have been emailed before hearings. There is a lot of inconsistency amongst courts with that. I understand that the judge does have the preference and that is up to the court. My point is that --

THE COURT: Correct me if I'm wrong. But that wasn't mentioned at -- We're talking about the very first hearing, you had an issue with uploading the documents. You've been instructed to file the documents. You had issues with filing the documents. You come to the hearing, and you don't present the documents at the hearing either; is that correct?

MR. BURNETTE: Your Honor, the plaintiff, in good faith, did believe that the court had this memorandum that was filed and the exhibits that were emailed.

THE COURT: I had the memorandum. I did not have any exhibits.

MR. BURNETTE: Your Honor, the memorandum references the exhibits specifically within it and incorporates them by reference. The plaintiff submitted these exhibits by email. It is up to the court whether those exhibits will be considered.

THE COURT: Let's just go through everything. What do you submit that is plaintiff's proof that the defendants were served in this case?

MR. BURNETTE: This transcript right here, Your Honor. If I may, I'll pass it up.

THE COURT: Before we get to the transcript, prior to that. What other evidence are you submitting that's proof that the defendants have

been served in this case.

MR. BURNETTE: Because this is a Rule 55 Motion, plaintiff isn't submitting any new evidence. Plaintiff is referring to the exhibits that were emailed along with this brief, that were incorporated into this brief that was filed.

Those exhibits included the transcript where the defendant did show up and identify himself as the owner. Also, that the deed showing that Lester Van Epps, III, does live at 4663 Catawba River Road, the certificates of service showing that the plaintiff was served at 4663 Catawba River Road.

The transcript is the main piece of evidence along with that, that this individual is the person that showed up in court. The burden is on the plaintiff to show that service was effected. Rule 4 states voluntary service on the defendant is equal to personal service. The transcript is by far the best and most relevant and probative evidence to show that that language of that rule was satisfied.

Part of the discrepancy is, the plaintiffs -- After the first hearing, when the court did consider the transcript as part of its ruling and then said that plaintiff need not submit new - or exhibits that had already been submitted. The plaintiff, in good

faith, did believe that the court was in possession of this transcript, that it was part of the file.

I understand what the court is saying, but the court does have the discretion to consider these exhibits submitted in that method. I would plead that the probative value, the prejudicial effect of not considering that is reason for the court to consider those exhibits. It was considered in the first hearing. It does seem arbitrary to not consider in the second hearing.

The reason it wasn't -- The reason it was excluded after the motion -- after the first hearing was because there was not enough notice that the defendant had. The second hearing, that objection did not apply because there was plenty of notice. The defendant had it 118 days before that. Plaintiff didn't see any exclusion of this evidence. Plaintiff did, in good faith, have the belief they had been submitted to the record, and it was referenced in an order, it was referenced in the memorandum that the court did have it in its possession.

THE COURT: Mr. Burnette, I distinctly remember at the second hearing saying that the transcript was not part of the record, that it had not been filed, and it was not part of the record. Mr. D'Agostino

raised that issue that it wasn't filed. I, again, said it wasn't filed, and you didn't stand up and object or say, judge, I've got a copy right here, I'd like to file it, during the second hearing.

MR. BURNETTE: Plaintiff intended to re-introduce that evidence at the hearing by -- Plaintiff has a right here right now and, again, reference the language that was in it, reference that this is the transcript that plaintiff was reading from and did have a belief that the court had it. The issue wasn't that it wasn't filed.

Plaintiff would argue it was in the court's possession, that the court did have it the last time we appeared. The court did review it. Plaintiff did believe by referencing it again in the brief that had been filed with the knowledge that exhibits should not be refiled. Plaintiff did have the understanding that it was in the court's possession. That was plaintiff's introduction of that evidence by -- Again, putting the language that was in this transcript onto the record in that second hearing.

If the court did have it in its possession, and the court didn't see any need for exhibits to be resubmitted, the plaintiff would argue that the court had it, and it was there to be considered. That was

the plaintiff's understanding at the time. Again, I understand the court has the discretion to accept these exhibits based on its order, but the court can do it right here.

THE COURT: I understand I have the discretion, but you were instructed to file it. That's what I keep going back to. I'll have to review the trial court order. I don't know that that was in effect at the time of the first hearing. I'll have to go back and take a look at it. Regardless, you were instructed to file it.

MR. BURNETTE: Your Honor --

THE COURT: But you decided not to because -- for whatever reasons and issues, you decided not to file.

MR. BURNETTE: The plaintiff's understanding was that it was filed. At that point in the second hearing, when the court asked to refiled these exhibits. At that point, they couldn't be e-filed. We were already in the hearing. That's why plaintiff pulled the exhibit out and referenced it again believing, in good faith, that it had already been filed and that it was in the court's possession.

THE COURT: Back to what plaintiff is saying, is the evidence that defendants were served in this case

the affidavit of service, I guess, upon Lester Van Epps because service upon you as CA or the U.S. corporation you agree is not?

MR. BURNETTE: Plaintiff's think about the corporation is that whichever corporation they decide to operate under --

MR. D'AGOSTINO: We --

THE COURT: I know. Just let me get through this. Thank you.

MR. BURNETTE: Plaintiff isn't contesting the service on the corporation at this point.

THE COURT: So the evidence plaintiffs is saying that both defendants were served because the affidavit of service by Ms. -- I can't remember her name.

MR. D'AGOSTINO: Sheila Dover.

THE COURT: The affidavit of Sheila Dover that was not filed, but that was in the email and then the transcript.

MR. BURNETTE: The plaintiff has the exact exhibit packet that was emailed to the court right here, we can pass that up.

THE COURT: Has that been filed now?

MR. BURNETTE: Yes, Your Honor.

THE COURT: As long as it's been filed, I've got

it. Then the legal theory that plaintiff is proposing is that based upon these three, that the court should find that service was proper under a voluntary appearance?

MR. BURNETTE: Yes, Your Honor. That the transcript does prove that this individual appeared in court and that is the evidence that plaintiff was primarily using to prove its point. I think you'll see from the other cases that this evidence is the same, exact type of evidence has been used and accepted by the court as to preponderance of the evidence. The defendant did appear.

It's essentially coming down to whether the court accepts this evidence by this type of submission, which the court does have the discretion. If there was any objection by the court, it wasn't until the second hearing plaintiff would have known about that. These exhibits were submitted and received by the court. Plaintiff ask that they be considered.

THE COURT: I'm trying to pull up the transcript. So the transcript --

MR. BURNETTE: I have a physical copy right here, Your Honor.

THE COURT: Let me see a copy. Give me just

one moment. Mr. Burnette, assuming that I find that the transcript is properly before the court to be considered, what about Mr. Epps appears and objects to jurisdiction, but the judge doesn't hear it. How is that still voluntary appearance?

MR. BURNETTE: Because the defendant did voluntarily appear and raised essentially a venue challenge, not a jurisdiction challenge. If you'll look at this other Graham case, this is exactly the same type of hearing that this defendant appeared in. It was a damages hearing, but that judge continued that hearing, which is the same thing that happened in this instance, Your Honor.

Again, it's appearance. It's a failure to make any objection to service. Again, the point is he identified himself as the owner that links any doubt that Lester Van Epps, III, who appeared at this hearing, is not the owner of this business. That clears up the -- Him saying that I'm this individual, I'm the owner, after being served at his address.

I mean that's preponderance of the evidence of Rule 4 that he made a voluntary appearance. I think any allegations thrown up that this isn't the individual is refuted by that. That's really the only evidence that does refute that. That's why

plaintiff relied on this evidence in its arguments in both these hearings.

Plaintiff believed that the court did have this evidence, and the court does have the discretion to consider this evidence. I think it links up all the other pieces to the fact that he does live at this address, the fact that he is the owner of this business.

I'm considering that the defendant has the burden to prove that there was some kind of surprise or lack of notice. I think that plenty establishes a prima facie case, the preponderance of the evidence that he did.

Defendant has no evidence to prove its burden otherwise. I think that it speaks for itself, Your Honor. He had notice, and he showed up.

THE COURT: Thank you, Mr. Burnette. Mr. D'Agostino.

MR. D'AGOSTINO: May it please the court, Your Honor. I don't really know where to begin. In preparing for today, I again went back and reviewed everything. I reviewed our Rules of Civil Procedure, our Rules of Evidence. I also reviewed our Rules of Professional Conduct and our obligations as an attorney, as a professional. That's what we are.

We are professionals. We not just laborers. We're not just people who push paper.

Our words mean something, and what we do means something. I've been doing this for 30 years. I've learned a lot in that 30 years. One of the most important things I've learned is that what we say means something, and the courts have to depend on what we say, and the judges rely upon what we say.

We also have rules that we have to go by, the Rules of Civil Procedure, the Rules of Evidence and the Rules of Professional Conduct.

What I want to do is take a few minutes and go through what we have here. It's unfortunate that we find ourselves here. It's nothing that my client did that created this. The reason why I've been so incensed and passionate about this whole thing is because the court has in its file, in the case filings, and it goes back to the issue of the service of the corporation.

We, as attorneys, often submit documents for the court to sign, affidavits of default and entry of default and judgments. What's disturbing here and why I say this, and I don't say it lightly, and it's hard to say.

In the very beginning of this case, this

corporation -- I know that they agreed that service upon the corporation wasn't right. It sets the tone of everything that's gone on and why the plaintiff continues to argue and why I don't agree with anything the plaintiff is arguing here.

They were sent notice that they were serving the wrong defendant because that corporation in Charleston was not the registered agent for my client's corporation or the corporation that's named in this lawsuit.

Despite that, they continued to serve this third party and assert that that service -- coming to this court and continuing to assert they've got service when it wasn't. They got notice, written notice, of what was going on, but it was ignored, and they continued to do it.

A lawyer, who is a professional, has an obligation to look at -- We all mistakes but time and time again they continue to do it. They made representations to you, the court, as to what was going on and that they had properly done it when it hadn't been properly done.

They talk about a judgment that they got. They got a judgment for actual damages, 70-something, and then they got the treble damages. Then they added

punitive damages on top of the treble damages under the UTPA. They just stacked it all up. They get to a three hundred or four hundred thousand dollar judgment by punitive damages, attorneys fees and treble damages. That wasn't right. There was nobody here to have said anything. It was just not right.

Let's look at the order this court entered granting my motion to set aside the judgment and denying their motion to correct a clerical state.

First, Your Honor, the court denied their motion to correct the clerical mistake. I've objected to all these things the plaintiff has submitted, not by way of affidavits, just submitted to the court.

One of the most disturbing things in this whole case is that the judgment has been entered against Lester Van Epps. In the filings they took to North Carolina -- Remember, they've asked the court to correct the judgment and say that it's against Lester Van Epps, III, and correct a clerical mistake.

Yet, in North Carolina, counsel has submitted a document to the court saying their judgment -- And they've titled it Patton versus Lester Van Epps, III. They're trying to collect against Lester Van Epps, III. They come back to this court and say, oh, it was a clerical mistake. They didn't say to that

court in North Carolina it was a clerical mistake. They just stuck III on there which isn't right.

As it relates to the documents filed in this court, as it relates to the corporation, we've established they don't have good service on the corporation. They don't have good service on Lester Van Epps either. The reason being, as the court said in its order that was issued on January 31st, they don't do anything. There has been no evidence submitted to this court to demonstrate that the pleadings were served on Lester Van Epps, III.

When I filed my motion, I provided the court with documents from state agencies showing my client is known as Lester Van Epps, III. I provided that documentation. They've never provided any documentation showing that they served Lester Van Epps, III.

Now, I don't agree that the court should consider that transcript. That transcript, even if it were considered, which it shouldn't be, that transcript doesn't solve the problem. Number 1, Lester Van Epps, III, was at a hearing that did not happen that said he contests jurisdiction. Number 2, we're assuming it was Lester Van Epps, III. I'm not going to argue it wasn't. I'm not going to consent.

I don't believe that transcript should come in. Even if it does, there's nothing to demonstrate in that transcript that Lester Van Epps, III, ever got any pleadings. There's nothing to say that the Summons was served on him. He's not asked on the record what is your address. He's not put under oath at that hearing. He doesn't say what his address is.

Nothing at that hearing supports their position that he was served with the Summons and Complaint, and service of the Summons and Complaint is what establishes jurisdiction of the court, subject matter jurisdiction and personal jurisdiction. The service of the Summons gives you the jurisdiction. That's basic civil procedures.

We know that he was at the hearing, assuming he was at the hearing, he was at the hearing. There's nothing to demonstrate he was ever served with any pleadings. When did they serve Lester Van Epps, III, the pleadings.

They don't have any evidence that they did. The only evidence in the record is that is that, and I put it in the record, is that the registered agent's address, Lester Van Epps, III's, registered agent is somewhere, but it's not at the address they've been sending all this paperwork to. It's a totally

separate address. That address for Lester Van Epps, III -- And he was listed at that with the secretary of state, is a different address than they sent everything else to.

As this court found in its order, they have not demonstrated -- They have not presented any evidence. I presented evidence to demonstrate that they did not have good service, that the judgment is void because of lack of service of process. It did not establish this court's jurisdiction.

They have not come forward with any evidence to refute that, any evidence whatsoever. You want to talk about prejudice. They haven't done any of that. They would have had 90 days after filing the Summons and Complaint to get it served, during which time the statute of limitations holds. They didn't do it. Statutes are long gone. They did not do what they needed to do. They were told long before any statutes ended, when I got involved, what they could do, but they didn't. They just insisted that we're right, and we want what we want.

Your Honor, they also -- Counsel for the plaintiff refers to the case from another circuit court in South Carolina. Your Honor, that case cannot be further from this case than exists. In

that case, what was going on they had a lawsuit between a plaintiff and defendant and defendant corporation. It was a car wreck case, bad car wreck case. The owner of the corporation -- The corporation ended up being placed in default. The insurance company for the owner of the company came in and tried to get the default set aside. The owner of the company was there at the hearing. If the court reads -- Well, first of all, the judge's order in that case that counsel presented, which isn't precedential value for anything because you can't use other circuit court decisions.

Regardless, the court's decision found in that case that the registered agent testified under oath. He was placed under oath. That's what the transcript shows. The person at the hearing in this case was never placed under oath, never asked that, has never asked anything. The objection to jurisdiction and the hearing ended. It was continued.

In the case that counsel presented -- This is why I say it's important to read, and it's important to follow. Page 14 of the transcript, counsel submitted, as part of that other case, not this case, the Graham -vs- Foster case.

The judge is asking the registered agent in that

case -- The insurance company is arguing the registered agent did not get service because they wanted to file an Answer. The registered agent in that case at Page 14 says that was the affidavit they wanted me to sign to say that my wife got served. Judge Miller: That was a package left on your front porch, right? Mr. Fulmer: An envelope. Judge Miller: You got that? Mr. Fuller: He's the registered the registered agent. He says I got the affidavit. I got a copy of what you wanted me to sign to say my wife got served, which she didn't get served. I was the one that got served.

So in that case that they presented for you to consider, the registered agent was put under oath and testified unequivocally that he was served. In this case, there is nothing of that nature here. Nothing whatsoever. I don't understand how that case is relevant. If the court considers it, it demonstrates my position. There's not good service.

Your Honor, the address of 4663 Catawba River Road is not the address from the secretary of state where Lester Van Epps, III, had registered. There's nothing to demonstrate Lester Van Epps, III, was ever served.

Your Honor, the reason I jumped up when

counsel was arguing in court, and I apologize. The reason why I stood up is because counsel says the two corporations whatever the defendant is operating under. It goes back to what I'm saying, Your Honor. There's no evidence my client has ever operated under any other company. What they're trying to do is mismatch. There's no evidence in the record whatsoever. It's improper to even argue that in today's hearing or the prior hearings.

Your Honor, there was not a volunteer appearance, a general appearance, in this case even if the court were to consider the transcript. That hearing did not happen. When Mr. Van Epps was there -- He's a layman. He said he's contesting jurisdiction, could have said. The hearing didn't happen. There is no indication that he was ever served with a Summons and Complaint.

In the arguments and things of that nature and in this court's order, I believe the court indicated it could have -- That counsel for the plaintiff could have presented testimony from Ms. Dover. He could have presented other testimony to try to flush out who she actually served.

THE COURT: I think he could've called your client.

MR. D'AGOSTINO: He could have but never did. That's where we stand. They had the burden of doing so, but they didn't. That was the -- I had my original hearing, had a motion to reconsider. The court set aside and gave him a third bite at the apple. Even then there was not competent evidence to demonstrate Lester Van Epps, III, was ever served with a Summons and Complaint for himself or for the corporation.

Your Honor, counsel for the plaintiff has not presented any evidence or any basis on which this court should alter or amend the order granting defendant's motion to set aside judgment and denying the plaintiff's motion to correct the clerical mistake.

I submit to you that the court's decision in entering that order was appropriate. How they proceed from here, it's up to them. I think the court said in that order they can file amended pleadings. That's what they have to do in order to proceed on. That's what they would have to do is proceed on if that's what they're going to do under this old caption.

For those reasons, Your Honor, I request the court to deny plaintiff's motion and to allow the

order that this court entered stand. They can proceed how they deem appropriate.

THE COURT: Anything further, Mr. Burnette?

MR. BURNETTE: Briefly, Your Honor. In regard to the corporation, plaintiff is not arguing that that wasn't properly served. Plaintiff did submit evidence in the last exhibit packet that this defendant has been sued and responded. Palmetto Contracting Services of York County, LLC, which is who the plaintiff served.

Defendant is going by Palmetto Contracting Services, LLC, even though he has responded to that other corporation in the past. The point is there's multiple corporations here. There's ambiguity which entity the defendant is operating under. Plaintiff is not contesting that because neither corporation has any assets here. The plaintiff is dropping that argument and not conceding wasn't properly serviced.

The plaintiff's service on the individual -- This individual was served, and the plaintiff has evidence that it was properly serviced. The defendant is saying that Lester Van Epps, III, address connected to these corporations is not his true address. It is, again, evidence that there is ambiguity as to defendant's legal status and its

legal entity, he's done it with the corporation, he's done it with himself as an individual, selling his property and moving up to North Carolina. This defendant has taken multiple steps to avoid these judgments and that is in the record.

Now, the defendant is arguing in North Carolina that Lester Van Epps, III, is not the entity that this judgment should be against. That is pending in North Carolina. A motion has been denied when they've been arguing that in a separate trial. It is on hold because of judgment. It has been thrown out in South Carolina, but that is an issue in North Carolina before the North Carolina court, and it is proceeding. The North Carolina court has declined to throw it out on those grounds.

The defendant has submitted that he was at the hearing. Based on that evidence, which was also an admission in the first hearing and the transcript establishing that the defendant appeared, the rules or requirements says voluntary appearance is equivalent to personal service. So based on Rule 4, if voluntary appearance is established then Rule 4 is satisfied.

Now, this other court -- I'd like to quote from this other court, too. Said Fuller (phonetic) not

only acknowledged service in his testimony but also made a voluntary appearance on January 8th. The court cites Rule 4 saying voluntary appearance by defendant is equivalent to personal service.

Based on that and based on plaintiff's good faith and belief that this exhibit, having been considered previously in the first hearing by the court, and that the objection that there wasn't enough notice to the defendant, was not applicable anymore if the plaintiff was using that evidence as the best evidence that the voluntary appearance was made in court.

Defendant can claim there's no evidence that it was actually him. That is the preponderance of the evidence. We know he's the owner. We know that he does reside at this address. We know that he appeared in court linking those two things.

Plaintiff takes issue to after the second hearing had begun being told he could have introduced other types of evidence. You know, made evidence to prove the same thing that plaintiff already had proof of in the transcript. That is establishment by preponderance of the evidence that the guy appeared. It is admitted that he did appear in court. For him to argue that maybe he didn't get it because Lester

Van Epps was written on the certificate of service instead of Lester Van Epps, III.

If you take it all down to what this issue is, it is a scrivener's error made by the plaintiff, and it's a good faith error because the defendant never at any point raised I'm Lester Van Epps, III, throughout this whole process, throughout the North Carolina proceedings, throughout appearing in court, throughout going through all of this. There was no argument I'm Lester Van Epps, III.

Again, plaintiff has established that his address was served and that he accepted service. He would have to prove that he did not have notice. That is established by the preponderance of the evidence that he had service. It is his burden to prove he did not.

Again, any precedent looking at this, the language from Rule 4, if the defendant makes a voluntary appearance, that is equivalent to personal service. I just see no doubt that the defendant did not appear. The transcript is the evidence. It it is the owner of the business. It is this defendant. He hasn't shown anything that that isn't the case. We have shown that it is the case. We just need the evidence to be considered, Your Honor.

It appears from the first hearing, if this evidence is considered, if the court agrees that he did appear, made a voluntary appearance, that's equivalent to service and that's the difference between the first hearing and the second hearing. It wasn't considered in the second hearing and now we don't have proof. That's our evidence, Your Honor.

MR. D'AGOSTINO: I need to say one thing.

THE COURT: Yes.

MR. D'AGOSTINO: No matter how many times it says it's a voluntary appearance, no matter how many times he says the same thing over, it doesn't change the facts.

When Rule 4 talks about a voluntary appearance, it talks about an appearance after he had proof of service of the Summons and Complaint.

The problem here is there's no proof of the service of the Summons and Complaint upon Lester Van Epps, III, and Lester Van Epps, III, is not named in the lawsuit. That's the problem. That's shown by their request to change the name of the defendant in the pleadings.

You can say a voluntary appearance all you want, but you've got to have the demonstration that

the court has jurisdiction and has acquired jurisdiction over that person. Somebody could have told Lester Van Epps -- Lester Van Epps, III, hey there's a hearing with somebody named your name. It's at the courthouse. That does not establish that he got served with the Summons and Complaint and when he was served with the Summons and Complaint because we know the documents that they've been filing in this case are not accurate. That's why I go back to what they did with regard to the corporation. It's also why I go back to why I've talked about the court order in the 13th Circuit that they argued today. When you drill down into it, it's not what they're arguing. The facts of that case are different.

In that case, you had a person who acknowledges he was served with the pleadings in that case, and he was under oath. Even if the court were to consider the transcript, from the Moss Justice Center hearing in front of Judge Hall, there's nothing in that transcript that says Mr. Van Epps said, hey, I was served with Summons and Complaint, and I'm here. I'm the named defendant. There's nothing in there at all like that.

Mr. Burnette, a learned attorney who is licensed to practice law in the State of South Carolina, has

been to law school, he was there. Nothing was on the record about my client who's -- He's not a professional. He's not a lawyer. He is not licensed by this state to practice law and help people.

I submit that you still stand by my arguments. It's your decision to set it aside and let them litigate against Mr. Van Epps, III. Let them file an Answer if that's what they want to do and amend the pleadings, and then we'll assert whatever defenses we have, and we will follow the Rules of Civil Procedure and the Rules of Evidence. Thank you.

THE COURT: Thank you. Mr. Burnette, plaintiff's motion is denied. I did not hear anything today that would change -- changes my opinion about finding that service was not proven to have been made upon Lester Van Epps, III, as shown in Ms. Dover's affidavit which she states she served Lester Van Epps.

As to the transcript, if it's properly before the court, and I'm not sure that it is, but even reviewing the transcript, which plaintiff's counsel argues is the main evidence of proof of service and the fact that it is the evidence that Lester Van Epps, III, made a voluntary appearance in this action, I do not find that it shows that he made a voluntary appearance because the hearing did not go

forward when Mr. Epps raised an issue before the court, the circuit court. He was told that that matter would be handled in master in equity. Nothing was ruled upon. I don't find that that rises to the level of a voluntary appearance in the case. I stand by my last order.

MR. D'AGOSTINO: Do you wish for us to prepare an order or will the court do a short order. How would the court like to proceed?

THE COURT: I can just a Form 4 unless you would like to prepare and order.

MR. D'AGOSTINO: It would probably be better in light of where we are to have an order. Would you like for me to prepare it or the court prepare it?

THE COURT: I certainly would appreciate a proposed order. It may help get me started.

THE COURT: I'll send it to you in Word as well as opposing counsel.

THE COURT: Thank you.

WHEREUPON: Hearing was concluded at 11:30 A.M.

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, do hereby certify that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages are a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

In witness my hand and official seal this the 19th day of March, 2023,in the City of Chester, County of Chester, State of South Carolina.

Shirley Dallas-Gerrald

Shirley Dallas-Gerrald, CVR-CM
Court Reporter/Notary Public

My Commission Expires:
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JOHN PATTON vs PALMETTO CONTRACTING SERVICES
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
	)	
John Patton and	)	
Tara Patton,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	**SUMMONS**
	)	Case No. 2020-CP-46-_____
	)	
Palmetto Contracting Services of	)	
York	)	
County, LLC and	)	
Lester Van Epps,	)	
Defendants.	)	

TO: THE DEFENDANTS, PALMETTO CONTRACTING SERVICES OF YORK COUNTY LLC & LESTER VAN EPPS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint on the subscribers at their offices at 414 East Main Street, Rock Hill, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Amended Complaint within the time aforesaid, the Court will render judgement of default against you for all the relief demanded in the Amended Complaint.

_s/Charles Burnette_____
Charles B. Burnette, IV
BURNETTE & PAYNE, P.A.
414 E. Main Street
Rock Hill, SC 29730
Telephone: (803) 328-1800
Fax: (803) 328-9494

ATTORNEY FOR PLAINTIFFS

Rock Hill, South Carolina

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November 16, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	Case No.: 2020-CP-46-_____
	)	
John Patton and	)	
Tara Patton	)	
	)	
	)	
Plaintiffs,	)	
vs.	)	**AMENDED COMPLAINT**
	)	**(Jury Trial Requested)**
Palmetto Contracting Services of York	)	
County, LLC and	)	
Lester Van Epps,	)	
	)	
Defendants.	)	
_____	)	

Plaintiffs John Patton and Tara Patton, complaining of the Defendants Palmetto Contracting Services of York County, LLC, and Lester Van Epps, would respectfully allege:

1. Plaintiffs are husband and wife and are citizens and residents of Fairfield County, South Carolina.

2. The Defendant, Palmetto Contracting Services of York County, LLC, is a limited liability company, incorporated in the State of South Carolina.

3. The Defendant Lester Van Epps is a contractor working with Palmetto Contracting Services of York County. Van Epps performed the work on the project that is at issue. Van Epps is a citizen and resident of York County, South Carolina.

4. The predominant acts giving rise to this action occurred in Fairfield County, South Carolina and has affected real estate located in Fairfield County.

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5. Each allegation in respect to the corporate Defendant is further realleged against the individual contractor.

STATEMENT OF FACTS

6. On July 31, 2019, Plaintiffs entered into an Independent Contractor Agreement with Defendants. Defendant Van Epps represented to Plaintiffs that he was licensed to perform general contracting work in the state of South Carolina. The agreement included additions and renovations to the home on the upper and lower levels.

7. A contract with addendums was signed on May 19, 2020. This provided the addition of a rear deck and renovations to the basement room. The total cost of the project, with addendums, was $202,415.00.

8. In accordance with the draw schedule, the Plaintiffs paid Defendants $190,000.00 (with $4,000.00 in credits).

9. Despite the fact that Plaintiffs paid close to the entirety of the contract price, the Defendants failed to complete the renovations. Further, the work that was completed is defective and does not meet industry standards of completing work in a workmanlike manner.

10. The floor design was not built according to the plans, the basement was demolished and left with dirt as the floor, the bathroom was not completed, the sides of the tub were not fastened to tub correctly causing leakage, the toilets do not work properly, the pantry/bar foundation was not attached correctly or at all to existing porch, the electrical wiring was not installed properly, hot lights were left in the attic insulation, the powder room bath sheetrock was crooked and installed on a slant, the windows were installed crooked and were not framed correctly, the siding was not installed correctly, the plumbing was not vented, the plumbing lines were not flowing to the septic tank, and the deck is in a very a dangerous condition, among other issues.

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11. The Defendants ultimately abandoned the job and refused to complete the project and mitigate the defective work. The defective work forced the Plaintiffs to hire outside contracting services to repair and complete the work. The issues have cost Plaintiffs significant financial damages and will continue to cost them until the work is completed.

12. After the Defendant's breached the Agreement, Plaintiffs discovered that Defendant Van Epp's general contracting license is expired, and was expired at the time the Agreement was made.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

13. The allegations of Paragraphs 1 through 12 are incorporated herein and made a part of this cause of action in all aspects not inconsistent herewith.

14. The Defendants entered into a written contract with the Plaintiffs to complete home renovations. Defendants received close to the full contract price, in accordance with the draw schedule.

15. Defendants breached the contract by failing to complete the work and by performing the work in a defective manner.

16. Due to the Defendants' breach of contract, the Plaintiffs are now being forced to have the work mitigated and completed at a significant cost.

SECOND CAUSE OF ACTION
NEGLIGENCE

17. The allegations of Paragraphs 1 through 16 are incorporated herein and made a part of this cause of action in all aspects not inconsistent herewith.

18. Defendants had a duty, by law and by contract, to perform home renovations for the Plaintiffs in a workmanlike manner. Implied in this contract was a duty for the Defendants to

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use due care in the work and to complete the work in accordance with industrial and legal standards.

19. Defendants breached this duty by failing to use due care in the work and to complete the work in accordance with industrial and legal standards.

20. As a proximate result of Defendants' acts, the Plaintiffs are now being forced to have the work mitigated and completed at a significant cost.

THIRD CAUSE OF ACTION
FRAUDULENT MISREPRESENTATION

21. The allegations of Paragraphs 1 through 20 are incorporated herein and made a part of this cause of action in all aspects not inconsistent herewith.

22. The Defendants made a representation to the Plaintiffs that Defendant Van Epps was a licensed general contractor.

23. Defendant Van Epps was not, and is not, a licensed general contractor.

24. Plaintiffs would not have hired Defendants if they had known that Van Epps was not a licensed general contractor.

25. Defendants were aware, or should have been aware, that Van Epps was not licensed to perform general contracting work under the laws of the state of South Carolina.

26. Defendants intended that the Plaintiffs act upon their misrepresentation.

27. The Plaintiffs were unaware that Defendant Van Epps was not a licensed general contractor.

28. The Plaintiffs reasonably relied on the misrepresentation that Defendant Van Epps was a licensed general contractor.

29. The Plaintiffs had the right to rely on the misrepresentations of Defendants.

30. As a proximate result of Defendants Acts, the Plaintiffs are now being forced to have the work mitigated and recompleted at a significant cost.

ELECTRONICALLY FILED - 2020 Nov 16 2:28 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

FORTH CAUSE OF ACTION
UNFAIR TRADE PRACTICES ACT VIOLATION

31. The allegations of Paragraphs 1 through 30 are incorporated herein and made a part of this cause of action in all aspects not inconsistent herewith.

32. The Defendants engaged in an unlawful trade practice. Defendants performed unlicensed general contracting work, in violation of SC Code Ann. 40-59-220.

33. The Plaintiffs suffered actual, ascertainable damages as a result of the Defendants' use of the unlawful trade practice.

34. The unlawful trade practice had an adverse impact on the public interest.

35. The unlawful trade practice is a practice that is likely to be repeated, as some unfair trade act has, and will take place every time Defendant Van Epps attempts to perform general contracting work without a license.

36. Defendants are in violation of the South Carolina Unfair Trade Practices Act (SCUTPA), SC Code Ann. 39-5-20.

WHEREFORE, Plaintiffs pray that:

a. Judgment be granted against Defendants for actual and punitive damages;

b. Judgment be granted against Defendants for treble damages under SC Code Ann. 39-5-20;

c. Attorneys fees and court costs be awarded to the Plaintiffs; and

d. Such other relief as the Court deems just and proper.

ELECTRONICALLY FILED - 2020 Nov 16 2:28 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

_s/Charles Burnette_____
Charles B. Burnette IV
Bar No.: 103747
BURNETTE & PAYNE, P.A.
414 E. Main Street
Rock Hill, SC 29730
Ph.: (803) 328-1800
Fax: (803) 328-9494
bburnette@burnettelaw.net
Attorney for Plaintiffs

November 16, 2020

ELECTRONICALLY FILED - 2020 Nov 16 2:28 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA **COUNTY OF YORK**	)	**IN THE COURT OF COMMON PLEAS**
John Patton And Tara Patton ,	)	
Plaintiffs,	)	
versus	)	**AFFIDAVIT OF PERSONAL SERVICE** **Case No. 2020-CP-46-03434**
Palmetto Contracting Services, Of York County LLC and Lester Van Epps	)	
Defendant.	)	

Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(x) Summons
(x) Complaint

(x) A copy of each document listed above was served on by personally **Lester Van Epps** delivering the same to the **Lester Van Epps** at the following address **4663 Catawba River Road Catawba SC 29704 on the of November 17,2020 at 3:14 p.m.**

Sheila P. Dover

SWORN TO and subscribed before me
This day of November 17, 2020 .

Mark D. Patterson
Notary Public for SC
My Commission Expires: 11-30th 2022

ELECTRONICALLY FILED - 2020 Nov 24 11:37 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL CASE NO. 2020-CP-46-03434
COUNTY OF LANCASTER	)	
	)	
JOHN PATTON AND TARA PATTON	)	
Plaintiffs,	)	**AFFIDAVIT OF MAILING**
	)	
vs.	)	
	)	
PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS	)	
Defendants.	)	

Personally appeared before me, BETH GAULT who states that she served PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC, with a copy of the SUMMONS AND COMPLAINT by mailing:

(Check one)

☐ First class mail

☒ Certified mail

- ☒ restricted delivery
- ☒ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on November 20, 2020 addressed as follows:

PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, SC 29407

Sworn to before me this
24th day of November, 2020

Notary Public of South Carolina

My Commission expires: 4/8/26

Affiant

SCCA 406 (12/2009)

ELECTRONICALLY FILED - 2020 Nov 24 11:41 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

ELECTRONICALLY FILED - 2020 Nov 24 11:41 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HWY, STE 201
CHARLESTON, SC 29407

9590 9402 3587 7305 7534 36

2. Article Number (Transfer from service label)
7006 0100 0000 2674 6212

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X S Wells ☒ Agent ☐ Addressee

B. Received by (Printed Name) S Wells
C. Date of Delivery 11/20/20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☒ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

USPS TRACKING#

9590 9402 3587 7305 7534 36

CHARLESTON SC 294
20 NOV 2020 PM 3 L

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United States Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

CHARLES B. BURNETTE IV
BURNETTE & PAYNE, PA
414 E. MAIN ST.
ROCK HILL, SC 29730

ELECTRONICALLY FILED - 2021 Feb 26 1:18 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA YORK COUNTY John Patton and Tara Patton, Plaintiffs, vs. Lester Van Epps and Palmetto Contracting Services of York County, LLC Defendants.	COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT AFFIDAVIT OF DEFAULT OF DEFENDANTS LESTER VAN EPPS AND PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC Civil Action No. 2020-CP-46-03434

Having been sworn, Charles B. Burnette IV says the following:

1. I am the attorney for the Plaintiffs, John Patton and Tara Patton.

2. As shown by the Certificate of Service filed November 24, 2020, I served a copy of Plaintiffs' Summons & Complaint against Defendants to Defendant Lester Van Epps, in his individual capacity and as the registered agent for Defendant Palmetto Contracting Services of York County, LLC on November 17, 2020.

3. More than 90 days have passed since service and no answer, motion, or notice of appearance has been received from Defendants.

4. Defendants Lester Van Epps and Palmetto Contracting Services of York County, LLC are default.

Charles B. Burnette IV
SC Bar No. 103747

BURNETTE & PAYNE, P.A.
414 E. Main Street
Rock Hill, SC 29730
(803) 328-1800
bburnette@burnettelaw.net
Attorney for Plaintiffs

Sworn to and subscribed before
me on February 26, 2020.

Notary Public for South Carolina
My commission expires 5/3/2021

ELECTRONICALLY FILED - 2021 Feb 26 1:18 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

ELECTRONICALLY FILED - 2021 May 11 12:42 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA) **COUNTY OF YORK)**	**IN THE COURT OF COMMON PLEAS**
John Patton And Tara Patton ,) **Plaintiffs,)**	
versus)	**AFFIDAVIT OF PERSONAL SERVICE** **Case No. 2020-CP-46-03434**
Palmetto Contracting Services, Of York County LLC and Lester Van Epps) **Defendant.)**	

Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(x) Affidavit of Default of Defendants Lester Van Epps and Palmetto Contracting Services od York County ,LLC
(x) Motion For Default Order
(x) Order Of Default

(x) A copy of each document listed above was served on by personally **Lester Van Epps** delivering the same to the **Lester Van Epps** at the following address **4663 Catawba River Road Catawba SC 29704 on the of May 5,2021 at 4:12 p.m.**

Sheila P. Dover

SWORN TO and subscribed before me
This day of May 5, 2021 .

Mark D. Patterson
Notary Public for SC
My Commission Expires: 11-30th 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL CASE NO. 2020-CP-46-03434
COUNTY OF LANCASTER	)	
	)	
JOHN PATTON AND TARA PATTON	)	
Plaintiffs,	)	**AFFIDAVIT OF MAILING**
	)	
vs.	)	
	)	
PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS	)	
Defendants.	)	

Personally appeared before me, BETH GAULT who states that she served PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC, with a copy of the AFFIDAVIT OF DEFAULT, MOTION FOR DEFAULT ORDER, AND ORDER OF DEFAULT by mailing:

(Check one)

☐ First class mail

☒ Certified mail

- ☒ restricted delivery
- ☒ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on May 6, 2021 addressed as follows:

PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, SC 29407

Sworn to before me this
11th day of May, 2021

Notary Public of South Carolina

My Commission expires: 4/8/26

Affiant

SCCA 406 (12/2009)

ELECTRONICALLY FILED - 2021 May 11 12:41 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

ELECTRONICALLY FILED - 2021 May 11 12:41 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

USPS TRACKING #

9590 9402 3587 7305 7534 98

First-Class Mail
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USPS
Permit No. G-10

United States Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

CHARLES B. BURNETTE IV
BURNETTE & PAYNE, P.A.
Attorneys at Law
414 East Main Street
Rock Hill, SC 29730

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HWY, STE 201
CHARLESTON, SC 29407

9590 9402 3587 7305 7534 98

2. Article Number (Transfer from service label)
7006 0100 0000 2674 6380

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☑ Agent
☐ Addressee

B. Received by (Printed Name) S Wells
C. Date of Delivery 5/6/21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL CASE NO. 2020-CP-46-03434
COUNTY OF LANCASTER	)	
	)	
JOHN PATTON AND TARA PATTON	)	
Plaintiffs,	)	**AFFIDAVIT OF MAILING**
	)	
vs.	)	
	)	
PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS	)	
Defendants.	)	

Personally appeared before me, BETH GAULT who states that she served PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC, with a copy of the AFFIDAVIT OF DEFAULT, MOTION FOR DEFAULT ORDER, AND ORDER OF DEFAULT by mailing:

(Check one)

☐ First class mail

☒ Certified mail

- ☒ restricted delivery
- ☒ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on May 21, 2021 addressed as follows:

PALMETTO CONTRACTING SERVICES OF YORK, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, SC 29407

Sworn to before me this
25th day of May, 2021

Notary Public of South Carolina

My Commission expires: 4/8/26

Affiant

SCCA 406 (12/2009)

ELECTRONICALLY FILED - 2021 May 25 10:31 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

ELECTRONICALLY FILED - 2021 May 25 10:31 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

USPS TRACKING #

9590 9402 6638 1060 9791 66

First-Class Mail
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United States Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

BURNETTE & PAYNE, P.A.
Attorneys at Law
414 East Main Street
Rock Hill, SC 29730

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Palmetto Contracting Services of York, LLC
c/o United States Corporation Agents, Inc
1591 Savannah Hwy, Suite 201
Charleston, SC 29407

9590 9402 6638 1060 9791 66

2. Article Number (Transfer from service label)

7006 0100 0000 2674 6397

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Carrier

☒ Agent
☐ Addressee

B. Received by (Printed Name) DTC C19

C. Date of Delivery 5-21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☒ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053 Dom... Receipt

CLERK OF COURT'S OFFICE
Post Office Box 649, York, South Carolina 29745-0649

ELECTRONICALLY FILED - 2021 Jun 16 3:55 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

June 16, 2021

Lester Van Epps
4663 Catawba River Road
Catawba, SC 29704

RE: **Case # 2020CP4603434**
John Patton Vs Palmetto Contracting Services of York County, LLC, et al

This is to advise a hearing has been scheduled for Plaintiff's Motion for Damages that was filed in the above noted case.

To be heard, you must appear at the Moss Justice Center, Courtroom E located at 1675 York Highway, York, South Carolina, 29745 at 2:00 pm on Wednesday, July 28, 2021.

PLEASE NOTE: A CORPORATION THAT IS A PARTY TO A CASE IN THE CIRCUIT COURT CANNOT APPEAR AND REPRESENT ITSELF. UNDER SOUTH CAROLINA LAW, A CORPORATION MUST BE REPRESENTED IN CIRCUIT COURT BY AN ATTORNEY.

Sincerely,

Lynn Strait

Lynn Strait
Court Coordinator
York County Court of Common Pleas
E-Mail: lynn.strait@yorkcountygov.com
Phone: (803) 684-8506

CLERK OF COURT'S OFFICE
Post Office Box 649, York, South Carolina 29745-0649

ELECTRONICALLY FILED - 2021 Jun 16 4:02 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

June 16, 2021

Palmetto Contracting Services of York County, LLC
C/O US Corporation Agents Inc
1591 Savannah Highway; Suite 201
Charleston, SC 29407

RE: **Case # 2020CP4603434**
John Patton Vs Palmetto Contracting Services of York County, LLC, et al

This is to advise a hearing has been scheduled for Plaintiff's Motion for Damages that was filed in the above noted case.

To be heard, you must appear at the Moss Justice Center, Courtroom E located at 1675 York Highway, York, South Carolina, 29745 at 2:00 pm on Wednesday, July 28, 2021.

PLEASE NOTE: A CORPORATION THAT IS A PARTY TO A CASE IN THE CIRCUIT COURT CANNOT APPEAR AND REPRESENT ITSELF. UNDER SOUTH CAROLINA LAW, A CORPORATION MUST BE REPRESENTED IN CIRCUIT COURT BY AN ATTORNEY.

Sincerely,

Lynn Strait

Lynn Strait
Court Coordinator
York County Court of Common Pleas
E-Mail: lynn.strait@yorkcountygov.com
Phone: (803) 684-8506

ELECTRONICALLY FILED - 2021 Aug 27 4:58 PM - YORK - COMMON PLEAS - CASE#2020CP460434

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
YORK COUNTY)	SIXTEENTH JUDICIAL CIRCUIT
)	
John Patton and Tara Patton,)	
)	
Plaintiffs,)	
)	
vs.)	**CERTIFICATE OF SERVICE**
Lester Van Epps and Palmetto Contracting)	
Services of York County, LLC)	
)	Civil Action No. 2020-CP-46-03434
Defendants.)	
)	

The undersigned hereby certifies that a copy of the within NOTICE OF HEARING was served on all parties of record by depositing a copy of same in the United States mail, with sufficient postage annexed thereto, addressed as follows:

Lester Van Epps
4663 Catawba River Road
Catawba, SC 29704

Palmetto Contracting Services of York, LLC
c/o US Corporation Agents, Inc.
1591 Savannah Highway, Suite 201
Charleston, SC 29407

This 19th day of August, 2021.

Beth Gault, Legal Assistant to
C. Baxter Burnette IV

STATE OF SOUTH CAROLINA) **COUNTY OF YORK)**	**IN THE COURT OF COMMON PLEAS**
John Patton And Tara Patton ,) **Plaintiffs,)**	
versus)	**AFFIDAVIT OF PERSONAL SERVICE** **Case No. 2020-CP-46-03434**
Palmetto Contracting Services, Of York County LLC and Lester Van Epps) **Defendant.)**	

Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(x) Order Of Default Judgment

(x) A copy of each document listed above was served on by personally **Lester Van Epps** delivering the same to the **Lester Van Epps** at the following address **4663 Catawba River Road Catawba SC 29704 on the of October 8,2021 at 3:14 p.m.**

Sheila P. Dover

SWORN TO and subscribed before me
This day of October 8, 2021 .

Mark D. Patterson
Notary Public for SC
My Commission Expires: 11-30th 2022

ELECTRONICALLY FILED - 2021 Dec 01 4:03 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL CASE NO. 2020-CP-46-03434
COUNTY OF LANCASTER	)	
	)	
JOHN PATTON AND TARA PATTON	)	
Plaintiffs,	)	**AFFIDAVIT OF MAILING**
	)	
vs.	)	
	)	
PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS	)	
Defendants.	)	

Personally appeared before me, BETH GAULT who states that she served PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC, with a copy of the ORDER OF DEFAULT JUDGMENT by mailing:

(Check one)

☐ First class mail

☒ Certified mail

- ☒ restricted delivery
- ☒ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on October 12, 2021 addressed as follows:

PALMETTO CONTRACTING SERVICES OF YORK, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, SC 29407

Sworn to before me this

14 day of October, 2021

Notary Public of South Carolina

My Commission expires: 3-7-2028

Affiant

SCCA 406 (12/2009)

ELECTRONICALLY FILED - 2021 Dec 01 4:05 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

ELECTRONICALLY FILED - 2021 Dec 01 4:05 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

USPS TRACKING #

9590 9402 6638 1060 9790 74

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

C. BAXTER BURNETTE IV
BURNETTE & PAYNE, P.A.
Attorneys at Law
414 East Main Street
Rock Hill, SC 29730

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PALMETTO CONTRACTING SERVICES OF YORK, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HWY, STE 201
CHARLESTON, SC 29407

9590 9402 6638 1060 9790 74

2. Article Number (Transfer from service label)
7006 0100 0000 2674 6441

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☑ Agent
☐ Addressee

B. Received by (Printed Name) S. WILLIS
C. Date of Delivery 10/12/21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☑ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☑ Signature Confirmation Restricted Delivery

Domestic Return Receipt

ELECTRONICALLY FILED - 2022 May 05 1:36 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA COUNTY OF YORK , John Patton and Tara Patton, Plaintiffs, v. Lester Van Epps and Palmetto Contracting Services of York County, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT C.A. No.: 2020-CP-46-03434 **MOTION TO SET ASIDE JUDGMENT**

The Defendants, by and through their undersigned attorney, moves for this court to set aside judgment and declare and determine that the judgment is void as against these Defendants.

First, as it relates to the business entity, the business was never served. The Plaintiff served a registered agent for Palmetto Contracting Services of York, LLC, United States Corporation Agents, Inc. with the pleadings. That registered agent is not the registered agent for Palmetto Contracting Services of York County, LLC. Attached is the letter which was filed in this action advising Plaintiff's counsel that United State Corporation was not the registered agent for Defendant in this action (Exhibit A). Attached is the Secretary of State website showing Palmetto Contracting of York, LLC uses United States Corporate Agents, Inc. as its registered Agent (Exhibit B). The Plaintiff named Palmetto Contracting Services of York County, LLC which was administratively dissolved (Exhibit C). **Lester VanEpps, III** was the registered agent for that company but that company is not who contracted with the Plaintiffs in this action. The Plaintiff's contracted with **Palmetto Contracting Services**. See attached contract (Exhibit D). As such, not only did the Plaintiff serve the wrong registered agent for the named Defendant, the Plaintiffs served and named the wrong business entirely.

As it relates to Lester Van Epps, the Plaintiffs did not name Lester Van Epps, III the individual against whom it now seeks to collect this judgment. Lester VanEpps, III is the individual with whom the Plaintiff's dealt during the construction relating to the home. Attached are Lester VanEpps, III identification cards (Exhibit E). The Plaintiff's named Lester VanEpps but did not serve Lester Van Eps, III nor did they serve Lester Van Epps, III. The Plaintiff is now attempting to sue Lester VanEpps, III and names Lester VanEpps, III in a lawsuit in North Carolina asserting they have a judgment against him but they have an invalid judgment against Lester Van Epps. Plaintiffs also do not have a judgment against Leicester VanEpps, III because he was not served with the lawsuit. This motion is being filed because the

Plaintiff seeks to collect on a judgment in North Carolina against Lester VanEpps, III and he was never named pr served in the S.C. lawsuit. As such, this judgment should be set aside as it relates to both Defendants.

Respectfully submitted.

s/Daniel D'Agostino
S.C. Bar No.: 65088
D'AGOSTINO LAW FIRM
25 West Liberty Street
York, South Carolina 29745
dan@ddllplaw.com
Office: 803-628-6509
Fax: 803-628-7990
ATTORNEY FOR DEFENDANTS

York, SC
May 4, 2022

ELECTRONICALLY FILED - 2022 May 05 1:36 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

LEGALZOOM

ELECTRONICALLY FILED - 2022 May 06 12:30 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

To Whom It May Concern:

We have verified that we are not the registered agent for the company addressed in the enclosed documents and are therefore returning them to you. If you have any questions, please call us at (866) 698-0052.

Please note that United States Corporation Agents, Inc. (USCA) is a wholly owned subsidiary of LegalZoom.com, Inc. (LegalZoom).

Sincerely,

Your LegalZoom Team

South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

ELECTRONICALLY FILED - 2022 May 05 1:36 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC

Corporate Information

Entity Type: Limited Liability Company

Status: Dissolved

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 01/12/2005

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: 04/23/2018

Registered Agent

Agent: LESTER VAN EPPS III

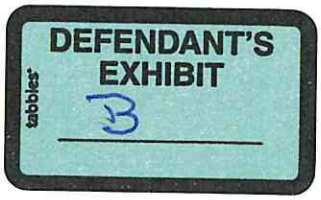
Address: 2532 KILLIAN ROAD
EDGEMOOR, South Carolina 29712

Official Documents On File

Filing Type	Filing Date
Articles of Termination	04/23/2018
Change of Agent or Office	09/12/2008
Organization	01/12/2005

For filing questions please contact us at **803-734-2158**

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South Carolina Secretary of State

Business Entities Online

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PALMETTO CONTRACTING SERVICES OF YORK LLC

Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 10/22/2013

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: UNITED STATES CORPORATION AGENTS, INC.

Address: 1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, South Carolina 29407

Official Documents On File

Filing Type	Filing Date
Organization	10/22/2013

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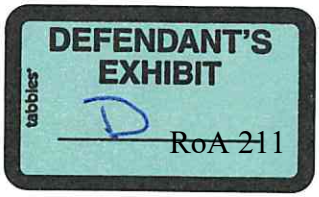
Proposal Submitted To:	Phone:	Date:	Job Name:	Job Location:
JOHN & TARA PATTON	704-201-9915	7/17/2019	ROOM ADDITION	FAIRFIELD CO.
Street Address:	**City:**	**State:**	**Zip:**	
467 SHANGRI LA DRIVE	WINNSBORO	SC	29180	

We hereby submit specifications and estimate:

ROOM ADDITION-ROUGH-IN STAGE ONLY APROX. 38 X 35, 2 STORY WITH UPPER LEVEL INCLUDED WITH-IN ROOF LINE AREA PER SET OF PLANS PROVIDED. INCLUDES AS STATED BELOW ALL PERMITS. PLANS TO FOLLOW C/O UPON COMPLETION.

LOWER ADDITION:

REMOVE EXISTING LEFT SIDE OF PORCH AREA AND ROOF LINE TO EXISTING SIDE WALL OF HOUSE. REMOVE VINYL SIDING ALONG WITH EXISTING SUNROOM WALL.
ATTACH-DIG FOUNDATION FOOTER AJOING EXISTING FOOTER AT APROX. 35 FT. AT REAR SIDE FACING THE LAKE AND THE FRONT, AT SIDE APROX. 38 FT. IN WIDTH.
INSTALL 2 COURSES OF REBAR WITH CHAIRS WITH-IN DITCH AREA/FOOTER.
INSTALL/PUMP CONCRETE FOOTER MIX TO DITCH/FOOTER AREA.
INSTALL PROPER PIER PLACEMENTS WITH-IN CENTER OF FOUNDATION AREA.
INSTALL CINDER BLOCK AT ALL PIERS AND AT CORNERS OF FOUNDATION.
INSTALL BRICK CURTAIN WALL AROUND ENTIRE PERIMITER OF FOUNDATION TO TIE INTO EXISTING FOUNDATION-BRICK TO MATCH AS CLOSE AS POSSIBLE.
INSTALL ONE 36 INCH FOUNDATION ACCESS DOOR AT REAR LEFT CORNER-HIGHEST POINT.
INSTALL 2X6 TREATED MUD SEAL PLATE AROUND FOUNDATION.
INSTALL TWO TRIPLE 2X10 MAIN GIRDERS/BEAM SPACED AT APROX. 13 FT. APART.
INSTALL 2X10 FLOOR JOISTS SPACED AT APROX. 16 INCHES APART PER FLOOR SYSTEM.
INSTALL/PRE-GLUE 3/4 AVANTECH SUBFLOOR SHEETHING PER FLOOR SYSTEM.



FRAME EXTERIOR WALLS TO MATCH EXISTING HEIGHT TOWARDS EXISTING HOUSE BEING APROX. 9 FT.
FRAME ALL INTERIOR WALLS PER PLAND PROVIDED BEING ONE ADJOING SUNROOM, ONE GUN-ROOM WITH POCKET DOOR FRAME, ONE MASTER BEDROOM WITH TRAY CEILING, ONE MASTER BEDROOM CLOSET, ONE FAMILY ROOM, ONE MASTER BEDROOM BATHROOM, ONE ADJOINING CLOSET TO MST.BATHROOM, ONE 1/2 BATHROOM, ONE SET OF STAIRS TO ACCESS UPPER LEVEL OF ADDITION.
INSTALL 1/2 OSB TO ALL EXTERIOR WALLS-INSTALL HOUSE WRAP MOISTURE BARRIER OVER WALLS.
INSTALL VINYL SIDING TO ALL EXTERIOR WALLS TO MATCH AS CLOSE AS POSSIBLE TO EXISTING WALLS OF HOUSE.
INSTALL OUTER SUNROOM WALL TO MATCH EXISTING SUNROOM WALL REMOVAL-RE-LOCATE WALL SYSTEM.
INSTALL ALL WINDOWS TO MATCH AS CLOSE AS POSSIBLE TO EXISTING WINDOWS OF HOUSE BEING UP TO 6 WINDOWS TOTAL PER PLANS PROVIDED.
INSTALL ONE EXTERIOR DOOR TO MATCH AS CLOSE AS POSSIBLE TO EXISTING MAIN DOOR OF HOUSE.

UPPER LEVEL:
FRAME FLOOR SYSTEM CEILING JOISTS ACROSS ALL LOWER WALLS.
INSTALL 3/4 AVANTECH SUBFLOOR SHEETHING OVER FLOOR JOISTS.
FROM EXISTING HIP ROOF AREA-CARRY NEW ROOF SYSTEM TO BE VAULTED A-FRAME ROOF SYSTEM WITH LEFT OUTER WALL AS A GABLE. INSTALL COLLER TIES AT CENTER OF VAULTED ROOF SYSTEM.
OUTER GABLE WALL TO FRAME IN TWO WINDOWS TO MATCH AS CLOSE AS POSSIBLE TO EXISTING WINDOWS.
UPPER LEVEL-FRAME ALL INTERIOR WALLS TO HAVE ATTIC SPACE/STORAGE AROUND KNEE WALL AREAS. FRAME INTERIOR WALLS TO HAVE TWO BEDROOMS AND ONE FULL BATHROOM-ADJOINING BETWEEN THE BEDROOMS, FRAME TWO CLOSET AREAS AT EACH BEDROOM.
COMPLETE FRAMING OF FLOOR SYSTEM FROM STAIRCASE TO ACCESS UPPER LEVEL AREA-LOFT/SMALL FAMILY ROOM-OPEN AREA.
INSTALL 1/2 OSB SHEETHING PER ROOF SYSTEM.
INSTALL 15 LBS. FELT PAPER/UNDERLAYMENT-INSTALL NEW SHINGLES TO MATCH AS CLOSE AS POSSIBLE TO EXISTING ROOF AREA OF HOUSE.
INSTALL VINYL SOFFIT AND FACIA METAL AROUND BOXING/EAVES OF ADDITION.
INSTALL NEW GUTTERS AROUND ADDITION TO MATCH EXISTING GUTTERS.

PLUMBING:
INSTALL ALL NEW PLUMBING, WATER-PEX LINES PER PLANS PROVIDED. WATER LINES TO TIE INTO EXISTING TANKLESS SYSTEM OF HOUSE.
INSTALL ALL NEW DRAIN LINES PER PLANS PROVIDED-TIE INTO EXISTING SEPTIC DRAIN PER ROUGH-IN STAGE.
ALL PLUMBING TO BE COMPLETED AFTER ALL CABINTRY,TILE,TUB COUNTER-TOPS,SINKS-CONTRACTOR WILL COMPLETE INSTALLATION OF ALL FAUCETS,DRAINS,AND TOILET INSTALLATION-HOMEOWNER TO SUPPLY ALL FAUCETS AND TOILETS. CONTRACTOR IS ONLY TO INSTALL ALL FIXTURES PROVIDED BY HOMEOWNER AFTER FINAL PAINTING AND CABINTRY/TUB IF ANY AND TILE SHOWERS ARE COMPLETED.

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ELECRICAL:
INSTALL-ROUGH-IN ALL ELECTRICAL WIRING PER PLANS PROVIDED-PRE WALK FRAMING FOR DETECATED OUTLET AND LIGHTING WITH CUSTOMER PRIOR TO WIRING.
WIRING TO BE PULLED FROM EXISTING PANEL BOX WITH-IN HOME.
CUSTOMER TO SUPPLY ALL LIGHT FIXTURES AND ALEXA DEVICES PER FINAL TRIM OF ELECTRICAL AFTER ALL PAINTING AND CABNETRY IS COMPLETED.
CONTRACTOR WILL INSTALL FINAL TRIM-CUSTOMER TO SUPPLY AS STATED ABOVE.

HVAC:
INSTALL ALL HVAC EQUIPMENT PER NEW ADDITION-BEING THERMOSTATS X TWO-UPPER AND LOWER, EXTERIOR UNITS AS WELL AS AIR HANDLER/RETURN, ALL GRILLS TO MATCH AS CLOSE AS POSSIBLE TO EXISTING HOMES GRILLS. ALL ROUGH-IN OF UNITS TO BE COMPLETED AND UNITS SET IN PLACE RUNNING-FINAL GRILL INSTALLATION TO BE COMPLETED AFTER ALL PAINTING IS COMPLETE.

INSULATION:
INSTALL ALL INSULATION PER PLANS AND TO CODE AROUND ENTIRE ADDITION AS NEEDED BEING LOWER CRAWL SUBFLOOR AREA, ALL EXTERIOR WALLS AND ROOF GABLE AREAS. AND AROUND ALL EXTERIOR WINDOWS AND DOORS.

DRYWALL:
INSTALL DRYWALL AROUND ALL WALLS AND CEILINGS PER PLAND PROVIDED.
TAPE AND BED/MUD, SAND FINISH DRYWALL READY TO PAINT.
ONCE CUSTOMER HAS PRIMED WALLS AND CEILINGS, CONTRACTOR WILL REPAIR/SPOT MUD ANY IMPERFECTIONS, NAIL POPS, CRACKS, LOOSE TAPE ETC...

RE-CAP:
ADDITION IS TO BE COMPLETED AS A FINAL C/O, CONTRACTOR IS ONLY RESPONSIBLE FOR UP TO A ROUGH-IN STAGE BEING A COMPLETED RAW SHELL EXTERIOR TO BE COMPLETED AS WELL AS THE INTERIOR UP TO FINISHED DRYWALL STAGE. CUSTOMER WILL SUPPLY ALL LIGHT FIXTURES AND FAUCETS, TOILETS-CONTRACTOR WILL COME BACK TO COMPLETE FINAL TRIM BEING ELECTRICAL, PLUMBING AND HVAC. CONTRACTOR WILL INSTALL AT FRONT OF ADDITION TWO DRAIN CATCH BASINS-AND TRENCH/INSTALL DRAIN PIPING AROUND TO SIDE OF ADDITION. ANY UNFORSEEN DECAY OR DAMAGE OR EXTRA WORK NOT STATED WITH IN THE CONTRACT OR THE SCOPE OF WORK WILL BE PRICED UPON DISCOVER WITH THE CUSTOMER.

TOTAL AMOUNT OF CONTRACT.....$ 150,000.00
DEPOSIT PER START.....$ 50,000.00
BALANCE OF CONTRACT WITH DEPOSIT RECEIVED-DRAWS TO BE RELEASED AS WORK IS COMPLETED TO MAINTAIN A TIMELY SCHEADULE.....$ 100,000.00

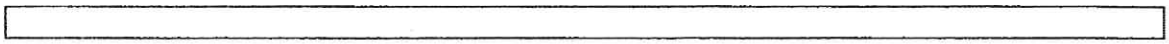
We propose hereby to furnish material and labor – complete in accordance with above specifications, for the sum of:
$150,000.00

Acceptance of proposal- the above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

John Patton Dara Rae Patton — Customer Signature — Date: 7-31-19

Contractor Signature — Date: 7.31.19

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Building Permit Application

Permit No.	Receipt No.	Permit Fee	Date Permit Issued			Issued By
(74-80)		$	Day (37-38)	Mo. (39-40)	Year (41-42)	
2019-434		100.00	06	11	19	Mercer Co.

LOCATION OF IMPROVEMENT

Address: Street No. (1-6)	Street Name (8-32)	Street Type	
460	Shangri La	Dr.	R-1

City (33-34)	County (35-36)	Zip Code	School (44) District	Fire (45-46 District	Census (47-51) Tract	Tax District
Johnsboro	Fairfield	29180				

TAX MAP			SUBDIVISION			
Page	Block	Lot	Name	Section	Block	Lot
079	02	00	015			

	NAME	MAILING ADDRESS	ZIP CODE	TELEPHONE	LICENSE NO
OWNER	John Potter				
ARCHITECT			29704	803-985-5544	
GEN.CONTRACTOR	Palmetto Contracting Services	4663 Catawba River Rd			11155

SELECTED CHARACTERISTICS OF WORK

NATURE OF WORK
- ☐ 1. New Building (52)
- ☑ 2. Addition
- ☐ 3. Alteration
- ☐ 4. Repair/Replacement
- ☐ 5. Demolition
- ☐ 6. Moving/Relocation
- ☐ 7. Foundation Only

OWNERSHIP (53)
- ☑ 1. Private (Individual, Corporation, Other)
- ☐ 2. Public (Federal, State Local Gov'ts., Other)

DIMENSIONS
1. Number of Floors _____
2. Total Floor Area of New Construction Based on Exterior Dimensions
   _____ Sq.Ft.
   Heated _____
   Basement _____
   Accessory Structures _____
3. Land Area _____ Sq.Ft.

DESCRIPTION OF WORK:
Room Addition

4 mbls

ESTIMATED DATE OF COMPLETION:

PROPOSED USE (IF DEMOLITION INDICATE MOST RECENT USE)

TYPE OF OCCURRENCE (54)
- ☐ 1. Assembly
- ☐ 2. Business
- ☐ 3. Educational
- ☐ 4. Hazardous
- ☐ 5. Factory – Industrial
- ☐ 6. Institutional
- ☑ 7. Mercantile
- ☑ 8. Residential
- ☐ 9. Storage

IF RESIDENTIAL (55) UNITS (56-58)
- ☐ 1. One Family _____
- ☑ 2. Mobile Home 1
- ☐ 3. Duplex 2
- ☐ 4. Apartment _____
- ☐ 5. Condominium _____
- ☑ 6. Dorm/ Rooming House _____
- ☐ 7. Other (Specify) _____

If Conversion, Explain: _____

OFF STREET PARKING
- ☐ 1. Indoor Number _____
- ☐ 2. Outdoor Number _____
- 3. TOTAL _____

SINGLE FAMILY ONLY

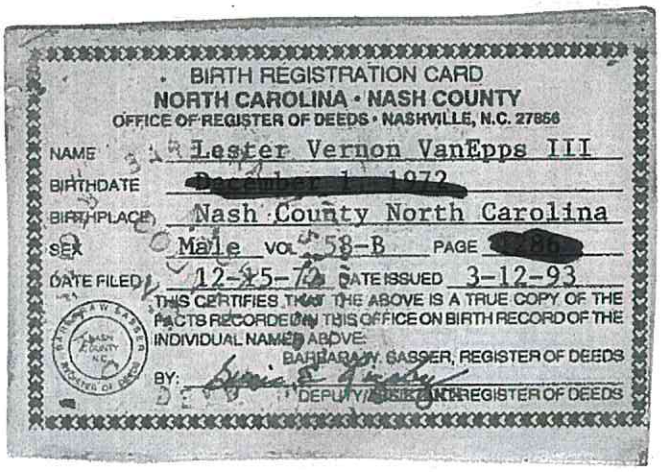
Rooms	Number
Bedrooms (59)	
Bathrooms-Full (60)	
Bathrooms-Partial (61)	
Total Rooms (62)	

PRINCIPAL HEATING FUEL (63)
☐ 1. Gas

TYPE OF WORK	VALUE	CONTRACTOR

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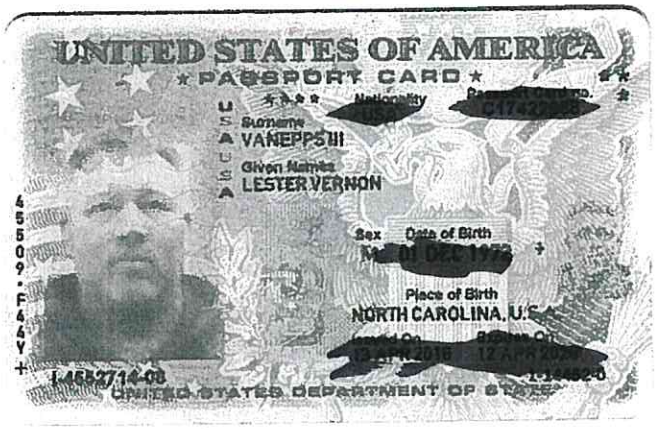


BIRTH REGISTRATION CARD
NORTH CAROLINA • NASH COUNTY
OFFICE OF REGISTER OF DEEDS • NASHVILLE, N.C. 27856

NAME Lester Vernon VanEpps III
BIRTHDATE [redacted] 1972
BIRTHPLACE Nash County North Carolina
SEX Male VOL 258-B PAGE [redacted]
DATE FILED 12-15-72 DATE ISSUED 3-12-93

THIS CERTIFIES THAT THE ABOVE IS A TRUE COPY OF THE FACTS RECORDED IN THIS OFFICE ON BIRTH RECORD OF THE INDIVIDUAL NAMED ABOVE.

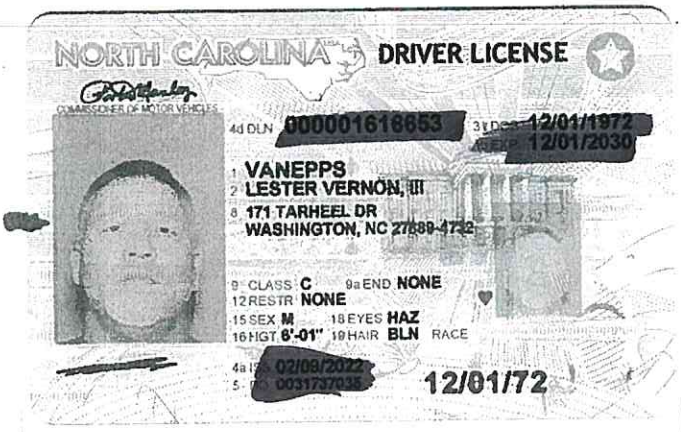
BARBARA W. GASSER, REGISTER OF DEEDS
BY: [signature] DEPUTY/ASSISTANT REGISTER OF DEEDS



UNITED STATES OF AMERICA
PASSPORT CARD

USA
Surname
VANEPPS III
Given Names
LESTER VERNON
Nationality
Sex Date of Birth
[redacted]
Place of Birth
NORTH CAROLINA, U.S.A.

UNITED STATES DEPARTMENT OF STATE



NORTH CAROLINA DRIVER LICENSE

COMMISSIONER OF MOTOR VEHICLES

4d DLN [redacted]
3 DOB 12/01/1972
4b EXP 12/01/2030
1 VANEPPS
2 LESTER VERNON, III
8 171 TARHEEL DR
WASHINGTON, NC 27889-4712
9 CLASS C 9a END NONE
12 RESTR NONE
15 SEX M 18 EYES HAZ
16 HGT 6'-01" 19 HAIR BLN RACE
4a [redacted] 02/08/2022
5 [redacted]
12/01/72

DEFENDANT'S EXHIBIT
tabbies
E

STATE OF SOUTH CAROLINA)	IN THE MASTER IN EQUITY COURT
)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
)	
)	
John Patton and)	
Tara Patton,)	
)	
Plaintiffs,)	
)	
-vs-)	**PRE-HEARING BRIEF**
)	
)	Case No. 2020-CP-46-3434
)	
Palmetto Contracting Services of)	
York County, LLC and)	
Lester Van Epps,)	
Defendants.)	

NOW COME Plaintiffs before the Court, in responding to Defendants' Motion to Set Aside Judgment:

The Defendant is seeking relief from this Court's judgment based on, at best, a clerical oversight. This does not meet the standard to set aside a valid judgment. Although Defendant does not cite a rule on which its motion is based,[1] this motion should be heard under the stricter standard of the South Carolina Rules of Civil Procedure's Rule 60 because a default judgment already has been entered. To meet this standard, the defendant must prove either "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; or (4) the judgment is void."[2]

[1] See SCRCP Rule 7: that a motion "shall state with particularity the grounds therefor."
[2] SCRCP Rule 60.

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STANDARD OF REVIEW

"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge." Roberson v. S. Fin. of S.C., Inc., 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005) (citing Thompson v. Hammond, 299 S.C. 116, 119, 382 S.E.2d 900, 902–03 (1989)). "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." Id. (citing Mitchell Supply Co., Inc. v. Gaffney, 297 S.C. 160, 163, 375 S.E.2d 321, 323 (Ct.App.1988)). " 'An abuse of discretion in setting aside a default judgment occurs when the [trial court] issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.' " Id. (quoting In re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997)).

The Defendant[3] is arguing the default judgment is void pursuant to Rule 60(b)(4), SCRCP, because the individual and corporate Defendants were not properly identified and served with the Summons and Complaint. To determine whether proper notice was given and if the parties were adequately identified, the Court should examine Rule 4 SCRCP, which governs process. Specifically, in the context of challenging process under a Rule 60 motion, South Carolina Courts have stated that Rule 4, SCRCP "assures the defendant of reasonable notice of the action."[4] "We have never required exacting compliance with the rules to effect service of process. Rather, we inquire whether the plaintiff has sufficiently complied with the rules such

[3] The individual and corporate Defendants are herein collectively referred to as "Defendant."
[4] *Delta Apparel, Inc. v. Farina,* 750 S.E.2d 615, 406 S.C. 257 (S.C. App. 2013).

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that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings."[5]

INDIVIDUAL DEFENDANT

First, Defendant argues that the judgment is void against the individual Defendant because he was named in the lawsuit as Lester Van Epps and not Lester Van Epps III. This argument does not carry legal significance because the proper parties were provided with reasonable notice of the action. In regard to Mr. Van Epps, he consistently identified himself to the Plaintiffs through his written correspondences as "Lester Van Epps." When Mr. Van Epps was served, the correct individual Defendant was identified, personally served at the correct residential address, and proceeded to appear in Court on behalf of himself individually and on behalf of the LLC (of which he is the sole owner and operator). There was never any confusion or question by the Defendant as to which individual was named in the lawsuit. Mr. Van Epps appeared in Common Pleas on July 28, 2021, after being personally served with the pleadings and receiving a notice of hearing. On the record, Mr. Van Epps identified himself as follows:

"THE COURT: And your name, sir?

MR. VAN EPPS: Lester Van Epps. I'm the owner."[6]

The Defendant clearly had actual notice of the proceedings against him, understood himself to be the party named in the action, and most significantly of all, actually appeared in Court. By

[5] *Id.*

[6] See Transcript of Record.

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appearing in Court and identifying himself as the Defendant, the Defendant waived and cured any alleged defects to the sufficiency of process under Rule 4 SCRCP.[7]

CORPORATE DEFENDANT

The Defendant's next argument is that the judgment should not be enforced against the corporate Defendant because it alleges Palmetto Contracting Services of York, LLC was served instead of Palmetto Contracting Services of York County, LLC. However, the Defendant created both of these corporations and has concurrently operated under both names in its efforts to avoid multiple judgments. Now, the Defendant is attempting to benefit from this deceptive practice. As the Defendant points out in its motion, the contract it uses with its customers vaguely identifies itself as "Palmetto Contracting Services." But Defendant admits that it operates under the corporate entity Palmetto Contracting Services of York County, LLC,[8] appeared in this lawsuit on behalf of Palmetto Contracting Services of York County, LLC,[9] and has appeared in past lawsuits on behalf of Palmetto Contracting Services of York County, LLC.[10] Also, the registered agent for Palmetto Contracting Services of York County, LLC is Lester Van Epps III[11], who was personally served with the Summons & Complaint, Affidavit of Default of Lester Van Epps and Palmetto Contracting Services of York County, LLC, Motion for Default Order, Order of Default, and Order of Default Judgment.[12] Each of these documents explicitly names and

[7] See Rule 4 SCRCP "Voluntary appearance by defendant is equivalent to personal service."
[8] See Transcript of Record.
[9] *Id.*
[10] See York County Public Index Screenshot
[11] See SC Secretary of State Business Filing
[12] See each of the three Affidavits of Service to Lester Van Epps.

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provides notice to both the individual and corporate entities. While identifying himself in Court (elaborating the same quotation from above), Mr. Van Epps also represented:

THE COURT: John Patton versus Palmetto Contracting. The parties here for that, y'all come forward...All right. This is 2020-CP-46-03434. John Patton versus Palmetto Contracting. Representing the plaintiff, John Patton, is Charlie Burnette the Fourth of Rock Hill. And Palmetto Contracting. It's an LLC. And your name, sir?

MR. VAN EPPS: Lester Van Epps. I'm the owner.[13]

Notably, Van Epps created a second corporation, Palmetto Contracting Services of York, LLC, during the pendency of his previous lawsuits. He concurrently operated under both corporate entities for five years as multiple lawsuits progressed[14] until he quietly dissolved Palmetto Contracting Services of York County, LLC in 2018. Still, Van Epps continues to use the same name, website, contract, and identity for his business, regardless of which business filing he ambiguously has operated under during this time. As a matter of practice and fact, Palmetto Contracting Services of York, LLC and Palmetto Contracting Services of York County, LLC operate as the same entity and should be legally considered as the same entity. In addition, Plaintiff served both registered agents.[15] It is obvious that the Defendant has intentionally

[13] See Transcript of Record

[14] See York County Public Index Screenshot.

[15] See Affidavits of Service (personal Service was provided to Lester Van Epps, who is the registered agent of Palmetto Contracting Services of York County, LLC. Certified mailing service was provided to US Corporate Agents, Inc., which is the registered agent of Palmetto Contracting Services of York, LLC).

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created this ambiguity for the purpose of avoiding litigation[16], and has inconsistently and arbitrarily claimed its identity based on what helps it to avoid litigation.

The Defendant has further proven its intent to defraud the Court through corporate filings by creating yet another corporation to conceal its assets. After this Court entered judgment against the Defendant in October 2021 (and with an unrelated judgment entered against him in Chester County), Mr. Van Epps promptly sold his real estate within the 30-day appeal period and purchased new real estate in Beaufort County, North Carolina. Mr. Van Epps then incorporated an LLC in Montana[17] and transferred the property to the LLC just four days later. These actions provide additional proof of Defendant's willingness to fraudulently shield its assets from judgments by creating shell corporations. The Court has long held the authority to "pierce the corporate veil" in these instances and should not permit the Defendant to benefit from this unlawful practice. The Court has the authority and should enforce or substitute this judgment against any of the LLC's beginning with "Palmetto Contracting Services" created by the Defendant.

Accordingly, under the same rule on which the Defendant's motion is based, Rule 60 SCRCP provides a remedy to the Plaintiffs in this circumstance. Rule 60 states "clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any

[16] Even now, Defendant is still vague and does not state which created entity it now identifies as. Defendant has also suggested he created and identifies as a third LLC, Palmetto Contracting Services, LLC.

[17] See Montana Secretary of State Business Filing (Pamlico Holdings, LLC was incorporated by "L VanEpps" on 12/13/21 and Van Epps sold his real estate ((located on the Pamlico River)) to the LLC on 12/17/2021). See also Van Epps deed.

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party and after such notice, if any, as the court orders."[18] Considering that the Defendants (individual and corporate) have knowingly participated as the parties named in this lawsuit without objection until now, in addition to the Defendant's other recent actions, the Plaintiffs believe it appropriate to now move for the Court to allow the correction of the alleged clerical oversights, and amend the Defendants' names to reflect their claimed preferred identities. To formally initiate this request, an appropriate Rule 60 Motion is attached hereto.

As a final practical argument, even if the merits of this case were fully litigated, it is highly unlikely that the Defendant would prevail. Screenshots from the Defendant's website prove that the Defendant actively represented to the Plaintiffs, as well as its other customers, that it is licensed to perform general contracting work[19], which it is not. This Court reviewed the evidence of damages presented by the Plaintiffs and competently determined the amount of financial harm suffered by the Plaintiffs. The Plaintiffs are confident that these damages and the allegations in the pleadings would have been proven at trial had it occurred. The Defendant received actual notice of all pleadings, scheduled hearings, and Orders throughout each stage of this litigation, and even appeared in Court. There is simply no argument that the Defendant wasn't afforded due process and there is no reason to void this Court's judgment.

s/Charles B. Burnette

[18] See Rule 60 SCRCP. (See also Rule 17 SCRCP "no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest").

[19] See palmettocontracting.com screenshot.

ELECTRONICALLY FILED - 2022 Jun 29 1:04 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

Charles B. Burnette IV
Bar No.: 103747
BURNETTE & PAYNE, P.A.
414 E. Main Street
Rock Hill, SC 29730
Ph.: (803) 328-1800
Fax: (803) 328-9494
bburnette@burnettelaw.net
Attorney for Plaintiffs

Rock Hill, South Carolina
June 28, 2022

ELECTRONICALLY FILED - 2022 Jun 29 1:04 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

State of South Carolina) Court of Common Pleas
County of York) Seventh Judicial Circuit

John Patton,) Transcript of Record
Plaintiff,)
vs.) 2020-CP-46-03434
Palmetto Contracting Services of York County, LLC,)
Defendant.)

July 28, 2021
York, South Carolina

B E F O R E:

The Honorable Daniel D. Hall, Judge

A P P E A R A N C E S:

Charles Baxter Burnette, IV, Esquire
On behalf of the Plaintiff

Lester Van Epps, Pro Se
On behalf of Palmetto Contracting

Reported by: Stacy S. Johnson,
Circuit Court Reporter

(The following proceedings were held July 28, 2021, beginning at 2:43 PM.)

THE COURT: John Patton versus Palmetto Contracting. The parties here for that, y'all come forward.

All right. This is 2020-CP-46-03434. John Patton versus Palmetto Contracting. Representing the plaintiff, John Patton, is Charlie Burnette the Fourth of Rock Hill.

And Palmetto Contracting. It's an LLC. And your name, sir?

MR. VAN EPPS: Lester Van Epps. I'm the owner.

THE COURT: Lester Bennett?

MR. VAN EPPS: No, Van Epps.

THE COURT: I'm sorry, help me pronounce your last name -- I mean, spell your last name.

MR. VAN EPPS: V-A-N E-P-P-S.

THE COURT: E-T-T-S?

MR. VAN EPPS: P-P.

THE COURT: Two P's as in Paul?

MR. VAN EPPS: Yes, sir.

THE COURT: All right. Mr. Burnette, I'll be glad to hear from you.

MR. BURNETTE: Thank you, Your Honor.

This is a damages hearing and the action's -- is a construction action. It's a breach of contract and negligence and for those damages most of them are

publicindex.sccourts.org/York/Publicindex/PISearch.aspx

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York County
Sixteenth Judicial Circuit
Public Index



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Search By...Court Type All Courts **Court Agency** All Agencies

Case # **Case Type** All Case Types **Case SubType** All Case Sub-Types

Last Name/Business palmetto contracting service **First** **Middle** **Suffix** **Party Type** All

Action Type All Actions **CDR Code** **Indictment #**

Date Type **Beginning** **Ending**

Tax Map# From **Through**

Only for Civil Cases... Index Search (•) All ( ) Lis Pendens ( ) Judgments | **Cross Index Search** ( ) All ( ) Judgment For ( ) Judgment Against

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Name	Party Type	Case Number	Filed Date	Case Status	Disposition Date	Type	Subtype	Judgment #	Court Agency
Palmetto Contracting Services Of York County LLC	Defendant	2009CP4604393	10/13/2009	Change Of Venue	01/26/2010	Common Pleas	Breach of Cont 140		York County Common Pleas
Palmetto Contracting Services Of York County LLC	Defendant	2016CP4602421	08/15/2016	Settled	05/23/2017	Common Pleas	Breach of Cont 140		York County Common Pleas
Palmetto Contracting Services Of York County Llc	Defendant	2020CP4603434	11/16/2020	Judgment	10/05/2021	Common Pleas	Constructions 100	2020CP4603434	York County Common Pleas
Palmetto Contracting Services Of York County Llc	Defendant	2020CP4603434	11/16/2020	Disposed	10/05/2021	Common Pleas	Constructions 100		York County Master In Equity

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South Carolina Secretary of State *Mark Hammond*

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PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC

Corporate Information

Entity Type Limited Liability Company

Status Dissolved

Domestic/Foreign Domestic

Incorporated State South Carolina

Important Dates

Effective Date 01/12/2005

Expiration Date N/A

Term End Date N/A

Dissolved Date 04/23/2018

Registered Agent

Agent LESTER VAN EPPS III

Address 2532 KILLIAN ROAD
EDGEMOOR, South Carolina 29712

Type here to search
69°F Mostly cloudy 10:44 AM 6/28/2022

STATE OF SOUTH CAROLINA) **COUNTY OF YORK)**	**IN THE COURT OF COMMON PLEAS**
John Patton And Tara Patton ,)	
Plaintiffs,)	
versus)	**AFFIDAVIT OF PERSONAL SERVICE** **Case No. 2020-CP-46-03434**
Palmetto Contracting Services, Of York County LLC and Lester Van Epps)	
Defendant.)	

Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(x) Summons
(x) Complaint

(x) A copy of each document listed above was served on by personally **Lester Van Epps** delivering the same to the **Lester Van Epps** at the following address **4663 Catawba River Road Catawba SC 29704 on the of November 17,2020 at 3:14 p.m.**

Sheila P. Dover

SWORN TO and subscribed before me
This day of November 17, 2020 .

Mark D. Patterson
Notary Public for SC
My Commission Expires: 11-30th 2022

ELECTRONICALLY FILED - 2020 Nov 24 11:37 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL CASE NO. 2020-CP-46-03434
COUNTY OF LANCASTER	)	
	)	
JOHN PATTON AND TARA PATTON	)	
Plaintiffs,	)	**AFFIDAVIT OF MAILING**
	)	
vs.	)	
	)	
PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS	)	
Defendants.	)	

Personally appeared before me, BETH GAULT who states that she served PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC, with a copy of the SUMMONS AND COMPLAINT by mailing:

(Check one)

☐ First class mail

☒ Certified mail

- ☒ restricted delivery
- ☒ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on November 20, 2020 addressed as follows:

PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, SC 29407

Sworn to before me this
24th day of November, 2020

Notary Public of South Carolina

My Commission expires: 4/8/26

Affiant

ELECTRONICALLY FILED - 2020 Nov 24 11:41 AM - YORK - COMMON PLEAS - CASE#2020CP4603434

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1. Article Addressed to:

UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HWY, STE 201
CHARLESTON, SC 29407

9590 9402 3587 7305 7534 36

2. Article Number *(Transfer from service label)*
7006 0100 0000 2674 6212

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☒ Agent ☐ Addressee

B. Received by *(Printed Name)* S Wells
C. Date of Delivery 11/20/20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
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- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
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- ☐ Registered Mail™
- ☒ Registered Mail Restricted Delivery
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CHARLES B. BURNETTE IV
BURNETTE & PAYNE, PA
414 E. MAIN ST.
ROCK HILL, SC 29730

ELECTRONICALLY FILED - 2021 May 11 12:42 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA) **COUNTY OF YORK)**	**IN THE COURT OF COMMON PLEAS**
John Patton And Tara Patton ,)	
Plaintiffs,)	
versus)	**AFFIDAVIT OF PERSONAL SERVICE** **Case No. 2020-CP-46-03434**
Palmetto Contracting Services, Of York County LLC and Lester Van Epps)	
Defendant.)	

Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(x) Affidavit of Default of Defendants Lester Van Epps and Palmetto Contracting Services od York County ,LLC
(x) Motion For Default Order
(x) Order Of Default

(x) A copy of each document listed above was served on by personally **Lester Van Epps** delivering the same to the **Lester Van Epps** at the following address **4663 Catawba River Road Catawba SC 29704 on the of May 5,2021 at 4:12 p.m.**

Sheila P. Dover

SWORN TO and subscribed before me
This day of May 5, 2021 .

Mark D. Patterson
Notary Public for SC
My Commission Expires: 11-30th 2022

ELECTRONICALLY FILED - 2021 May 11 12:41 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA) COUNTY OF LANCASTER) JOHN PATTON AND TARA PATTON Plaintiffs,) vs.) PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS Defendants.	IN THE COURT OF COMMON PLEAS CIVIL CASE NO. 2020-CP-46-03434 **AFFIDAVIT OF MAILING**

Personally appeared before me, BETH GAULT who states that she served PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC, with a copy of the AFFIDAVIT OF DEFAULT, MOTION FOR DEFAULT ORDER, AND ORDER OF DEFAULT by mailing:

(Check one)

☐ First class mail

☒ Certified mail

- ☒ restricted delivery
- ☒ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on May 6, 2021 addressed as follows:

PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, SC 29407

Sworn to before me this
11th day of May, 2021

Notary Public of South Carolina

My Commission expires: 4/8/26

Affiant

ELECTRONICALLY FILED - 2021 May 11 12:41 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

USPS TRACKING#

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CHARLES B. BURNETTE IV
BURNETTE & PAYNE, P.A.
Attorneys at Law
414 East Main Street
Rock Hill, SC 29730

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1. Article Addressed to:

PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HWY, STE 201
CHARLESTON, SC 29407

9590 9402 3587 7305 7534 98

2. Article Number (Transfer from service label)
7006 0100 0000 2674 6380

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☑ Agent ☐ Addressee

B. Received by (Printed Name) S Wells
C. Date of Delivery 5/6/21

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type
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- ☐ Collect on Delivery
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- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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Post Office Box 649, York, South Carolina 29745-0649

ELECTRONICALLY FILED - 2021 Jun 16 3:55 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

June 16, 2021

Lester Van Epps
4663 Catawba River Road
Catawba, SC 29704

RE: **Case # 2020CP4603434**
John Patton Vs Palmetto Contracting Services of York County, LLC, et al

This is to advise a hearing has been scheduled for Plaintiff's Motion for Damages that was filed in the above noted case.

To be heard, you must appear at the Moss Justice Center, Courtroom E located at 1675 York Highway, York, South Carolina, 29745 at 2:00 pm on Wednesday, July 28, 2021.

PLEASE NOTE: A CORPORATION THAT IS A PARTY TO A CASE IN THE CIRCUIT COURT CANNOT APPEAR AND REPRESENT ITSELF. UNDER SOUTH CAROLINA LAW, A CORPORATION MUST BE REPRESENTED IN CIRCUIT COURT BY AN ATTORNEY.

Sincerely,

Lynn Strait

Lynn Strait
Court Coordinator
York County Court of Common Pleas
E-Mail: lynn.strait@yorkcountygov.com
Phone: (803) 684-8506

CLERK OF COURT'S OFFICE
Post Office Box 649, York, South Carolina 29745-0649

ELECTRONICALLY FILED - 2021 Jun 16 4:02 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

June 16, 2021

Palmetto Contracting Services of York County, LLC
C/O US Corporation Agents Inc
1591 Savannah Highway; Suite 201
Charleston, SC 29407

RE: **Case # 2020CP4603434**
John Patton Vs Palmetto Contracting Services of York County, LLC, et al

This is to advise a hearing has been scheduled for Plaintiff's Motion for Damages that was filed in the above noted case.

To be heard, you must appear at the Moss Justice Center, Courtroom E located at 1675 York Highway, York, South Carolina, 29745 at 2:00 pm on Wednesday, July 28, 2021.

PLEASE NOTE: A CORPORATION THAT IS A PARTY TO A CASE IN THE CIRCUIT COURT CANNOT APPEAR AND REPRESENT ITSELF. UNDER SOUTH CAROLINA LAW, A CORPORATION MUST BE REPRESENTED IN CIRCUIT COURT BY AN ATTORNEY.

Sincerely,

Lynn Strait

Lynn Strait
Court Coordinator
York County Court of Common Pleas
E-Mail: lynn.strait@yorkcountygov.com
Phone: (803) 684-8506

CLERK OF COURT'S OFFICE
Post Office Box 649, York, South Carolina 29745-0649

ELECTRONICALLY FILED - 2021 Jul 09 12:18 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

June 16, 2021

Palmetto Contracting Services of York, LLC
C/O US Corporation Agents Inc
1591 Savannah Highway; Suite 201
Charleston, SC 29407

RE: **Case # 2020CP4603434**
John Patton Vs Palmetto Contracting Services of York, LLC, et al

This is to advise a hearing has been scheduled for Plaintiff's Motion for Damages that was filed in the above noted case.

To be heard, you must appear at the Moss Justice Center, Courtroom E located at 1675 York Highway, York, South Carolina, 29745 at 2:00 pm on Wednesday, July 28, 2021.

PLEASE NOTE: A CORPORATION THAT IS A PARTY TO A CASE IN THE CIRCUIT COURT CANNOT APPEAR AND REPRESENT ITSELF. UNDER SOUTH CAROLINA LAW, A CORPORATION MUST BE REPRESENTED IN CIRCUIT COURT BY AN ATTORNEY.

Sincerely,

Lynn Strait

Lynn Strait
Court Coordinator
York County Court of Common Pleas
E-Mail: lynn.strait@yorkcountygov.com
Phone: (803) 684-8506

ELECTRONICALLY FILED - 2021 Aug 27 4:58 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
YORK COUNTY)	SIXTEENTH JUDICIAL CIRCUIT
)	
John Patton and Tara Patton,)	
)	
Plaintiffs,)	
)	
vs.)	**NOTICE OF HEARING**
Lester Van Epps and Palmetto Contracting)	
Services of York County, LLC)	
)	Civil Action No. 2020-CP-46-03434
Defendants.)	
)	

YOU WILL PLEASE TAKE NOTICE that a hearing has been scheduled in the above captioned matter before the Honorable Teasa Weaver, in the Master-in-Equity's courtroom, *York County Historic Courthouse, 2 S. Congress Street, 2nd Floor, York, SC 29745* on August 31, 2021 at 9:00 a.m.

Respectfully Submitted,

s/Charles Burnette

Charles B. Burnette IV
Bar No.: 103747
BURNETTE & PAYNE, P.A.
414 E. Main Street
Rock Hill, SC 29730
Ph.: (803) 328-1800
Fax: (803) 328-9494
bburnette@burnettelaw.net
Attorney for Plaintiffs

Rock Hill, SC
August 19, 2021

ELECTRONICALLY FILED - 2021 Aug 27 4:58 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
YORK COUNTY	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
John Patton and Tara Patton,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
Lester Van Epps and Palmetto Contracting Services of York County, LLC	)	
	)	
	)	Civil Action No. 2020-CP-46-03434
Defendants.	)	
	)	

The undersigned hereby certifies that a copy of the within NOTICE OF HEARING was served on all parties of record by depositing a copy of same in the United States mail, with sufficient postage annexed thereto, addressed as follows:

Lester Van Epps
4663 Catawba River Road
Catawba, SC 29704

Palmetto Contracting Services of York, LLC
c/o US Corporation Agents, Inc.
1591 Savannah Highway, Suite 201
Charleston, SC 29407

This 19th day of August, 2021.

Beth Gault, Legal Assistant to
C. Baxter Burnette IV

STATE OF SOUTH CAROLINA) **COUNTY OF YORK)**	**IN THE COURT OF COMMON PLEAS**
John Patton And Tara Patton ,) **Plaintiffs,)** **versus)** **Palmetto Contracting Services, Of York County LLC and Lester Van Epps)** **Defendant.)**	**AFFIDAVIT OF PERSONAL SERVICE** **Case No. 2020-CP-46-03434**

Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(x) Order Of Default Judgment

(x) A copy of each document listed above was served on by personally **Lester Van Epps** delivering the same to the **Lester Van Epps** at the following address **4663 Catawba River Road Catawba SC 29704 on the of October 8,2021 at 3:14 p.m.**

Sheila P. Dover

SWORN TO and subscribed before me
This day of October 8, 2021 .

Mark D. Patterson
Notary Public for SC
My Commission Expires: 11-30th 2022

ELECTRONICALLY FILED - 2021 Dec 01 4:03 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL CASE NO. 2020-CP-46-03434
COUNTY OF LANCASTER	)	
	)	
JOHN PATTON AND TARA PATTON	)	
Plaintiffs,	)	**AFFIDAVIT OF MAILING**
	)	
vs.	)	
	)	
PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS	)	
Defendants.	)	

Personally appeared before me, BETH GAULT who states that she served PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC, with a copy of the ORDER OF DEFAULT JUDGMENT by mailing:

(Check one)

☐ First class mail

☒ Certified mail

- ☒ restricted delivery
- ☒ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on October 12, 2021 addressed as follows:

PALMETTO CONTRACTING SERVICES OF YORK, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, SC 29407

Sworn to before me this

14 day of October, 2021

Notary Public of South Carolina

My Commission expires: 3-7-2028

Affiant

ELECTRONICALLY FILED - 2021 Dec 01 4:05 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

ELECTRONICALLY FILED - 2021 Dec 01 4:05 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

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C. BAXTER BURNETTE IV
BURNETTE & PAYNE, P.A.
Attorneys at Law
414 East Main Street
Rock Hill, SC 29730

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PALMETTO CONTRACTING SERVICES OF YORK, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HWY, STE 201
CHARLESTON, SC 29407

9590 9402 6638 1060 9790 74

2. Article Number (Transfer from service label)
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PS Form 3811, July 2020 PSN 7530-02-000-9053

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X
☑ Agent
☐ Addressee

B. Received by (Printed Name) S. Wills
C. Date of Delivery 10/12/21

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3. Service Type
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☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
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Results: 1

Form Info	Status	Registration Date	Agent
Pamlico Holdings, LLC (C1254183) *Domestic Limited Liability Company*	Active-Good Standing	12/13/2021	ALL DAY $49 MONTANA REG AGENT LLC

Pamlico Holdings, LLC (C1254183)
Domestic Limited Liability Company

Request Information

Filing Number	C1254183
Entity Type	Domestic Limited Liability Company
Entity SubType	Limited Liability Company
Status	Active-Good Standing
Managed By	Member
Formed In	Montana
Principal Address	N/A
Mailing Address	1001 S. MAIN ST. STE 49 KALISPELL, MT 59901
Registration Date	12/13/2021
AR Due Date	04/15/2023
Commercial Registered Agent	Commercial C182737 ALL DAY $49 MONTANA REG AGENT LLC 1001 S MAIN STREET STE 49 KALISPELL, MT 59901

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20170514042136.pdf 1638392786193-9....pdf Patton timeline.docx Patton Domestic....docx patton lis pende....docx Patton Affidavit C....docx Show all

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1 of 2
Page view | Read aloud | Add text | Draw | Highlight | Erase

Limited Liability Company Type	
Type of Limited Liability Company	Limited Liability Company (LLC)
Limited Liability Company Name	
Entity Name	Pamlico Holdings, LLC
Term	
Term Expiration	Perpetual / Ongoing
Business Purpose	
Purpose	
Business Mailing Address of Principal Office	
Address	1001 S. MAIN ST. STE 49 KALISPELL, MT 59901
Business Physical Address of Principal Office	
☐ Add Physical Address	
Registered Agent In Montana	
Registered Agent	ALL DAY $49 MONTANA REG AGENT LLC Commercial Registered Agent Agent Number C182737 Email Address Website Physical Address 1001 S MAIN STREET STE 49 KALISPELL, MT 59901 Mailing Address 1001 S MAIN STREET STE 49 KALISPELL, MT 59901
☒ The appointment of the registered agent listed above is an affirmation by the represented entity that the agent has consented to serve as a registered agent.	
LLC Management	
LLC Managed By	Members
Are Members Liable?	No

Members

Name Of Individual Or Business Entity	Business Mailing Address	Email Address
L VanEpps	1001 S. MAIN ST. STE 49 KALISPELL, MT 59901	

Page 1 of 2

AM Received by MT Secretary of State Christi Jacobsen

Type here to search
59°F Mostly cloudy
4:23 PM
3/29/2022

This instrument prepared by
a licensed North Carolina attorn
If any to be paid by the closing a
tax collector upon disbursement

NO TITLE SEARCH REQUESTED AND NONE PERFORMED BY C. T. PARTRICK, JR., P.A.

NO REAL ESTATE
TAX PAID

NORTH CAROLINA

BEAUFORT COUNTY

THIS DEED, made this 17 day of December, 2021, by and between LESTER VERNON VAN EPPS, III & Wife, HEATHER VAN EPPS, hereinafter designated as Grantors, whose address is: 171 Tarheel Drive, Washington, NC 27889 to PAMLICO HOLDINGS, LLC, a Montana Limited Liability Company, hereinafter designated as Grantee, whose address is: 1001 South Main Street, Suite 5628, Kalispell, MT 59901;

W I T N E S S E T H:

That the Grantors for and in consideration of the sum of TEN DOLLARS ($10.00) and other valuable considerations to them paid by the Grantee, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do hereby bargain, sell and convey unto the Grantee, its heirs, successors and assigns, in fee simple, all that certain lot or parcel of land lying and being in Washington Township, Beaufort County, State of North Carolina, and more particularly described as follows:

BEING all of that certain lot or parcel of land containing 0.747 acre, more or less as the same is shown on a map of survey entitled "Survey for Jehu Nicholls, III & wife, Laura W. Nicholls", dated March 17, 2003 by Thomas L. Bohrer, PLS, a copy of which is recorded in Book 1331, Page 958, Beaufort County Registry and the same is incorporated herein by reference. SUBJECT TO,

palmettocontracting.com

Apps YouTube Maps Gmail

Reading list



Home Services About Us Contact Us

Licensed Contractors

As a company dedicated to providing premier customer service, it is important to us to deliver unparalleled workmanship on every assignment. We are accredited, licensed, bonded, and insured. With our experience and expertise, we can provide the support your project needs.

On-time Completion

We will work with you to meet deadlines and coordinate with other related projects. We will maintain open communication with you to keep you up to date on the status of your job. We do this to guarantee that the project is completed according to your preferences.

Great Service

We combine our industry knowledge, the highest quality building supplies and equipment, and our dedication to deliver exceptional service to our clients. We will stay in touch, keeping you up to date on both the paperwork and renovation process.

STATE OF NORTH CAROLINA)	IN THE GENERAL COURT OF JUSTICE
)	SUPERIOR COURT DIVISION
COUNTY OF BEAUFORT)	22 CVS 153
)	
)	
John Patton &)	
Tara Patton,)	
)	
Plaintiffs,)	
)	
-vs-)	**COMPLAINT AND MOTION TO EXECUTE**
)	
)	
Lester Van Epps III & Pamlico)	
Holdings, LLC,)	
Defendant.)	

FILED
2022 MAR -2 A 11:26
BEAUFORT CO., C.S.C.
BY PMI

Plaintiffs John Patton and Tara Patton, complaining of the Defendants Lester Van Epps III and Pamlico Holdings, LLC, would respectfully allege:

1. Plaintiffs are residents of Chester County, South Carolina.

2. Upon information and belief, the Defendant Lester Van Epps III has been a resident of Beaufort County, North Carolina since November 1, 2021.

3. Defendant Palumbo Holdings, LLC is a newly formed Limited Liability Company that was incorporated in the State of Montana on December 13, 2021.

4. The predominant acts giving rise to this action occurred in Beaufort County, NC and relates to real estate located in Beaufort County.

STATEMENT OF FACTS

5. On October 5, 2021, Plaintiffs were awarded a Default Judgment in the principal amount of $367,825.01, together with the post-judgment interest at the rate of 7.25% against Defendant Van Epps in the Court of Common Pleas, York County, South Carolina in the case captioned *John Patton and Tara Patton vs. Palmetto Contracting Services of York County, LLC*

and Lester Van Epps, Case No.: 2020CP4603434 (the "Judgment"). (Exemplified Copy attached).

6. Defendant Van Epps was served with the Judgment by personal service on October 8, 2021. (Affidavit of Personal Service attached).

7. On October 22, 2021, Defendant Van Epps sold his residential real estate property located in Chester County, South Carolina at 4663 Catawba River Rd., Catawba, SC to Donald R. Templeton for the price of $500,000.00. (Deed attached).

8. On November 1, 2021, Defendant Van Epps purchased real estate property located in Beaufort County, North Carolina at 171 Tarheel Dr., Washington, NC 27889 from Laura W. Nicholls for "ten dollars and other valuable considerations to her paid by the Grantee." (Deed attached). Upon information and belief, Defendant Van Epps currently resides at this property.

9. On December 13, 2021, Defendant Pamlico Holdings, LLC was incorporated in the State of Montana.

10. On December 17, 2021, Defendant Van Epps transferred his residential real estate property located at 171 Tarheel Dr., Washington, NC to Defendant Pamlico Holdings, LLC for "ten dollars and other valuable considerations to them paid by the Grantee." (Deed attached).

11. Despite Defendant Van Epp's transfer of 171 Tarheel Drive to Pamlico Holdings, LLC, Defendant Van Epps continues to possess 171 Tarheel Drive and reside at the property.

12. Upon information and belief, Defendant Van Epps created Pamlico Holdings, LLC as an entity to dispose his assets for the purpose of defrauding a judgment creditor.

FIRST CAUSE OF ACTION
VIOLATION UNDER UNIFORM VOIDABLE TRANSACTIONS ACT

13. The allegations of Paragraphs 1 through 12 are incorporated herein and made a

part of this cause of action in all aspects not inconsistent herewith.

14. In violation of G.S. §§ 39-23.4 – 39-23.5, Defendant Van Epps, a debtor to Plaintiffs, who are present judgment creditors, transferred his residential real estate property in Beaufort County to a fraudulent entity, Defendant Pamlico Holdings, LLC, with intent to hinder, delay, or defraud the creditors of Defendant Van Epps.

15. The transfer of the real estate was to an insider.

16. Defendant Van Epps retained possession or control of the property transferred after the transfer.

17. The transfer was not disclosed and was concealed to the Plaintiffs.

18. Before the transfer was made, Defendant Van Epps had been sued and served with a Judgment by the Plaintiffs.

19. The transfer was the substantial majority of Defendant Van Epps's assets.

20. Defendant Van Epps absconded to North Carolina to avoid the Plaintiff's Judgment.

21. Defendant Van Epps removed or concealed assets to avoid the Plaintiff's Judgment.

22. Defendant Van Epps is now insolvent to the collection of the Plaintiff's Judgment after the transfer.

23. The transfer occurred shortly after a substantial debt was incurred.

24. Defendant Van Epps made the transfer without receiving a reasonably equivalent value in exchange for the transfer or obligation, and Defendant Van Epps knew or reasonably should have believed that Defendant Van Epps had incurred debts beyond Defendant Van Epps's ability to pay.

MOTION TO EXECUTE ON DEFENDANTS' REAL ESTATE

25. The allegations of Paragraphs 1 through 24 are incorporated herein and made a part of this cause of action in all aspects not inconsistent herewith.

26. Defendant Van Epp's sale of his residential real estate in Beaufort County to Defendant Pamlico Holdings, LLC was a fraudulent transfer to a fraudulent entity for the purpose of defrauding the Judgment creditor Plaintiffs, in violation of G.S. §§ 39-23.4 – 39-23.5.

27. Under G.S. §39-23.7, Plaintiffs are entitled to an attachment against 171 Tarheel Dr., Washington, NC 27889, in conjunction with the concurrently pending domestication of the Plaintiff's Judgment.

WHEREFORE, Plaintiffs pray that:

a. The Court grant an injunction against further disposition of real property by Pamlico Holdings, LLC and Lester Van Epps, in accordance with G.S. §39-23.7;

b. The Court freeze any transfer of 171 Tarheel Drive during the pendency of the Domestication of Plaintiffs' South Carolina Judgment in Beaufort County.

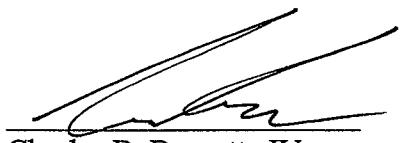
c. The Court order that 171 Tarheel Drive be attached to Plaintiff's concurrently pending Judgment, upon the Domestication of the Judgment in Beaufort County, against Pamlico Holdings, LLC;

d. The Court alternatively order that 171 Tarheel Drive be transferred from Defendant Pamlico Holdings, LLC to Defendant Lester Van Epps;

e. The Court alternatively add Pamlico Holdings, LLC as a party to the concurrently pending Domestication of the Judgment and order that the Judgment be enforced against Pamlico Holdings, LLC;

f. The Court award attorneys' fees and collection costs to the Plaintiff; and

g. The Court grant any other relief the circumstances may require.



Charles B. Burnette IV
NC Bar No.: 55790
BURNETTE & PAYNE, P.A.
414 E. Main Street
Rock Hill, SC 29730
Ph.: (803) 328-1800
Fax: (803) 328-9494
bburnette@burnettelaw.net
Attorney for Plaintiffs

February 25, 2022
Rock Hill, South Carolina

ELECTRONICALLY FILED - 2021 Dec 01 4:03 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA) **COUNTY OF YORK)**	**IN THE COURT OF COMMON PLEAS**
John Patton And Tara Patton ,) **Plaintiffs,)** **versus)** **Palmetto Contracting Services, Of York County LLC and Lester Van Epps)** **Defendant.)**	**AFFIDAVIT OF PERSONAL SERVICE** **Case No. 2020-CP-46-03434**

Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(x) Order Of Default Judgment

(x) A copy of each document listed above was served on by personally **Lester Van Epps** delivering the same to the **Lester Van Epps** at the following address **4663 Catawba River Road Catawba SC 29704 on the of October 8,2021 at 3:14 p.m.**

Sheila P. Dover

SWORN TO and subscribed before me
This day of October 8, 2021 .

Mark D. Patterson
Notary Public for SC
My Commission Expires: 11-30th 2022

Instrument Book Volume Page
2021 - 116523 DB 1360 132
DEED

PREPARED BY Trimnal & Myers, LLC

2021 - 116523
Filed for Record in
CHESTER COUNTY, SC
Sue K. Carpenter, CLERK OF COURT
10/29/2021 08:50:03 AM
DEED $15.00
Bk DB Vol 1360 Page 132 - 134

Consideration Amt: $500000.00 STATE TAX: $1300.00 LOCAL TAX: $550.00

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF CHESTER)

KNOW ALL MEN BY THESE PRESENTS, THAT **Lester Van Epps, III** (hereinafter called "Grantors") in the State aforesaid, for and in consideration of the sum of **Five Hundred Thousand and 00/100 ($500,000.00) Dollars,** to it paid by **Donald R. Templeton** (hereinafter called "Grantee/s") in the State aforesaid (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these Presents (do(es) grant, bargain, sell and release, unto the said:

Donald R. Templeton, his/her/their Heirs and/or Assigns Forever:

All that certain piece, parcel or lot of land in Chester County, South Carolina, shown as Tract B containing 0.516 acres more or less and Tract C containing 7.318 acres more or less described on Plat of Survey for Lester Van Epps dated January 10, 2017 by Hipp Land Surveying, Inc., as recorded March 7, 2017 in Plat Book Cabinet E Slide 36 at Page 10B in the office of the Register of Deeds for Chester County, South Carolina. Plat craved for a more accurate description.

This being the same property conveyed to Lester Van Epps, III by Deed recorded December 1, 2016 in the Register of Deeds/Clerk of Court for Chester County, South Carolina in Deed Book 1180 at Page 293.

TMS# 142-00-00-079

ALSO: All that certain piece, parcel or lot of land triangular in shape, lying on the west side of Catawba River Road immediately adjacent to Tracts B and C on Plat of Survey for Lester VanEpps dated January 10, 2017 and recorded in Plat Cabinet E, Slide 36, Page 10B in the office of the Register of Deeds for Chester County, South Carolina.

This being a portion of the same property conveyed to Lester Van Epps, III by deed recorded August 6, 2021 in Deed book 1351 at Page 147 in the Office of the Register of Deeds for Chester County, South Carolina.

TMS# P/O 152-00-00-012

Grantee's Address: 46163 Catawba River Rd., Catawba, SC 29704

2021 - 116523
Electronic Filing
From: Simplifile
Thru: ERX

CHESTER CO ASSESSORS OFFICE
DATE: 10/29/2021
MAP#: 142-0-0-79
152-0-0-12 P/O

Instrument	Book	Volume	Page
2021 - 116523	DB	1360	133
DEED			

This conveyance is made subject to all existing easements, restrictions, rights of way and/or encroachments.

TOGETHER will all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said **GRANTEE/S**, Their Heirs and/or Assigns forever.

AND the said **GRANTOR/S** do hereby bind themselves and their heirs and/or assigns to warrant and forever defend all and singular the said premises unto the said GRANTEE/S, Their Heirs and/or Assigns, against Themselves and Their Heirs and/or Assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS our Hand(s) and Seal(s) this 22 day of Oct, in the year of our Lord 2021.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

* _____
Witness #1

* _____
Witness #2

* _____
Lester Van Epps, III

I hereby certify that the within Deed
Has been recorded this date 10/29/2021
AUDITOR, CHESTER COUNTY

Donald A. Wade

STATE OF SC)
) ACKNOWLEDGEMENT
COUNTY OF Lancaster)

I, Oshaka Witherspoon, Notary Public for the State of SC,
do hereby certify that **GRANTOR/S** personally appeared before me this day and acknowledged the due execution of the foregoing deed.

Sworn before me this 22 day
of Oct, 2021.

* _____
Notary Public for the State of SC

My Commission Expires: 9/25/30

O'SHAKA M. WITHERSPOON
Notary Public, State of South Carolina
My Commission Expires 09/25/2030

This instrument prepared by
a licensed North Carolina attorn
If any to be paid by the closing a
tax collector upon disbursement

NO TITLE SEARCH REQUESTED AND NONE PERFORMED BY C. T. PARTRICK, JR., P.A.

NO REAL ESTATE
TAX PAID

NORTH CAROLINA

BEAUFORT COUNTY

THIS DEED, made this 17 day of December, 2021, by and between LESTER VERNON VAN EPPS, III & Wife, HEATHER VAN EPPS, hereinafter designated as Grantors, whose address is: 171 Tarheel Drive, Washington, NC 27889 to PAMLICO HOLDINGS, LLC, a Montana Limited Liability Company, hereinafter designated as Grantee, whose address is: 1001 South Main Street, Suite 5628, Kalispell, MT 59901;

W I T N E S S E T H:

That the Grantors for and in consideration of the sum of TEN DOLLARS ($10.00) and other valuable considerations to them paid by the Grantee, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do hereby bargain, sell and convey unto the Grantee, its heirs, successors and assigns, in fee simple, all that certain lot or parcel of land lying and being in Washington Township, Beaufort County, State of North Carolina, and more particularly described as follows:

BEING all of that certain lot or parcel of land containing 0.747 acre, more or less as the same is shown on a map of survey entitled "Survey for Jehu Nicholls, III & wife, Laura W. Nicholls", dated March 17, 2003 by Thomas L. Bohrer, PLS, a copy of which is recorded in Book 1331, Page 958, Beaufort County Registry and the same is incorporated herein by reference. SUBJECT TO,

referenced map of survey, the same being recorded in Deed Book 1331, Page 958, Beaufort County Registry and the same is incorporated herein by reference. Reference is made to deeds recorded in Book 1162, page 901 and Book 1185, Page 398, Beaufort County Registry. Reference is further made to deed in Book 1331, Page 957, Beaufort County Registry. Jehu Nicholls, III died on the 22nd of November, 2014. Reference is made to deed in Book 2084, Page 326, Beaufort County Registry.

ALSO CONVEYED HEREWITH is a certain perpetual, nonexclusive easement or right of way for the purpose of ingress, egress and regress between the above described property and West Third Street over that existing 22' wide right of way known as "Tar Heel Drive" as described in a Consent Judgment recorded in Book 846, Page 4445, Beaufort County Registry, and as more particularly described in the aforesaid map of survey.

This does/does not include the primary residence of a Grantor.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereunto belonging or in anywise appertaining unto the Grantee, his heirs, successors and assigns, in fee simple, subject, however, to the following:

1. 2021 Beaufort County Ad Valorem taxes and those for subsequent years.

2. Such easements, restrictive covenants and rights-of-way in the Beaufort County Registry.

3. Non-compliance with any local, county, state or federal governmental laws, ordinances or regulations relative to zoning, subdivision, occupancy, use, construction or the development of the subject property.

width, as described in Consent Judgment recorded in Book 846 at Page 445 of the Beaufort County Registry.

5. Rights of others in and to the pond and canal shown on the above referenced survey and in Plat Cabinet C, Slide 110 of the Beaufort County Registry.

The Grantors covenant with the Grantee that they are seized in fee simple of the above described property and has good right and title to convey the same; that the same is free and clear of all liens and encumbrances, except those matters above set forth, and that, subject thereto, she will forever warrant and defend the title to the same against all lawful claims and demands.

IN WITNESS WHEREOF, the Grantor has hereunto set her hand and seal, all as of the day and year first above written.

_____ (SEAL)
LESTER VERNON VAN EPPS, III

Heather Van Epps (SEAL)
HEATHER VAN EPPS

STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared LESTER VERNON VAN EPPS, III and he acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this 17 day of ~~November~~ December, 2021.

Jeanene K. Matkins
NOTARY PUBLIC

My Commission Expires: 03.29-22

JEANENE K MATKINS
NOTARY PUBLIC
BEAUFORT COUNTY, NC
MY COMMISSION EXPIRES 03.29.22

STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared HEATHER VAN EPPS and she acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this 17 day of December, 2021.

Jeanene K. Watkins
NOTARY PUBLIC

My Commission Expires: 03.29.22

JEANENE K MATKINS
NOTARY PUBLIC
BEAUFORT COUNTY, NC
MY COMMISSION EXPIRES 03.29.22

Partrick JRV

BK2084PG326

FOR REGISTRATION REGISTER OF DEEDS
Jennifer Leggett Whitehurst
Beaufort County, NC
November 01, 2021 11:20:40 AM
Book 2084 Page 326-328
FEE: $26.00
NC REVENUE STAMP: $810.00
INSTRUMENT # 2021006896

BEAUFORT COUNTY LAND RECORDS
ROUTING FORM 56270
CLB 11/1/21
Land Records Official Date

INSTRUMENT # 2021006896

PREPARED BY: C. T. PARTRICK, JR., P.A., 204 N MARKET STREET, WASHINGTON, NC 27889

"This instrument prepared by CT PARTRICK JR PA a licensed North Carolina attorney. Delinquent taxes, if any to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

NORTH CAROLINA

BEAUFORT COUNTY

THIS DEED, made this 1 day of November, 2021, by and between LAURA W. NICHOLLS, UNMARRIED, hereinafter designated as Grantor, whose address is: 171 Tarheel Drive, Washington, NC 27889 to LESTER VERNON VAN EPPS, III, hereinafter designated as Grantee, whose address is: 4663 Catawba Road, Catawba, SC 29704;

W I T N E S S E T H:

$810.

That the Grantor for and in consideration of the sum of TEN DOLLARS ($10.00) and other valuable considerations to her paid by the Grantee, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does hereby bargain, sell and convey unto the Grantee, his heirs, successors and assigns, in fee simple, all that certain lot or parcel of land lying and being in Washington Township, Beaufort County, State of North Carolina, and more particularly described as follows:

BEING all of that certain lot or parcel of land containing 0.747 acre, more or less as the same is shown on a map of survey entitled "Survey for Jehu Nicholls, III & wife, Laura W. Nicholls", dated March 17, 2003 by Thomas L. Bohrer, PLS, a copy of which is ~~attached hereto &~~ recorded in Book 1331 page 958, BCR and the same is incorporated herein by reference for a more complete and adequate description. SUBJECT TO, HOWEVER, the rights of other in and to the right of way shown as "New 22' wide right of way" on the above referenced map of

survey, the same being recorded in Deed Book 1331, Page 958, Beaufort County Registry and the same is incorporated herein by reference. Reference is made to deeds recorded in Book 1162, page 901 and Book 1185, Page 398, Beaufort County Registry. Reference is further made to deed in Book 1331, Page 957, Beaufort County Registry. Jehu Nicholls, III died on the 22nd of November, 2014.

ALSO CONVEYED HEREWITH is a certain perpetual, nonexclusive easement or right of way for the purpose of ingress, egress and regress between the above described property and West Third Street over that existing 22' wide right of way known as "Tar Heel Drive" as described in a Consent Judgment recorded in Book 846, Page 4445, Beaufort County Registry, and as more particularly described in the aforesaid map of survey.

This does include the primary residence of a Grantor.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereunto belonging or in anywise appertaining unto the Grantee, his heirs, successors and assigns, in fee simple, subject, however, to the following:

1. 2021 Beaufort County Ad Valorem taxes and those for subsequent years.

2. Such easements, restrictive covenants and rights-of-way in the Beaufort County Registry.

3. Non-compliance with any local, county, state or federal governmental laws, ordinances or regulations relative to zoning, subdivision, occupancy, use, construction or the development of the subject property.

4. right of Way of Tar Heel Drive, 22 feet in width, as described in Consent Judgment recorded in Book 846 at Page 445 of the Beaufort County Registry.

5. Rights of other in and to the pond and canal shown on the above referenced survey and in Plat Cabinet C, Slide 110 of the Beaufort County Registry.

The Grantor covenants with the Grantee that she is seized in fee simple of the above described property and has good right and title to convey the same; that the same is free and clear of all liens and encumbrances, except those matters above set forth, and that, subject thereto, she will forever warrant and defend the title to the same against all lawful claims and demands.

IN WITNESS WHEREOF, the Grantor has hereunto set her hand and seal, all as of the day and year first above written.

Laura W. Nicholls (SEAL)
LAURA W. NICHOLLS, UNMARRIED

STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared LAURA W. NICHOLLS, UNMARRIED and she acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this 1 day of November, 2021.

Jeanene K. Watkins
NOTARY PUBLIC

My Commission Expires: 03-29-22

JEANENE K MATKINS
NOTARY PUBLIC
BEAUFORT COUNTY, NC
MY COMMISSION EXPIRES 03-29-22

Neal Patrick JM

15037898 Initial Filing.pdf
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1 of 2 Page view Read aloud Add text Draw Highlight Erase

Limited Liability Company Type Type of Limited Liability Company	Limited Liability Company (LLC)
Limited Liability Company Name Entity Name	Pamlico Holdings, LLC
Term Term Expiration	Perpetual / Ongoing
Business Purpose Purpose	
Business Mailing Address of Principal Office Address	1001 S. MAIN ST. STE 49 KALISPELL, MT 59901
Business Physical Address of Principal Office ☐ Add Physical Address	
Registered Agent In Montana Registered Agent	ALL DAY $49 MONTANA REG AGENT LLC Commercial Registered Agent Agent Number C182737 Email Address Website Physical Address 1001 S MAIN STREET STE 49 KALISPELL, MT 59901 Mailing Address 1001 S MAIN STREET STE 49 KALISPELL, MT 59901
☒ The appointment of the registered agent listed above is an affirmation by the represented entity that the agent has consented to serve as a registered agent.	
LLC Management LLC Managed By	Members
Are Members Liable?	No

Members

Name Of Individual Or Business Entity	Business Mailing Address	Email Address
L VanEpps	1001 S. MAIN ST. STE 49 KALISPELL, MT 59901	

AM Received by MT Secretary of State Christi Jacobsen

Type here to search
59°F Mostly cloudy
4:23 PM
3/29/2022

biz.sosmt.gov/search/business

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CHRISTI JACOBSEN
MONTANA SECRETARY OF STATE

Business Notary Liens Trademark CRA Login

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Business Search

pamlico holdings

Advanced

Results: 1

Form Info	Status	Registration Date	Agent
Pamlico Holdings, LLC (C1254183) *Domestic Limited Liability Company*	Active-Good Standing	12/13/2021	ALL DAY $49 MONTANA REG AGENT LLC

Pamlico Holdings, LLC (C1254183)
Domestic Limited Liability Company

RoA 263

Request Information

Filing Number	C1254183
Entity Type	Domestic Limited Liability Company
Entity SubType	Limited Liability Company
Status	Active-Good Standing
Managed By	Member
Formed In	Montana
Principal Address	N/A
Mailing Address	1001 S. MAIN ST. STE 49 KALISPELL, MT 59901
Registration Date	12/13/2021
AR Due Date	04/15/2023
Commercial Registered Agent	Commercial C182737 ALL DAY $49 MONTANA REG AGENT LLC 1001 S MAIN STREET STE 49 KALISPELL, MT 59901

© 2022 MT Secretary of State

20170514042136.pdf 1638392786193-9....pdf Patton timeline.docx Patton Domestic....docx patton lis pende....docx Patton Affidavit C....docx Show all

Type here to search 75°F Mostly sunny 5:34 PM 2/25/2022

palmettocontracting.com
Apps YouTube Maps Gmail Reading list



Licensed Contractors

As a company dedicated to providing premier customer service, it is important to us to deliver unparalleled workmanship on every assignment. We are accredited, licensed, bonded, and insured. With our experience and expertise, we can provide the support your project needs.

On-time Completion

We will work with you to meet deadlines and coordinate with other related projects. We will maintain open communication with you to keep you up to date on the status of your job. We do this to guarantee that the project is completed according to your preferences.

Great Service

We combine our industry knowledge, the highest quality building supplies and equipment, and our dedication to deliver exceptional service to our clients. We will stay in touch, keeping you up to date on both the paperwork and renovation process.

STATE OF NORTH CAROLINA	)	IN THE GENERAL COURT OF JUSTICE
	)	SUPERIOR COURT DIVISION
COUNTY OF BEAUFORT	)	22 CVS 153
	)	2022 MAR -2 A 11:26
	)	22M28
	)	BEAUFORT CO., C.S.C.
John Patton &	)	
Tara Patton,	)	BY pm1
	)	
Plaintiffs,	)	
	)	
-vs-	)	**NOTICE OF LIS PENDENS**
	)	
	)	
Pamlico Holdings, LLC &	)	
Lester Van Epps III,	)	
	)	
Defendants.	)	

NOTICE IS HEREBY GIVEN pursuant to N.C. Gen. Stat. §§ 1-116 – 1-120.2 that an action is pending in this Court against the Defendants as follows:

1. That said action affecting Defendants' real property is being concurrently commenced in accordance with G.S. 1-119.
2. That the Plaintiffs in this action are John Patton and Tara Patton and that the Defendants in this action are Pamlico Holdings, LLC and Lester Van Epps III.
3. That the purpose of this action is as follows:

   To claim an interest in affected property as set forth in the Complaint.
4. That the property to be affected thereby is:

   Being all that certain piece, parcel or lot of land, containing 0.747 acre, with all improvements thereon or to be constructed thereon, more or less as the same is shown on a map of survey entitled "Survey for Jehu Nicholls III & wife Laura W. Nicholls," dated March 17, 2003 by Thomas L. Bohrer, PLS, a copy of which is recorded in Book 1331, Page 958, Beaufort County Registry and the same is incorporated herein by reference. Reference to the aforesaid survey is made in aid of further description.

   GPIN number: 5676-30-5914
   Common Address: 171 Tarheel Dr., Washington, NC 27889

Residential Builders - Google Chrome

verify.llronline.com/LicLookup/Resbu/Resbu2.aspx?LicNum=45510&cdi=507&bk=6348...

Print this page

Board: Residential Builders

LESTER V VAN EPPS III
4663 CATAWBA RIVER RD
CATAWBA, SC 29704-7728

Associated Businesses:

- PALMETTO CONTRACTING SERVICES OF YORK COUNTY LLC

Status: LAPSED
Registration number: 45510
Registration type: Specialty
Expiration: 06/30/2019
First Issuance Date: 06/14/2005

Licensee is authorized to perform work only in the classification(s) listed below.
CARPENTRY
FLOOR COVERING
ROOFING

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Charles B. Burnette IV
BURNETTE & PAYNE, P.A.
NC Bar No.: 55790
414 E. Main Street
Rock Hill, SC 29730
(803) 328-1800
Attorney for Plaintiffs

Rock Hill, South Carolina
February 25, 2022

ELECTRONICALLY FILED - 2022 Sep 25 7:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SIXTEENTH JUDICIAL CIRCUIT
YORK COUNTY)	
)	
JOHN PATTON AND TARA PATTON,)	
)	
PLAINTIFF,)	MOTION TO ALTER OR AMEND
)	
V.)	DOCKET NO.: 2020-CP-46-3434
)	
PALMETTO CONTRACTING SERVICES OF)	
YORK COUNTY, LLC AND LESTER VAN EPPS,)	
)	
DEFENDANTS,)	
)	
_____)	

The Defendants move for this court to alter or amend the Order Denying Defendant's Motion to Set Aside Judgment. At the hearing, Defendants objected to the affidavits and documents which the Plaintiffs untimely served and the court sustained the objection. The court's Order relies upon documents which were not admitted into the record and are not part of the record. As such, the court bases its decision upon evidence does not exist of the record.

In addition, the Plaintiffs are the ones who filed the affidavits of service certifying that they served the registered agent for the business Defendant and the individual Defendant. The registered agent whom they served provided documentation to this court asserting that it was not the registered agent for the business Defendant. Despite being an actual notice that the Plaintiffs were serving the wrong registered agent, they continued to serve the wrong registered agent. The court now makes a finding in its Order that the Defendants were properly served without any factual basis that the individual or the business were served.

The Plaintiffs did not file an affidavit of service showing that the business Defendant was served. Methods of service is defined by statute and Rule 4(d)(3) of the South Carolina Rules of Civil Procedure. There is no evidence that the business Defendant was given a Summons and

ELECTRONICALLY FILED - 2022 Sep 25 7:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

Complaint. The affidavit of service which is of record lists the wrong registered agent as having been served. The Plaintiffs through counsel asserted proper service when they filed documents with this court when in fact proper service was not affected. Defendants submit that this court cannot substitute a finding now that the business Defendant was served properly finding that a different person was served with the pleadings for the business Defendant. The Plaintiff filed the affidavit of service. As to Lester Van Epps, III who was the registered agent for the business Defendant and listed that way on the Secretary of State's web site, the address is a different address than where the Plaintiff's served a Lester Van Epps, therefore, the Plaintiffs never served the registered agent for the business at the registered agent's address. The Secretary of State shows that the registered agent for the corporation is Lester Van Epps, III with the address of 2532 Killian Rd., Edgemoor, SC 29712. The affidavit of service for the individual Defendant shows a service of process address of 4663 Catawba River Road, Catawba, SC 29704. Nothing the Plaintiffs have filed and rely upon is consistent. For the above reasons, the Defendant request this court to alter or amend its order. The findings of fact in the court's order denying the Defendants' motion are not supported of the record. There is no evidence to demonstrate the Defendants, either of them, were ever properly served with the Summons and Complaint. The pleadings are what gives this court jurisdiction over an individual. Whether someone gets a notice of hearing or other document is not relevant until and unless the Defendant is properly served with the Summons and Complaint. Without jurisdiction, the court cannot act. Respectfully submitted

SEPTEMBER 25, 2022

/s/ Daniel D. D'Agostino
DANIEL D. D'AGOSTINO
D'Agostino Law Firm
25 West Liberty Street
York, South Carolina 29745
Office: (803) 628-6509
Email: dan@dagostinolawyers.com
Attorney for Defendants

ELECTRONICALLY FILED - 2022 Oct 25 2:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA	)	IN THE MASTER IN EQUITY COURT
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
	)	
John Patton and	)	
Tara Patton,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	**MOTION TO CORRECT A CLERICAL MISTAKE**
	)	
	)	Case No. 2020-CP-46-3434
	)	
Palmetto Contracting Services of	)	
York County, LLC and	)	
Lester Van Epps,	)	
Defendants.	)	

TO: THE DEFENDANTS, PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned attorney, will move before the Court, for an Order of this Court correcting a clerical error in the Summons & Complaint dated November 16, 2020. The clerical mistake being as follows:

The individual Defendant is named in the Summons & Complaint as "Lester Van Epps."

Although the Defendant initially represented himself in his written correspondences to the Plaintiffs as "Lester Van Epps," the Defendant has stated that his legal name is correctly spelled as "Lester Van Epps III." The Summons & Complaint should be corrected to amend the

ELECTRONICALLY FILED - 2022 Oct 25 2:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

individual Defendant party as:

"Lester Van Epps III."

For reference, see original Summons & Complaint.

Such Motion shall be based upon the statutory and decisional law of the State of South Carolina including, but not limited to, SCRCP 60(a) and shall be made upon such grounds as may be made to appear at the hearing on such Motion.

s/Charles B. Burnette

Charles B. Burnette, IV
BURNETTE & PAYNE, P.A.
414 E. Main Street
Rock Hill, SC 29730
Telephone: (803) 328-1800
Fax: (803) 328-9494

ATTORNEY FOR PLAINTIFFS

Rock Hill, South Carolina

October 25, 2022

ELECTRONICALLY FILED - 2023 Feb 01 2:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA	)	IN THE MASTER IN EQUITY COURT
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
	)	
John Patton and	)	
Tara Patton,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	**MOTION TO ALTER OR AMEND**
	)	
	)	Case No. 2020-CP-46-3434
	)	
Palmetto Contracting Services of	)	
York County, LLC and	)	
Lester Van Epps,	)	
Defendants.	)	

TO: THE DEFENDANTS, PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs John Patton and Tara Patton (collectively "Plaintiff"), by and through their undersigned attorney, will move before the Court, under Rule 59(e) of the South Carolina Rules of Civil Procedure, for an Order of this Court to alter or amend the Order Granting Motion to Set Aside Judgment, issued on January 31, 2023. The ground for this Motion is that material evidence that was submitted to the record was not considered in the Court's decision.

The Court's decision is based on the conclusion that there is not sufficient evidence that the Defendants were served with the Summons & Complaint. In this Motion, Plaintiff's contention is that there is significant evidence in the record establishing that the individual

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Defendant, Lester Van Epps III (Defendant) was properly served and understood itself to be the Defendant in this action. In its Order to Set Aside Judgment, the Court noted that "the only proof of service provided by Plaintiff is Dover's affidavit." The Court further stated that "the pre-trial brief was not accompanied by testimony, affidavit or exhibit, so it can only be considered as argument." However, Plaintiff had submitted a transcript to the Court on June 29, 2022 and understood the transcript to have been received by the Court and part of the Court's records.

The transcript that was submitted to the Court contains statements by the Defendant that are proof that the Defendant had actual notice of the action and that the Defendant appeared in court on July 28, 2021, identifying himself as the Defendant (Exhibit 3). The transcript was included in a packet of Exhibits that was submitted to the Court by email on June 29, 2022 (Exhibit 1). The Exhibits were submitted in support of a pre-hearing brief that was filed with the Court the same day. At the June 30, 2022 hearing, the Plaintiff cited the language in the transcript with the Defendant identifying himself as "Lester Van Epps. I'm the owner." The Defendant admitted that the Defendant is the party that appeared in court on July 28, 2021. The Defendant then objected to the introduction of the transcript on the grounds that it was provided with a copy of the transcript with only one day's notice instead of two. The Court sustained the Defendant's objection, however, it denied Defendant's Motion to Set Aside Judgment. In its Order, the Court cited the Defendant's admission in Circuit Court and concluded that the Defendant "appeared at a hearing before the Circuit Court and identified himself as "Lester Van Epps." (Exhibit 4).

The Defendant then brought a Motion to Alter or Amend based on the grounds that the ruling was based on the transcript and that the transcript should not have been considered as part

ELECTRONICALLY FILED - 2023 Feb 01 2:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

of the record. The Court then issued an Order stating "the Court relied on a transcript of a hearing before a Circuit judge. The transcript was offered by Plaintiffs. Defendants received a copy of this transcript one day prior to the hearing. Defendants assert that they were not provided sufficient notice to respond. I agree. THEREFORE, IT IS ORDERED that the September 15, 2022 order is vacated. Defendant's motion to set aside judgment shall be scheduled for a re-hearing. Any exhibit that is a part of the record does not need to be re-filed. The parties may present other exhibits or witnesses. This hearing shall also address Plaintiffs' Motion to Correct Clerical Mistake filed on October 25, 2022." (Exhibit 5).

Based on the language of this Order, Plaintiff did not re-file, or resubmit the pre-hearing brief, Exhibit packet, or Motion to Correct Clerical Mistake. What is noteworthy (and may explain the discrepancy between the Court's file and what was submitted to the Court) is that the Exhibit packet was submitted and received to the Court and opposing counsel by email (not through e-filing) before the June 30, 2022 hearing.[a] The filed pre-hearing brief references and incorporates each Exhibit (including the transcript), but the Exhibit packet file was too large in size to upload to the e-filing system. For this reason, the supporting Exhibit packet was sent by email only.[b] The Exhibits were not attached to the Motion in the e-filing system, but the Plaintiff understood that the Court (as well as opposing counsel) had received the Exhibits and that the submission was part of the Court's records.

[a] The Court did prompt the Plaintiff to file the brief it submitted by email on June 29, 2022 and the Plaintiff did so. However, Plaintiff was unable to attach the Exhibits file because it was too large in size. In addition, Defendant's counsel subsequently demanded in the email thread that the transcript be submitted in its entirety along with the exhibit packet. In response, Plaintiff emailed the full transcript to the Court and to Defendant's counsel (Exhibit 2).
[b] In its attempts to file this Motion, Plaintiff has encountered the same issue in that the Exhibit Packet file is too large to upload to the e-filing system (Exhibit 6). To avoid this same issue, Plaintiff has rescanned the Exhibit packet and uploaded it into two parts (Part A and Part B).

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At the re-hearing, the Plaintiffs again sought to introduce the language in the transcript establishing that the Defendant appeared in Circuit Court. While the Court appears to state that the Plaintiff was only referencing its brief without any supporting exhibits, the Plaintiff contends that it was reading directly from the transcript, was under the impression that the Court (and opposing counsel) were in possession of the transcript from the Exhibit packet, and that the evidence was derived directly from this transcript. The Defendant's objection that it had less than two days' notice of the transcript no longer applied (supported by the Order's language that the parties "may present other exhibits or witnesses"). Further, the Plaintiff argued in the re-hearing that, although the transcript should be introduced (Defendant had well over two day's notice), the Defendant's statements in Circuit Court were also party opponent admissions and are admissible to be considered as evidence. Again, the Defendant admitted at the re-hearing that it was the party that appeared in Circuit Court, and that it is indeed Lester Van Epps III (See Defendant's drivers' license). This evidence, along with the Certificates of Service, establish that the Defendant, Lester Van Epps III, was the party who appeared in Circuit Court as Lester Van Epps, after being served actual notice of the proceedings against him.

Plaintiff adamantly contends the conclusion that it did not introduce any evidence beyond the Certificates of Service. The transcript is proof that the Defendant was provided actual notice. The transcript was referenced in the pre-hearing brief and was submitted to the Court and opposing counsel on June 29, 2022. The Court acknowledges the transcript and references the transcript's party opponent language in the September 15, 2022 Order. Opposing counsel had notice of the Exhibit 118 days in advance of the re-hearing. The Court stated that Exhibits may be introduced, and Plaintiff was under the impression that the Court already had the Exhibit

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packet in its records. And the Defendant admits to what the Plaintiff seeks to prove with the transcript: that the Defendant appeared in Circuit Court and identified himself as the Defendant. The transcript should be considered as a part of the record, Defendant's admissions should be considered in the record, and the Court should consider the overwhelming evidence that the Defendant was, in fact, the party that was served in this action.

Last, Plaintiff requests that the Court reconsider its Motion to Correct a Clerical Mistake and consider the evidence that Defendant continually held himself out to be "Lester Van Epps" when he is actually "Lester Van Epps III." The Defendant knew he was the correct party throughout this entire action and continues to benefit from deceptive practices to avoid legal judgments. Such Motion shall be based upon the statutory and decisional law of the State of South Carolina including, but not limited to, SCRCP 60 and shall be made upon such grounds as may be made to appear at the hearing on such Motion.

s/Charles B. Burnette
Charles B. Burnette, IV
BURNETTELAW, LLC
414 E. Main Street
Rock Hill, SC 29730
Telephone: (803) 328-1800
Fax: (803) 328-9494

ATTORNEY FOR PLAINTIFFS

Rock Hill, South Carolina

February 1, 2023

I certify that the Record on Appeal contains all material proposed to be included on appeal and not any other material.

s/C. Baxter Burnette IV

C. Baxter Burnette IV
SC Bar No.: 103747
BurnetteLaw, LLC
414 E. Main Street
Rock Hill, SC 29730
Telephone: (803) 328-1800
Fax: (803) 328-9494
bburnette@burnettelaw.net
ATTORNEY FOR APPELLANTS

Rock Hill, South Carolina
August 18, 2023

ELECTRONICALLY FILED - 2023 Feb 01 2:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

State of South Carolina)	Court of Common Pleas
County of York)	Seventh Judicial Circuit
John Patton,)	Transcript of Record
Plaintiff,)	
vs.)	2020-CP-46-03434
Palmetto Contracting Services of York County, LLC,)	
Defendant.)	

July 28, 2021
York, South Carolina

B E F O R E:

The Honorable Daniel D. Hall, Judge

A P P E A R A N C E S:

Charles Baxter Burnette, IV, Esquire

On behalf of the Plaintiff

Lester Van Epps, Pro Se

On behalf of Palmetto Contracting

Reported by: Stacy S. Johnson,
Circuit Court Reporter

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(The following proceedings were held July 28, 2021, beginning at 2:43 PM.)

THE COURT: John Patton versus Palmetto Contracting. The parties here for that, y'all come forward.

All right. This is 2020-CP-46-03434. John Patton versus Palmetto Contracting. Representing the plaintiff, John Patton, is Charlie Burnette the Fourth of Rock Hill.

And Palmetto Contracting. It's an LLC. And your name, sir?

MR. VAN EPPS: Lester Van Epps. I'm the owner.

THE COURT: Lester Bennett?

MR. VAN EPPS: No, Van Epps.

THE COURT: I'm sorry, help me pronounce your last name -- I mean, spell your last name.

MR. VAN EPPS: V-A-N E-P-P-S.

THE COURT: E-T-T-S?

MR. VAN EPPS: P-P.

THE COURT: Two P's as in Paul?

MR. VAN EPPS: Yes, sir.

THE COURT: All right. Mr. Burnette, I'll be glad to hear from you.

MR. BURNETTE: Thank you, Your Honor.

This is a damages hearing and the action's -- is a construction action. It's a breach of contract and negligence and for those damages most of them are

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Last Name/Business palmetto contracting service **First** **Middle** **Suffix** **Party Type** All

Action Type All Actions **CDR Code** **Indictment #**

Date Type **Beginning** **Ending**

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Palmetto Contracting Services Of York County LLC	Defendant	2009CP4604393	10/13/2009	Change Of Venue	01/26/2010	Common Pleas	Breach of Cont 140		York County Common Pleas
Palmetto Contracting Services Of York County LLC	Defendant	2016CP4602421	08/15/2016	Settled	05/23/2017	Common Pleas	Breach of Cont 140		York County Common Pleas
Palmetto Contracting Services Of York County Llc	Defendant	2020CP4603434	11/16/2020	Judgment	10/05/2021	Common Pleas	Constructions 100	2020CP4603434	York County Common Pleas
Palmetto Contracting Services Of York County Llc	Defendant	2020CP4603434	11/16/2020	Disposed	10/05/2021	Common Pleas	Constructions 100		York County Master In Equity

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PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC

Corporate Information

Entity Type Limited Liability Company

Status Dissolved

Domestic/Foreign Domestic

Incorporated State South Carolina

Important Dates

Effective Date 01/12/2005

Expiration Date N/A

Term End Date N/A

Dissolved Date 04/23/2018

Registered Agent

Agent LESTER VAN EPPS III

Address 2532 KILLIAN ROAD
EDGEMOOR, South Carolina 29712

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STATE OF SOUTH CAROLINA) **COUNTY OF YORK)**	**IN THE COURT OF COMMON PLEAS**
John Patton And Tara Patton ,)	
Plaintiffs,)	
versus)	**AFFIDAVIT OF PERSONAL SERVICE** **Case No. 2020-CP-46-03434**
Palmetto Contracting Services, Of York County LLC and Lester Van Epps)	
Defendant.)	

Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(x) Summons
(x) Complaint

(x) A copy of each document listed above was served on by personally **Lester Van Epps** delivering the same to the **Lester Van Epps** at the following address **4663 Catawba River Road Catawba SC 29704 on the of November 17,2020 at 3:14 p.m.**

Sheila P. Dover

SWORN TO and subscribed before me
This day of November 17, 2020 .

Mark D. Patterson
Notary Public for SC
My Commission Expires: 11-30th 2022

ELECTRONICALLY FILED - 2020 Feb 02 4:15:37 PM - YORK - COMMON PLEAS - CASE# 2020CP4603434

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL CASE NO. 2020-CP-46-03434
COUNTY OF LANCASTER	)	
	)	
JOHN PATTON AND TARA PATTON	)	
Plaintiffs,	)	**AFFIDAVIT OF MAILING**
	)	
vs.	)	
	)	
PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS	)	
Defendants.	)	

Personally appeared before me, BETH GAULT who states that she served PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC, with a copy of the SUMMONS AND COMPLAINT by mailing:

(Check one)

☐ First class mail

☒ Certified mail

☒ restricted delivery

☒ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on November 20, 2020 addressed as follows:

PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, SC 29407

Sworn to before me this
24th day of November, 2020

Notary Public of South Carolina

My Commission expires: 4/8/26

Affiant

ELECTRONICALLY FILED - 2023 Feb 02 12:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

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CHARLESTON, SC 29407

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CHARLES B. BURNETTE IV
BURNETTE & PAYNE, PA
414 E. MAIN ST.
ROCK HILL, SC 29730

STATE OF SOUTH CAROLINA) **COUNTY OF YORK)**	**IN THE COURT OF COMMON PLEAS**
John Patton And Tara Patton ,)	
Plaintiffs,)	
versus)	**AFFIDAVIT OF PERSONAL SERVICE** **Case No. 2020-CP-46-03434**
Palmetto Contracting Services, Of York County LLC and Lester Van Epps)	
Defendant.)	

Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(x) Affidavit of Default of Defendants Lester Van Epps and Palmetto Contracting Services od York County ,LLC
(x) Motion For Default Order
(x) Order Of Default

(x) A copy of each document listed above was served on by personally **Lester Van Epps** delivering the same to the **Lester Van Epps** at the following address **4663 Catawba River Road Catawba SC 29704 on the of May 5,2021 at 4:12 p.m.**

Sheila P. Dover

SWORN TO and subscribed before me
This day of May 5, 2021 .

Mark D. Patterson
Notary Public for SC
My Commission Expires: 11-30th 2022

ELECTRONICALLY FILED - 2023 Feb 01 12:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

ELECTRONICALLY FILED - 2023 Feb 01 12:56 PM - YORK - COMMON PLEAS - CASE# 2020CP4603434

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER JOHN PATTON AND TARA PATTON Plaintiffs, vs. PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS Defendants.	)	IN THE COURT OF COMMON PLEAS CIVIL CASE NO. 2020-CP-46-03434 **AFFIDAVIT OF MAILING**

Personally appeared before me, BETH GAULT who states that she served PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC, with a copy of the AFFIDAVIT OF DEFAULT, MOTION FOR DEFAULT ORDER, AND ORDER OF DEFAULT by mailing:

(Check one)

☐ First class mail

☒ Certified mail

- ☒ restricted delivery
- ☒ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on May 6, 2021 addressed as follows:

PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, SC 29407

Sworn to before me this
11th day of May, 2021

Notary Public of South Carolina

My Commission expires: 4/8/26

Affiant

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CHARLES B. BURNETTE IV
BURNETTE & PAYNE, P.A.
Attorneys at Law
414 East Main Street
Rock Hill, SC 29730

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1. Article Addressed to:

PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HWY, STE 201
CHARLESTON, SC 29407

9590 9402 3587 7305 7534 98

2. Article Number (Transfer from service label)
7006 0100 0000 2674 6380

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☑ Agent ☐ Addressee

B. Received by (Printed Name) S Wells
C. Date of Delivery 5/6/22

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- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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CLERK OF COURT'S OFFICE
Post Office Box 649, York, South Carolina 29745-0649

ELECTRONICALLY FILED 2022 Feb 01 2:36 PM YORK COMMON PLEAS CASE# 2020CP4603434

June 16, 2021

Lester Van Epps
4663 Catawba River Road
Catawba, SC 29704

RE: **Case # 2020CP4603434**
John Patton Vs Palmetto Contracting Services of York County, LLC, et al

This is to advise a hearing has been scheduled for Plaintiff's Motion for Damages that was filed in the above noted case.

To be heard, you must appear at the Moss Justice Center, Courtroom E located at 1675 York Highway, York, South Carolina, 29745 at 2:00 pm on Wednesday, July 28, 2021.

PLEASE NOTE: A CORPORATION THAT IS A PARTY TO A CASE IN THE CIRCUIT COURT CANNOT APPEAR AND REPRESENT ITSELF. UNDER SOUTH CAROLINA LAW, A CORPORATION MUST BE REPRESENTED IN CIRCUIT COURT BY AN ATTORNEY.

Sincerely,

Lynn Strait

Lynn Strait
Court Coordinator
York County Court of Common Pleas
E-Mail: lynn.strait@yorkcountygov.com
Phone: (803) 684-8506

CLERK OF COURT'S OFFICE
Post Office Box 649, York, South Carolina 29745-0649

ELECTRONICALLY FILED 2021 Feb 01 8:50 PM IN YORK COMMON PLEAS CASE# 2020CP4603434

June 16, 2021

Palmetto Contracting Services of York County, LLC
C/O US Corporation Agents Inc
1591 Savannah Highway; Suite 201
Charleston, SC 29407

RE: **Case # 2020CP4603434**
John Patton Vs Palmetto Contracting Services of York County, LLC, et al

This is to advise a hearing has been scheduled for Plaintiff's Motion for Damages that was filed in the above noted case.

To be heard, you must appear at the Moss Justice Center, Courtroom E located at 1675 York Highway, York, South Carolina, 29745 at 2:00 pm on Wednesday, July 28, 2021.

PLEASE NOTE: A CORPORATION THAT IS A PARTY TO A CASE IN THE CIRCUIT COURT CANNOT APPEAR AND REPRESENT ITSELF. UNDER SOUTH CAROLINA LAW, A CORPORATION MUST BE REPRESENTED IN CIRCUIT COURT BY AN ATTORNEY.

Sincerely,

Lynn Strait

Lynn Strait
Court Coordinator
York County Court of Common Pleas
E-Mail: lynn.strait@yorkcountygov.com
Phone: (803) 684-8506

CLERK OF COURT'S OFFICE
Post Office Box 649, York, South Carolina 29745-0649

ELECTRONICALLY FILED - 2021 Feb 09 2:56 PM YORK COMMON PLEAS CASE#2020CP4603434

June 16, 2021

Palmetto Contracting Services of York, LLC
C/O US Corporation Agents Inc
1591 Savannah Highway; Suite 201
Charleston, SC 29407

RE: **Case # 2020CP4603434**
John Patton Vs Palmetto Contracting Services of York, LLC, et al

This is to advise a hearing has been scheduled for Plaintiff's Motion for Damages that was filed in the above noted case.

To be heard, you must appear at the Moss Justice Center, Courtroom E located at 1675 York Highway, York, South Carolina, 29745 at 2:00 pm on Wednesday, July 28, 2021.

PLEASE NOTE: A CORPORATION THAT IS A PARTY TO A CASE IN THE CIRCUIT COURT CANNOT APPEAR AND REPRESENT ITSELF. UNDER SOUTH CAROLINA LAW, A CORPORATION MUST BE REPRESENTED IN CIRCUIT COURT BY AN ATTORNEY.

Sincerely,

Lynn Strait

Lynn Strait
Court Coordinator
York County Court of Common Pleas
E-Mail: lynn.strait@yorkcountygov.com
Phone: (803) 684-8506

STATE OF SOUTH CAROLINA YORK COUNTY John Patton and Tara Patton, Plaintiffs, vs. Lester Van Epps and Palmetto Contracting Services of York County, LLC Defendants.	COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT **NOTICE OF HEARING** Civil Action No. 2020-CP-46-03434

YOU WILL PLEASE TAKE NOTICE that a hearing has been scheduled in the above captioned matter before the Honorable Teasa Weaver, in the Master-in-Equity's courtroom, *York County Historic Courthouse, 2 S. Congress Street, 2nd Floor, York, SC 29745* on August 31, 2021 at 9:00 a.m.

Respectfully Submitted,

s/Charles Burnette

Charles B. Burnette IV
Bar No.: 103747
BURNETTE & PAYNE, P.A.
414 E. Main Street
Rock Hill, SC 29730
Ph.: (803) 328-1800
Fax: (803) 328-9494
bburnette@burnettelaw.net
Attorney for Plaintiffs

Rock Hill, SC
August 19, 2021

ELECTRONICALLY FILED 2021 Feb 9 12:56 PM YORK COUNTY COMMON PLEAS CASE 2020CP4603434

ELECTRONICALLY FILED 2023 Feb 9 12:56 PM YORK COMMON PLEAS CASE#2020CP4603434

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
YORK COUNTY	SIXTEENTH JUDICIAL CIRCUIT
John Patton and Tara Patton, Plaintiffs, vs. Lester Van Epps and Palmetto Contracting Services of York County, LLC Defendants.	**CERTIFICATE OF SERVICE** Civil Action No. 2020-CP-46-03434

The undersigned hereby certifies that a copy of the within NOTICE OF HEARING was served on all parties of record by depositing a copy of same in the United States mail, with sufficient postage annexed thereto, addressed as follows:

Lester Van Epps
4663 Catawba River Road
Catawba, SC 29704

Palmetto Contracting Services of York, LLC
c/o US Corporation Agents, Inc.
1591 Savannah Highway, Suite 201
Charleston, SC 29407

This 19th day of August, 2021.

Beth Gault, Legal Assistant to
C. Baxter Burnette IV

STATE OF SOUTH CAROLINA) **COUNTY OF YORK)**	**IN THE COURT OF COMMON PLEAS**
John Patton And Tara Patton ,)	
Plaintiffs,)	
versus)	**AFFIDAVIT OF PERSONAL SERVICE** **Case No. 2020-CP-46-03434**
Palmetto Contracting Services, Of York County LLC and Lester Van Epps)	
Defendant.)	

Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(x) Order Of Default Judgment

(x) A copy of each document listed above was served on by personally **Lester Van Epps** delivering the same to the **Lester Van Epps** at the following address **4663 Catawba River Road Catawba SC 29704 on the of October 8,2021 at 3:14 p.m.**

Sheila P. Dover

SWORN TO and subscribed before me
This day of October 8, 2021 .

Mark D. Patterson
Notary Public for SC
My Commission Expires: 11-30th 2022

ELECTRONICALLY FILED 2022 Feb 01 02:56 PM YORK COMMON PLEAS CASE 2020CP4603434

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL CASE NO. 2020-CP-46-03434
COUNTY OF LANCASTER	)	
	)	
JOHN PATTON AND TARA PATTON	)	
Plaintiffs,	)	**AFFIDAVIT OF MAILING**
	)	
vs.	)	
	)	
PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC AND LESTER VAN EPPS	)	
Defendants.	)	

Personally appeared before me, BETH GAULT who states that she served PALMETTO CONTRACTING SERVICES OF YORK COUNTY, LLC, with a copy of the ORDER OF DEFAULT JUDGMENT by mailing:

(Check one)

☐ First class mail

☒ Certified mail

☒ restricted delivery

☒ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on October 12, 2021 addressed as follows:

PALMETTO CONTRACTING SERVICES OF YORK, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HIGHWAY, SUITE 201
CHARLESTON, SC 29407

Sworn to before me this

14 day of October, 2021

Notary Public of South Carolina

My Commission expires: 3-7-2028

Affiant

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United States Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

C. BAXTER BURNETTE IV
BURNETTE & PAYNE, P.A.
Attorneys at Law
414 East Main Street
Rock Hill, SC 29730

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PALMETTO CONTRACTING SERVICES OF YORK, LLC
c/o UNITED STATES CORPORATION AGENTS, INC.
1591 SAVANNAH HWY, STE 201
CHARLESTON, SC 29407

9590 9402 6638 1060 9790 74

2. Article Number (Transfer from service label)

7006 0100 0000 2674 6441

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☑ Agent
☐ Addressee

B. Received by (Printed Name) S. WILLS

C. Date of Delivery 01/14/21

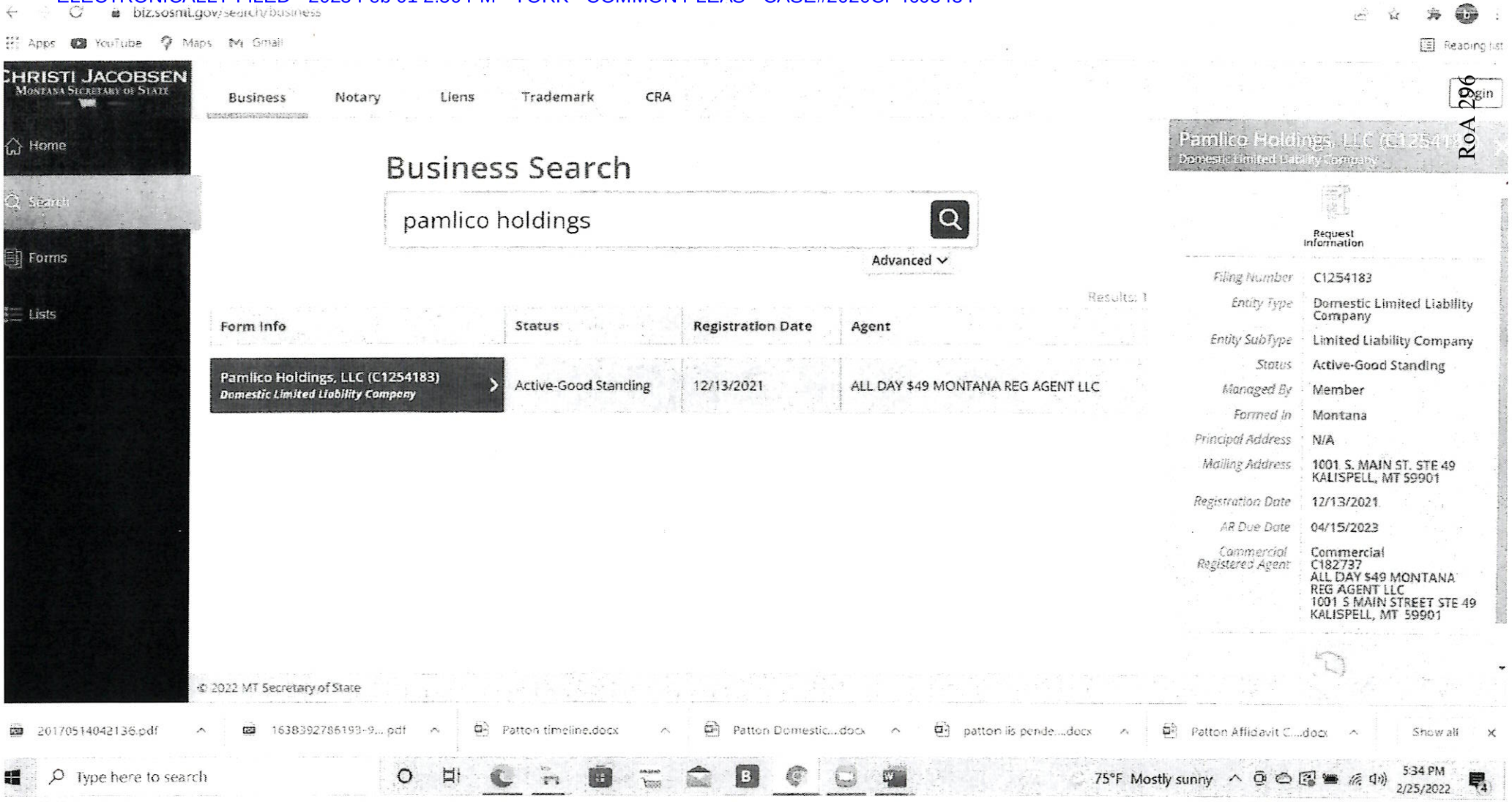
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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- ☐ Adult Signature
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- ☐ Certified Mail®
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- ☐ Collect on Delivery Restricted Delivery
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- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☑ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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AM Received by MT Secretary of State Christi Jacobsen

Limited Liability Company Type Type of Limited Liability Company	Limited Liability Company (LLC)
Limited Liability Company Name Entity Name	Pamlico Holdings, LLC
Term Term Expiration	Perpetual / Ongoing
Business Purpose Purpose	
Business Mailing Address of Principal Office Address	1001 S. MAIN ST. STE 49 KALISPELL, MT 59901
Business Physical Address of Principal Office ☐ Add Physical Address	
Registered Agent In Montana Registered Agent	ALL DAY $49 MONTANA REG AGENT LLC Commercial Registered Agent Agent Number C182737 Email Address Website Physical Address 1001 S MAIN STREET STE 49 KALISPELL, MT 59901 Mailing Address 1001 S MAIN STREET STE 49 KALISPELL, MT 59901
☒ The appointment of the registered agent listed above is an affirmation by the represented entity that the agent has consented to serve as a registered agent.	
LLC Management LLC Managed By	Members
Are Members Liable?	No

Members

Name Of Individual Or Business Entity	Business Mailing Address	Email Address
L VanEpps	1001 S. MAIN ST. STE 49 KALISPELL, MT 59901	

Page 1 of 2

This instrument prepared by
a licensed North Carolina attorn
If any to be paid by the closing
tax collector upon disbursement

NO TITLE SEARCH REQUESTED AND NONE PERFORMED BY C. T. PARTRICK, JR., P.A.

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NO REAL ESTATE
TAX PAID

NORTH CAROLINA

BEAUFORT COUNTY

THIS DEED, made this 17 day of December, 2021, by and between LESTER VERNON VAN EPPS, III & Wife, HEATHER VAN EPPS, hereinafter designated as Grantors, whose address is: 171 Tarheel Drive, Washington, NC 27889 to PAMLICO HOLDINGS, LLC, a Montana Limited Liability Company, hereinafter designated as Grantee, whose address is: 1001 South Main Street, Suite 5628, Kalispell, MT 59901;

W I T N E S S E T H:

That the Grantors for and in consideration of the sum of TEN DOLLARS ($10.00) and other valuable considerations to them paid by the Grantee, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do hereby bargain, sell and convey unto the Grantee, its heirs, successors and assigns, in fee simple, all that certain lot or parcel of land lying and being in Washington Township, Beaufort County, State of North Carolina, and more particularly described as follows:

BEING all of that certain lot or parcel of land containing 0.747 acre, more or less as the same is shown on a map of survey entitled "Survey for Jehu Nicholls, III & wife, Laura W. Nicholls", dated March 17, 2003 by Thomas L. Bohrer, PLS, a copy of which is recorded in Book 1331, Page 958, Beaufort County Registry and the same is incorporated herein by reference. SUBJECT TO,



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Licensed Contractors

As a company dedicated to providing premier customer service, it is important to us to deliver unparalleled workmanship on every assignment. We are accredited, licensed, bonded, and insured. With our experience and expertise, we can provide the support your project needs.

On-time Completion

We will work with you to meet deadlines and coordinate with other related projects. We will maintain open communication with you to keep you up to date on the status of your job. We do this to guarantee that the project is completed according to your preferences.

Great Service

We combine our industry knowledge, the highest quality building supplies and equipment, and our dedication to deliver exceptional service to our clients. We will stay in touch, keeping you up to date on both the paperwork and renovation process.

RoA 299

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Quick steps | Read / Unread

Patton/Van Epps Hearing Brief/Motion

7

BB

Bax Burnette

To: 'Krecek, Robin (Robin.Krecek@yorkcountygov.com)'

Cc: Dan D'Agostino <Dan@ddllplaw.com>

Wed 6/29/2022 12:32 PM

Patton Hearing Brief Final .pdf
237 KB

Patton Hearing Exhibits.pdf
10 MB

Patton Rule 60(a) Motion.pdf
109 KB

3 attachments (11 MB) Save all to OneDrive - Burnette and Payne Download all

Robin,

Attached for Judge Weaver please find Plaintiffs' Pre-Hearing Brief, Exhibits, and Rule 60(a) Motion.

All the best,

Charles Baxter Burnette, IV
Burnette & Payne, P.A.
414 E. Main St.
Rock Hill, SC 29730
803-328-1800

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Patton/Van Epps Hearing Brief/Motion

7

DD

Dan D'Agostino <Dan@ddllplaw.com>

To: Bax Burnette

Cc: Krecek, Robin (Robin.Krecek@yorkcountygov.com)

Wed 6/29/2022 2:49 PM

Patton Hearing Brief Final .pdf
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Bax
When did you request a transcript. I did not receive a copy of your request. In addition, do you have the entire transcript and if so, please provide it to me.

Sent from my iPhone

> On Jun 29, 2022, at 12:32 PM, Bax Burnette <bburnette@burnettelaw.net> wrote:
>
> Robin,
>
> Attached for Judge Weaver please find Plaintiffs' Pre-Hearing Brief, Exhibits, and Rule 60(a) Motion.
>
> All the best,

ELECTRONICALLY FILED - 2023 Feb 01 2:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

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Patton/Van Epps Hearing Brief/Motion

7

Bax Burnette

To: Dan D'Agostino <Dan@ddllplaw.com>

Cc: Krecek, Robin (Robin.Krecek@yorkcountygov.com)

Wed 6/29/2022 4:52 PM

John Patton vs. Palmetto Con...
220 KB

Dan,

I ordered this last week and received it on Monday. I've attached the entire transcript here. All that takes place is the parties appearing and the judge deferring the hearing to the Master in Equity.

Charles Baxter Burnette, IV
Burnette & Payne, P.A.
414 E. Main St.
Rock Hill, SC 29730
803-328-1800

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State of South Carolina) Court of Common Pleas
County of York) Seventh Judicial Circuit

John Patton,) Transcript of Record
)
Plaintiff,)
vs.) 2020-CP-46-03434
)
Palmetto Contracting)
Services of York County,)
LLC,)
)
Defendant.)

July 28, 2021
York, South Carolina

B E F O R E:

The Honorable Daniel D. Hall, Judge

A P P E A R A N C E S:

Charles Baxter Burnette, IV, Esquire

On behalf of the Plaintiff

Lester Van Epps, Pro Se

On behalf of Palmetto Contracting

Reported by: Stacy S. Johnson,
Circuit Court Reporter

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I N D E X

PAGE

Certificate of Reporter 8

E X H I B T S

NO EXHIBITS WERE INTRODUCED

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(The following proceedings were held July 28, 2021, beginning at 2:43 PM.)

THE COURT: John Patton versus Palmetto Contracting. The parties here for that, y'all come forward.

All right. This is 2020-CP-46-03434. John Patton versus Palmetto Contracting. Representing the plaintiff, John Patton, is Charlie Burnette the Fourth of Rock Hill.

And Palmetto Contracting. It's an LLC. And your name, sir?

MR. VAN EPPS: Lester Van Epps. I'm the owner.

THE COURT: Lester Bennett?

MR. VAN EPPS: No, Van Epps.

THE COURT: I'm sorry, help me pronounce your last name -- I mean, spell your last name.

MR. VAN EPPS: V-A-N E-P-P-S.

THE COURT: E-T-T-S?

MR. VAN EPPS: P-P.

THE COURT: Two P's as in Paul?

MR. VAN EPPS: Yes, sir.

THE COURT: All right. Mr. Burnette, I'll be glad to hear from you.

MR. BURNETTE: Thank you, Your Honor.

This is a damages hearing and the action's -- is a construction action. It's a breach of contract and negligence and for those damages most of them are

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liquidated, not all of them, and to prove those I intend to have John Patton testify as to the authenticity of checks -- cancelled checks, statements and invoices and things of that matter. That's the majority of the items that we'll have to prove the damages.

There's also a cause action for fraudulent misrepresentation under the South Carolina Unfair Practices Act and we'll get around to those. Those are not liquidated invoices, so we'll have to wait for those to be in.

But first I'd like to go ahead and pass up a chart that I prepared.

THE COURT: Well, let me do this. Explain to me why -- the case was referred to the master in equity on May the 5th. Why is -- why are we here today in front of the circuit court?

MR. BURNETTE: I did file a motion to hold the defendant in default to the master in equity and ultimately a damages hearing and that was filed at the proper office and this was the hearing that was set, Your Honor.

THE COURT: Well, I guess, you know, I'm lost a little bit. Did you -- did you agree for the master to hear the damages?

MR. BURNETTE: The motion was filed to the master's

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office and the hearing was subsequently scheduled for this courtroom. I'm not sure exactly --

THE COURT: Yeah, well, that -- then it is not properly in front of me. It needs to be in front of the master in equity.

MR. BURNETTE: It was filed in front of him, Your Honor. I assumed he referred back to you or this was the proper venue for it. That's just where it was filed and how it was scheduled.

THE COURT: Probably just a --

MR. BURNETTE: And it may have ended up that way, Your Honor, because the defendant was in default before the case was referred there, so there may be some crossover there and perhaps this was scheduled before that happened and that's why it ended up here.

THE COURT: Okay. I signed an order of default on April the 29th and then the case was referred to the master on May the 5th.

MR. BURNETTE: All right. There may be some crossover there.

THE COURT: Well, I think the reality is --

THE CLERK: There's a code that's supposed to be entered in for Robin to accept it and it doesn't look like it's been accepted. That's a clerical issue.

THE COURT: I don't know why they wouldn't have

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accepted it.

THE CLERK: It may have not been sent to them.

THE COURT: Okay.

All right. Well, I'm not gonna hear it today. You know, we have an order that -- that it was referred to the master. I'm not here to undo that order. In fact, I think once I signed that order referring it to the master -- and it appears that that was probably a clerical error why it was docketed here for this court today.

And so, Donna, what is it we need to do as far as to ensure this gets sent to the master?

THE CLERK: I will make sure that Robin gets it.

THE COURT: Okay.

All right. You should get notice from the master in equity about a hearing date for the damages.

Yes, sir. Mr. Patton {sic}, anything you want to say?

MR. EPPS: In regards to jurisdiction, my company is located in Chester county, I live in Chester county, the plaintiff is in Fairfield county where the job took place.

THE COURT: Well, we're not -- we're not here to hear that. In fact, what -- the case now has been sent to the master in equity, which is another part of the

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circuit court. There was a default judgment signed. You may -- have you talked to an attorney?

MR. VAN EPPS: That's what I was gonna ask the Court, if they would allow time for me to get representation.

THE COURT: Well, you've got between now and whenever the hearing date's scheduled. It probably won't be scheduled for the next few weeks at the earliest. In fact, I think I can tell you as a corporation or LLC you may be required to have a lawyer to represent you.

MR. VAN EPPS: Yes, sir.

THE COURT: So Donna will straighten it out with the master and make sure that they get it on their docket. They'll notify you of the date of the hearing, all right? Thank y'all.

MR. BURNETTE: Thank you, Your Honor.

(Whereupon, the proceedings were concluded at 2:50 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 28th day of July, 2021.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

June 27, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

ELECTRONICALLY FILED - 2022 Sep 15 1:00 PM - YORK - COMMON PLEAS - CASE#2020CP4603434
ELECTRONICALLY FILED - 2023 Feb 01 2:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

STATE OF SOUTH CAROLINA COUNTY OF YORK John Patton and Tara Patton, Plaintiffs, v. Palmetto Contracting Services of York County, LLC and Lester Van Epps, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO. 2020CP4603434 **ORDER DENYING DEFENDANTS' MOTION TO SET ASIDE JUDGMENT**

This matter came before me for a hearing on June 30, 2022 upon a Motion to Set Aside Judgment as void. Daniel D. D'Agostino appeared on behalf of the Defendant Palmetto Contracting Services of York County, LLC (" Palmetto") and Lester Van Epps ("Epps"). Charles Burnette, IV appeared for Plaintiffs. Based on the record, motion, and arguments of the parties, I make the following findings and conclusions.

FINDINGS OF FACT

According to the affidavits of service filed by Plaintiffs, the "Summons and Complaint" were served upon Palmetto by certified mail, and upon Epps by personal service. The mailing for Palmetto was addressed to United States Corporation Agents ("USCA"). The parties do not dispute that USCA is not an agent authorized to accept service for Palmetto. The registered agent for Palmetto is Epps. Throughout this action, Plaintiffs served notices upon USCA and Epps.

Entry of default was entered against the Defendants on April 29, 2021. Shortly thereafter, Plaintiffs filed a motion for a damages hearing. A copy of the motion was mailed to Epps. The Clerk of Court scheduled the motion before the Circuit Court, which was held on July 28, 2021. Notice of the hearing was mailed to Epps. Epps appeared at the hearing, pro se, and identified himself to the Court as "Lester Van Epps. I'm the owner". (Plaintiff's Pre-Hearing Brief, p.5). The Circuit judge continued the hearing as this matter had been referred. The damages hearing was held before me on August 31, 2021. Notice of the hearing was sent to Epps. Epps did not appear. No one appeared on behalf of Palmetto.

CONCLUSIONS OF LAW

Palmetto argues the judgment is void due to insufficient service of process. A defendant may be relieved from judgment or order, if the judgment is void. Rule 60(b)(4), SCRCP. A

judgment is void if the court lacked personal jurisdiction. *McDaniel v. U.S. Fidelity and Guar. Cp.*, 324 S.C. 639, 478 S.E.2d. 868 (Ct. App. 1996).

In this case, Palmetto's registered agent, Epps, received a copy of the pleadings, and Epps attended a July hearing before the Circuit Court. Rule 4(d)(3), SCRCP allows a business to be served through an agent authorized by appointment or law. Moreover, our Supreme Court in *Roche v. Young Bros. Inc.*, 318 S.C. 207, 456 S.E.2d 897 (1995) found that exact compliance is not required; instead, the inquiry is whether plaintiff sufficiently complied, and the defendant had notice of the action. Based on this standard, I conclude that Plaintiffs sufficiently complied with rules regarding service, and that Palmetto had notice of the action.

Palmetto also requests the judgment be set aside because the contract that was the subject of this action shows that Plaintiffs contracted with "Palmetto Contracting Services", and not the Defendant LLC. Having found that Palmetto was properly served in this action, Palmetto should have raised the issue in a responsive pleading. *See* Rule 8(b), SCRCP ("A party … shall admit or deny the averments upon which the adverse party relies").

Epps asserts that the judgment is void against him due to a misnomer, as his name is "Lester Van Epps, III". A court will not set aside a default judgment in a case where the defendant is sued by a wrong name, and fails to plead in abatement. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 399 S.E.2d 779 (1990); *Waldrop v. Leonard*, 22 S.C. 118 (1885). Epps, who was properly served with the pleadings, did not raise this issue in a responsive pleading. He also appeared at a hearing before the Circuit Court and identified himself as "Lester Van Epps".

ORDER

Based on the foregoing findings of fact and conclusions of law, it is ordered that the Defendants' motion be DENIED.

Judge's Signature Page to Follow

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York Common Pleas

Case Caption: John Patton , plaintiff, et al VS Palmetto Contracting Services Of York County Llc , defendant, et al

Case Number: 2020CP4603434

Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4603434

John Patton et al
PLAINTIFF(S)

Palmetto Contracting Services Of York County Llc 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

Order Vacating Order Denying Defendants' Motion to Set Aside Judgment.
See page 2 for order details.

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 11/15/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

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ORDER

This matter came before me for a hearing on November 1, 2022, upon Defendants' Motion to Alter or Amend. Present at the hearing: Daniel D. D'Agostino for Defendants; and Charles B. Burnette, IV for Plaintiffs.

As part of the basis for denying Defendants' motion to set aside the judgment, the Court relied on a transcript of a hearing before a Circuit judge. The transcript was offered by Plaintiffs. Defendants received a copy of this transcript one day prior to the hearing. Defendants assert that they were not provided sufficient notice to respond. I agree.

THEREFORE, IT IS ORDERED that the September 15, 2022 order is vacated. Defendant's motion to set aside judgment shall be scheduled for a re-hearing. Any exhibit that is a part of the record does not need to be re-filed. The parties may present other exhibits or witnesses. This hearing shall also address Plaintiffs' Motion to Correct Clerical Mistake filed on October 25, 2022.

Judge's Signature Page to Follow

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York Common Pleas

Case Caption: John Patton , plaintiff, et al VS Palmetto Contracting Services Of York County Llc , defendant, et al

Case Number: 2020CP4603434

Type: Order/Electronic Form 4

So Ordered

s/ Teasa K. Weaver 3084



CP4603434 Case Caption : John Patton , plaintiff, et al VS Palmetto Contracting Services Of York County Llc , defendant, et

County: York Court Agency: Common Pleas Case Type: Common Pleas Case Subtype: (100) Constructions

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