

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge
Walton J. McCloud, Circuit Court Judge

Case No. 2023-001005

Donald R. McCabe and Marion J. Smith,

Respondents,

v.

Dennis Gallipeau,

Appellant.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD

December 3, 2023



Dennis M. Gallipeau, *pro se*
1920 Ashford Lane
Columbia, SC 29210
(803) 238-8735
Appellant

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SC Court of Appeals

I. Orders

May 1, 2023 Order On Defendants' Motion For Dismissal Under Rule 12(B)(6) Filed March 10, 2023

October 2, 2023 Order Denying Defendant's Motion To Set Aside Default

II. Transcripts

Transcript of Record of Hearing August 1, 2023, on Respondents' Motion For Default Judgment

III. Pleadings

Complaint filed in C.A. No. 2023CP3200091

Appellant's Motion To Set Aside Default Judgment

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

Case No.: 2023CP3200091

DENNIS GALLIPEAU,)

Plaintiff,)

vs.)

ORDER ON DEFENDANTS' MOTION
FOR DISMISSAL UNDER RULE 12(B)(6)
FILED MARCH 10, 2023

D. RYAN McCABE and)
MARION J. SMITH,)

Defendants.)
_____)

Heard: April 24, 2023 via Webex Virtual Courtroom
Plaintiff is self-represented
Defendants' Attorney: Ryan McCabe
Court Reporter: None – Webex Recording by Consent

The plaintiff filed this suit against Marion J. Smith, the owner of MJS, Inc., an opponent in a pending case (Case No. 2020CP3200109), and the attorney for MJS, D. Ryan McCabe, asserting that the plaintiff is entitled to civil remedies under criminal statutes related to perjury, S.C. Code §§ 16-9-10, et seq. The defendants seek dismissal of the present Complaint under Rule 12(b)(6), SCRPC. The motion is granted.¹ There are remaining counterclaims under the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code §§ 15-36-10 et seq. which are not dismissed.

Rule 12(b)(6), SCRPC reads:

Every defense, in law or fact, to a cause of action . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses

¹ This is a difficult issue because of the language in S.C. Code §16-9-50 referenced later in this order. Even if a civil cause of action were to arise under §16-9-50, which the court finds not to be the case, the cause of action should not arise until after there is a determination that the perjury or subornation of perjury resulted in a judgment against the plaintiff. To determine otherwise would open the courts to multiple overlapping lawsuits.

may . . . be made by motion: . . . (6) failure to state facts sufficient to constitute a cause of action[.]

In ruling on a motion under Rule 12(b)(6), the court is limited to reviewing the allegations in the four corners of the Complaint. All averments and reasonable inferences therefrom must be accepted as true and construed in favor of the plaintiff.

The question is whether South Carolina recognizes a civil cause of action based on the criminal statutes regarding perjury and subornation of perjury.² The court finds that the criminal statutes do not give rise to an individual cause of action in Common Pleas court, though no ruling is made as to whether commission of perjury or subornation of perjury may be used as proof of some other recognized civil cause of action. This decision is reached even though South Carolina has enacted § 16-9-50, which reads:

SECTION 16-9-50. Disposition of fines.

The one moiety of the fines imposed by this article shall be for the State and the other moiety to such person as shall be grieved, hindered or molested by reason of the offense or offenses before mentioned that will sue for the same by action in any court of competent jurisdiction.

² **SECTION 16-9-10. Perjury and subornation of perjury.**

(A)(1) It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

(B)(1) A person who violates the provisions of subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

(C) A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement.

SECTION 16-9-20. Subornation of perjury in civil actions.

(A) It is unlawful for a person to:

(1) wilfully induce, procure, or persuade another person by any means to commit perjury in initiating a civil action or proceeding; or

(2) wilfully induce, procure, or persuade another person to give false, misleading, or incomplete testimony while under oath in a civil action or proceeding.

(B) A person who violates the provision of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months and fined not less than two hundred dollars.

Perjury is defined in Black's Law Dictionary as follows:

In criminal law. The willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury, or person holding the proceeding. 2 Whart. Crim. Law.

Subornation of perjury is defined as follows:

In criminal law. The offense of procuring another to take such a false oath as would constitute perjury in the principal. See *Stone v. State*, US Ga. 705, 45 S. E. 030, 9S Am. St. Rep. 145; *State v. Falihey*, 3 Pennewill (Del.) 504, 54 Atl. 090; *State v. Geer*, 40 Kan. 529, 20 Pac. 1027.

A detailed law review article discusses the status of the law in the United States concerning whether criminal laws against perjury give rise to a private cause of action. See *Lying On The Stand Won't Cost You A Dime: Should Courts Recognize A Civil Action In Tort For Perjury?*, 44 Wash. & Lee L. Rev. 1257 (1987). Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol44/iss4/6> as read on April 28, 2023.

The author of the article advocates expansion of the law so as to allow such a cause of action to exist in tort. It details that Maine has a statute that authorizes a private cause of action and that Oklahoma's courts have recognized that perjury may form the basis for civil damages. However, the article recognizes that a private cause of action did not exist in common law, nor is it recognized in the vast majority of states. The article sets out the reasoning for the failure to allow this cause of action to be pursued.

In *Doe v. Marion*, 373 S.C. 390, 395 S.E.2d 245 (2007), the Supreme Court of South Carolina wrote:

In determining whether a statute creates a private cause of action, the main factor is legislative intent:

The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.... In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability. *Dorman v. Aiken Communications, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (quoting *Whitworth v. Fast Fare Markets of South Carolina, Inc.*, 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)). When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party. *Citizens of Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992).

Allowing civil actions sounding in perjury or subornation of perjury would likely open a Pandora's Box of litigation. Therefore, this court believes that interpreting the statutes should be especially sensitive to ambiguities and that there is ambiguity because §16-9-50 deals with the disposition of fines. It is true that the language mentions bringing suit in a court of competent jurisdiction, but that language can be read in the context of seeking one-half of any fines imposed under the chapter, if the person aggrieved sues to recover it. Fines in common parlance are those imposed in the discretion of the court or some administrative agency. As the language in *Doe v. Marion* states, there is a general rule, and if the court has to evaluate whether to imply a private cause of action if the statute "was enacted for the special benefit of a private party." As stated above, this is a difficult question which may be interpreted differently that is being decided in this order. The perjury laws were clearly created for the welfare of the public. It is §16-9-50 which can be argued to provide a special benefit to a private party.

The Maine statute clearly creates a private cause of action.³ However, it appears to deal with situations where a judgment has first been obtained against the party aggrieved by the

³ **Title 14: COURT PROCEDURE -- CIVIL
Part 2: PROCEEDINGS BEFORE TRIAL
Chapter 205: LIMITATION OF ACTIONS
Subchapter 3: MISCELLANEOUS ACTIONS**

perjury. That would appear to reduce the concern about multiple lawsuits going on simultaneously concerning the same basic dispute. The law review article cited above mentions collection of damages in terms of post-judgment actions.

While the court is concerned with the language in §16-9-50, it is convinced that South Carolina would follow the overwhelming majority of jurisdictions that do not have a private cause of action for perjury. Earlier in this order, the court stated that no ruling is made on whether anyone affected by perjury could use perjurious misconduct as evidence in a different cause of action recognized in this state. That seems a more plausible interpretation of South Carolina law. Obviously, the admissibility of such evidence would be subject to the immunities

§871

§870. Judgment by perjury; action on case

1. Action; within 3 years. When a judgment has been obtained against a party by the perjury of a witness introduced at the trial by the adverse party, the injured party may, within 3 years after that judgment or after final disposition of any motion for relief from the judgment, bring an action against such adverse party, or any perjured witness or confederate in the perjury, to recover the damages sustained by the injured party by reason of such perjury. The judgment in the former action does not bar an action under this section.

[PL 2009, c. 187, §1 (NEW).]

2. Specificity of claim. A claim under this section must identify the specific testimony alleged to be false at the initial filing of the claim.

[PL 2009, c. 187, §1 (NEW).]

3. Record; evidence. A claim may not be submitted under this section solely on the same record as in the former trial. Evidence discoverable by due diligence before the trial cannot be introduced as new evidence to establish perjury.

[PL 2009, c. 187, §1 (NEW).]

4. Standard of proof. The plaintiff in an action under this section must prove the alleged perjury by clear and convincing evidence.

[PL 2009, c. 187, §1 (NEW).]

5. Affirmative defense. It is an affirmative defense to an action under this section that the plaintiff has no new evidence to present concerning the alleged perjury.

[PL 2009, c. 187, §1 (NEW).]

6. Strictly construed. The pleading and proof requirements of this section must be strictly construed.

[PL 2009, c. 187, §1 (NEW).]

granted in actions related to court. Further, the fact that no cases have been cited to the court that have imposed liability in a private cause of action for perjury bolsters the court's conclusion.

THEREFORE, IT IS ORDERED that the Complaint is dismissed under Rule 12(b)(6).

The counterclaims are not dismissed as that issue is not before the court.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Lexington Common Pleas

Case Caption: Dennis Gallipeau VS Ryan McCabe
Case Number: 2023CP3200091
Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2023-04-28 19:47:14 page 7 of 7

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Dennis Gallipeau,)

Plaintiff,)

vs.)

Ryan McCabe,)

Defendant.)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2023-CP-32-00091

**ORDER DENYING DEFENDANT'S
MOTION TO SET ASIDE DEFAULT**

This matter is before the court upon Plaintiff Dennis Gallipeau's, ("Plaintiff") Motion to Set Aside Default, pursuant to Rule 55(c), filed with this Court on August 10, 2023. Defendant filed a memorandum in opposition on September 21, 2023. A hearing on Plaintiff's Motion was held on September 26, 2023. Dennis Gallipeau appeared *pro se* and Stephanie Trotter Kellahan, Esq., appeared for the Defendant.

PROCEDURAL HISTORY

The Plaintiff instituted this action on January 11, 2023, by filing the Summons and Complaint in the Lexington County Court of Common Pleas. The Plaintiff's Complaint alleges a civil cause of action for perjury against Defendant.¹ Court records indicate that the Summons and Complaint were personally served upon Defendant on February 18, 2023, with a certificate of service filed February 21, 2023. Defendant subsequently filed an Answer and Counterclaim by mail on March 3, 2023, alleging a counterclaim for (1) violation of the S.C. Frivolous Proceedings Act and (2) abuse of process. The Defendant also emailed a copy of the responsive pleadings to Plaintiff that same day.² In addition, Defendant served a copy of the responsive pleading upon

¹ Plaintiff Gallipeau's allegations in this matter arise out of the litigation of *Gallipeau v. Allied Waste Company, et al.*, 2020-CP-32-00109.

² The parties in this case, and the 2020 case, have used email to communicate with one another routinely.

Plaintiff via USPS Certified Mail / Restricted Delivery. A Certificate of Service for the responsive pleadings was filed by Defendant on March 24, 2023.³

On May 1, 2023, The Honorable William P. Keesley dismissed Plaintiff's Complaint against Defendants. Plaintiff subsequently appealed that dismissal. The matter is currently pending before the Court of Appeals as case number 2023-001005.

On June 13, 2023, Defendant filed an Affidavit of Default asserting that Plaintiff had failed to answer or otherwise plead in response to Defendant's counterclaims. Defendant also filed a notice of Motion and Motion for Default Judgment and Request for Hearing on Damages. The Court granted the request for a hearing, and a hearing on the matter was held on August 1, 2023. After the hearing, the Court found Plaintiff to be in default and entered an Order of Default Judgment against Plaintiff as to liability for Defendant's counterclaims, finding that Plaintiff was served with Defendant's Answer and Counterclaims on March 3, 2023, making Plaintiff's responsive pleading due on April 3, 2023.⁴ On August 8, 2023, Plaintiff filed a Motion to Set Aside Default. A hearing on the matter followed on September 26, 2023.

ANALYSIS

Service of counterclaims are effective upon mailing to the plaintiff at his last known address. Rule 5(b)(1), SCRCP. A plaintiff must serve his reply to a counterclaim within 30 days after service of the answer. Rule 12(a), SCRCP. When a party fails to plead in response to a counterclaim, and that fact is made to appear by affidavit, the clerk is obligated to enter his default

³ Subsequent to the hearing, the Defendant provided a copy of the certified mail green card, and the USPS documentation showing attempted delivery of the March 3, 2023 filings as well as USPS's notice that Plaintiff needed to coordinate delivery.

⁴ 30 days from March 3, 2023 is April 2, 2023. However, because April 2, 2023 was a Sunday, Plaintiff's deadline to respond was April 3, 2023 pursuant to Rule 6(a), SCRCP.

into the record. Rule 55(a), SCRCPP. Thereafter, a party seeking a judgment by default may apply to the court for the same and request a hearing on unliquidated damages. Rule 55(b)(2), SCRCPP.

Under Rule 55(c) SCRCPP, “the standard for granting relief from an entry of default is good cause.” *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989). The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court. *Id.* Instead of the more rigorous standard of “excusable neglect” under Rule 60(b), SCRCPP, when determining whether to set aside the entry of a default under Rule 55(c), SCRCPP, the party seeking relief must provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

Here, the Plaintiff has failed to set forth a satisfactory explanation of the default that rises to good cause nor a reason why vacation of the default entry would serve the interests of justice. Proof of service was adequately produced by Defendant, providing that Defendant conformed with the required SCRCPP when serving Plaintiff with the Answer and Counterclaims. In addition to the procedures set forth by the SCRCPP, Defendant provided additional notice to Plaintiff by email wherein he acknowledged his awareness of the March 3, 2023 filings. Plaintiff’s choice not to respond because of the belief that service was not proper does not set forth a good cause to set aside default under the specific circumstances before this Court.⁵

⁵ Although there is no South Carolina case directly on point, we find *Patel v. Southern Brokers, Ltd.*, 277 S.C. 490, 289 S.E.2d 642 (1982), instructive. In *Patel*, the plaintiff attempted service of process under the long arm statute because the defendant was a North Carolina corporation. **The summons and complaint were sent to the defendant by certified mail, return receipt requested.** The plaintiff could not enter proof of service because the postal service returned the unopened envelope as refused. Noting “technical objections to service of process” had been overruled “where the defendant had not been denied due process,” the Court found a defendant could not avoid process by refusing to accept registered mail known to contain a summons and complaint. *Id.* at 494, 289 S.E.2d at 645. **Once the documents were made available to the defendant, “the mailman was not required to ram them down the Defendant’s throat.”** *Id.* at 495, 289 S.E.2d at 645. The Court concluded the defendant had been served with process and the lower court had jurisdiction over the defendant. *BB & T v. Taylor*, 633 S.E.2d 501, 504, 369 S.C. 548, 553 (2006)(emphasis added).

CONCLUSION

WHEREAS, for the reasons set forth further above, the Plaintiff's Motion to Set Aside Default is **DENIED** and the court orders that the Entry of Default as to Plaintiff remains in place.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: Dennis Gallipeau VS Ryan McCabe
Case Number: 2023CP3200091
Type: Order/Default

It Is So Ordered

s/ Walton J. McLeod

State of South Carolina) Court of Common Pleas
) Eleventh Judicial Circuit
County of Lexington) Case No. 2023-CP-32-00091
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Dennis Gallipeau,)
)
) Plaintiff,)
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)
-vs-) Transcript of Record
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)
D. Ryan McCabe and)
Marion J. Smith,)
)
)
) Defendants.)
)

August 1, 2023
Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, Judge

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

Stephanie Kellahan, Esquire
Attorney for the Defendants

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

I N D E X

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<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
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Court Reporter Certification.....	8

1 AUGUST 1, 2023

2 (WHEREUPON, the proceedings began via WebEx virtual
3 courtroom. The plaintiff was not present in the virtual
4 courtroom. Counsel for the defendants was present.)

5 THE COURT: All right. Gallipeau v. McCabe. Ms.
6 Kellahan?

7 MS. KELLAHAN: Good morning, Your Honor, or I guess good
8 afternoon, Your Honor.

9 THE COURT: Yeah. Good afternoon, I know. Bear with me.
10 All right. So this is the case of Dennis Gallipeau
11 versus Ryan McCabe, and we obviously just had a hearing
12 yesterday. I don't see Mr. Gallipeau in the virtual
13 courtroom.

14 MS. KELLAHAN: No, Your Honor. He sent a couple emails
15 this morning saying he objected to this hearing.

16 THE COURT: Oh, okay. This is a motion for entry of
17 default on the counterclaims; is that accurate?

18 MS. KELLAHAN: Yes, Your Honor.

19 THE COURT: Happy to hear from you.

20 MS. KELLAHAN: Thank you. This is actually a different
21 case, Your Honor, than the one heard yesterday. The one heard
22 yesterday was filed in 2020. It was Mr. Gallipeau versus MJS,
23 Inc. The defendant in this case, Marion Judd Smith, is the
24 owner of MJS, Inc., and the other defendant in this case, Ryan
25 McCabe, represented MJS in the 2020 case.

1 Mr. Gallipeau filed this case alleging perjury against
2 the defendants related to the 2020 case. We filed
3 counterclaims alleging frivolous proceedings on behalf --
4 behalf of both defendants, as well as abuse of process on
5 behalf of Mr. Smith. Those were served on Mr. Gallipeau via
6 mail on March the 3rd. We also served him via email or we
7 sent him a copy via email. No answer or other responsive
8 pleading has been filed.

9 In the meantime, Judge Keesley dismissed Mr. Gallipeau's
10 action, his claim for perjury. Mr. Gallipeau has appealed
11 that dismissal. However, the -- the order that he's appealing
12 from clearly states that it has nothing to do with the
13 counterclaims. Because Mr. Gallipeau is in default, he's
14 admitted the allegations of the complaint, which is that this
15 suit was brought for an improper purpose against Mr. Smith,
16 and that his pleadings are frivolous.

17 And so we'd ask the Court to enter default against him.
18 I'd also ask the Court to enter a judgment that Mr. Gallipeau
19 has admitted or that he is liable for the allegations
20 contained in the defendants' counterclaims and hold the issue
21 of damages in abeyance.

22 For so long as Mr. Gallipeau continues this appeal, the
23 damages against my clients are continuing to accrue. So we'd
24 like to go ahead and have it entered into the record that he
25 is in default, that judgment is entered, but hold the

1 determination of damages in abeyance.

2 THE COURT: Okay.

3 MS. KELLAHAN: Just for the Court's record, the emails
4 that Mr. Gallipeau sent this morning were that he contested
5 having a virtual hearing on damages. So if the Court holds
6 the issue of damages in abeyance, it gives Mr. Gallipeau what
7 he requests anyway.

8 THE COURT: Okay. Would you just do me a proposed order
9 on this, please? And just --

10 MS. KELLAHAN: Yes, Your Honor.

11 THE COURT: -- give me the -- please give me the
12 procedural history as well, when you served your counterclaims
13 and --

14 MS. KELLAHAN: I will.

15 THE COURT: I mean, there's a lot in the file here, but
16 we might even -- we're doing default. We might need to do an
17 affidavit of default, which you can file supplementally, if
18 it's not already.

19 MS. KELLAHAN: We have. We have filed an affidavit of
20 default, Your Honor.

21 THE COURT: Okay. All right. I'll tell you what. Just
22 reference the documents, the procedural history.

23 MS. KELLAHAN: I will.

24 THE COURT: All right. I appreciate it. I'll look for
25 your proposed order.

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MS. KELLAHAN: Thank you very much, Your Honor.

THE COURT: All right.

(WHEREUPON, the proceedings ended.)

--- END REQUESTED TRANSCRIPT ---

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

2023 JAN 11

AM10: 53

Civil Action Number

Dennis Gallipeau,

Plaintiff,

v.

D. Ryan McCabe; and
Marion J. Smith,

Defendants.

2023 CP 3200091

**COMPLAINT WITH
JURY DEMAND**

Plaintiff complaining of the defendants above named, would respectfully show as follows:

This action is brought pursuant to § 16-9-10, et seq, alleging crimes against public justice.

JURISDICTION

1. The State of residence of plaintiff is South Carolina. Plaintiff has been grieved, hindered, or molested by reason of the offenses alleged herein.
2. D. Ryan McCabe is an attorney licensed to practice law in the State of South Carolina. He is a senior partner and shareholder of the law firm McCabe, Trotter and Beverley. He is also a member of the South Carolina House of Representatives and resides in Lexington County. Marion J. Smith is the owner and sole proprietor of MJS, Inc., a property management company with its principal place of business located in Richland County.
3. This Court has jurisdiction over the parties and subject matter jurisdiction pursuant to S.C. Code § 16-9-50 and venue is proper.

FACTS AND CLAIMS

4. On or about January 8, 2020, plaintiff filed civil action 2020-CP-32-0109 in this court.
5. On or about March 9, 2020, McCabe filed a motion to dismiss in which he made statements he knew were false, misleading and or incomplete in violation of § 16-9-10 S.C. Code.
6. On or about March 20, 2020, McCabe filed an answer in which he made statements he knew were false, misleading and or incomplete in violation of § 16-9-10 S.C. Code.
7. On or about May 11, 2020, McCabe filed a motion for summary judgment in which he made statements he knew were false, misleading and or incomplete in violation of § 16-9-10 S.C. Code.
8. On or about December 7, 2020, an ADR Hearing was held during which McCabe made statements he knew were false, misleading and or incomplete in violation of § 16-9-10.
9. On or about January 19, 2021, a hearing was held before the Honorable Debra R. McCaslin during which McCabe made statements under oath he knew were false, misleading and or incomplete, in violation of § 16-9-10 S.C. Code.
10. On or about May 16, 2021, a hearing was held before the Honorable William P. Keesley during which McCabe made statements under oath he knew were false, misleading and or incomplete, in violation of § 16-9-10 S.C. Code.
11. On or about October 21, 2022, McCabe prepared an affidavit he knew included false, misleading and or incomplete statements, in violation of §§ 16-9-10(C) and 16-9-20(A)(2).

12. On or about October 21, 2022, Smith knowingly signed the false affidavit prepared by McCabe, under oath and McCabe then filed Smith's false affidavit with the court, in violation of §§ 16-9-10, 16-9-20 and 16-9-30, S.C. Code.

13. On or about October 27, 2022, a hearing was held before the Honorable William P. Keesley during which McCabe made statements under oath he knew were false, misleading and or incomplete, in violation of § 16-9-10.

14. On or about November 28, 2022, a hearing was held before the Honorable Grace Gilchrist Knie during which McCabe made statements under oath he knew were false, misleading and or incomplete, in violation of § 16-9-10.

15. Plaintiff has been grieved, hindered and or molested by the actions of defendants McCabe and Smith, which include preparing and filing documents including false, deceptive, misleading and or incomplete statements; giving false testimony during court proceedings and willfully inducing, procuring and or persuading another person to commit perjury and McCabe and Smith did commit perjury while under oath in a civil action or proceeding.

WHEREFORE, the prayer of the Plaintiff, judgment in an amount sufficient to compensate the Plaintiff for actual damages, punitive damages, statutory damages, costs and such other relief as is just and proper. Plaintiff demands a jury trial.



Dennis Gallipeau
1920 Ashford Lane
Columbia, SC 29210
(803) 834-6095

Columbia, SC
January 8, 2023

FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

2023 AUG 19 AM 10:44

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2023-CP-32-00091

LISA J. COMER
CLERK OF COURT
LEXINGTON SC

Dennis Gallipeau,

Plaintiff,

v.

D. Ryan McCabe; and
Marion J. Smith,

Defendants.

**PLAINTIFF'S MOTION TO
SET ASIDE JUDGMENT BY DEFAULT
AND REQUEST FOR IN-PERSON
EVIDENTIARY HEARING**

TO: ATTORNEY KELLAHAN:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge for the Eleventh Judicial Circuit in the Lexington County Courthouse, on the tenth (10th) day after service hereof or at such other time as is convenient to the Court for an Order setting aside the judgment by default entered on August 3, 2023.

The grounds for this motion are that: (1) the judgment by default was improperly entered, (2) the judgment by default is void, (3) the judgement by default was obtained through fraud, and (4) there exists good cause to set aside the judgment by default pursuant to S.C.R.C.P. Rule 55(c).

This Motion shall be based upon the record, upon S.C.R.C.P. Rule 55(c), upon the attached emails and such additional law and argument as shall be appropriate.



Dennis Gallipeau, pro se
1920 Ashford Lane
Columbia, SC 29210
803-238-8735

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2023 AUG 10 AM 10:44

COUNTY OF LEXINGTON

Civil Action No.: 2023-CP-32-00091

LISA J. COWEN
CLERK OF COURT
LEXINGTON SC

Dennis Gallipeau,

Plaintiff,

v.

D. Ryan McCabe; and

Marion J. Smith,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of Plaintiff's **Motion to Set Aside Judgment by Default**, by First Class Mail, postage prepaid, upon Stephanie Kellahan, 4500 Fort Jackson Blvd., Suite 250, Columbia, SC 29209, this 8th day of August, 2023.



Dennis Gallipeau
1920 Ashford Lane
Columbia, SC 29210
803-238-8735



Dennis Gallipeau <dennismgallipeau@gmail.com>

Re: 2023-CP-32-00091 Today's Hearing on Defendants' Motion for Default Judgment

1 message

Dennis Gallipeau <dennismgallipeau@gmail.com>
To: Stephanie.Kellahan@mccabetrotter.com
Cc: wjmcleodsc@sccourts.org

Tue, Aug 1, 2023 at 10:16 AM

Good Morning again,

In addition to my previous email notification that I cannot and respectfully will not consent to today's hearing, all parties in this matter have demanded a trial by jury and as such, under Rule 55(b)(2), the plaintiff is entitled to a trial by jury and the plaintiff so demands a jury trial be scheduled in this matter.

Respectfully,

Dennis Gallipeau
Plaintiff

On Tue, Aug 1, 2023 at 9:43 AM Dennis Gallipeau <dennismgallipeau@gmail.com> wrote:

Good morning,

This is to let you know that the Plaintiff, Dennis Gallipeau, cannot and respectfully does not consent to a hearing in this forum on a motion for default judgment. An in-person evidentiary hearing will be necessary. Further although a motion for default judgment has been filed, there has been, and there is no Entry of Default and as such the defendants' motion even if the Plaintiff were to consent to today's hearing, is premature. I would ask that an in-person hearing be scheduled for this matter.

Dennis Gallipeau
(803) 238-8735

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge
Walter j. McCloud, Circuit Court Judge

Case No. 2023-001005

Donald R. McCabe and Marion J. Smith,

Respondents,

v.

Dennis Gallipeau,

Appellant.

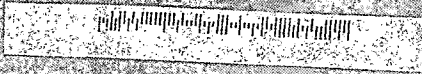
PROOF OF SERVICE

I certify that I have caused to be served Respondents, Donald R. McCabe and Marion J. Smith, Appellant's Designation of Matter, by US First Class Mail to Respondents counsel of record, Stephanie Trotter Kellahan, 4500 Fort Jackson Blvd., Suite 250, Columbia, SC 29209 on December 4, 2023



Dennis M. Gallipeau

DENNIS GALLIPAU
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