

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
2022-CP-29-00240

JENNA ROBBINS,

Plaintiff,

v.

IMFI3, LLC d/b/a THE INDIGO AT CROSS
CREEK, TAFT MANAGEMENT GROUP,
TAFT FAMILY VENTURES, SOUTHERN-
EEZ LANDSCAPING, LLC, and
SOUTHERN HORTICULTURE GROUP,
LLC, d/b/a SOUTHERN-EEZ
LANDSCAPING,

Defendants,

RECEIVED

Dec 27 2023

SC Court of Appeals

ORDER

THIS MATTER came before the Court for a hearing on August 14, 2023 upon four (4) motions asserted between Plaintiff Jenna Robbins (hereinafter “Plaintiff”) and Intervening Defendant Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping (hereinafter “Southern Horticulture”). The motions were: 1) Southern Horticulture’s Motion to Compel, 2) Plaintiff’s Motion for Protection from Participating in Discovery, 3) Plaintiff’s Motion to Dismiss Southern Horticulture’s Declaratory Judgment cause of action, and 4) Plaintiff’s Motion to Amend Judgment entered by Special Referee Ashley Creech on August 15, 2022. Upon consideration of the motions, the affidavits, the briefs, the pleadings, the exhibits, and the applicable rules and case law, the Court has heard, reviewed, and further deliberated upon the arguments of the parties and enters this Order **GRANTING** (1) Southern Horticulture’s Motion to Compel and **DENYING** (2) Plaintiff’s Motion for Protection from Participating in Discovery, (3) Plaintiff’s Motion to Dismiss, and (4) Plaintiff’s Motion to Amend Judgment. Further, the

Court orders that the case caption shall be modified to reflect Southern Horticulture as a named defendant, as set forth in the caption in this Order.

FACTUAL BACKGROUND

This is a personal injury action. The Complaint alleges that Plaintiff tripped and fell on a scooter while walking her dog at The Indigo at Cross Creek Apartments on August 30, 2020. Pl. Compl. ¶ 10. The incident resulted in Plaintiff's alleged physical, mental, and emotional injuries. *Id.* Plaintiff has asserted claims for negligence, gross negligence, negligence *per se*, and public and private nuisance against the defendants. *Id.* at ¶¶ 17-26. Plaintiff has alleged that each named party possessed at least some responsibility for Plaintiff's alleged injuries. *Id.* at ¶¶ 27-30. Plaintiff did not name, identify, or assert claims against Southern Horticulture in the Complaint.

PROCEDURAL BACKGROUND

Plaintiff filed the Complaint on March 3, 2022. An affidavit of service as to Defendant Southern-EEZ Landscaping, LLC (hereinafter "Defendant Landscaping") was filed on April 6, 2022. Defendant Landscaping did not file a responsive pleading to the Complaint. On June 16, 2022, Plaintiff obtained an entry of default against Defendant Landscaping. This Court issued an order referring all claims against Defendant Landscaping to the Special Referee on June 17, 2022. A damages hearing in front of Special Referee Ashley Creech to decide the amount of the judgment against Defendant Landscaping was scheduled.

Prior to the damages hearing, Plaintiff sent a *Tyger River* letter to counsel for Southern Horticulture on June 29, 2022. Aff. of Nathaniel Negrin *Id.* at ¶¶ 38-42. The letter demanded that Southern Horticulture's commercial general liability insurance carrier settle all claims asserted by Plaintiff against Defendant Landscaping prior to the damages hearing. *Id.* Southern Horticulture and its insurer did not pay the demand.

Southern Horticulture filed a Motion to Intervene in this action on July 11, 2022. The Honorable J. Mark Hayes, II heard Southern Horticulture's Motion to Intervene on July 28, 2022. On August 2, 2022, Judge Hayes granted Southern Horticulture's Motion to Intervene as a matter of right.

Southern Horticulture subsequently filed a responsive pleading to Plaintiff's Complaint in accordance with Rule 24 and also served written discovery to Plaintiff on August 4, 2022. Southern Horticulture's responsive pleading included an 1) Answer, 2) 31 Affirmative Defenses, and 3) a Counterclaim/Crossclaim seeking declaratory relief pursuant to S.C. Code. Ann. § 15-53-20. Southern Horticulture's written discovery served on August 4, 2022 included a First Set of Interrogatories, a First Set of Requests for Production of Documents, and a First Set of Requests for Admission (hereinafter "Written Discovery").

On August 15, 2022, a default judgment (hereinafter "Default Judgment") in the total amount of \$1,500,000.00 was entered in favor of Plaintiff against Defendant Landscaping. On August 23, 2022, Plaintiff filed a Rule 60(a) Motion to Amend Judgment against Defendant Landscaping. The Rule 60(a) Motion to Amend Judgment argues that Defendant Landscaping was misnamed in the Complaint and requests that Southern Horticulture be substituted in place of Defendant Landscaping as the debtor of the Default Judgment.

Plaintiff filed a Motion to Dismiss Southern Horticulture's Counterclaim/Crossclaim seeking declaratory relief on September 2, 2022. Plaintiff also filed a Motion for Protective Order on September 2, 2022 arguing that Southern Horticulture was in default and subject to the Default Judgment such that Southern Horticulture was precluded from asserting counterclaims/crossclaims and was further precluded from participating in discovery.

Plaintiff served objections to Southern Horticulture's First Set of Requests for Admission on September 2, 2022. Plaintiff did not respond at all to Southern Horticulture's First Set of

Interrogatories and First Set of Requests for Production of Documents. In response, Southern Horticulture filed a Motion to Compel against Plaintiff on November 11, 2022. Southern Horticulture argued that it is entitled to be a full participant in discovery since Southern Horticulture is not subject to the default entered against Defendant Landscaping and was previously permitted by this Court to independently intervene in this action as a matter of right. Counsel for Southern Horticulture orally argued that the Court should expand the scope of the relief requested in the Motion to Compel to include an order that Plaintiff be precluded from further arguing that Southern Horticulture is in default and cannot participate in upcoming depositions in the process of being scheduled including the deposition of Plaintiff.

The four (4) motions were heard during the August 14, 2022 Civil Session of the Court of Common Pleas in Courtroom B of the Lancaster County Courthouse. Plaintiff was represented by Andrew Sims Radeker. Southern Horticulture was represented by Robert C. Gunst, Jr. and Joshua R. Hinson. Adam Crain appeared for Defendant IMFI3, LLC d/b/a The Indigo at Cross Creek, Defendant Taft Management Group, and Defendant Taft Family Ventures. No one appeared for Defendant Landscaping.

ANALYSIS

Pursuant to controlling South Carolina precedent, Plaintiff failed to secure personal jurisdiction over Southern Horticulture in this action when the entry of default and order of reference were entered against Defendant Landscaping on June 16, 2022 and June 17, 2022, respectively. “When an action is brought against a corporation . . . where the name is mistaken materially and substantially, *or where there is such a variation that a different entity is indicated*, the suit cannot be regarded as against the corporation, and it cannot be affected by the proceedings or judgment therein.” *Tunstall v. The Lerner Shops, Inc.*, 160 S.C. 557, 159 S.E. 386, 388 (1931) (emphasis added). Because the Court finds that Southern Horticulture and

Defendant Landscaping are legally separate entities, the Complaint and Summons asserted against Defendant Landscaping cannot be regarded as against Southern Horticulture. In the absence of proper service and personal jurisdiction, the Default Judgment also cannot be regarded as against Southern Horticulture. Accordingly, the Court rules in favor of Southern Horticulture on all four motions that were heard during the August 14, 2023 civil session.

I. Plaintiff's Rule 60(a) Motion to Amend Judgment is denied.

Rule 60(a) of the South Carolina Rules of Civil Procedure states in part that “[c]lerical 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 party and after such notice, if any, as the court orders.” Rule 60(a) S.C.R.C.P. Plaintiff argues misnomer case law and requests that the Court amend the Default Judgment to substitute “Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping” as the judgment debtor in place of the existing judgment debtor “Southern-EEZ Landscaping, LLC.” However, Plaintiff’s argument fails to address the preliminary questions of proper service and personal jurisdiction and further seeks relief that would improperly expand the scope of the Default Judgment.

a. Southern Horticulture and Defendant Landscaping are different entities.

The Court finds that Southern Horticulture and Defendant Landscaping are legally separate and distinct entities. Horticulture was formed on March 30, 2015 in the State of North Carolina and is owned by Mr. Negrin. *See* Aff. of Nathaniel Negrin ¶¶ 3-4. Mr. Negrin further affirmed that he and Southern Horticulture have no ownership or operational control of Defendant Landscaping. *Id.* at ¶¶ 6-21. Defendant Landscaping was formed on April 12, 2010 in the State of South Carolina and is owned by Mr. Tyler Jonathan Lee Smith, as confirmed by the South Carolina Secretary of State. The briefing submitted by Southern Horticulture further

establishes that Southern Horticulture and Defendant Landscaping adversely litigated a case against each other in Mecklenburg County, North Carolina in 2016. The settlement of the 2016 lawsuit between Southern Horticulture and Defendant Landscaping was memorialized by a settlement agreement executed in 2017 by Mr. Negrin and by Mr. Smith. *See* Aff. of Nathaniel Negrin ¶ 8. A Certificate of Existence issued by the South Carolina Secretary of State further confirmed that Defendant Landscaping had not been dissolved as of June 16, 2022 when the default against Defendant Landscaping was entered by the Court. For these reasons, it is apparent that there is a material and substantial variation between Southern Horticulture and Defendant Landscaping such that they are different entities.

b. Plaintiff never properly served Southern Horticulture.

Plaintiff filed an affidavit of service stating that Defendant Landscaping was properly served through the delivery of the Complaint and Summons to Mr. Negrin on April 6, 2022 at Southern Horticulture's office located at 187 Sutton Road South, Fort Mill, South Carolina 29708 over his objections. *See* Aff. of Nathaniel Negrin ¶¶ 26-33. Southern Horticulture's briefing included a copy of the cover letter accompanying the Complaint and Summons that was addressed to "Southern-EEZ Landscaping, LLC c/o Tyler Jonathan Lee Smith, 106 Phifer Street, Fort Mill, South Carolina 29715." *Id.* at ¶ 27. Plaintiff now argues that Southern Horticulture was also served on April 6, 2022. However, the Court finds that Plaintiff failed to properly serve Southern Horticulture on April 6, 2022.

Proper service is achieved "by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 4(d)(3) S.C.R.C.P. While exacting compliance is not required, a party must nevertheless sufficiently comply with the rules of civil procedure such that personal jurisdiction is established and such that the defendant has reasonable notice of the

action. *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209-10, 456 S.E.2d 897, 899 (1995). When the rules are followed, there is a presumption of proper service, and the defendant bears the burden to show that service was not accomplished. *Id.*, 318 S.C. at 211, 456 S.E.2d at 900. There must be some evidence that the defendant conferred authority upon the agent to accept service of process. *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 67 (Ct. App. 1996).

The Court finds that Plaintiff intended to sue and to serve Defendant Landscaping as a named legal entity as set forth in the case caption and within allegations of the Complaint and Summons. Mr. Negrin is not and has never been an officer or director of Defendant Landscaping. Aff. of Nathaniel Negrin ¶¶ 10-11. Mr. Negrin is not and has never been an employee of Defendant Landscaping. *Id.* at ¶ 12. Mr. Negrin is not and has never been a managing agent of Defendant Landscaping. *Id.* at ¶ 13. Mr. Negrin is not and has never been a general agent of Defendant Landscaping. *Id.* Mr. Negrin has never been authorized by appointment or by law to receive service of process for Defendant Landscaping. *Id.* at ¶¶ 13-16. Furthermore, Mr. Negrin affirmatively took reasonable steps to actually tell the process server that he had no authority to accept service of process for Defendant Landscaping prior to the delivery of the enclosed suit papers with the cover letter addressed to Mr. Smith and Defendant Landscaping on April 6, 2022. *Id.* at ¶¶ 26-33. Additionally, Mr. Negrin told the process server that Mr. Smith was the point of contact for Defendant Landscaping. *Id.* at ¶¶ 28-29.

By delivering the Complaint and Summons to Mr. Negrin instead of Mr. Smith, the Court finds that Plaintiff did not comply with Rule 4(d)(3) and did not achieve proper service. Accordingly, no personal jurisdiction was conferred upon Southern Horticulture prior to the entry of default on June 16, 2022. Therefore, Southern Horticulture is not subject to the Order of Entry of Default entered on June 16, 2022; Southern Horticulture is not subject to the Order

Appointing Special Referee entered on June 17, 2022; and Southern Horticulture is not subject to the Default Judgment entered on August 15, 2022.

c. Plaintiff's misnomer argument fails.

Plaintiff's misnomer arguments are inapplicable because Plaintiff has failed to establish proper service upon Southern Horticulture as discussed *supra*. Applying *Tunstall*, the analysis ends in the absence of personal jurisdiction such that there can be no misnomer. Therefore, the Complaint, Summons, and Default Judgment cannot be regarded as against Southern Horticulture. *See Tunstall*, 160 S.C. 557, 159 S.E. at 388.

Nevertheless, Plaintiff contends that Southern Horticulture is really the same as Defendant Landscaping because Southern Horticulture uses "SouthernEEZ Landscaping" or "Southern-EEZ Landscaping" as a trade name in the ordinary course of business. Plaintiff argues that an entity can be brought into Court if it is sued in a name in which it transacts business. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 240, 399 S.E.2d 779, 782 (1990); *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992); *McCall v. Ikon*, 363 S.C. 646, 611 S.E.2d 315, 318 (2005). However, this argument ignores that Southern Horticulture and Defendant Landscaping are different entities. Moreover, there is no evidence showing that Southern Horticulture has transacted business as or used "Southern-EEZ Landscaping, LLC" as a trade name. Aff. of Nathaniel Negrin ¶¶ 6, 9, 17-18, 21, 30. For these reasons, Plaintiff's misnomer argument fails.

d. Plaintiff's requested relief under Rule 60(a) is improper.

The Court cannot change the scope of a judgment through an amendment made under Rule 60(a). *Dion v. Ravenel, Eiserhardt Associates*, 316 S.C. 226, 230, 449 S.E.2d 251, 254-55 (Ct. App. 1994). The Default Judgment is presently limited to Defendant Landscaping and attempts to execute against Defendant Landscaping are already underway. The requested

amendment is not a request to correct a clerical mistake. It is an attempt to fundamentally broaden the scope of the Default Judgment by clearly substituting one legal entity (Southern Horticulture) for a different legal entity (Defendant Landscaping) as the judgment debtor. Such a result would circumvent the judicial process and operate to deny Southern Horticulture due process as an intervening party in the case.

II. Plaintiff's Motion to Dismiss is denied.

Plaintiff asserted a Motion to Dismiss Southern Horticulture's Counterclaim for declaratory relief pursuant to Rule 12(b)(1), Rule 12(b)(3), Rule 12(b)(6), Rule 12(b)(7), and Rule 12(b)(8) of the South Carolina Rules of Civil Procedure. Plaintiff and Southern Horticulture submitted written briefs on these arguments. Plaintiff's central argument in support of its Motion to Dismiss is that Southern Horticulture is already in default and consequently cannot assert counterclaims or crossclaims. Plaintiff also argues that Southern Horticulture failed to join its commercial general liability insurer as a necessary party. The Court disagrees with all of Plaintiff's arguments. Given that Southern Horticulture is not in default, the Court finds that Southern Horticulture has standing to seek declaratory relief in this case pertaining to the controversy between the parties pending in this Court. The Court further finds that Southern Horticulture's commercial general liability insurer is not a necessary party to this action and further finds that there is no previously existing action between the parties. For these reasons, the Motion to Dismiss is accordingly denied.

III. Southern Horticulture's Motion to Compel is granted, and Plaintiff's Motion for Protective Order is denied.

It is undisputed that Plaintiff has not answered or fully responded to Southern Horticulture's Written Discovery. Plaintiff's Motion for Protective Order argues that Plaintiff has no obligation to answer or respond to the Written Discovery because Southern Horticulture is

in default and therefore cannot participate in discovery. Since the Court finds that Southern Horticulture is not in default, the Court finds that Southern Horticulture is a full participant in litigation and orders that Plaintiff shall fully respond to the Written Discovery within thirty (30) days of the entry of this order. For these reasons, Southern Horticulture's Motion to Compel is granted and Plaintiff's Motion for Protective Order is denied.

IV. The Caption shall be modified to reflect Southern Horticulture as a named defendant.

The Court further orders that the case caption shall be modified to reflect Southern Horticulture as a named defendant, as set forth on the caption of this Order.

CONCLUSION

For these reasons, it is **ORDERED** and **ADJUDGED** as set forth below.

1. Plaintiff's Motion to Amend Judgment is **DENIED**.
2. Plaintiff's Motion to Dismiss is **DENIED**.
3. Plaintiff's Motion for Protection from Participating in Discovery is **DENIED**.
4. Southern Horticulture's Motion to Compel Discovery is **GRANTED**.
5. The Court further orders that this matter shall proceed with amended pleadings to reflect both Defendant Landscaping and Southern Horticulture as named defendants.

AND IT IS SO ORDERED.

The Honorable Brian M. Gibbons
Circuit Court Judge for the Sixth Circuit



Lancaster Common Pleas

Case Caption: Jenna Robbins VS Imfi3, Llc D/B/A The Indigo At Cross Creek ,
defendant, et al
Case Number: 2022CP2900240
Type: Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge