

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Bently Price

Common Pleas Case No. 2022-CP-10-5277

Appellate Case No. 2024-000773

Simply Green Landscaping, LLC.....Appellant,

v.

Alan M. Craig.....Respondent.

APPELLANT’S MOTION TO REINSTATE

Appellant Simply Green Landscaping, LLC (hereinafter “Simply Green” or “Appellant”) by and through its undersigned counsel, moves for an order reinstating the above-captioned appeal pursuant to Rule 221 and Rule 260(a) of the South Carolina Appellate Court Rules.

INTRODUCTION

On May 10, 2024¹, Appellant filed a Notice of Appeal which was served upon all parties. On May 14, 2024, this Honorable Court dismissed the Appeal stating the “appeal arises out of an order of the circuit court denying Appellant’s motion to set aside entry of default. Because the underlying order is not immediately appealable, we dismiss the appeal.” Exhibit A. Respectfully, this Appeal does not arise out of an order denying Appellant’s motion to set aside entry of default. Rather, this appeal arises out of the untimely, *sua sponte* Order of Judge Price, dated March 13, 2024, striking Appellant’s timely Answer. Exhibit B. An interlocutory order striking

¹ The original Notice of Appeal identified the incorrect case number of the underlying action. A revised Notice of Appeal was filed and served on May 14, 2024.

a portion of a pleading is immediately appealable. *See Burkey v. Noce*, 398 S.C. 35, 37, 726 S.E.2d 229, 230 (Ct. App. 2012) (“An interlocutory order is not immediately appealable unless it involves the merits of the case or affects substantial right.”); *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (“an order affects a substantial right and is immediately appealable when it ‘(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) *strikes an answer or any part thereof or an pleading in any action*’” (emphasis added) (quoting § 14-3-330(2))).

RELEVANT PROCEDURAL HISTORY

On January 29, 2024, Judge Price filed an Order Granting Defendant’s Motion to Reconsider and Motion to Set Aside Entry of Default. Exhibit C. This Order stipulated that “Appellant has ten (10) days from the date of filing of this Order to file a timely responsive pleading.” On January 30, 2024, Simply Green filed an Answer to Respondent’s Complaint. Exhibit D. On February 7, 2024, Respondent’s counsel filed a Motion to Reconsider. The Court did not rule on Respondent’s Motion to Reconsider. Instead, and without consideration of Respondent’s Motion to Reconsider, Judge Price, *sua sponte*, filed an Order on March 13, 2024 rescinding his prior Order granting Appellant’s Motion to Reconsider on the basis it was “entered in error.” No further information was provided regarding the “error” or the grounds for the rescission. Appellant filed a Motion to Reconsider on March 21, 2024 which was denied by an Order of Judge Price dated April 16, 2024. This appeal of the March 13, 2024 Order followed on May 10, 2024.

GROUND FOR APPEAL

- I. The Trial Court Lacked Authority to *sua sponte* rescind its January 29, 2024 Order**

Without consideration of Respondent's Motion to Reconsider, Judge Price, *sua sponte*, filed an Order on March 13, 2024, which states:

After a concise review of all filed memoranda and orders and a review of the Court's notes in this, it is evident that the order granting the defendant's motion to reconsider and its motion to set aside entry of default, electronically signed on January 29, 2024, was entered in error and is therefore rescinded. The plaintiff's motion to reconsider is moot.

By its own terms, the Court did not consider Respondent's Motion to Reconsider. By failing to rule on Respondent's Motion, and simultaneously rendering Respondent's Motion moot, the Court's rescission of the January 29, 2024 Order was *sua sponte* and untimely as more than ten (10) days had elapsed from the filing of its previous Order. Circuit Court judges do not have the authority to alter or amend a judgment, *sua sponte*, following the expiration of ten (10) days since the entry thereof. *See Heins v. Heins*, 344 S.C. 146, 149 (“[J]udge does not have the jurisdiction to alter or amend a judgment, *sua sponte*, when more than 10 days have elapsed since the judgment's entry by clerk of court.”)

Rule 60(a) of the South Carolina Rules of Civil Procedure authorizes the Court to correct clerical errors without temporal constraints. *Burnam v. Amoco Container Co.*, 738 F.2d 1230, 1231. A "clerical error" is one "resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination." Black's Law Dictionary 563 (7th ed 1999). The Court's March 13, 2024 Order states, “[the Order] electronically signed on January 29, 2024 was entered in error.” The Court has not identified a clerical error which the subsequent Order is intended to correct, nor does it correct a clerical mistake. Rather, it rescinds the January 29, 2024 Order, thereby altering the previous ruling of the Court. Therefore, the subsequent Order is not authorized by Rule 60(a).

As the trial court was not correcting a clerical error, the authorized manner in which it could *sua sponte* rescind the January 29, 2024 Order is via the powers afforded it by Rule 59(e). However, as discussed *supra*, more than ten (10) days elapsed from the filing of the previous Order. Therefore, the trial court lacked authority to rescind the January 29, 2024 order forty-four (44) days after the entry thereof.

II. The Court's March 13, 2024 *sua sponte* Order is Immediately Appealable

The *sua sponte* Order sanctioned Defendant without just cause by striking Defendant's timely filed Answer of January 30, 2024. The Order set forth no basis for the conduct giving rise to the decision to sanction Defendant. As the *sua sponte* Order provides sanctions against Defendant and strikes the timely filed Answer, said order is immediately appealable. An order striking a portion of a pleading is immediately appealable. *See Harbert v. Atlanta & Charlotte Air Line Railway*, 74 S.C. 13, 16, 53 S.E. 1001, 1002 (1906).

CONCLUSION

The March 13, 2024 Order of Judge Price is immediately appealable because - by striking the timely answer of Appellant without authority - the Order affects a substantive right of Appellant. For these reasons, the Appeal of Simply Green should be reinstated.

LUZURIAGA MIMS, LLP

By: *s/W. Chase McNair*

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*Attorney for the Defendant Simply Green
Landscaping, LLC.*

Charleston, South Carolina
May 24, 2024

The South Carolina Court of Appeals

Alan M. Craig, Respondent,

v.

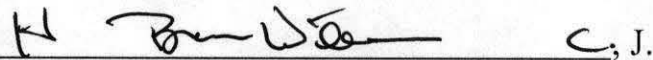
Comcast Corporation and Troy Perez Tolbert; Simply Green Landscaping, LLC, and Jeremiah Shawn Harrell, Defendants,

of which Simply Green Landscaping, LLC is the Appellant.

Appellate Case No. 2024-000773

ORDER

This appeal arises out of an order of the circuit court denying Appellant's motion to set aside entry of default. Because the underlying order is not immediately appealable, we dismiss the appeal. *See Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct. App. 1987) (stating an "order refusing to grant relief from the entry of default is not appealable until after final judgment"). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

 C, J.

FOR THE COURT

Columbia, South Carolina

cc:

Jeffrey Wayne Buncher, Jr., Esquire

Matthew Thomas Reitz, Esquire

Kevin W. Mims, Esquire

William Chase McNair, Esquire

Joseph Hayden Grooms, Esquire

FILED
May 14 2024

Alan M Craig
PLAINTIFF(S)

Jeremiah Shawn Harrell 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:

After a concise review of all filed memoranda and orders and a review of the Court's notes in this, it is evident that the order granting the defendant's motion to reconsider and its motion to set aside entry of default, electronically signed on January 29, 2024, was entered in error and is therefore rescinded. The plaintiff's motion to reconsider is moot.

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 03/13/2024 .

Comcast of Carolina Llc

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.



Charleston Common Pleas

Case Caption: Alan M Craig VS Comcast Corporation , defendant, et al

Case Number: 2022CP1005277

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2024-03-13 11:02:55 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
)	
Alan M. Craig,	)	CASE NO. 2022-CP-10-05277
)	
Plaintiff,)	
)	
v.)	
	)	ORDER
Comcast Corporation and Troy Perez)	
Tolbert; Simply Green Landscaping, LLC,)	
and Jeremiah Shawn Harrell,)	
)	
Defendants.)	
)	

Defendant Simply Green Landscaping, LLC’s (“Defendant”) Motion to Set Aside Entry of Default was filed on January 13, 2023 and came before this Court on November 16, 2023. Defendant’s motion was premised upon assertions of defective service or, alternatively, pursuant to *SCRCP* 55(c) as it maintained good cause existed in support of the relief sought therein. On December 6, 2023, this Court filed an Order denying Defendant’s Motion (the “Order”).

On December 12, 2023, Defendant filed a timely Motion to Reconsider pursuant to *SCRCP* 59(e), wherein Defendant argued the Order failed to address that Plaintiff prematurely filed his Affidavit of Default on December 21, 2022, prior to the expiration of additional time afforded by *SCRCP* 6(e). Moreover, Defendant asserted the Order did not set forth a factual basis related to the existence of good cause to set aside the Order of Entry of Default. Defendant’s Motion to Reconsider is incorporated into the record.

After reconsideration of the issues presented to the Court, the Court finds Plaintiff did not adhere to the prescriptions of *SCRCP* 6(e) and, therefore, did not provide Defendant adequate notice of the default. Further, Plaintiff would not be prejudiced by allowing Defendant to present a defense. As such, the Court GRANTS Defendant’s Motion to Reconsider and its

Motion to Set Aside Entry of Default. Defendant has ten (10) days from the date of filing of this Order to file a timely responsive pleading.

IT IS SO ORDERED.

Honorable Judge Bentley D. Price
Ninth Judicial Circuit



Charleston Common Pleas

Case Caption: Alan M Craig VS Comcast Corporation , defendant, et al

Case Number: 2022CP1005277

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2024-01-29 13:45:45 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
)	
Alan M. Craig,	)	CASE NO. 2022-CP-10-05277
)	
Plaintiff,)	
)	
v.	)	DEFENDANT SIMPLY GREEN
	)	LANDSCAPING, LLC’S ANSWER TO
	)	PLAINTIFF ALAN M. CRAIG’S
	)	COMPLAINT
Comcast Corporation and Troy Perez)	
Tolbert; Simply Green Landscaping, LLC,)	
and Jeremiah Shawn Harrell,)	
)	
Defendants.)	
)	

TO: JEFF BUNCHEER, JR. ESQ., ATTORNEY FOR PLAINTIFF

Defendant Simply Green Landscaping, LLC (hereinafter “**Defendant**”), by and through its undersigned counsel, hereby answers the Complaint of Plaintiff Alan M. Craig (“**Plaintiff**”) as follows:

1. Each and every allegation not specifically admitted or modified below is hereby denied.
2. Upon information and belief, Defendant admits the allegations of Paragraph 1 of Plaintiff’s Complaint.
3. Defendant does not possess sufficient knowledge or belief to admit or deny the allegations contained in Paragraphs 2 and 3 of Plaintiff’s Complaint and, therefore, denies the same and demands strict proof thereof.
4. Defendant admits the allegations contained in Paragraph 4 of Plaintiff’s Complaint.
5. Upon information and belief, Defendant admits the allegations contained in Paragraph 5 of Plaintiff’s Complaint.
6. Paragraphs 6 through 9 constitute legal conclusions to which no response is

required. To the extent a response is required, Defendant denies the same and demands strict proof thereof.

7. The allegations contained within Paragraphs 10 through 12 of Plaintiff's Complaint relate to an alleged motor vehicle accident in which Defendant was not involved. As the allegations set forth in these paragraphs do not relate to Defendant, no response is required. To the extent a response is required from Defendant, the same is denied and strict proof is demanded thereof.

8. Defendant admits the allegations of Paragraph 13 of Plaintiff's Complaint.

9. Upon information and belief, Defendant admits the allegations contained in Paragraph 14 of Plaintiff's Complaint.

10. Defendant denies the allegations contained in Paragraph 15 of Plaintiff's Complaint and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(Negligence, Gross Negligence)

11. Defendant adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

12. Responding to Paragraph 17 and the subparts directed at Defendant Simply Green Landscaping, LLC, Defendant denies the same and demands strict proof thereof. Defendant would state the remaining allegations contained in Paragraph 17 are not related to Defendant, and no response is required. To the extent a response is required, Defendant denies the same and demands strict proof thereof.

13. Defendant denies the allegations contained in Paragraph 18 of Plaintiff's Complaint and demands strict proof thereof.

14. The WHEREFORE paragraph of Plaintiff's Complaint is denied.

FOR AN AFFIRMATIVE DEFENSE
(Sole Negligence)

15. That the injury or damage sustained by Plaintiff, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of Plaintiff or of others over whom Defendant had no control in the following particulars, to wit:

- a. In failing to take prompt and reasonable action under the circumstances to mitigate damages;
- b. In otherwise failing to act with due and reasonable care, caution and prudence under the circumstances then and there prevailing in such further particulars as shall be determined through discovery;

and such constitutes a complete defense to any claims for negligence.

FOR AN AFFIRMATIVE DEFENSE
(Sever Claims against Defendant)

16. Plaintiff's claims against Comcast Corporation and Troy Perez bear no relation to his claims against Simply Green Landscaping, LLC and Jeremiah Shawn Harrell. As such Defendant reserves the right to move to sever these separate and distinct claims.

FOR AN AFFIRMATIVE DEFENSE
(Sole, Superseding and Intervening Negligence of Others)

17. Plaintiff's damages, if any, which Defendant expressly denies, were due to and caused by the sole intervening and superseding negligence of others and/or other forces, over whom Defendant had no control, so as to bar the claims against Defendant.

FOR AN AFFIRMATIVE DEFENSE
(Comparative Negligence)

18. Plaintiff's claims, if any, are barred, or should be reduced, by Plaintiff's own

contributory and comparative negligence and recklessness which combined, contributed, and concurred with any alleged negligence on the part of Defendant, if any, and which is expressly denied.

FOR AN AFFIRMATIVE DEFENSE
(Failure to Mitigate)

19. The injuries and/or damages alleged by the Plaintiff, which are hereby specifically denied, were caused and/or aggravated by the Plaintiff's failure to mitigate. Such a failure to mitigate is a complete bar to the Plaintiff's recovery.

FOR AN AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

20. Defendant alleges that any alleged conduct or omission by Defendant was not the cause in fact or proximate cause of any injury alleged by Plaintiff.

FOR AN AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

21. The Plaintiff is not entitled to an award of punitive damages on the grounds that such an award would be in violation of the due process and equal protection clauses of the United States and South Carolina Constitutions.

22. Defendant alleges the Plaintiff's claim for punitive damages in this matter is improper because Defendant did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FOR AN AFFIRMATIVE DEFENSE
(Trial Bifurcation of Punitive Damages)

23. The Defendant specifically reserves the right to bifurcate any trial of this matter upon request by one or more Defendant as set forth in S.C. Code Ann Sec. 15-32-520, et seq., and specifically provides notice herein to all parties of its non-waiver and reservation of the right to bifurcate.

FOR AN AFFIRMATIVE DEFENSE
(Punitive Damages Cap Pursuant to S.C. Code Section 15-32-530)

24. Defendant affirmatively pleads all defenses, limitations on damages, and other privileges afforded pursuant to S.C. Code Ann. Section 15-32-530 as if fully restated herein verbatim.

FOR AN AFFIRMATIVE DEFENSE
(Last Clear Chance)

25. To the extent it is shown that Plaintiff may have had the latest and last clear chance of opportunity to avoid injuries and/or damages he allegedly sustained by reasonable ordinary care under the circumstances, but Plaintiff negligently, carelessly, and recklessly failed to do so, and therefore his claims against this Defendant should be barred.

FOR AN AFFIRMATIVE DEFENSE
(Additional Defense)

26. The Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its answer to assert any such defenses.

WHEREFORE Defendant prays for the Court to grant such relief to it as follows:

- a. Dismiss all Plaintiff's claims against Defendant with prejudice;
- b. Grant Defendant reasonable attorney's fees and costs as to Plaintiff's claims;
- c. Any such other and further relief the Court may deem just and proper.

Defendant demands a trial by jury.

[Signature on following page]

LUZURIAGA MIMS, LLP

By: s/ Chase McNair

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*Attorney for the Defendant Simply Green
Landscaping, LLC.*

Charleston, South Carolina

January 30, 2024

RECEIVED
May 24 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Bently Price

Common Pleas Case No. 2022-CP-10-5277

Appellate Case No. 2024-000773

Simply Green Landscaping, LLC.....Appellant,

v.

Alan M. Craig.....Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Reinstate via counsel's primary e-mail address listed in the Attorney Information System (AIS). A copy of the sent email is enclosed herewith as proof of service.

LUZURIAGA MIMS, LLP

*s/ W. Chase McNair*_____

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cmcnair@lmlawllp.com
hgrooms@lmlawllp.com

ATTORNEYS FOR APPELLANT

Dated: May 14, 2024

Andrea S Tata

From: Andrea S Tata
Sent: Friday, May 24, 2024 12:07 PM
To: 'jeff@uricchio.com'; 'Nina@uricchio.com'; 'carl@uricchio.com'; 'ddiethrich@csvl.law'; 'kcarlsten@csvl.law'
Cc: 'nyoung@csvl.law'; Hayden Grooms; Katie Pattison; Chase McNair
Subject: RE: Alan M. Craig v. Simply Green Landscaping, LLC and Jeremiah Shawn (226-20231370)
Attachments: 720691.pdf; 720692.pdf; 720693.pdf; 720694.pdf; 720695.pdf

Good afternoon,

Attached please find Appellant's Motion to Reinstate along with the corresponding exhibits.

Andrea S. Tata • Paralegal
Luzuriaga Mims, LLP
1156 King Street
Charleston, SC 29403
Direct: 843.725-0002 • atata@lmlawllp.com



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