

1 STATE OF SOUTH CAROLINA \* COURT OF COMMON PLEAS  
2 COUNTY OF HORRY \* TRANSCRIPT OF RECORD

3 -----X  
4 ROSE BERNARD, \*  
5 Plaintiff, \*  
6 vs. \* Case No. 2022-CP-26-05492  
7 LUCAS GREEN and APERTURE \*  
8 INVESTIGATIONS, \*  
9 Defendant. \*  
-----X

September 6, 2023

11 B E F O R E:

12 The Honorable Benjamin Culbertson, Presiding Judge

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

14 Rose Bernard, Pro Se Plaintiff

15 Luther McCutchen, Esq.  
16 Attorney for the Defendant

**RECEIVED**  
**Nov 29 2023**  
**SC Court of Appeals**

22 Recorded by: Webex Courtroom

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24 SC Official Court Reporter III  
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## I N D E X

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## E X H I B I T S

(None.)

## COURT REPORTER LEGEND

|                 |   |
|-----------------|---|
| Dash (--)       | Indicates an interruption in speech   |
| Ellipses (...)  | Indicates trailing off in speech  |
| (ph)            | Indicates phonetic word   |
| [Verbatim]      | Indicates the word is said as written   |
| (Indiscernible) | [Transcription] Indicates word(s) is not known due to audio recording quality |

## P R O C E E D I N G S

1  
2 THE COURT: All right. Next is 2022-CP-26-05492.  
3 That is Rose Bernard versus Lucas Green and others.  
4 Anyone involved in that, please raise your right hand.

5 Mr. McCutchen, are you there?

6 MR. McCUTCHEN: Yes, sir, I am.

7 THE COURT: Your video is not on.

8 There we go.

9 MR. McCUTCHEN: Good morning, sir.

10 THE COURT: Good morning. All right.

11 MS. BERNARD: Good morning.

12 THE COURT: This is -- hold for a second. All  
13 right. This is 2022-CP-26-5492, Rose Bernard versus Lucas  
14 Green, Aperture Investigations -- or Aperture  
15 Investigations. According to my roster, the matter is  
16 before the Court on a motion, discovery time limitation, a  
17 motion to dismiss, default request, and a motion to  
18 compel.

19 All right. You are Ms. Bernard? Wait a minute. We  
20 have got you muted. You're going to need to speak up into  
21 the microphone. Can you hear me?

22 MS. BERNARD: I can hear you fine, sir.

23 THE COURT: Okay. Now, I can hear you. All right,  
24 Ms. Bernard.

25 All right. Mr. McCutchen, you're appearing in what

1 capacity?

2 MR. McCUTCHEN: Your Honor, I'm on behalf of Lucas  
3 Green and Aperture Investigations, both of those  
4 defendants.

5 THE COURT: All right. Ms. Bernard, we'll go in the  
6 order they're filed. First motion, discovery time  
7 limitation. What is that?

8 MS. BERNARD: Well, actually, it goes -- that one  
9 actually goes with the motion to compel discovery. I had  
10 filed that back in March after I had submitted some  
11 questions to the defendant and I didn't get a response. I  
12 sent them -- in February, I sent them some questions by  
13 mail and asked them to send me the answers, you know,  
14 written answers. And I didn't get a response. So then I  
15 filed the -- you know, the motion -- well, actually, it's  
16 a motion to compel, but I -- you know, motion for  
17 discovery. I'm not familiar with, you know, how procedure  
18 works and all that.

19 And then I was going to ask the judge whether the  
20 judge would have been -- you know, to apply some kind of  
21 rules there. So that actually goes with the motion to  
22 compel discovery. I have no idea what's going on. All I  
23 know is, actually, the oldest motion I have here is to  
24 dismiss the default.

25 THE COURT: Let me hear from you on the motion to

1 dismiss default.

2 MS. BERNARD: Yes, sir --

3 MR. McCUTCHEN: Me?

4 MS. BERNARD: I'm sorry. I didn't hear. I didn't  
5 hear something.

6 THE COURT: You also filed a motion to dismiss  
7 default?

8 MS. BERNARD: Yes, sir.

9 THE COURT: All right. Let me hear from you on  
10 that.

11 MS. BERNARD: This might take a little bit more time  
12 because I explain myself better. I filed my case a little  
13 over a year ago. It was back in August 23rd or 26th --  
14 yeah, the 26th of last year. My case shouldn't have went  
15 to ADR. And when I filed it, you know, I informed the  
16 clerks, and they told me there was a backup in cases and  
17 that I could call to find out what was going on.

18 So I called to check on the case, and I was informed  
19 that it was going to ADR court or however -- I don't know  
20 how you guys -- they just said ADR, alternative dispute --

21 THE COURT: Alternative dispute resolution. That's  
22 required in civil cases. You have to do alternative  
23 dispute resolution or you do mediation.

24 MS. BERNARD: My complaint includes an injunction,  
25 so that's why I brought it to their attention. And they

1 had told me when I called back to check on my case to see,  
2 you know -- they said they were backed up in cases and it  
3 could be a while before I even get a first hearing.

4           Anyway, so when I called back, they told me that,  
5 you know, that it was out of their hands, that my case was  
6 going to ADR, and, you know, I'd have to ask to be removed  
7 from there. And so then that's what I did and I got the  
8 court hearing in January. So it's five months later, and,  
9 you know, I'm waiting to go to court to see if I can get  
10 my case out of ADR.

11           THE COURT: Well, your motion to dismiss default,  
12 what are you asking the Court to do? What are you asking  
13 me to do?

14           MS. BERNARD: To dismiss the default judgment  
15 against me. And I guess what I'm trying to say is, you  
16 know, yeah, there was a judgment against me. There was an  
17 order signed. And I don't know. I'm a little confused  
18 about, you know, what's transpiring. Because I never -- I  
19 actually never got a first hearing for my original  
20 complaint back last year. You know, I never got -- the  
21 first hearing I had was just to see if I could get out of  
22 ADR, to see if the judge would allow my case to -- you  
23 know, so, I mean, everything was pending his decision as  
24 far as I could tell.

25           I was surprised that he had even addressed some of

1 the motions that the defendant had gone to court that day,  
2 which, you know, in a motion to remove the case or to  
3 dismiss my complaint and motion to -- what was the other  
4 one? Move to magistrate court. I don't know why. I  
5 guess, you know -- I don't know.

6 It just seems confusing to me because my case never  
7 got an initial hearing. So I never really got to address  
8 and talk about my case with the judge. You know, I don't  
9 know -- you know, there's things that I wanted to talk  
10 about.

11 THE COURT: Mr. McCutchen, let me hear from you.

12 MR. McCUTCHEN: Your Honor, there are two motions  
13 which are, I assume, virtually identical motions for  
14 discovery -- excuse me; I'm rather hoarse today -- and to  
15 set time limitations. And then there's another one for a  
16 motion to compel discovery.

17 However, there was some motions outstanding. They  
18 were heard by Judge DeBerry on January 23rd of this year.  
19 As a result of that hearing, he instructed me to have --  
20 to prepare a judgment by default on the matters that were  
21 asserted in our counterclaim, which were -- is a very  
22 thorough counterclaim and negates the positions presented  
23 by the plaintiff in her complaint.

24 Judge DeBerry presented after the January 23rd  
25 hearing. On March 8th, she filed several motions. We

1 submitted it to him, and it was filed March 9th. And it  
2 is -- it goes through the matters of the contract and the  
3 merits of the case, gives us a counterclaim judgment for  
4 \$1812. She admitted she got served with the documents,  
5 and that's where the case stands.

6 And in that order, there's a recital of various  
7 parts of the counterclaim which go directly against the  
8 claims in the complaint. And it is now a matter of  
9 record. She was there. He ruled. And that's what we  
10 have on that matter. It's in the file, Your Honor.

11 MS. BERNARD: Now, there was no motion for January  
12 23rd to hear about filing default. He had actually  
13 brought that up as an addition. He never -- there was no  
14 notice that -- he didn't file any official notice. He  
15 just brought that up additionally, "Oh, by the way, Judge,  
16 she never answered my..."

17 That's what he's saying. He told the judge -- he  
18 said, "Oh, she never answered my -- you know, my  
19 counterclaim." And then instructed me to answer him.

20 Well, to me, my complaint -- because of his  
21 counterclaim, my complaint and motion to be removed from  
22 ADR is a response. I mean, under the circumstances -- I  
23 don't understand how I could even -- okay. Basically,  
24 Your Honor, my complaint is -- you know, I'm saying that  
25 his client breached contract and he committed fraud, and

1 his counterclaim is I breached contract and that he  
2 denies -- you know, how do I respond to that other than --  
3 you know, it's like argument on paper.

4 But besides that, I mean, I -- you know, I mean, I  
5 never even -- like I said, I never got an initial court  
6 hearing where I could actually address my -- my case, you  
7 know, talk about my complaints or the reason I was asking  
8 for an injunction. And five months had passed by, and it  
9 just seems like everything is out of order. He's going on  
10 to do the things that he would usually -- he would  
11 normally do under the circumstances, and I have to wait,  
12 you know.

13 So, anyway --

14 THE COURT: And I understand your frustration,  
15 Ms. Bernard, but the problem is, is I think you're  
16 attempting to do something you don't really know how to  
17 do. I'm going to be honest with you, I don't know how to  
18 prepare my taxes. I have to get a CPA to prepare my  
19 taxes. I just don't know how to do it.

20 And I think you're trying to do something under the  
21 legal system and you don't know the proper procedures, you  
22 don't know the proper wording, you don't know the proper  
23 filings.

24 But in looking at the clerk of court's file and  
25 what's online, it does appear that Judge DeBerry has

1 basically made a decision in this case and finds these  
2 motions that you have brought moot, and they're no longer  
3 an issue for the Court.

4 There is a --

5 MS. BERNARD: Wait a minute --

6 THE COURT: -- means where you can get it back in  
7 front of Judge DeBerry, but what would be under a motion  
8 for reconsideration, and I don't know whether you have met  
9 the time frame for that or not.

10 But I think that's -- that's the dilemma you find  
11 yourself in, is you're trying to practice law and  
12 represent yourself, which you can do, but you're held to  
13 the same standards and the same requirements and the same  
14 procedures as anyone who comes into court with a lawyer.

15 It does appear to me Judge DeBerry has already  
16 addressed, by the motion to compel, it seems as though  
17 that issue is now a moot issue, since there was a default  
18 judgment granted on the counterclaim.

19 MS. BERNARD: Motion to compel discovery?

20 THE COURT: Correct.

21 MS. BERNARD: When -- I -- so you're saying I'm not  
22 allowed discovery either?

23 THE COURT: Well, I see -- I mean, is the matter  
24 over, Mr. McCutchen?

25 MR. McCUTCHEN: The matter is not technically ended,

1 Your Honor. The order of default and order of judgment  
2 does address the claims in the complaint. However, my  
3 entire matter has not been dismissed to date.

4 THE COURT: So what is still outstanding?

5 MR. McCUTCHEN: Well, Your Honor --

6 MS. BERNARD: So, he ordered -- the judge's order  
7 specifically says that -- he signed an order that  
8 Mr. Luther McCutchen had wrote up himself. And,  
9 basically, the order -- I don't know. The order --  
10 anyway...

11 And then the judge also wrote that -- the Form 4 --  
12 is it Form 4? He wrote that the case did not end.

13 At the time that he filed his motions for default  
14 judgment, based on default reason, I had also filed a  
15 request that the motion that you're looking at now, and  
16 there was no response to it. I mean, there was nothing --  
17 because I guess that's not --

18 THE COURT: Help me -- I see where Judge DeBerry  
19 granted your motion for exemption from ADR, denied your  
20 motion to remand to the magistrate, and denied your motion  
21 to dismiss. He did that by his Form 4 order on January  
22 24th, 2023.

23 It looks like the only thing we have left  
24 outstanding is the motion to compel. Let me see what your  
25 motion to compel asks for.

1 (Pause in the proceedings while the Court reviews  
2 documents.)

3 THE COURT: All right. Let me hear from you on the  
4 motion to compel, Mr. McCutchen.

5 MR. McCUTCHEN: Your Honor, if I'm looking at the  
6 one that was filed August 3rd -- is that the --

7 THE COURT: Yes. That's the one I have got on my  
8 roster, yeah.

9 MR. McCUTCHEN: Okay. Well, then, the interrogatory  
10 questions do not comply with the Rules of Civil Procedure  
11 in my opinion. However, if His Honor rules me to answer  
12 the discovery that is outstanding after the order follows  
13 the order of judgment, I will certainly do so.

14 MS. BERNARD: The case isn't ended. That's what the  
15 judge said. So I don't know. What are we supposed to do?  
16 Nothing? So basically -- you know what I mean?

17 Your Honor, I would -- okay.

18 THE COURT: All right. I'm going to grant your  
19 motion to compel. If you could respond, Mr. McCutchen,  
20 within 15 days.

21 MR. McCUTCHEN: All right, sir.

22 THE COURT: He'll respond to your discovery within  
23 15 days.

24 The other two motions have already been addressed by  
25 Judge DeBerry -- addressed and ruled on by Judge DeBerry.

1 MS. BERNARD: The ones that I -- my motions?

2 THE COURT: Yeah, the motion --

3 MS. BERNARD: I didn't get a response to those.

4 THE COURT: I mean, Judge DeBerry -- you're asking  
5 me to dismiss his default?

6 MS. BERNARD: Yeah.

7 THE COURT: I can't do that. That's his order.

8 MS. BERNARD: Well, reverse it. Reverse his order.

9 THE COURT: I can't. That's what I'm telling you.  
10 I can't. Your options are a motion to reconsider back in  
11 front of Judge DeBerry or to appeal it to the Court of  
12 Appeals. I can't just go and change a circuit judge's  
13 order. And that's what I'm telling you, Ms. Bernard. I  
14 think you're attempting to do something you don't really  
15 know how to do. I can't change Judge DeBerry's order.

16 Now, there are procedures if you're claiming -- you  
17 know, under the Rules of Civil Procedure, you know, fraud  
18 or excusable neglect, and there's a litany of other  
19 grounds to set aside defaults, but once a default judgment  
20 is granted, then there are -- there is a rule that, when  
21 you have to make proper arguments and the proper grounds,  
22 and I don't think you have done it in this case. It  
23 doesn't seem to be, you know, lack of jurisdiction or the  
24 judgment is void or excusable neglect or anything of that  
25 nature. All right?

1 MS. BERNARD: Okay. Well, can I ask for leave of  
2 Court so that I can appeal about the judge's default?

3 THE COURT: Ms. Bernard, there are avenues you can  
4 pursue. But as a judge, I can't give you legal advice.

5 MS. BERNARD: No, I'm asking you -- don't I have to  
6 ask permission for leave of Court so that I can file an  
7 appeal?

8 THE COURT: Not that I'm aware of. I mean, I think  
9 you just appeal their order.

10 MS. BERNARD: Okay. All right. Thank you.

11 THE COURT: Thank you.

12 All right. Has that got everything then?

13 MR. McCUTCHEN: Yes, sir, I think so. Thank you.

14 THE COURT: All right. Thank you.

15 (The above matter concluded at 2:47 p.m.).  
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CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: Rose Bernard v. Lucas Green, et al.

2022-CP-26-05492

DATE OF HEARING: 9/6/2023

COURT REPORTER/MONITOR: Webex Courtroom

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I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

*Bobbi Fisher*

/s/ Bobbi Fisher\_\_\_\_\_

Bobbi Fisher, RPR and Certified Transcriber

Date Submitted: 10/30/23

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