

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021-CP-24-03180

Kaleb Jowers,

Spartanburg Methodist College,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: A. Todd Darwin

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

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
- 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: See attached Order

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: Portion of Red Bird Lane in Landrum, South Carolina, between North Lyles Avenue and North Lee Avenue, bounded on one side by Parcel ID 1-08-010-033.00, and on the other by Parcel ID 1-08-01-048.00.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2022 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2022 to attorneys of record or to parties (when appearing pro se) as follows:

G. Lee Cole, Jr., Esq.

Post Office Box 315

Williamston, SC 29697

ATTORNEY(S) FOR THE PLAINTIFF(S)

A. Todd Darwin, Esq.

Post Office Box 1897

Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

Mr. Flippin a filed copy of the Summons and Complaint or an Acceptance of Service form. Therefore, Plaintiff's counsel never served the pleadings on SMC's attorney. The three year statute of limitations pursuant to S.C. Code §15-3-350 expired on Plaintiff's claim on April 11, 2022.

On April 21, 2022, the Spartanburg Count Clerk of Court's Office filed a "Dormant File Notice" indicating that since no proof of service had been filed in the case the Clerk of Court was requesting that the case be dismissed pursuant to Rule 5(d), SCRCPP. On May 4, 2022, Plaintiff's counsel contacted Mr. Flippin and advised that he had received a dormant file notice from the Clerk's Office so he was now following up on the Acceptance of Service form, which he attached to the email, which was the first time Plaintiff's counsel had ever sent an Acceptance of Service form to Mr. Flippin, more than three weeks after the statute of limitations had expired. SMC filed its Motion to Dismiss on June 3, 2022.

Legal Standard

"Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party." Rule 5(d), SCRCPP. Despite any argument to the contrary, the Plaintiff failed to serve the summons and complaint in this action. While counsel for the Defendant told Plaintiff's counsel that he would accept service of the summons and complaint and requested that he send an acceptance of service form, the fact remains that a filed copy of the summons and complaint was never served on defense counsel.

In the Plaintiff's *Return to Motion to Dismiss* filed on October 17, 2022, Plaintiff's counsel argues that "the Defendant, through its attorney, clearly had notice of this action and electronic access to the pleadings on October 7, 2021." However, I find that having "electronic access to the

pleadings” is not a substitution for proper service of the summons and complaint under the South Carolina Rules of Civil Procedure.

Therefore, I find the summons and complaint were never properly served on the Defendant, and I hereby grant the Defendant’s Motion to Dismiss. This case is hereby dismissed.

IT IS SO ORDERED.

Shannon M. Phillips, Presiding Judge
Seventh Judicial Circuit
Judge’s electronic signature to be applied



Spartanburg Common Pleas

Case Caption: Kaleb Jowers VS Spartanburg Methodist College

Case Number: 2021CP4203180

Type: Order/Form 4

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087