

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

RECEIVED

NOV 29 2023

SC Court of Appeals

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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STATE OF SOUTH CAROLINA
COUNTY OF YORK
COMMON PLEAS COURT

CASE NO. 2020-CP-46-03434

John Patton et al

VS

Palmetto Contracting Services Of York
County LLC

Plaintiff(s)

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.

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.

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



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 signed on 2021-05-05 15:06:55 page 2 of 2

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
)
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
SIXTEENTH JUDICIAL CIRCUIT

ORDER FOR DEFAULT JUDGMENT

Case No. 2020-CP-46-3434

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).

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

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
PLAINTIFF(S)

Lester Van Epps
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

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
		\$

		\$
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
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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.



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 signed on 2021-10-05 15:46:19 page 6 of 6

ELECTRONICALLY FILED - 2021 Oct 05 3:55 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), SCRPC. 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), SCRCPC 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), SCRCPC ("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



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

Electronically signed on 2022-09-15 11:12:41 page 3 of 3

ELECTRONICALLY FILED - 2022 Sep 15 1:00 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. 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

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

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

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

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), SCRCF.

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



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 signed on 2022-11-15 17:02:20 page 3 of 3

ELECTRONICALLY FILED - 2022 Nov 16 8:02 AM - 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	)	C.A. No.: 2020-CP46-03434
York County, LLC and)	
Lester Van Epps,)	
)	
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



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 signed on 2023-04-06 16:22:52 page 3 of 3

ELECTRONICALLY FILED - 2023 Apr 06 4:32 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 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.

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), SCRCPP.

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



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

Electronically signed on 2023-01-30 18:18:02 page 4 of 4

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

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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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Certificate of Reporter

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E X H I B I T S

****NO EXHIBITS WERE INTRODUCED****

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

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

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

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

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

11 THE COURT: Lester Bennett?

12 MR. VAN EPPS: No, Van Epps.

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

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

16 THE COURT: E-T-T-S?

17 MR. VAN EPPS: P-P.

18 THE COURT: Two P's as in Paul?

19 MR. VAN EPPS: Yes, sir.

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

22 MR. BURNETTE: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

10 THE COURT: Probably just a --

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

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

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

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

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

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

1 accepted it.

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

3 THE COURT: Okay.

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

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

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

14 THE COURT: Okay.

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

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

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

23 THE COURT: Well, we're not -- we're not here to
24 hear that. In fact, what -- the case now has been sent
25 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.)

C E R T I F I C A T E

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

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

12 I do further certify that I am neither of kin,
13 counsel, nor have an interest to any party hereto.
14

15 June 27, 2022
16

17 1st Stacy S. Johnson
18 STACY S. JOHNSON
19 CIRCUIT COURT REPORTER
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JOHN PATTON vs PALMETTO CONTRACTING SERVICES
Hearing on 11/01/2022

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS
3) SIXTEENTH JUDICIAL CIRCUIT
4 JOHN PATTON,)
5 PLAINTIFF,)
6 -VS-) CA. NO: 2020-CP-46-03434
7 PALMETTO CONTRACTING)
8 SERVICES,)
9 DEFENDANT.)

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

11 TRANSCRIPT OF TESTIMONY

12 YORK, SOUTH CAROLINA

13 NOVEMBER 1, 2022

14 www.huseby.com Huseby Global Litigation 800-333-2082

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1 TRANSCRIPT OF PROCEEDINGS

2 11:00 A.M.

3 BEFORE THE HONORABLE TEASA WEAVER

4 *****

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

13 MR. BURNETTE: Yes, Your Honor.

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

16 MR. D'AGOSTINO: Thank you, Your Honor. May it
17 please the court, Your Honor. When we had this
18 hearing, the original hearing, we had it on June 30,
19 2022.

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

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

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

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

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

1 The plaintiff, in their affidavit of service as
2 it relates to the summons and complaint, first, they
3 served the wrong registered agent for Palmetto
4 Contracting Services of York County, LLC. So there
5 was no service upon the corporation. Even if the
6 court were going to say, okay, the defendant, Van
7 Epps, was served, there is no evidence that the
8 registered agent was served at the registered address
9 with the Secretary of State. The registered address
10 with Secretary of State, JOHN PATTON vs PALMETTO CONTRACTING SERVICES
Hearing on 11/01/2022 the registered agent is
11 Lester Van Epps, III, and the address is 2532 Killian
12 Road, Edgemoor, South Carolina, 29712.

13 The pleadings in this case always refer to
14 Lester Epps, no II or III. The affidavit of service
15 is not the address with the Secretary of State for
16 the registered agent but 4663 Catawba River Road,
17 Catawba, South Carolina. www.huseby.com Huseby Global Litigation 800-333-2082

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

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

9 Well, Your Honor, that hearing never took -- I
10 mean that was a hearing JOHN PATTON vs PALMETTO CONTRACTING SERVICES
Hearing on 11/01/2022 that was scheduled, but it
11 never took place. It was cancelled. That transcript
12 should not have been considered by this court because
13 it wasn't provided timely to this court. So that
14 transcript -- You sustained the objection in not
15 accepting that transcript.

16 As it relates to service of process, there
17 still is no evidence www.huseby.com Huseby Global Litigation 800.333.2082 that Mr. Van Epps, III, which is
18 the registered agent for the corporation, was served
19 with the pleadings or that they have the right
20 defendant in this lawsuit. That was the other thing.

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

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

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

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

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

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

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

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

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

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

21 THE COURT: Mr. Burnette?

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

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

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

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

25 MR. BURNETTE: He did represent himself as being

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

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

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

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

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

1 address.

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

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

8 THE COURT: I understand.

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

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

16 THE COURT: I understand.

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

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

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

10 THE COURT: I understand.

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

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

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

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

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

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

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

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

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

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

1 2005. To come in here and say there were three
2 others created at the same time, two others created
3 at the same time and it's amalgamation. There's no
4 evidence in the record -- It should not even be
5 argued to this court.

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

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

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

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

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

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

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

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

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

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

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

10 MR. D'AGOSTINO: Your Honor --

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

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

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

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

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

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

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

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

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

7 MR. D'AGOSTINO: He was aware that there was a
8 hearing that day. That's not evidence that they
9 served the corporation by serving the registered
10 agent at his address. JOHN PATTON vs PALMETTO CONTRACTING SERVICES
HEARING ON 11/01/2022 Mr. Burnette filed affidavits
11 with this court asserting he served the registered
12 agent for the corporation and said it was that
13 corporation down in Charleston when it wasn't. This
14 court had that as part of its record, that it wasn't.

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

17 MR. D'AGOSTINO: www.huseby.com Huseby Global Litigation 800-333-2082 Your Honor, I will tell you, and
18 I will acknowledge that they have an affidavit of
19 service saying Mr. Van Epps. They don't have
20 anything saying Van Epps, III, who is the registered
21 agent. That's the problem. They could have served
22 his daddy. They could have served the II. My client
23 is Mr. Lester Van Epps, III. That's on his license.
24 That's on everything I've provided to this court.
25 That's with the Secretary of State, public record.

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

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

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

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

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

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

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

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

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

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

22 THE COURT: Lester Van Epps at this point.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 THE COURT: That's not before me.

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

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

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

13 THE COURT: Is that your client though?

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

15 THE COURT: The defendant, Lester Van Epps?

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

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

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

1 and the same. That's why I'm -- That motion is
2 before this court today. That motion and that's why
3 I want to be clear, and I want to understand who this
4 judgment is against, Lester Van Epps or Lester Van
5 Epps, III. They're asking you to change the judgment
6 to Lester Van Epps, III. If you're saying, that
7 judgment, I'm not doing that. That's not a clerical
8 mistake. They've got to correct what they've done in
9 North Carolina as well and specifically say it's not
10 Lester Van Epps, III. JOHN PATTON vs PALMETTO CONTRACTING SERVICES
HEARING ON 11/01/2022 That's incumbent on them. My
11 position is, is that judgment, because of what
12 they're doing in North Carolina, has effect here.
13 That's why I've been so clear to say what's of public
14 record in South Carolina is Lester Van Epps, III.
15 He's the registered agent for this corporation, and
16 he's the registered agent for this corporation at
17 this address, www.huseby.com Huseby Global Litigation 800-333-2082 Lester Van Epps, III. They take the
18 position that Lester Van Epps -- They have a judgment
19 against Lester Van Epps, III.

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

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

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

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

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

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

25 THE COURT: Right. I understand your response to

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

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

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

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

5 THE COURT: Anything further, Mr. Burnette?

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

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

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

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

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

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

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

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

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

21 The thing is, is could have been corrected in
22 2021 or 2020 had the documents and the records from
23 the public record been looked at or had counsel paid
24 attention to what the corporation was sending to it,
25 that they looked up the wrong corporation when they

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

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

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

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

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

1 judgment.

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

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

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

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800-333-2082

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

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS
3) SIXTEENTH JUDICIAL CIRCUIT
4 JOHN PATTON,)
5 PLAINTIFF,)
6 -VS-) CA. NO: 2020-CP-46-03434
7 PALMETTO CONTRACTING)
8 SERVICES,)
9 DEFENDANT.)

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

10
11 TRANSCRIPT OF TESTIMONY
12 YORK, SOUTH CAROLINA
13 JANUARY 11, 2023
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1 Appearances: Representing the Plaintiff -
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1 TRANSCRIPT OF PROCEEDINGS

2 12:35 P.M.

3 BEFORE THE HONORABLE TEASA WEAVER

4 *****

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

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

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

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

25 An order from that hearing was filed on

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

6 We appeared before the court on November 1,
7 2022, as it relates to that motion. The court took
8 that matter under advisement on November 1, 2022, and
9 issued an order basically setting this hearing. I'm
10 not sure exactly where we are. From the order it
11 seems that you're saying we're going to start all
12 over and do everything all over.

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

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

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

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

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

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

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

1 event because that's a hearing that didn't occur.

2 I'll go into that if we end up arguing that.

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

10 That's where I am. I'll be glad to set forth
11 my reasons as I set forth back in May or June, June
12 30, as to why I believe the order -- the judgment
13 should be set aside. I'll be glad, subject to my
14 objections, go ahead and do that for the record if
15 you'd like for me to, Your Honor.

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

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

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

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

5 The registered agent was Lester Van Epps, III.
6 Let me get it. I don't want to say it wrong
7 because that's part of the whole problem. The
8 registered agent for Palmetto Contracting Services of
9 York County, LLC, which is the named defendant, is
10 Lester Van Epps, III, and specifically says that.
11 It has 2532 Killian Road, Edgemoor, South Carolina,
12 29712. So public records list Lester Van Epps, III,
13 and lists my client, Lester Van Epps, III.

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

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

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

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

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

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

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

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

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

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

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

16 MR. BURNETTE: No.

17 THE COURT: So that matter is not contested.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

			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	07-28-2020	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,

RoA 92

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

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

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

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

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

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

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

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

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

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

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

25 Your Honor, for those reasons, I request the

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

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

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

25 As it relates to my client, Lester Van Epps,

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

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

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

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

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

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

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

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

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

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

21 THE COURT: At that hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 THE COURT: Of the Summons and Complaint?

25 MR. D'AGOSTINO: Of the Summons and Complaint

1 for personal service.

2 THE COURT: That is the only one I reviewed.

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

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

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

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

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

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

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

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

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

1 served the following. It lists the documents. It
2 says a copy of each document was served on personally
3 Lester Van Epps, delivering the same to Lester Van
4 Epps on the following address. For all three of
5 them, it lists 4663 Catawba River, Catawba, South
6 Carolina, and it lists the date each one was served,
7 November 17, 2020, for the Summons and Complaint.
8 May 5, 2021 for the Affidavit of Default and October
9 8, 2021, for the Order of Default Judgment. Nowhere
10 in these affidavits does it say anything about Mr.
11 Van Epps identifying himself or doing anything. They
12 don't have anything else from the process server to
13 support what Mr. Burnette just now said. He came out
14 and identified himself. None of that exists. It's a
15 form Affidavit of Service.

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

25 Your Honor, as it relates to the clerical

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

5 Your Honor, again, they're arguing that they
6 served Lester Van Epps, and service upon a
7 corporation should be good because he's the
8 registered agent for the corporation. However, what
9 they leave out is the registered agent is listed as
10 Lester Van Epps, III. JOHN PATTON vs PALMETTO CONTRACTING SERVICES
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11 of public record showing that Lester Van Epps, III,
12 is the individual who should be sued and who should
13 be served as the registered agent for the
14 corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MR. D'AGOSTINO: It was sent to the same address
20 that the -- Let me just make sure. It was sent to
21 4663 Catawba River Road, Catawba, South Carolina.
22 That doesn't mean Lester Van Epps, III, was properly
23 notified. He showed up. His grandfather or father
24 could have said go there and figure it out.

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

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

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

25 THE COURT: Anything further, Mr. Burnette?

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

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

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

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

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

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

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

21 MR. BURNETTE: Nothing further, Your Honor.

22 THE COURT: This hearing is concluded.

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

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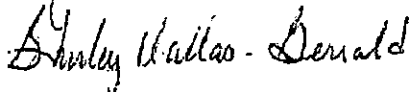
CERTIFICATE OF REPORTER

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, 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
Transcript of Testimony on 03/01/2023

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS
3) SIXTEENTH JUDICIAL CIRCUIT
4 JOHN PATTON,)
5 PLAINTIFF,) CA. NO: 2020-CP-46-03434
6 -VS-)
7 PALMETTO CONTRACTING)
8 SERVICES,)
9 DEFENDANT.)
10 _____)

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

TRANSCRIPT OF TESTIMONY

YORK, SOUTH CAROLINA

MARCH 1, 2023

1 Appearances: Representing the Plaintiff -
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25

1 TRANSCRIPT OF PROCEEDINGS

2 10:35 A.M.

3 BEFORE THE HONORABLE TEASA WEAVER

4 *****

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

8 This is Plaintiff's Motion to Alter or Amend an
9 Order I issued setting aside default judgment.

10 Present on behalf of plaintiff is Mr. Bax Burnette.

11 Present on behalf of defendants is Mr. Dan

12 D'Agostino. Mr. Burnette, whenever you're ready.

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

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

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

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

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

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

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

25 I think this comes down to whether it was

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

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

15 The only rule under the South Carolina Rules of
16 Evidence about any time notice is with affidavits in
17 regard to that. This is not an affidavit, Your
18 Honor. The rule to be considered then would be Rule
19 403, which is whether, one, is it relevant evidence?
20 I believe it is.

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

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

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

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

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

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

25 The court, on that ground, did not dismiss that

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

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

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

19 We have the paper trail showing that he lives at
20 4663 Catawba River Road. That was also in the pre-
21 hearing packet. The defendant has now sold that
22 residence, bought property up in North Carolina and
23 has actively litigated up there over the last year.

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

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

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

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

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

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

12 The plaintiff's have the evidence that suggest
13 just the opposite. I think the transcript along with
14 the defendant showing up in the court that day along
15 with paper trail records showing that he lives at
16 4663 Catawba River Road, it all establishes well
17 beyond preponderance of the evidence this was the
18 individual that was served. You can ask him whether
19 he received these documents.

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

1 would ask this court to do the same.

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

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

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

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

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

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

1 exhibits by the court?

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

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

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

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

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

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

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

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

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

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

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

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

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

1 been served in this case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 MR. BURNETTE: Your Honor --

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

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

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

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

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

7 MR. D'AGOSTINO: We --

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

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

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

16 MR. D'AGOSTINO: Sheila Dover.

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

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

23 THE COURT: Has that been filed now?

24 MR. BURNETTE: Yes, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 In the very beginning of this case, this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The judge is asking the registered agent in that

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

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

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

25 Your Honor, the reason I jumped up when

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

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

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

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

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

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

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

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

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

3 THE COURT: Anything further, Mr. Burnette?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 THE COURT: Thank you.

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

22

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25

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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

November 16, 2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 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
 SIXTEENTH JUDICIAL CIRCUIT
 Case No.: 2020-CP-46-_____

AMENDED COMPLAINT
(Jury Trial Requested)

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.

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.

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

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.

**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.

/Charles Burnette
Charles B. Burnette IV
Bar No.: 103747
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bburnette@burnettelaw.net
Attorney for Plaintiffs

November 16, 2020

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) 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

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 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

[Signature]
Notary Public of South Carolina


[Signature]
Affiant

My Commission expires: 4/8/26

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 OF DELIVERY

A. Signature Agent
 Addressee

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


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

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 - Adult Signature Restricted Delivery
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 - 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
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

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CHARLESTON, SC 294

20 NOV 2020 PM 3 L

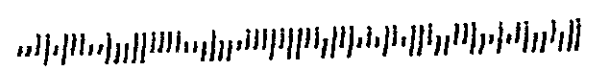
9590 9402 3587 7305 7534 36

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



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:

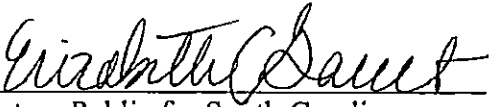
1. I am the attorney for the Plaintiffs, John Patton and Tara Patton.
2. As shown by the Certificate of Service filed November 24, 2020, I served a copy of Plaintiffs' Summons & Complaint against Defendants to Defendant Lester Van Epps, in his individual capacity and as the registered agent for Defendant 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

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)

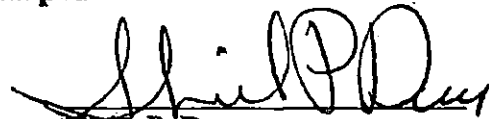
Defendant.)

AFFIDAVIT OF PERSONAL SERVICE
Case No. 2020-CP-46-03434

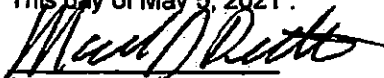
Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

- (x) Affidavit of Default of Defendants Lester Van Epps and Palmetto Contracting Services of 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)
)
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, 20 21
[Signature]
Notary Public of South Carolina
My Commission expires: 4/8/26

[Signature]
Affiant

USPS TRACKING#



CHARLESTON SC 294

5 MAY 2021 PM 1 L

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

9590 9402 3587 7305 7534 98

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



9590 9402 3587 7305 7534 98

2. Article Number (Transfer from sender label)

7006 0100 0000 2674 6380

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

SWALLS

C. Date of Delivery

5/16/21

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)
)
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 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

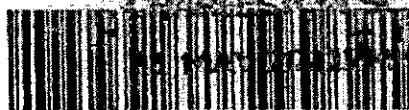
25th day of May, 2021

[Signature]
Notary Public of South Carolina

[Signature]
Affiant

My Commission expires: 4/8/26

USPS TRACKING#



9590 9402 6638 1060 9791 66

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United States
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* 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
of United States Corporation
Agents, Inc
1541 Savannah Hwy, Suite 201
Charleston, SC 29407



9590 9402 6638 1060 9791 66

2. Article Number (Transfer from carrier label)

7006 0100 0000 2674 6397

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X. *Carrier*

Agent

Addressee

B. Received by (Printed Name)

DTC CIA

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



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

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)

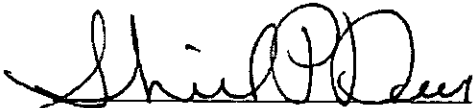
Defendant.)

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

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 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

[Signature]
Notary Public of South Carolina

[Signature]
Affiant

My Commission expires: 3-7-2028

USPS TRACKING#



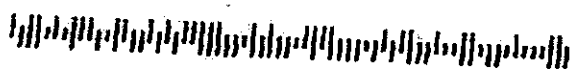
CHARLESTON SC 294
18 OCT 2021 11:13 L

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

9590 9402 6638 1060 9790 74

United States
Postal Service

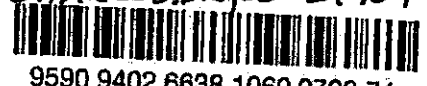
• Sender: Please print your name, address, and ZIP+4® in this box®
C. BAXTER BURNETTE IV
BURNETTE & PAYNE, P.A.
Attorneys at Law
414 East Main Street
Rock Hill, SC 29730



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.
 159 SAVANNAH HWY, STE 201
 CHARLESTON, SC 29407



9590 9402 6638 1060 9790 74

2. Article Number (Transfer from service label)
7006 0100 0000 2674 6442

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. W. B.** C. Date of Delivery **10/1/21**

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

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.

York, SC
May 4, 2022

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



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

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

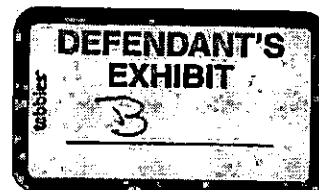
Address: 2532 KILLIAN ROAD
EDGEMOOR, South Carolina 29712

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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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 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

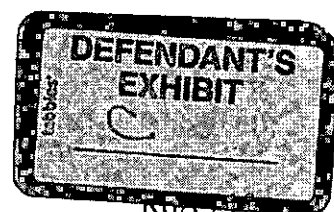
Registered Agent

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



PALMETTO CONTRACTING SERVICES

Your Number ONE Source for Custom Renovations & Log Homes
 STORM DAMAGE RESPONSE TEAM

803-985-5544

ROOFING DECKS VINYL SIDING
 REPLACEMENT WINDOWS
 CERAMIC TILE FLOOR COVERINGS
 COUNTERTOPS CUSTOM CABINETS
 KITCHENS BATHROOMS
 PAINTING PLUMBING
 CUSTOM STONE WORK CONCRETE WORK
 ROOM ADDITIONS
 CUSTOM ARBORS & PERGOLAS
 CUSTOM LOG HOME BUILDER

ENERGY EFFICIENT WINDOWS
 VINYL SIDING
 SUN ROOMS AND SCREENED PORCHES
 FLOOR COVERINGS
 CUSTOM DECKS
 CUSTOM ADDITIONS
 PAINTING
 CUSTOM KITCHEN AND BATHROOMS
 GARAGES
 CONCRETE DRIVES

VISA www.palmettocontracting.com

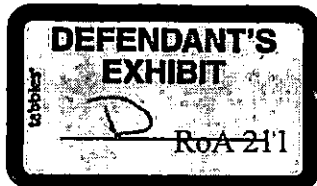
Proposal Submitted To: JOHN & TARA PATTON	Phone: 704-201-9915	Date: 7/17/2019	Job Name: ROOM ADDITION	Job Location: FAIRFIELD CO.
Street Address: 467 SHANGRI LA DRIVE	City: WINNSBORO	State: SC	Zip: 29180	

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 AJOINING 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 PERIMETER 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 ADJOINING 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.

ELECTRICAL:

INSTALL-ROUGH-IN ALL ELECTRICAL WIRING PER PLANS PROVIDED-PRE WALK FRAMING FOR DECEGATED 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.

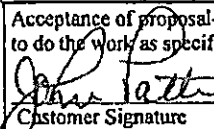
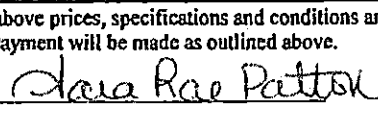
DRYWALL:

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.	
 Customer Signature	<u>7-31-19</u> Date
 Contractor Signature	<u>7.31.19</u> Date



Building Permit Application

Permit No. (74-80) 219-431	Receipt No.	Permit Fee \$ 100.00	Date Permit Issued			Issued By Maurice
			Day (37-38) 10	Mo. (39-40) 11	Year (41-42) 11	
LOCATION OF IMPROVEMENT						
Address: Street No. (1-6) 409 Street Name (8-32) Shirley Ln Street Type Dr.						
City (33-34) Windsor	County (35-36) Fairfield	Zip Code 29180	School (44) District	Fire (45-46) District	Census (47-51) Tract	Tax District
TAX MAP		SUBDIVISION				
Page 01	Block 02	Lot 00	Name 015	Section	Block	Lot
NAME		MAILING ADDRESS		ZIP CODE	TELEPHONE	LICENSE NO.
OWNER		ARCHITECT		ZIP CODE	TELEPHONE	LICENSE NO.
GEN. CONTRACTOR		ARCHITECT		ZIP CODE	TELEPHONE	LICENSE NO.
SELECTED CHARACTERISTICS OF WORK						
NATURE OF WORK		DIMENSIONS		DESCRIPTION OF WORK: <i>Room Addition</i>		
<input type="checkbox"/> 1. New Building (52) <input type="checkbox"/> 2. Addition <input type="checkbox"/> 3. Alteration <input type="checkbox"/> 4. Repair/Replacement <input type="checkbox"/> 5. Demolition <input type="checkbox"/> 6. Moving/Relocation <input type="checkbox"/> 7. Foundation Only		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.				
OWNERSHIP (53)		ESTIMATED DATE OF COMPLETION:				
<input type="checkbox"/> 1. Private (Individual, Corporation, Other) <input type="checkbox"/> 2. Public (Federal, State, Local Gov'ts., Other)						
PROPOSED USE (IF DEMOLITION INDICATE MOST RECENT USE)				OFF STREET PARKING		
TYPE OF OCCURRENCE (54)		IF RESIDENTIAL (55) UNITS (56-58)		<input type="checkbox"/> 1. Indoor Number _____ <input type="checkbox"/> 2. Outdoor Number _____ 3. TOTAL _____		
<input type="checkbox"/> 1. Assembly <input type="checkbox"/> 2. Business <input type="checkbox"/> 3. Educational <input type="checkbox"/> 4. Hazardous <input type="checkbox"/> 5. Factory - Industrial <input type="checkbox"/> 6. Institutional <input type="checkbox"/> 7. Mercantile <input checked="" type="checkbox"/> 8. Residential <input type="checkbox"/> 9. Storage		<input type="checkbox"/> 1. One Family _____ <input type="checkbox"/> 2. Mobile Home _____ <input type="checkbox"/> 3. Duplex _____ <input type="checkbox"/> 4. Apartment _____ <input type="checkbox"/> 5. Condominium _____ <input type="checkbox"/> 6. Dorm/Rooming House _____ <input type="checkbox"/> 7. Other (Specify) _____ If Conversion, Explain: _____		SINGLE FAMILY ONLY Rooms Number _____ Bedrooms (59) _____ Bathrooms-Full (60) _____ Bathrooms-Partial (61) _____ Total Rooms (62) _____		
PRINCIPAL HEATING FUEL (63)		TYPE OF WORK		VALUE		CONTRACTOR
<input type="checkbox"/> 1. Gas						

CITY OF WINDSOR - 2022 MARCH 11 11:36 AM - COMMON PLEAS - CASE#2020CP4603434

BIRTH REGISTRATION CARD
NORTH CAROLINA - NASH COUNTY
 OFFICE OF REGISTER OF DEEDS - NASHVILLE, N.C. 27863

NAME Lester Vernon VanEpps III
 BIRTHDATE [REDACTED]
 BIRTHPLACE Nash County North Carolina
 SEX Male VA 58-B PAGE [REDACTED]
 DATE FILED 12-25-78 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 J. GASSER, REGISTER OF DEEDS
 BY: [Signature] DEPUTY REGISTER OF DEEDS

UNITED STATES OF AMERICA
PASSPORT CARD

U S A A S [REDACTED]
 A VANEPPIII
 G N M [REDACTED]
 A LESTER VERNON

Sex [REDACTED] Date of Birth [REDACTED]
 Place of Birth
 NORTH CAROLINA, U.S.

4632712-00
 UNITED STATES DEPARTMENT OF STATE

NORTH CAROLINA DRIVER LICENSE

[Signature]
 460LN [REDACTED] 3100 12/01/72
 VANEPPS
 LESTER VERNON III
 3 171 TARHEEL OR
 WASHINGTON, NC 27788-3722

05 CLASS C 06 END NONE
 12 RESR NONE
 15 SEX M 16 EYES HAZ
 18 HGT 6-01 19 HAIR BLN RACE

[REDACTED] 12/01/72

DEFENDANT'S EXHIBIT
 E
 RoA 216

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
)
 John Patton and)
 Tara Patton,)
)
 Plaintiffs,)
)
 -vs-)
)
)
 Palmetto Contracting Services of)
 York County, LLC and)
 Lester Van Epps,)
 Defendants.)

IN THE MASTER IN EQUITY COURT
 SIXTEENTH JUDICIAL CIRCUIT

PRE-HEARING BRIEF

Case No. 2020-CP-46-3434

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 SCRCF Rule 7: that a motion "shall state with particularity the grounds therefor."
² SCRCF Rule 60.

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 Defendant³ is arguing the default judgment is void pursuant to Rule 60(b)(4), SCRCF, 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 SCRCF, which governs process. Specifically, in the context of challenging process under a Rule 60 motion, South Carolina Courts have stated that Rule 4, SCRCF “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).

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.

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 SCRPC.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 III¹¹, 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 SCRPC "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.

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 progressed¹⁴ 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).

created this ambiguity for the purpose of avoiding litigation¹⁶, 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 Montana¹⁷ 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 SCRCR 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 (Palmetto 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.

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 work¹⁹, 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.

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

1 State of South Carolina) Court of Common Pleas
 2 County of York) Seventh Judicial Circuit
 3
 4 John Patton,) Transcript of Record
 5)
 5 Plaintiff,)
 6 vs.) 2020-CP-46-03434
 6)
 7 Palmetto Contracting)
 7 Services of York County,)
 8 LLC,)
 8)
 9 Defendant.)

11 July 28, 2021
 12 York, South Carolina

13 B E F O R E:

14 The Honorable Daniel D. Hall, Judge

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

17 Charles Baxter Burnette, IV, Esquire

18 On behalf of the Plaintiff

19 Lester Van Epps, Pro Se

20 On behalf of Palmetto Contracting
 21

24 Reported by: Stacy S. Johnson,
 25 Circuit Court Reporter

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

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

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

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

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

11 THE COURT: Lester Bennett?

12 MR. VAN EPPS: No, Van Epps.

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

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

16 THE COURT: E-T-T-S?

17 MR. VAN EPPS: P-P.

18 THE COURT: Two P's as in Paul?

19 MR. VAN EPPS: Yes, sir.

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

22 MR. BURNETTE: Thank you, Your Honor.

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



York County Sixteenth Judicial Circuit Public Index



[York County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

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

Search **Reset Search Fields** | Name Search Option Begins With Contains

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	2016CP4502471	09/15/2016	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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RoA 227

South Carolina Secretary of State *Mark Hammond*
Business Entities Online
 File, Search, and Retrieve Documents Electronically

In partnership with SC GJV

Log In

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

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) 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

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 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, 20 20
[Signature]
Notary Public of South Carolina

[Signature]
Affiant


My Commission expires: 4/8/26

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ 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. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>UNITED STATES CORPORATION WELLES, INC. 1971 BRADNORIAN HWY, STE 201 CHARLESTON, SC 29407</p>  <p>9590 9402 3587 7305 7534 36</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>
<p>2. Article Number (Transfer from service label)</p> <p>7006 0100 0000 2674 6212</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>

PS Form 3811, July 2016 PSN 7530-02-000-9053

Domestic Return Receipt

USPS TRACKING#



CHARLESTON SC 294
 20 NOV 2020 PM 3 L

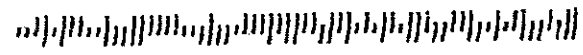
9590 9402 3587 7305 7534 36

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, 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)

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) Affidavit of Default of Defendants Lester Van Epps and Palmetto Contracting Services of 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)
)
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, 20 21
[Signature]
Notary Public of South Carolina
My Commission expires: 4/8/26

[Signature]
Affiant

USPS TRACKING#



9590 9402 3587 7305 7534 98

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*

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



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 Agent
 Addressee
 B. Received by (Printed Name) C. Date of Delivery
 S WILLS 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



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



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
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

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

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)

Palmetto Contracting Services,)
Of York County LLC and Lester)
Van Epps)

Defendant.)

AFFIDAVIT OF PERSONAL SERVICE
Case No. 2020-CP-46-03434

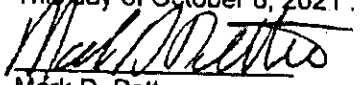
Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

(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

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 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

[Signature]
Notary Public of South Carolina

[Signature: Beth Gault]
Affiant

My Commission expires: 3-7-2028

SENDER: COMPLETE THIS SECTION

1. Article addressed to:
 ■ 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.

2. Article Number (Transfer from service label)
 9590 9402 6638 1060 9790 74

3. Service Type
 Adult Signature Restricted Delivery
 Adult Signature Restricted Delivery
 Certified Mail Restricted Delivery
 Certified Mail Restricted Delivery
 Collect on Delivery Restricted Delivery
 Insured Mail Restricted Delivery (over \$500)
 Registered Mail Restricted Delivery
 Priority Mail Express Restricted Delivery

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

A. Signature Agent
 B. Received by (Printed Name) S. WATTS
 C. Date of Delivery 12/1/21
 Addressee

COMPLETE THIS SECTION ON DELIVERY

Domestic Return Receipt

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

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

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

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



USPS TRACKING#

9590 9402 6638 1060 9790 74

CHRISTI JACOBSEN
MONTANA SECRETARY OF STATE


Home


Forms

Lists


Business Notary Liens Trademark CRA

Business Search

pamlico holdings 

Advanced 

Results: 1

Form Info	Status	Registration Date	Agent
	Active-Good Standing	12/13/2021	ALL DAY S49 MONTANA REG AGENT LLC

Pamlico Holdings LLC

RoA 

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 S49 MONTANA
REG AGENT LLC
1001 S MAIN STREET STE 49
KALISPELL, MT 59901

Limited Liability Company Type Type of Limited Liability Company	Limited Liability Company (LLC)						
Limited Liability Company Name Entity Name	Panico 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 <input type="checkbox"/> 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						
<input checked="" type="checkbox"/> 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 Are Members Liable?	Members No						
Members <table border="1"> <thead> <tr> <th>Name Of Individual Or Business Entity</th> <th>Business Mailing Address</th> <th>Email Address</th> </tr> </thead> <tbody> <tr> <td>L VanEpps</td> <td>1001 S. MAIN ST. STE 49 KALISPELL, MT 59901</td> <td></td> </tr> </tbody> </table>	Name Of Individual Or Business Entity	Business Mailing Address	Email Address	L VanEpps	1001 S. MAIN ST. STE 49 KALISPELL, MT 59901		
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 Christl Jacobsen

RoA 244

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:

NS.

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,

This instrument prepared by
STARR
a licensed North Carolina attorney
if any to be paid by the closing;
tax collector upon disbursement

NO TITLE SEARCH REQUESTED AND NONE PERFORMED, BY C. T. FARTRICK, JR., P.A.



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)
)
 COUNTY OF BEAUFORT)
)
)
 John Patton &)
 Tara Patton,)
)
 Plaintiffs,)
)
 -vs-)
)
)
 Lester Van Epps III & Pamlico)
 Holdings, LLC,)
 Defendant.)

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION

22 CVS 153 FILED

2022 MAR -2 A 11: 26

BEAUFORT CO., C.S.C.
 BY pmi

COMPLAINT AND MOTION TO EXECUTE

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

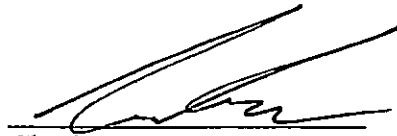
25. The allegations of Paragraphs 1 through 24 are incorporated herein and made a part of this cause of action in all aspects not inconsistent herewith.

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

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

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

PREPARED BY Trimnai & Myers, LLC

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: 4063 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:

* [Signature]
Witness #1

* [Signature]
Witness #2

* [Signature]
Lester Van Epps, III

I hereby certify that the within Deed
Has been recorded this date 10/29/2021
AUDITOR, CHESTER COUNTY

STATE OF SC }
COUNTY OF Lancaster }

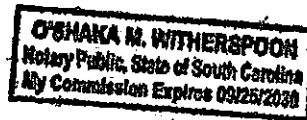
[Signature]
ACKNOWLEDGEMENT

L. [Signature], 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.

* [Signature]
Notary Public for the State of SC



My Commission Expires: 9/25/30

This instrument prepared by
VP/BRK
a licensed North Carolina attorney
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.

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:

NS.

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.


LESTER VERNON VAN EPPS, III (SEAL)


HEATHER VAN EPPS (SEAL)

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.


NOTARY PUBLIC

JEANENE K MATKINS
NOTARY PUBLIC
BEAUFORT COUNTY, NC
MY COMMISSION EXPIRES 03-22-22

My Commission Expires: 03-22-22

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: 0329-22

JEANENE K WATKINS
NOTARY PUBLIC
BEAUFORT COUNTY, NC
MY COMMISSION EXPIRES 0329-22

Partridge
RW

Document prepared by
C. J. KIRK 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 EED mad this day of November 2, 1921,
by and between LEANIE NICHOLS, ARRIBED in after
designated grantee whose address is 17 Tarheel
Drive Washington Co. N. C. 78 St. LESTER N. W. P. P. S.,
II herein designated grantee whose address:
466 Catawba Road, SC 28244, Catawba,

WITNESSETH:

510.

That the grantor and in consideration of
of TEN DOLLARS (\$10.00) of the value and consideration
to be paid by the grantee hereinafter which
hereby acknowledge and bargain and sell to the
present and hereafter by grantee and convey to the
Grantors, successors and assigns in fee
simple, the tract of land or parcel of land
lying in the town of Washington, Beaufort County,
State of North Carolina, more particularly described
as follows:

BEING the tract of land or parcel of land
containing 7 acres or less as shown
on a map of survey titled "Deeds of Nicholas,
II and wife, Laura Nichols" dated March 7, 2003 by
Thomas L. Bohrer P.L.L.C. a copy of which is attached hereto
and incorporated herein by reference complete
and adequate description of the HOWEVER
right to the land and other rights shown on New
22 wide highway "youth above referred"

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.

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. Matkins
NOTARY PUBLIC

My Commission Expires: 0329-22

JEANENE K MATKINS
NOTARY PUBLIC
BEAUFORT COUNTY, NC
MY COMMISSION EXPIRES 0329-22

Neal Partrick

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		
<input type="checkbox"/> 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	
<input checked="" type="checkbox"/> 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

RoA 262

Business Search

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 449 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 449 MONTANA
REG AGENT LLC
1001 S MAIN STREET STE 49
KALISPELL, MT 59901



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)
COUNTY OF BEAUFORT)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2022 MAR -2 A 11-26 ^{22-CVS} 153
22m28

John Patton &
Tara Patton,

BEAUFORT CO., C.S.C.
BY pmi

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

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

No Bond On File

Board Public Action History:

View Orders

View Other License for this Person

No Orders Found



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

STATE OF SOUTH CAROLINA)
)
 YORK COUNTY)
)
 JOHN PATTON AND TARA PATTON,)
)
 PLAINTIFF,)
)
 v.)
)
 PALMETTO CONTRACTING SERVICES OF)
 YORK COUNTY, LLC AND LESTER VAN EPPS,)
)
 DEFENDANTS,)
)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

MOTION TO ALTER OR AMEND

DOCKET No.: 2020-CP-46-3434

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

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

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
)
John Patton and)
Tara Patton,)
)
)
Plaintiffs,)
)
-vs-)
)
)
Palmetto Contracting Services of)
York County, LLC and)
Lester Van Epps,)
)
Defendants.)

IN THE MASTER IN EQUITY COURT
SIXTEENTH JUDICIAL CIRCUIT

MOTION TO ALTER OR AMEND

Case No. 2020-CP-46-3434

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

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

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).

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

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

1 State of South Carolina) Court of Common Pleas
 2 County of York) Seventh Judicial Circuit
 3
 4 John Patton,) Transcript of Record
 5)
 6 Plaintiff,)
 7 vs.) 2020-CP-46-03434
 8)
 9 Palmetto Contracting)
 10 Services of York County,)
 11 LLC,)
 12)
 13 Defendant.)

11 July 28, 2021
 12 York, South Carolina

13 B E F O R E:

14 The Honorable Daniel D. Hall, Judge

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

17 Charles Baxter Burnette, IV, Esquire
 18 On behalf of the Plaintiff

19 Lester Van Epps, Pro Se
 20
 21 On behalf of Palmetto Contracting

24 Reported by: Stacy S. Johnson,
 25 Circuit Court Reporter

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

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

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

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

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

11 THE COURT: Lester Bennett?

12 MR. VAN EPPS: No, Van Epps.

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

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

16 THE COURT: E-T-T-S?

17 MR. VAN EPPS: P-P.

18 THE COURT: Two P's as in Paul?

19 MR. VAN EPPS: Yes, sir.

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

22 MR. BURNETTE: Thank you, Your Honor.

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



York County Sixteenth Judicial Circuit Public Index



[York County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC GOV Home Page](#)

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 services] **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 Lis Pendens Judgments Cross Index Search Judgment For Judgment Against

Name Search Option Begins With Contains

Name	Party Type	Case Number	Filed Date	Case Status	Disposition Date	Type	Subtype	Judgment #	Court Agency
Palmetto Contracting Services Of York County LLC	Defendant	2009CP4604383	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	2016CP4607421	03/15/2016	Settled	05/23/2017	Common Pleas	Breach of Cont 140		York County Common Pleas
Palmetto Contracting Services Of York County LLC	Defendant	2020CP1692134	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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RoA 280



STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

John Patton And Tara Patton ,)

Plaintiffs,)

versus)

Palmetto Contracting Services,)
Of York County LLC and Lester)
Van Epps)

Defendant.)


IN THE COURT OF COMMON PLEAS

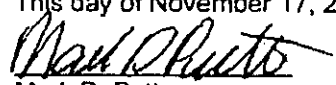
AFFIDAVIT OF PERSONAL SERVICE
Case No. 2020-CP-46-03434

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

- (x) 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

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 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, 20 20
[Signature]
Notary Public of South Carolina


[Signature]
Affiant

My Commission expires: 4/8/26

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> 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. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>[Signature]</i></p>
<p>1. Article Addressed to:</p> <p><i>DR. CHARLES B. BURNETTE IV</i> <i>1115 S. MAIN ST.</i> <i>ROCK HILL, SC 29730</i></p>  <p>9590 9402 3587 7305 7534 36</p>	<p>B. Received by (Printed Name) <i>B. Wells</i></p> <p>C. Date of Delivery <i>11/20/20</i></p>
<p>2. Article Number (Transfer from service label)</p> <p>7006 0100 0000 2674 6212</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p>3. Service Type</p> <ul style="list-style-type: none"> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery

PS Form 3811, July 2016 PSN 7530-02-000-8053 Domestic Return Receipt

USPS TRACKING#



CHARLESTON SC 294

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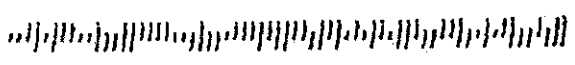
9590 9402 3587 7305 7534 36

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*

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)

Palmetto Contracting Services,)
Of York County LLC and Lester)
Van Epps)

Defendant.)

AFFIDAVIT OF PERSONAL SERVICE
Case No. 2020-CP-46-03434

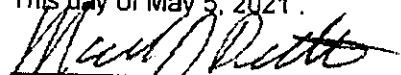
Personally, appeared before me, Sheila P. Dover, who being duly sworn, says that she served the following:

- (x) Affidavit of Default of Defendants Lester Van Epps and Palmetto Contracting Services of 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)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO. 2020-CP-46-03434

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, 20 21
[Signature]
Notary Public of South Carolina
My Commission expires: 4/8/26

[Signature]
Affiant



CLERK OF COURT'S OFFICE

Post Office Box 649, York, South Carolina 29745-0649

FILED FROM DAVID Y. FLEISCHER D 2020 JUN 16 10 56 AM YORK COUNTY COMMON PLEAS CLERK'S OFFICE

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

FILED FROM VABALY F FILED 2020 JUN 16 10 11:56 AM YORK COUNTY COMMON PLEAS SC AS 2020 06 16 08 34

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 08 2:56 PM YORK COUNTY REEAS SC 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 AUG 19 12:48 PM YORK COUNTY CLERK'S OFFICE 20210819 12:48 PM

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

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)

Palmetto Contracting Services,)
Of York County LLC and Lester)
Van Epps)

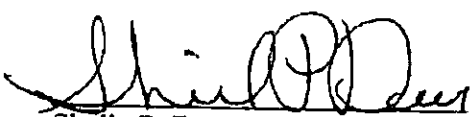
Defendant.)

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

FILED ELECTRONICALLY FILED 2021 OCT 12 10 50 AM YORK COUNTY COMMONS RULES CASE # 2020 CP 46 03434

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO. 2020-CP-46-03434

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

[Signature]
Notary Public of South Carolina

[Signature: Beth Gault]
Affiant

My Commission expires: 3-7-2028

ELECTRONICALLY FILED - 2023 FEB 01 2:50 PM YORK COMMONWEALTHS CASE#2023R0003434

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United States
Postal Service

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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.
 159 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

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 X Addressee
 B. Received by (Printed Name) S. W. S. C. Date of Delivery 01/12/23
 D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

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

Domestic Return Receipt

CHRISTIE JACOBSEN
MONTANA SECRETARY OF STATE

Home

Forms

Lists

Business Notary Liens Trademark CRA

Business Search

pamlico holdings



Advanced

Results: 1

Form Info	Status	Registration Date	Agent
	Active-Good Standing	12/13/2021	ALL DAY 549 MONTANA REG AGENT LLC

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: 1601 S. MAIN ST. STE 49
KALISPELL, MT 59901
Registration Date: 12/13/2021
AA Due Date: 04/15/2023
Commercial Registered Agent: Commercial
C182737
ALL DAY 549 MONTANA
REG AGENT LLC
1601 S MAIN STREET STE 49
KALISPELL, MT 59901

Limited Liability Company Type		Limited Liability Company (LLC)
Type of Limited Liability Company		Limited Liability Company (LLC)
Limited Liability Company Name		Pamlico Holdings, LLC
Entity Name		Pamlico Holdings, LLC
Term		Perpetual / Ongoing
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		
		<input type="checkbox"/> 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
		<input checked="" type="checkbox"/> 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 MI Secretary of State Christli Jacobsen

RoA 297

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 :

NS.

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,

THIS INSTRUMENT PREPARED BY
[Signature]
a licensed North Carolina attorney
if any to be paid by the closing
tax collector upon disbursement

NO TITLE SEARCH REQUESTED AND NONE PERFORMED BY C. F. FARRICK, JR., P.A.

ELECTRONICALLY FILED - 2023 Feb 01 2:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434



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.

Patton/Van Epps Hearing Brief/Motion

7 [Icons]



Bax Burnette

To: 'Krecek, Robin (Robin.Krecek@yorkcountygov.com)'

Cc: Dan D'Agostino <Dan@ddlplaw.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

This e-mail message is confidential and is intended only for the named recipients. It may contain information that is subject to the attorney-client privilege of confidentiality. If you have received this e-mail message in error or you are not

ELECTRONICALLY FILED - 2023 Feb 01 2:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

Patton/Van Epps Hearing Brief/Motion

7 [search icon]



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

This e-mail message is confidential and is intended only for the named recipients. It may contain information that is subject to the attorney-client privilege of confidentiality. If you have received this e-mail message in error or you are not the named person to whom it was sent, please notify the sender immediately, delete this message from your computer, and destroy all copies. Thank you.

...

Reply Reply all Forward

ELECTRONICALLY FILED - 2023 Feb 01 2:56 PM - YORK - COMMON PLEAS - CASE#2020CP4603434

1 State of South Carolina) Court of Common Pleas
 2 County of York) Seventh Judicial Circuit
 3
 4 John Patton,) Transcript of Record
 5)
 6 Plaintiff,)
 7 vs.) 2020-CP-46-03434
 8)
 9 Palmetto Contracting)
 10 Services of York County,)
 11 LLC,)
 12)
 13 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 I T S

NO EXHIBITS WERE INTRODUCED

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

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

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

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

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

11 THE COURT: Lester Bennett?

12 MR. VAN EPPS: No, Van Epps.

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

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

16 THE COURT: E-T-T-S?

17 MR. VAN EPPS: P-P.

18 THE COURT: Two P's as in Paul?

19 MR. VAN EPPS: Yes, sir.

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

22 MR. BURNETTE: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

10 THE COURT: Probably just a --

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

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

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

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

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

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

1 accepted it.

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

3 THE COURT: Okay.

4 All right. Well, I'm not gonna hear it today.

5 You know, we have an order that -- that it was referred
6 to the master. I'm not here to undo that order. In
7 fact, I think once I signed that order referring it to
8 the master -- and it appears that that was probably a
9 clerical error why it was docketed here for this court
10 today.

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

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

14 THE COURT: Okay.

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

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

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

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

1 circuit court. There was a default judgment signed.

2 You may -- have you talked to an attorney?

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

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

10 MR. VAN EPPS: Yes, sir.

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

14 Thank y'all.

15 MR. BURNETTE: Thank you, Your Honor.

16 (Whereupon, the proceedings were concluded at
17 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

1s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

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), SCRPC. 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), SCRCF 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), SCRCF (“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



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

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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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

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

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

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

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), SCRCF.

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
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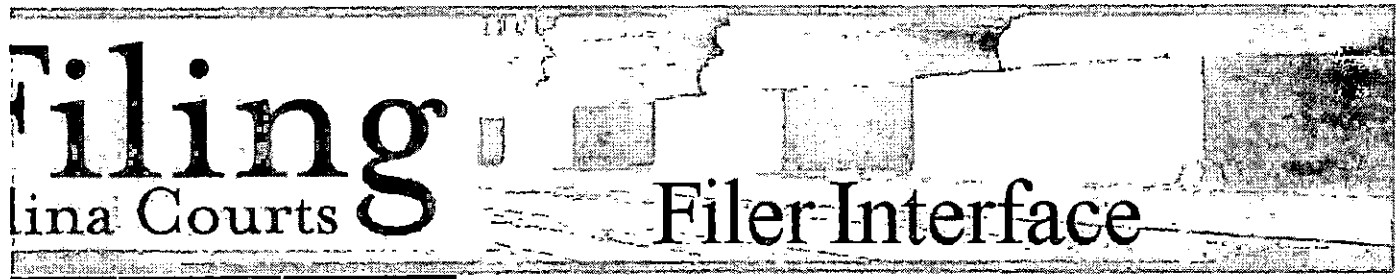
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