

STATE OF SOUTH CAROLINA }  
COUNTY OF GREENVILLE }

IN THE COURT OF COMMON PLEAS  
THIRTEENTH CIRCUIT

John D. Alexander, #194748, }  
Plaintiff, }

Civil Action No. 2023-CP-23-01388

vs. }

MOTION TO ALTER OR AMEND  
JUDGMENT RULE 59(e), SCRPC

William Glenn Yarborough, III }  
et al, }

**RECEIVED**

Defendants.

JAN 22 2024

COMES, John Alexander, pursuant to Rule 59(e), <sup>SC Court of Appeals</sup> SCRPC with a Motion To Alter or Amend Judgment of this Court filed on July 27, 2023 and will show:

On July 25, 2023, a hearing motion was held on plaintiff's Motion For a Lien and Motion for Default Judgment, and on Defendant William G. Yarborough III's Motion to Dismiss for Failure of Service of Process and Motion to Dismiss for Failure to State Facts. During the hearing Plaintiff did not produce to the Court Proof of Service of the February 15, 2023 Summons and Complaint.

The Court can and should alter its July 27, 2023 to reflex the Exhibit # 1 production of the February 15, 2023 clock, date and stamped Summons and Complaint. As such, the Court should Reverse its Decision Denying plaintiff's Motion for Default Judgment and Motion For a Lien. And Grant each of the plaintiff's

motions.

Second, on August 2, 2023 the plaintiff received the Court's Order Granting the defendant's Motions. This court can and should Reverse its Decision for the above mentioned. As well as pursuant to Karlsson v. Rabinowitz, 318 F.2d 666, 668-69 (4th Cir. 1963) "Noncompliance with Rule 4 does not mandate dismissal where the necessary parties have received actual notice of the suit and have not been prejudiced by the technical defect in service."

In the instant case, the Court overlooked that the defendant's (1) conceded along with the plaintiff that they received actual notice; (2) the plaintiff established for the record that the defendants filed an Answer to the Complaint and Summons; and (3) the defendants did not allege or argue that they had been prejudiced in any manner.

Third, the Court can and should Reverse its Decision because it overlooked the plaintiff's Amendment to Complaint Filed on June 9, 2023 curing any defect of failing to state facts. The Amendment corroborates any and all testimonial, documentations evidence provided at the hearing to state facts sufficient to constitute a cause of action.

On the other hand, the Court erroneously denied the plaintiff's Request to produce testimony from his witnesses present at the hearing to support facts sufficient to constitute a cause of action. See Fourteenth Amendment ... right to appear, present evidence, and be heard in a civil action.

The plaintiff reserves the right to Amend the motion

pending receipt of defendants proposed order request by the Court, and reasonable time to respond.

Wherefore, it is prayed that the Court grant the motion. Reverse its ruling denying plaintiff's Motion For a lien and Motion For Default Judgment. Reverse its ruling granting defendant's Motion to Dismiss for Failure of Service and Motion to Dismiss for Failure to State Facts. And grant plaintiff's Motion For Default and Motion For a Lien.

Dated 8/8/2023.

Respectfully Submitted,  
John Alexander

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH CIRCUIT

John D. Alexander, #194748,

Plaintiff,  
vs.

William Glenn Yarborough III,  
et al,  
Defendants.

Civil Action No. 2023-CP-23-01388

AMENDMENT TO MOTION TO ALTER  
OR AMEND JUDGMENT RULE 59(e),  
SCRPC

**RECEIVED**

JAN 22 2024

SC Court of Appeals

This matter comes before the Court by way of a Motion To Alter or Amend Judgment Rule 59(e), SCRPC filed on 8 August 2023. In that motion the plaintiff reserved the right to amend pending receipt of defendant's proposed order requested by Honorable G.D. Morgan Jr.

However, on 9 September 2023, the plaintiff received an Order Granting Defendant's Motion To Dismiss. NOW, the plaintiff submits the below Amendment:

(1) The plaintiff resubmits the evidence, facts and arguments submitted within the Motion to Alter or Amend Judgment;

(2) The Court erroneously concluded the plaintiff stated no facts for a cause of action. The plaintiff clearly stated that he paid the defendants specifically to represent him in his pro se

filed Post-Conviction Relief application. That the defendants never took any actions on plaintiff's PCR applications in breach of our agreement. That the defendants did not and could not produce to the Court or plaintiff at his motion hearing a shred of evidence establishing any work performed on plaintiff behalf. And, plaintiff stated he had been defrauded the monies paid to the defendants where they refused to promptly return the funds so he could find and retain competent counsel within twenty (20) days to prevent the PCR application from being summarily dismissed.

Plus, the plaintiff had suffered undue anxiety and distress because the defendants refused to refund plaintiff resulting in his not being able to retain counsel of choice;

(3) The plaintiff submitted the above facts in his Amended Complaint in excess of thirty (30) days prior to the motion hearing which would have cured any defects;

(4) At the motion hearing the defendants conceded along with the plaintiff that they received "actual and timely Notice of the Summons and Complaint;"

(5). At the motion hearing the defendants conceded along with the plaintiff that they were not unduly prejudiced by any Rule 4 and 5, SCRPC deficiencies made by the plaintiff; and

(6) Had this Court viewed the above facts and evidence in the light most favorable to the plaintiff and with every

doubt resolved in his behalf, and liberally construed those pleadings to the extent reasonable or appropriate when considering the Summons, Complaint and Proof of Service submitted to the Prison Postal Service Director at the Prison Mailroom on 15 February 2023 by the prose plaintiff it must find the plaintiff has stated supporting facts constituting a cause of action, sufficient facts constituting a valid claim entitling him to relief on the theories, and asserted sufficient facts to establish the damages sought and conform to the minimum requirements set forth in Rules 4 and 5, SCRPC, as well as Rules 8(a) and (e) and 9(b), SCRPC.

Wherefore, it is prayed the Order electronically Filed - 2023 September 5 is Reversed. The Motion to Alter or Amend Judgment is Granted. And a Trial by Jury is scheduled.

Dated 10/2/2023.

Respectfully Submitted,  
John D. Alexander



and Defendant Cherry which assert that the Plaintiff failed to serve the Complaint on Defendants, refuting the proof of service attached to the Plaintiff's Summons and Complaint which stated service on all Defendants was made by regular US mail to the law office address of 308 West Stone Avenue Greenville SC 29609. The Proof of Service was dated "on this 15 day of February, 2023", weeks before the Summons and Complaint were filed and clocked by the Court of Common Pleas on March 21, 2023.

Without leave of the Court or the consent of the Defendants, Plaintiff filed an Amended Complaint on June 19, 2023, as well as a Response to the Defendants' motions to dismiss. A hearing was held on July 25, 2023. William G. Yarborough, III appeared on behalf of himself and other named Defendants. The Plaintiff, John Alexander, was also present and appeared on his own behalf. The Court took the matter under advisement.

Having considered the pleadings and arguments by both parties, this Court concludes dismissal of the Plaintiff's action to be appropriate.

This Court finds that the Plaintiff failed to serve the Summons and Complaint filed on March 21, 2023 on Defendants and the Complaint's Proof of Service fails to comply with Rule 4 and 5, SCRCF. *See* Rule 4(d)(8) (permitting a plaintiff to serve a summons and complaint upon an individual defendant "by *registered or certified* mail, return receipt requested *and delivery restricted to the addressee.*"(italics added); Rule 5(d), SCRCF ("[A] summons and complaint shall be filed before service. Proof of service shall be filed within ten ... days after service of the summons and complaint"). *See also Christian v. Healy*, 435 S.C. 507, 511, 868 S.E.2d 403, 405 (Ct. App. 2021).

This Court views the pleadings in the light most favorable to the Plaintiff and with every doubt resolved in his behalf, and liberally construes the pleadings to the extent appropriate when

considering the filings submitted by a pro se party. *E.g., Robinson v. Code*, 384 S.C. 582, 585, 682 S.E.2d 495, 496 (Ct. App. 2009) (“Where a pleading is attacked for an alleged failure to state a cause of action, the pleading must be liberally construed in favor of the pleader and sustained if the facts and reasonable inferences to be drawn therefrom entitle the pleader to relief on any theory of the case.”). Under this view, this Court further finds that the facts and inferences reasonably deducible therefrom as alleged by the Plaintiff fail to constitute as any valid claim that would entitle him to relief on any theory. *See Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); Rule 12(b)(6), SCRPC. The Plaintiff has stated no supporting facts for any cause of action and instead asserts only general, circular legal conclusions against each Defendant. The Complaint likewise fails to assert sufficient facts to establish the damages sought and also fails to conform to even the minimum requirements set forth in Rule 8(a) and (e) and Rule 9(b), SCRPC. Rule 8(a) and (e), SCRPC; Rule 9(b), SCRPC. *See also Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009)

The Court further finds any attempt by Plaintiff to remedy the failure of service of process or the insufficiency on the face of the Complaint inconsequential as any amendment would be futile or result in material prejudicial to the Defendants. Rule 4(i), SCRPC. *See also* Rule 15(a), SCRPC; *e.g., Skydive Myrtle Beach, Inc. v. Horry Cnty*, 426 S.C. 175, 826 S.E.2d 585 (2019) (summarizing precedent on dismissal with prejudice and denial of request to amend if futile); *Alternax Tax Asset Group, LLC v. York County*, 434 S.C. 328, 863 S.E.2d 465 (Ct. App. 2021) (holding trial court's dismissal of alleged purchaser's claims with prejudice without allowing amendment was warranted, where any amendment to alleged purchaser's complaint would have been futile).

In light of the foregoing, this Court further finds the Plaintiff's Motion for Default Judgment and Motion for a Lien inoperative and moot.

THEREFORE, In light of the foregoing, this Court hereby GRANTS Defendants' motions and this action is therefore dismissed with prejudice.

This Court hereby DENIES Plaintiff's Motion for a Lien and Motion for Default Judgment.  
IT IS SO ORDERED.

*s/* \_\_\_\_\_

The Honorable G. D. Morgan, Jr.  
Circuit Court Judge

\_\_\_\_\_, 2023

STATE OF SOUTH CAROLINA  
COUNTY OF Greenville  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2301388

John Alexander  
PLAINTIFF(S)

William Glenn Yarborough, III et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

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

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

Please see page two below.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/27/2023 .

John Alexander for John Alexander  
John Alexander for John Alexander

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---

This matter is before the Court on Plaintiff's Motion To Alter Or Amend Judgment Rule 59(e), SCRCP and Plaintiff's Motion For Fact Finding And Conclusion Of Law Rule 52(b), SCRCP. Based on a review of the file and submissions of the parties, Plaintiff's Motion To Alter Or Amend Judgment Rule 59(e) is hereby DENIED.

As to Plaintiff's Motion For Fact Finding And Conclusion Of Law Rule 52(b), SCRCP, Plaintiff's motion is hereby DENIED. The Court did make findings of fact and law and stated those findings in its Order Granting Defendants' Motion To Dismiss.

It is so ordered



Greenville Common Pleas

**Case Caption:** John Alexander vs. William Glenn Yarborough III , defendant, et al  
**Case Number:** 2023CP2301388  
**Type:** Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2023-10-27 13:18:07 page 3 of 3

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH CIRCUIT

John D. Alexander, #194748, )  
 )  
Plaintiff, )  
 )  
vs. )

Civil Action No. 2023C42301388

PROOF OF SERVICE

William Glenn Yarborough III, )  
 )  
et al, )  
 )  
Defendants.

**RECEIVED**

JAN 22 2024

SC Court of Appeals

I, John Alexander, certify this 8 day of August, 2023 that I sent the Motion to Alter or Amend Judgment Rule 59(e), SCRPC and Motion For Fact Finding and Conclusion of Law Rule 52(b), SCRPC United States Postal Services, prepaid, to Law Office of William G. Yarborough III, William Glenn Yarborough III, et al, 308 West Stone Avenue, Greenville, South Carolina 29609.

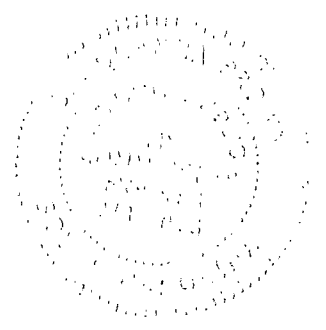
Respectfully Submitted,

John Alexander

Sworn and Subscribed  
this 8<sup>th</sup> day of August, 2023

Notary Public For South Carolina

My Commission Expires 2/3/2026.



STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH CIRCUIT

John D. Alexander, #194748,

Civil Action No. 2023CP23-01388

Plaintiff,

vs.

PROOF OF SERVICE

William Glenn Yarborough III,  
et al,

Defendants.

**RECEIVED**

JAN 22 2024

SC Court of Appeals

I, John Alexander, certify this 2 day of October, 2023 that I sent the Amendment to Motion to Alter or Amend Judgment Rule 59(e), SCRPC United States Postal Services, prepaid, to Law Office of William Glenn Yarborough III, William Glenn Yarborough III, 308 West Stone Avenue, Greenville, South Carolina 29609.

Respectfully Submitted

John Alexander

Sworn and Subscribed

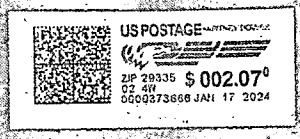
this 7 day of October, 2023

Paul Dennis Cruse

Notary Public For South Carolina

My Commission Expires Dec. 10, 2024.

John Alexander 194748  
Tiger River Corr. Inst.  
200 Prison Road, U6-29  
Murree, SC 29335



Received  
JAN 17 2024  
Tiger River Mailroom

**RECEIVED**  
JAN 22 2024  
SC Court of Appeals

South Carolina Court of Appeals  
Clerk's Office  
Post Office Box 11629  
Columbia, SC 29211