THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Mullen, Circuit Judge
Marvin H. Dukes, III, Master-In-Equity

APPEAL CASE No. 2011-204367
Circuit Court Case No. 2011-CP-07-02546

OLESYA MATYUSHEVSKY, CITIZENS OPPOSING DOMESTIC ABUSE, CHRISTINE VARG and LILING SUN ..... **Respondents**

v.

JOSEPH C. SUN ..... **Appellant**

INITIAL BRIEF OF APPELLANT

JOSEPH C. SUN, Appellant pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

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(1) It is error of the circuit court to issue an order dismissing complaint as to Defendant LiLing Sun on November 9, 2011.

(2) It is error of the circuit court to issue an order on March 30, 2012 denying Appellant's motion to amend, and dismissing all claims against Defendant Matyushesky, Defendant CODA and Defendant Varg with the exception of the claims raised in Paragraphs 27 and 28 of the complaint.

(3) It is error of the circuit court to issue an order on July 10, 2012 denying Appellant's motion for continuance and granting Respondent Varg's motion for summary judgment.

STATEMENT OF THE CASE

Appellant Joseph Sun filed a complaint pro se against the Respondents Olesya Matyushesky (hereinafter Olesya), Citizen Opposed to Domestic Abuse (hereinafter CODA), Christine Varg (hereinafter Varg) and LiLing Sun (hereinafter LiLing) on about June 15, 2011. In his initial complaint, Appellant Sun gave a Background of his Marriage with Defendant LiLing. In his Statement of Facts, he alleges wrongful acts committed by all the Respondents against him, during the divorce up to the filing of this case.

To clarify his complaint and to add certain missing facts, Appellant filed a Motion to Amend and Supplement with an attached proposed Amended Complaint. Respondent LiLing did not file an answer, but filed a Motion to Dismiss. Her motion was heard on October 19, 2011. Circuit Court Judge Carmen Mullen issued an Order Dismissing Complaint as to Defendant LiLing Sun on

November 8, 2011. Appellant timely filed his Notice of Appeal.

Respondents Olesya, CODA and Varg filed their Answers and a joined Motion to Dismiss. Respondents' motion and Appellant's Motion to Amend Complaint were heard on March 13, 2012 when Judge Marvin Dukes, III, Master in Equity denied Appellant's motion to amend and granted Respondents' motion to dismiss "with the exception of the claim raised in Paragraphs 27 and 28 of Plaintiff's Complaint." Appellant also timely filed his Notice of Appeal.

Respondent Varg filed her motion for summary judgment in June 2012. Appellant immediately filed a Motion for Continuance on the ground that Respondents had not allowed any discovery. In a hearing in July 2012, Judge Dukes, Master in Equity, denied Appellant's motion for continuance and granted Respondent Varg's motion for summary judgment. Appellant again timely filed his Notice of Appeal.

Appellant Sun respectfully submits the court to take judicial notice that some of the facts argued in this case has already been presented in another appeal case pending before the court, Appeal Case No. 2010-162926.

STATEMENT OF FACTS

Respondent Olesya was the lawyer representing Respondent LiLing in a divorce action at the Beaufort County Family Court, Case No. 2009-DR-07-0628. That case is now on appeal at this court, Appeal Case No. 2010-162926. Respondent CODA was an organization which employed Respondents Olesya and Varg.

In his initial complaint, Appellant gave a background of his marriage with Respondent

LiLing who signed a prenuptial agreement with Appellant prior to marriage in 1999. LiLing pretended initially to be a loving wife and good daughter in law to Appellant's parents. Appellant and his parents from the beginning of the marriage, unaware of Respondent LiLing's scheme and ulterior motive, therefore rendered numerous physical and financial means to help Respondent LiLing to gain her "Green Card" and citizenship in a short period after her arrival in 1999.

Appellant's father allowed Respondent LiLing to buy real estate property from the Sun Family Corporation with no down payment and small monthly installments so Respondent LiLing could have financial status in her application for Green Card and citizenship. Respondent LiLing was also employed in the family company so she could show immigration that she was gainfully employed. Respondent LiLing obtained her Green Card in less than one year, and her citizenship in about 3 years. Appellant drove Respondent LiLing from Jasper County to Charleston for the citizenship ceremony in 2005. Respondent LiLing then devised a scheme to hide the prenuptial agreement she signed and claim the real property in the family company as marital property when she had not made any payment on the property.

In his original and amended complaint, Appellant alleged several causes of action:

(1) Fraud committed by Respondents LiLing and Olesya.

Plaintiff's allegations show that these two Respondents served Appellant the Notice of Hearing only one day before the temporary hearing and used a wrong Certified Receipt to defraud the Family Court judge to deny Appellant's request for continuance. Then they presented an altered warranty deed to gain temporary possession of the marital home knowing that the deed was not current and that the marital home was already deeded back to Appellant's mother by a collateral warranty deed which LiLing had signed earlier.

Respondent LiLing's fraud was that after she altered the warranty deed, filed it and conveyed the house to her name, she pretended to be a good wife and good daughter in law, and agreed to make payments on the house, and signed another warranty deed back to Ah Tsao Sun as collateral. Appellant and his mother did not know about Respondent LiLing's fraud in the beginning because there was a Prenuptial Agreement prohibiting Liling from making any claim on real property which she did not purchase or pay for herself. That was the reason for the collateral warranty deed signed by LiLing to be kept by the Suns which could convey the real property back to Appellant's mother in case of default by LiLing.

Appellant was not aware that Respondent LiLing was involved in an adulterous relationship with a Caucasian man who she met on the internet in late 2008 or January 2009. In 2008, Respondent LiLing was still married to Plaintiff Joseph found a job and had income. Respondent LiLing invited Appellant and her mother who was visiting her from China at the time, to spend several days at Disney World, and paid for the accommodation. LiLing's mother knew nothing abnormal and Plaintiff happily took her mother to the Savannah airport for departure. LiLing misled Appellant and his mother to believe that she could be trusted.

After returning from the Florida trip, and after LiLing's mother returned to China, only a month later, in March 2009, Respondent LiLing abruptly moved out of the marital home into an apartment which she already found in Beaufort and signed a lease. Respondents Olesya and LiLing presented no evidence, only made false allegations of domestic violence and filed a divorce action against Appellant. Evidence showed that it was a preplanned scheme because the date on the apartment lease signed by LiLing in Beaufort predated her false claim of domestic violence. As aforesaid, Respondent Olesya scheduled a temporary hearing on June 25, 2009 but served

Appellant the notice of hearing by Certified Mail on June 24, 2009 in violation of Family Court rule. But by using a wrong Certified Receipt on the Notice of Hearing, Respondents LiLing and Olesya defrauded the Family judge who denied Appellant's motion for continuance and was awarded several valuable items including the temporary possession of the marital home, a 2009 Toyota car and a 1 ½ Carat diamond ring.

Appellant was ordered to move out of the marital home immediately. Because of the one day notice before hearing, Appellant was totally unprepared and had no counsel at the hearing. He had no means to address the fraud committed by Respondents LiLing and Olesya and the injustice he had suffered. Appellant hired a lawyer who filed a motion for reconsideration of the pendent lite order which motion was hastily denied by the same Family Court judge.

Appellant suffered damages because Respondents LiLing and Olesya were awarded property and things which were his and the award was prohibited by the prenuptial agreement which was covered up by Respondent Olesya.

Some time in July 2009, Appellant was checking emails in several accounts some shared by his ex-wife Respondent LiLing, he found an email written by a Tony An to LiLing with an attachment of a naked erected penis and some other photographs of LiLing's apartment where the photographs showed that the laptop computer was left on the dining table at the entrance to the apartment kitchen where LiLing and Appellant's minor daughter Abigail were residing. Appellant was concerned that his daughter could see those photos of Tony's naked penis therefore immediately took those emails and photographs to the Guardian Ad Litem of the divorce case.

During the next visitation with his daughter Abigail who was only eight (8) at the time, Abigail told Appellant certain shocking facts which Appellant recorded on a recorder. Abigail told

Appellant that "Tony" came to visit her mother LiLing for the first time the week before (in August 2009), and that after Tony and her mother was locked inside the bedroom for about an hour, they invited Abigail to join them in bed inside the bedroom, and represented to Abigail that they were "cousins." The three were in bed together making minor contacts. After Appellant explained that Tony, a Caucasian man and her mother, a Chinese woman cannot possibly be cousins, Abigail cried hysterically because her mother had lied to her. The next working day, Appellant again took the tape recording to the Guardian Ad Litem.

During the period in 2009, when Appellant was without representation of legal counsel, he served Respondent Olesya discovery which included Request for Admissions and Interrogatories. Respondent Olesya did not respond as required by South Carolina Rules of Civil Procedure. After the temporary hearing, Appellant filed a Supplemental Affidavit, informing the Family Court of the untimely and insufficient service of the Notice of Temporary Hearing, and that there were internet pornography and indecent adults and child in bed together in Respondent LiLing's apartment. Respondent Olesya responded by signing a statement making numerous false accusation against the Appellant and allowed Respondent LiLing to sign a verification of the statement signed by her.

Respondent Olesya did not file a Certificate of Service and did not serve Appellant a copy of her statement and LiLing's Verification. Appellant inadvertently found out about the aforesaid statement and verification when he examined the file of the divorce case at the Family Court. Appellant filed a bar complaint against Respondent Olesya because of the untimely service of the Notice of the temporary Hearing and the refusal of Olesya to comply with the Rules of Civil Procedure to serve Appellant a copy of document she filed at the Family Court when Appellant was representing himself at the time. Respondent Olesya thereafter committed numerous malicious and

wrongful acts on her own as her vengeance against the Appellant.

After Appellant exposed the indecent activity of Respondent LiLing as Appellant was concerned that there might be adverse effect on his minor daughter Abigail, a series of retaliation and malicious activity committed by all the respondents started. Respondent LiLing lost her driver's license in about September 2009 due to certain violation, therefore, could not go to the exchange location to pick up Abigail after visitation on one weekend. She called Appellant and told him to keep Abigail for an extra day so she could find someone to drive her to the exchange location. The next day, on Monday, Respondents LiLing, Olesya and Varg all came to Appellant's home with the Bluffton police and had Appellant arrested for refusing to return Abigail to her mother. Several hours later, Appellant was released because there was no evidence of any wrongdoing. Appellant was 62 years old at the time and suffering rheumatoid arthritis and asthma. Appellant was hand-cuffed on his back and left inside a hot police car for over 3 hours. Appellant had to visit a doctor and took medication for pain and discomfort for several weeks.

One day next year, after visitation with his daughter when Appellant followed the verbal agreement made with Respondent LiLing and daughter Abigail, that he would deliver a Sprinkler pool to the marital home with his truck, Appellant was arrested by the Bluffton police again. Respondent Olesya was present and assisted the Bluffton police in the malicious arrest without cause. Several days later, Appellant was released on bail. He then called Respondent LiLing to ask for visitation of Abigail pursuant to pendent lite order. Again, Appellant was arrested repeatedly in 2010 for trespassing, unlawful phone call, burglary, possession of burglary tools and stalking. Several charges fabricated by Respondents LiLing and Olesya have been dismissed or found not guilty and some are pending since about April 2010 up to this date. Appellant has not been

convicted of any charge.

The divorce trial was conducted in September 2010 when Appellant was still in jail. Some time before and after the divorce trial, Respondent LiLing per instruction and coaching by Respondent Olesya broke into Appellant's residence in Jasper County at least twice, destroyed a heavy duty Sentry safe, a large key box and a file cabinet and stole everything inside the safe which was full of valuables including some jewelry, titles on cars, trucks and boats, original warranty deeds and prenuptial agreement, cash, savings bonds and gold coins and much more. In a deposition at the Beaufort Family Court, Respondent LiLing admitted that she did break in Appellant's home, broke open his safe and took all its content and many other items. She also admitted carrying minor daughter Abigail to commit the burglary. Respondent Varg who was a large size woman undoubtedly assisted in the theft because she admitted knowledge of the burglary to the police who made the report.

During Respondents' multiple burglary of Appellant's home, she destroyed numerous items, including equipments beside the house when she climbed through the rear window. LiLing used electric grinder, long crow bar and sledge hammer found in the basement of Appellant's home to tear open the safe, and in the process causing damages to the floor and the walls in the house. The prenuptial agreement stolen was never presented to the divorce court even though a copy was presented and filed at the temporary hearing in June 2009.

During the same period in 2010, while Appellant was still in jail due to fabricated charges made by Respondent LiLing and Olesya, these two defendants made numerous harassing phone calls and wrote threatening letters to Appellant's 90 year old mother in Canada, telling the old lady that they intended to subpoena her to the Family Court trial unless they were paid $200,000.00.

Appellant's 90 year old mother was already in distress because her son, Appellant was in jail when he had committed no crime, could not take the harassment from these respondents, fainted and fell down the stairs and went into a coma. After struggling almost a year, in and out of the hospital several times, Appellant's mother finally died of some complication. Before she died, Appellant's mother agreed to give Respondent LiLing $75,000.00 to stop her harassment and signed a Settlement Agreement with Respondent LiLing through Respondent Olesya during the time when Appellant was in jail without knowledge of what had happened or agreed to by the parties.

While the divorce case was pending trial, Respondent Olesya wrote letters and made phone calls to other lawyers and law enforcement making false derogatory remarks against Appellant calling Appellant a criminal involving in serious crimes when Appellant has not been convicted of any charges made by Olesya without the knowledge of her client LiLing. Respondent Olesya committed Libel and slander against the Appellant surely not as part of her representation of Respondent LiLing who spoke little English. All the defamatory communication was unrelated to the divorce case, but for her own purpose of vendetta because Appellant filed a bar complaint against her.

After receiving the settlement of $75,000.00 from Appellant's mother, Respondent LiLing moved out of the marital home. She took numerous valuable items in a large U-Haul trailer including furniture and antique items with her all in violation of the prenuptial agreement and the divorce decree. Because of the respondents' malicious acts of using false and fabricated charges to put Appellant in jail until after the divorce trial and settlement, these respondents collectively and individually incapacitated Appellant Sun from raising the issue of prenuptial agreement.

Appellant wrote several letters to the director of Respondent CODA complaining against

Respondents Olesya and Varg, informing the director of the wrongful acts committed by them, and asked to show evidence in a meeting. Respondent CODA did not respond, but gave the letter to Respondent Olesya and made a false accusation against Appellant of trespassing the office of CODA. Respondent CODA condoned, aided and abetted Respondent Olesya and Varg in their malicious and criminal activity against the Appellant.

All the respondents had individually and collectively caused damages and personal injury to Appellant. Appellant is entitled to recover damages from all Respondents jointly and severally.

ARGUMENTS

The circuit court in several hearings, in granting respondents motions to dismiss, made erroneous assumption that all wrongful acts alleged in the complaint and amended complaint were already or should have been litigated in the family court. Most of all, the circuit court made the assumption that all malicious acts committed by Respondents Olesya, Varg and CODA against the Appellant were part of their representation of Respondent LiLing, and applied the South Carolina Supreme Court holding in Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1965); and the Court of Appeals holding in Gaar v. North Myrtle Beach Realty, 287 S.C. 525, 339 S.E.2d 887 (1985).

ISSUE 1: Circuit Court is erroneous in its Order of November 9, 2011, Page 4, Para. 13, that Appellant stated insufficient facts to constitute a cause of action for fraud; that in Para. 15, Appellant failed to allege special damages for civil conspiracy; that in Para. 16, on claims of malicious prosecution, Appellant failed to allege the proceedings have been terminated in his favor;

and in Paras. 17 and 18, all Appellant's claims for trespass, adultery, theft, burglary, conspiracy, libel and slander were part of another action pending between the parties and that those claims were within the exclusive jurisdiction of the family court.

At the hearing on October 19, 2011, after Respondent counsel presented his exhibits A - C as stated in the November 9, 2011 Order, the Circuit Judge summarily directed counsel to prepare an Order for her to sign and dismissing the complaint against Respondent LiLing Sun. The hearing lasted less than 10 minutes as transcript can show.

Respondent counsel did not present any evidence that showed all Appellant's claims in the within complaint against Respondent LiLing were or had been litigated in another action because there was no such other action.

The Family Courts in South Carolina were created as courts of limited jurisdiction, see South Carolina Code of Law § 63-3-10. The "exclusive jurisdiction" of the Family Court is clearly outlined in Section 63-3-530. Respondent LiLing has not shown any of Appellant's claims fall within the statutory jurisdiction of the Family Court. Though unartfully done, pro se Appellant's allegations state sufficient facts on Respondent LiLing's involvement, commission and conspiracy to commit numerous wrongful and/or criminal acts of forgery, perjury, fraud, false arrest, malicious prosecution, harassment, criminal trespassing and burglary, just to name a few, causing Plaintiff damages and personal injury.

Appellant alleges conspiracy of Respondent LiLing with some or all other Respondents in their scheme against Plaintiff causing him damages and injury. Appellant should be allowed pretrial discovery to determine any evidence of conspiracy between Respondent LiLing and all the other Respondents.

In his amended complaint, Appellant alleges Respondents LiLing and Olesya used a false Certified Receipt to defraud the Family Court judge to deny Appellant's motion for continuance, then presented an altered warranty deed which was already superceded by another warranty deed at the temporary hearing to unjustly obtain temporary possession of the house fully paid for and titled in Appellant's mother's name. The Prenuptial Agreement should bar any possession of the marital home by Respondent LiLing. In order to completely bury the Prenuptial Agreement, these Respondent used numerous tricks and false pretense to repeatedly put Appellant in jail in 2010. While Appellant was in jail, these Respondents conspired to break in Appellant's residence and destroy his safe and file cabinet, and steal the original Prenuptial Agreement and numerous other valuables and documents.

In an unrelated case between Respondent LiLing and Appellant, LiLing testified that she broke in Appellant's home and committed the burglary and theft at least with the knowledge, if not per instruction and counseling, of Respondent Olesya. Respondent Varg admitted to the police that she also knew about the burglary and theft, therefore was also involved. Most importantly, numerous of the documents and valuables stolen by Respondent LiLing were found in Respondent CODA's office, and Respondent Olesya even took a car title of the 2009 Toyota that LiLing was driving to Appellant's divorce counsel and demanded signature to convey the title from Appellant's mother to LiLing.

Even Respondents LiLing and Olesya were successful in the burglary and theft of the original Prenuptial Agreement, a copy of it had been filed in the divorce case after the temporary hearing in 2009. In fact, Respondent Olesya even filed a motion in 2009 attempting to set aside the pren uptial agreement on the pretentious ground that Respondent LiLing could not understand

English and might have signed the Prenuptial in error. The motion to set aside was abandoned later by the Respondents. Therefore, these Respondents cannot be heard that they did not know the existence of the Prenuptial.

Property excluded, by written contract or antenuptial agreement, from marital estate is nonmarital property over which the family court has no jurisdiction. Circuit court had jurisdiction to enforce postnuptial agreement regarding nonmarital property. Code 1976, s 20-7-473; Rules Civ.Proc., Rule 53(b). Bailey v. Bailey, 330 S.C. 326, 498 S.E.2d 891 (1998). Respondent LiLing can have no claim on any marital property because she came to the United States to marry Appellant empty handed and she had not purchased any real property of her own prior to divorce. Without considering the Prenuptial Agreement, the only land she attempted to buy from Appellant's father was not paid therefore it was returned to the original owners by the collateral warranty deed signed by LiLing.

Circuit Court is erroneous in holding that Appellant's claims of damages caused by Respondents' trespass, adultery, theft, burglary, wrongful arrests, libel and slander, and fraud were part of the divorce action therefore should be dismissed for being within the exclusive jurisdiction of the family court. In Thompson v. Ballentine, 298 S.C. 289, 379 S.E.2d 896 (1989) the South Carolina Supreme Court held that the family court has no jurisdiction to award damages. Therefore, jurisdiction of the within action lies at the Circuit Court.

It is important to note that in its "analysis" Page 2, Paragraph 1, of the October 19,2011 Order, the Circuit Court found that Appellant "appears to allege fraud, adultery, forgery, wrongful arrest and incarceration, libel and slander, burglary, theft, trespass and conspiracy." Therefore, Circuit Court already found that Appellant sufficiently alleged several causes of action against the

Respondents. The Circuit Court erroneously ruled that those causes of action should be in the jurisdiction of the family court.

Further more, it was improper for the Circuit Court to consider the exhibits presented by Respondent LiLing in another case though related. In Charleston County School District v. Harrell, 393 S.C. 552, 713 S.E.2d 604, 270 Ed. Law Rep. 357 (2011), The South Carolina Supreme Court held that,

> "Trial court improperly considered matters outside the pleadings in deciding state's motion to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action when it went outside the four corners of the complaint and cited to a federal district court case with regard to county's unique geography. Rules Civ.Proc., Rule 12(b)(6)."

ISSUE 2: As aforesaid, Circuit Court is erroneous in assuming that all the wrongful acts committed by the Respondents were part of their representation of Respondent LiLing which is a question of facts for the jury. Attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to third person or acts in his own personal interest, outside scope of his representation of client. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). Ruling on motion to dismiss for failure to state claim for which relief could be granted must be based solely upon allegations set forth on face of complaint; motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory. Rules Civ.Proc., Rule 12(b)(6). Id.

In their arguments before another circuit judge on March 13, 2012, Respondents Olesya, Varg and CODA asked the Circuit Court to follow the prior Court Order regarding their defendants and attached the prior Circuit Court Order as their authority in support. Therefore,

Appellant sufficiently alleges several causes of action of fraud, adultery, forgery, wrongful arrest and incarceration, libel and slander, burglary, theft, trespass and conspiracy. (See Page 2, Para. 1 of October 19, 2011 Order.) These Respondents' claim that they were only involving in all the aforesaid wrongdoings were mere "actions taken in the representation of a client" is certainly unsustainable. In any event, if their actions were indeed taken in their representation, they have to prove it, not merely claim it verbally. In a motion to dismiss, the burden is on them to show why they are entitled to relief and all allegations and inferences are taken most favorable to the Plaintiff-Appellant. In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. Rules Civ.Proc., Rule 12(b)(6). Brazell v. Windsor, 384 S.C. 512, 682 S.E.2d 824 (2009). Ruling on motion to dismiss for failure to state claim for which relief could be granted must be based solely upon allegations set forth on face of complaint; motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory. Rules Civ.Proc., Rule 12(b)(6). Stiles v. Onorato, supra.

All the Respondents have presented anything to show that they committed or conspired to commit all the wrongful acts with the consent or knowledge of their client Respondent LiLing who spoke little English and could not possibly conspired with them to commit libel and slander, for example. In a phone conversation when Appellant was appearing pro se, Respondent Olesya admitted that she acted without her client knowledge.

Appellant may not have alleged artful allegations that those Respondents had acted outside the scope of their representation. However, the proper application of Rule 12(b)(6) of the Civil Procedure is to make all inferences in favor of the non-movant, the Appellant. Therefore,

inferences must be made that the Respondents acted outside of their representation of their client. On a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the question is whether, in the light most favorable to plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Rules Civ.Proc., Rule 12(b)(6). Cole Vision Corp. V. Hobbs, 384 S.C. 283, 680 S.E.2d 923 (2009).

Therefore, it is proper and a requirement that inferences be made that the Respondents acted either outside of their representation or on their own volition as their personal vendetta against the Appellant.

Appellant'S motion to amend should be granted.

ISSUE 3: Appellant should be allowed pretrial discovery because it is erroneous and an abuse of discretion for Circuit Court to hastily conclude that "Plaintiff has not demonstrated a likelihood that discovery would uncover additional relevant evidence." (Page 2, Circuit Court Order of July 10, 2012.) Although the case had been pending for almost a year, it had two (2) prior motions to dismiss and hearings to determine if the case could go on. Appellant had shown at the hearing on July 12, 2012 that he had written Counsel for Respondents requesting a date for deposition, but counsel had ignored Appellants request.

Without the benefit of any discovery, Respondent Varg simply filed an affidavit claiming she was not present at the time when Respondent LiLing was admittedly breaking in Appellant's residence, and was granted a summary judgment from the case. According to the Jasper County police report and the deposition of LiLing, Respondent Varg had knowledge of the break in and the

details of all property stolen by LiLing either on the same day or very soon after. Appellant should be allowed to explore by discovery Respondent Varg's involvement in the burglary and theft.

Appellant's right to pretrial discovery should not be denied and Respondent Varg should not be granted a summary judgment.

CONCLUSION

For the foregoing reasons, the Circuit Court Orders of November 9, 2011, April 6, 2012 and July 18, 2012 should all be reversed.

Respectfully submitted,

JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

PROOF OF SERVICE

I certify that I have this date served the Appellant's Initial Brief and Designation of Matters on all Respondents by depositing a copy of same in the U.S. Mail postage prepaid, on July 6, 2013, addressed to their attorneys on record as follows:

J. Sam Scoville, Esq. P.O. Drawer 1107, Beaufort, SC 29901
Charles J. Baker III, Esq. P.O. Box 999, Charleston, SC 29402
Jackson H. Daniel, III, Esq. 40 Calhoun Street, Suite 400, Charleston, SC 29401

Joseph C. Sun, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963