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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
Jeremy C. Hodges, Esquire, Special Referee

Case No. 2022-CP-28-00877

Appellate Case No.: 2024-000679

Joseph and Lauren Jaco.....Respondents,

vs.

J.N. Green and Associates, LLC, Big Blue Express, LLC, and Joe N. Green.....Appellants.

**RESPONDENTS'
MOTION TO DISMISS
APPEAL**

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Under Rule 240 of the South Carolina Appellate Court Rules, Respondents Joseph and Lauren Jaco move to dismiss Appellants' putative appeal as untimely brought.

INTRODUCTION

Respondents' Complaint, filed in the Court of Common Pleas for Kershaw County, centers on Appellants' irresponsible development of the "Tookie Doo" subdivision upstream from property Respondents own—land that Respondents and their family have treasured for generations. By failing to develop this subdivision legally, Appellants caused significant amounts of turbid and otherwise polluted stormwater to flow into Respondents' formerly idyllic stream and pond.

Before bringing their lawsuit, Respondents endeavored to seek relief directly from Appellants for over a year. Finding their numerous entreaties led to nothing but inaction from the Appellants, Respondents filed suit.

Faced with service of a Summons and Complaint, Appellants went to great lengths to evade service of process. Once the Circuit Court approved service by publication, Appellants failed to file a responsive pleading. Unsurprisingly, default was entered, and the Circuit Court issued an Order of Reference appointing Jeremy C. Hodges, Esquire, as Special Referee. The Special Referee held a hearing in September 2023 and entered judgment for the Appellants on January 8, 2024.

After entry of Special Referee's Final Order, Appellants served their Rule 59(e), SCRCF Motion to Reconsider on January 18, 2024. But Appellants failed to *file* this Motion or pay the requisite filing fee. Appellants then waited over three and a half months, until April 24, 2024, to file their Notice of Appeal.

As explained in greater detail below, this Court should dismiss Appellants' appeal because Appellants have failed to meet the threshold jurisdictional requirement of timely noticing their appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Respondents filed their Complaint on October 12, 2022. **Exhibit A**. But for over a year before this suit was filed, Respondents attempted to seek relief directly from Appellants. Or as the Special Referee, in denying Appellants' motion to set aside the entry of default, noted,

Appended to the Complaint are various exhibits memorializing communications between [Respondents]' counsel and [Appellant] Joe N. Green . . . the principal and registered agent of the two corporate [Appellants] Big Blue Express, LLC and J.N. Green & Associates, LLC. . . . These communications date back to September 23, 2021 (just over a year before the Complaint was filed).

Exhibit B, Special Referee's Order Denying Defendants' Motion to Set Aside Entry of Default at 2 (Filed for Record April 6, 2023).

Following the filing of the Complaint, Respondents attempted to evade service and continued their altogether unserious approach to this suit. As the Special Referee detailed,

[Respondents] attempted to serve [Appellants] personally on October 22, 2022, and again on October 24, 2022. On October 22, 2022, a process server attempted to serve Defendant Big Blue Express, LLC via its registered agent [Appellant Joe N. Green], at 180 Ole Still Lane, in Elgin, South Carolina. There, the process server spoke to a woman who identified herself as [Appellant Joe N. Green]'s ex-wife who informed the process server that [Appellant Joe N. Green] "moved out of South Carolina" and that the "business is closed." The process server was later able to contact [Appellant Joe N. Green] via telephone. [Appellant Joe N. Green] "said to look for him in Georgia but would not" provide "any other information."

On October 24, 2022, a second process server sought to serve [Appellant] J.N. Green & Associates, LLC via its registered agent, [Appellant Joe N. Green], at 10817-B Two Notch Road in Columbia, South Carolina. When the process server arrived, he could hear "a male voice talking on the phone" behind a locked door. No one responded to the process server's knocks and announcement of his presence. The process server took photographs of three motor vehicles in the

adjacent parking lot—a semi-truck, a pick-up truck, and hatchback sedan. Public records indicate these vehicles were registered to [Appellant Joe N. Green].

The next day, October 25, 2022, [Respondents’] counsel emailed [Appellant Joe N. Green] . . . with a copy of the Summons & Complaint attached—requesting that [Appellant Joe N. Green] accept service via email.

On November 7, 2022, the Kershaw County Clerk of Court entered an “Order for Service by Publication.”

On November 8, 2022, [Respondents] sent the Summons & Complaint, the Order for service by Publication, and [Respondents’] first set of discovery to [Appellants] at the 180 Ole Still Lane and 10817-B Two Notch Road addresses listed above.

On November 14, 2022, [Appellant Joe N. Green] replied to the email from [Respondents’] counsel dated October 25, 2022. . . . In relevant part, the email stated: “Good morning, please send the acceptance of service form via email. Thank you so much!” A short time later, [Respondents’ counsel] responded to [Appellant Joe N. Green] and sent the acceptance of service form [Appellant Joe N. Green] requested.

[Appellant Joe N. Green] did not return the acceptance of service form. [Respondents’] counsel again emailed the acceptance of service form to Mr. Green on November 16, 2022. [Appellant Joe N. Green] did not respond to this email, either.

On November 15, 2022, November 22, 2022, and November 29, 2022, [Respondents] published a copy of the Summons and Notice of Filing of Complaint in the Chronicle-Independent, a newspaper of general circulation in Kershaw County, South Carolina.

Id. at 2-3. In sum, Appellants “understood their obligation to timely respond to the Summons and Complaint yet chose not to do so.” *Id.* at 6.

Following service of the Complaint via publication, the Appellants failed to file a responsive pleading. Thereafter, the Circuit Court entered default, **Exhibit C**, and ordered the appointment of Jeremy C. Hodges, Esquire, as Special Referee. **Exhibit D**.

Counsel for Appellants noted an appearance on January 19, 2023, but Appellants did not file anything substantive in the trial court until January 24, 2023—over two months after

acknowledging the lawsuit in an email—when they moved to set aside the entry of default. In an order dated April 3, 2023, and filed for record on April 6, 2023, the Special Referee denied Appellants’ Motion to set aside the entry of default. **Exhibit B.**

On September 22, 2023, the Special Referee conducted a final hearing on Respondents’ claims. In a 24-page “Final Order Making Findings of Fact and Conclusions of Law” (“Final Order”) entered on January 8, 2024, the Special Referee awarded Respondents \$2,500,000.00 in damages. **Exhibit E.**

On Thursday, January 18, 2024, Appellants served the Special Referee and Respondents with their “Rule 59(e) Motion for Reconsideration,” **Exhibit F**, in an email sent to the Special Referee and Respondents’ Counsel received at approximately 11:46 p.m. **Exhibit G** at 3. An automated Notice of Electronic Filing (“NEF”) was transmitted to the parties’ counsel at 11:41 p.m. on January 18, 2024, memorializing Appellants’ attempted filing of the Rule 59(e) Motion. **Exhibit H.**

But the next morning, on Friday, January 19, 2024, at 8:12 a.m., another NEF was sent out alerting the parties’ counsel that the NEF transmitted late on January 18, 2024, was “RESCINDED” and that Appellants’ 59(e) Motion “was not filed.” **Exhibit I.**

On January 31, 2024, the Special Referee wrote to counsel and asked whether Respondents “plan[ne]d to submit a written response to the Motion to Reconsider.” **Exhibit G** at 2–3.

Later that same day, Respondents’ counsel responded to the Special Referee and informed the Special Referee and Appellants’ counsel that the “reject[ion] by the clerk” of Respondents’ Motion needed to be “resolved as a threshold matter” and attached to his email a copy of **Exhibit I**, the January 18, 2024, NEF rescinding acceptance of Appellants’ 59(e) Motion. **Exhibit G** at 1.

Later that same day, Appellants’ counsel responded, stating,

I spoke with the clerk's office and learned that my office inadvertently filed and paid for duplicate motions in the same transaction. They do not have a way of partially rejecting du[p]licate filings or overpayments, so they had to reject both. I will be resubmitting the same filing and single fee payment with them shortly.

Id.

Appellants did not “resubmit” their Motion for Reconsideration through the E-Filing system. No other NEF regarding this Motion was transmitted by the Court. Today, the Public Index omits any reference to Appellants’ Motion to Reconsider. **Exhibit J.**

On April 24, 2024, Appellants filed and served their Notice of Appeal.

DISCUSSION

Appellants’ putative and untimely appeal should be immediately dismissed for failure to timely file a Notice of Appeal. Following the entry of the Special Referee’s Final Order, Appellants could have sought relief through the timely filing of a Rule 59(e) Motion but failed to do so. True to lackadaisical form, Respondents then waited over three and a half months to file their Notice of Appeal. This notice was untimely, and the appropriate remedy is dismissal. Appellants’ unserious approach to litigation does not warrant special treatment. Appellants unlawfully developed their property, disregarded Respondents’ concerned communications for over a year pre-suit, and attempted to evade service of this “suit at law . . . a serious effort on the part of adult human beings to administer justice.” *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992). Appellants then failed to file an answer after a multitude of service methods before the Final Order and a money judgment was entered against them. Nothing in Appellants’ litigation conduct justifies looking past their untimely filing.

Rule 203(b)(1), SCACR provides that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or

judgment.” “The notice of appeal from an order or judgment issued by a . . . special referee shall be served in the same manner as provided by Rule 203(b)(1).” Rule 203(b)(4), SCACR.

The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice.

Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004).

Still, if a party makes a “timely motion . . . to alter or amend the judgment [under Rule 59, SCRCP] . . . the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.” Rule 203(b)(1), SCACR.

In conjunction with Rule 5, Rule 59, SCRCP sets forth the requirements for timely moving to alter or amend a judgment. “A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of order.” Rule 59(e), SCRCP. Rule 5(d), SCRCP provides that “[a]ll papers required to be served upon a party. . . shall be filed with the court within five (5) days after service thereof.” Compliance with both rules is necessary for a timely filing.¹

Rule 5(d), SCRCP provides the general rule that “[u]pon failure of a party to file. . . [a] motion[] . . . the court may permit filing or proceed as though the same had not been served.” But this authority is restricted in the context of a Rule 59(e) motion because a “trial court” lacks “any

¹ And “[a] party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.” Rule 59(g), SCRCP. In *Gallagher v. Evert*, this Court observed that “[t]he notes to Rule 59, SCRCP, indicate that subsection (g) was added ‘to help insure the judge is promptly notified that the motion has been filed.’ There is no indication that the failure to transmit a copy of the motion to the circuit court [judge] affects the tolling provisions of Rule 203(b)(1), SCACR.” 353 S.C. 59, 63, 577 S.E.2d 217, 219 (Ct. App. 2002). But, here, it is not disputed that Appellants timely *served* their “Motion to Reconsider” under Rule 59(e). In any event, to trigger the stay provisions of Rule 203(b)(1), SCACR, it is not the timeliness of service, but rather the *filing* of a Rule 59(e) motion that is essential.

power to grant the moving party an extension of time in which to file a Rule 59(e) motion.” *Overland, Inc. v. Nance*, 423 S.C. 253, 256–57, 815 S.E.2d 431, 433 (2018); *see also Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006) (“Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.”); *Leviner v. Sonoco Prod. Co.*, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) (“When no timely Rule 59 motion [is] made nor timely sua sponte order filed under Rule 59(e)” a subsequent order by a trial judge is “a nullity because the trial judge no longer ha[s] jurisdiction over the matter.”).

In recent years, the Supreme Court has modified how documents are typically filed with the Clerk of Court under Rule 5(e), SCRCP. On October 28, 2015, the Supreme Court issued an Order “adopt[ing]” the “[South Carolina] Electronic Filing Policies and Guidelines” (“SCEF”) that would be “effective upon the adoption of E-Filing on a county-by-county basis as set forth in future Administrative Orders of” the Court. *In re S.C. Elec. Filing Pol'ys & Guidelines*, 415 S.C. 1, 780 S.E.2d 600 (2015). “The electronic transmission of a document to the E-Filing System in accordance with [the SCEF] constitutes the filing of that document in accordance with Rule 5(e), SCRCP.” SCEF § 4(a), 415 S.C. at 6, 780 S.E.2d at 602.²

The SCEF provide a straightforward mechanism for addressing technical problems with document filing that occasionally arise. “Where a Technical Failure of the Electronic Filing System or a technical difficulty prevents an Authorized E-Filer from submitting a document for Electronic Filing, and the filing of the document is required by the SCRCP, order of the court, or

² SCEF Section 2(b) provides that “[u]nless otherwise excluded by these Policies and Guidelines or by Order of the Supreme Court or the Chief Justice, all filings in all civil cases commenced or pending in any E-Filing county after the effective date of the Pilot Program shall be E-Filed if the party is represented by an attorney.” 415 S.C. at 3, 780 S.E.2d at 601. On November 27, 2017, the Court of Common Pleas in Kershaw County became an E-Filing court. Order 2017-11-27-01 *RE: Expansion of Electronic Filing Pilot Program - Court of Common Pleas*, Appellate Case No. 2015-002439.

South Carolina law on the day of the Technical Failure or technical difficulty, the E-Filer may” elect from two options. SCEF § 9(d), 415 S.C. at 13, 780 S.E.2d at 606.

First, the filer “may traditionally file the document by physically delivering the document, together with any required filing fee, to the county Clerk of Court’s office during normal hours of operation.” *Id.* § 9(d)(1).

Second, when the “E-Filer is unable to physically deliver the document to the clerk of court pursuant to paragraph (d)(1), the Authorized E-Filer may preserve the time for filing by utilizing an alternative method of submission” including “a certification signed by the Authorized E-Filer” attesting to the technical problems encountered. The E-Filer “must serve the certification and the entire document on all other parties to the case.” *Id.* § 9(d)(2), 415 S.C. at 13–14, 780 S.E.2d at 606. But,

THE ALTERNATIVE METHOD OF SUBMISSION IS NOT IN ITSELF A PROPER FILING. The *submission shall be effective only to preserve the time for filing*, and the subsequent E-Filing will be deemed timely filed if E-Filing is accomplished within one (1) business day after the Technical Failure is remedied, or, in the case of an alleged technical difficulty, the *next business day*. The E-Filer *must also pay* any required filing fees at that time.³

Id. 415 S.C. at 14, 780 S.E.2d at 607 (2015) (bolded emphasis original).

Here, Appellants’ Rule 59(e) Motion has yet to be filed rendering this appeal untimely. Apparently Appellants suffered an “inadvertent[]” technical difficulty with their attempt to file

³ Further demonstrating that Appellants never properly filed their Rule 59(e) Motion, there is no indication that Appellants paid the fee of twenty-five dollars “assessed for every motion made in the court of common pleas . . . [that] **must** accompany each motion filed” under S.C. Code Ann. § 8-21-320 (emphasis added) and Appellants neither sought nor received permission to proceed *in forma pauperis*. See also *Martin v. State*, 321 S.C. 533, 535, 471 S.E.2d 134, 134–35 (1995) (“In the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions.”).

their Rule 59(e) Motion on January 18, 2024, **Exhibit G** at 1, and thus, under the SCEF, their Rule 59(e) Motion was not filed and “not . . . part of the court record. *See* SCEF § 4(d)(2), 415 S.C. at 7, 780 S.E.2d at 603. When, on the morning of Friday, January 19, 2024, the Clerk of Court rescinded acceptance of Appellants’ attempted filing of their Rule 59(e) Motion, **Exhibit I**, Appellants could have availed themselves of the SCEF’s savings provision permitting the “preserv[ation of] the time for filing” so long as “E-Filing is accomplished . . . the next business day,” here, Monday, January 22, 2024. SCEF § 9(d)(2), 415 S.C. at 114, 780 S.E.2d at 608. But Appellants took no such action.

Indeed, over a week later, on Wednesday, January 31, 2024, Respondents’ counsel first raised this “threshold” issue with Appellants and the Special Referee. **Exhibit G** at 1. In response, Appellants’ counsel asserted her office had “inadvertently” experienced problems with the filing, but assured the Special Referee and Respondents’ counsel that Appellants would be “resubmitting the same filing . . . shortly.” *Id.* But Appellants took no effective follow-up action in the following days.

Appellants’ Rule 59(e) Motion still has not been filed. However, by January 31, 2024, it was already too late for Appellants to file their Rule 59(e) Motion under the SCEF (or any other authority). On January 31, 2024, the Special Referee had already “lost jurisdiction over [the] case” because the “time to file post-trial motions” had already “elapsed,” *Russell*, 370 S.C. at 20, 633 S.E.2d at 730. As such, the Special Referee lacked “any power to grant” Appellants “an extension of time in which to file a Rule 59(e) motion,” *Overland*, 423 S.C. at 256–57, 815 S.E.2d at 433, and any subsequent orders would constitute a “nullity because the [Special Referee] no longer had jurisdiction over the matter.” *Leviner*, 339 S.C. at 494, 530 S.E.2d at 128. Without a timely filed Rule 59(e) Motion, Appellants’ notice of appeal is untimely because it was filed well over 30 days

after the entry of the Final Order. Accordingly, this Court lacks jurisdiction over this appeal and should dismiss it.

CONCLUSION

Appellants failed to timely file their Rule 59(e) Motion and pay the requisite filing fee. Accordingly, the period between service of their Rule 59(e) Motion on January 18, 2024, and Appellants' filing of their Notice of Appeal on April 24, 2024, was not tolled under Rule 203(b)(1), SCACR. As such, this Court should immediately dismiss this appeal under Rule 240, SCACR.

Respectfully submitted,

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May 29, 2024

EXHIBIT

“A”

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Joseph & Lauren Jaco	)	
	)	Case No.: 2022-CP-_____
Plaintiffs,	)	
	)	
v.	)	COMPLAINT
	)	(JURY TRIAL DEMANDED)
	)	
J.N. Green & Associates, LLC, Big Blue	)	
Express, LLC, and Joe N. Green,	)	
	)	
Defendants.	)	

Comes now Plaintiffs, Joseph and Lauren Jaco, who, complaining of the Defendants, would respectfully show upon this Court as follows:

PARTIES, JURISDICTION & VENUE

1. Plaintiffs, Joseph and Lauren Jaco, are husband and wife and citizens and residents of Richland County, South Carolina, but they also own a home at the real property located at 848 Tookie Doo Lane, Elgin, South Carolina, 29045, identified by Kershaw County Parcel Identification Number 305-00-00-009.

2. Defendant J.N. Green & Associates, LLC ("J.N. Green & Associates"), is upon information and belief a company organized and existing under South Carolina law.

3. Defendant Big Blue Express, LLC, ("Big Blue Express") is upon information and belief a company organized and existing under South Carolina law.

4. Defendant Joe N. Green ("Green") is upon information and belief a citizen and resident of Kershaw County, South Carolina.

5. Upon information and belief, Defendants J.N. Green & Associates and Big Blue Express are shell companies totally dominated and controlled by Defendant Green and these companies merely serve as the alter ego of Defendant Green and each other.

6. This Court has personal and subject matter jurisdiction over the parties to this case.

7. Venue is appropriate before this Court because Kershaw County is where Defendant Green resides; it is where the facts and circumstances giving rise to this action occurred; and it is where the real property that is the subject of this action is located.

FACTS

8. The Jacos own a comfortable and modest home, set in the tranquil woods, on approximately 25-acres, that has been in Mrs. Jaco's family for decades.

9. Near the southwest corner of the Jaco property is a small pond, just over an acre in size. The pond is fed by a stream that runs generally from the north to the south, and once passing through the Jacos' pond, flows into Flat Branch creek to the south.

10. Both the stream that feeds the Jaco pond and the pond on the Jacos' property are characterized under the law as wetlands and constitute waters of the United States and of the State of South Carolina.

11. Today, adjacent to Tookie Doo Lane (State Road S-28-334) and generally to the north and west of the Jaco pond sits real property that is now or formerly owned in the name of Defendant J.N. Green & Associates according to records in the Kershaw County Register of Deeds office and such property is identified with the Kershaw County Parcel Identification Numbers: 305-00-00-001; 305-00-00-105; 305-00-00-106; 305-00-00-107; 305-00-00-108.

12. The five parcels listed above used to constitute a single parcel within the records of the Kershaw County Register of Deeds office. Historically, this acreage was covered with trees and other established vegetation.

13. On or about May 3, 2021, Defendants Green and J.N. Green & Associates applied for approval from Kershaw County to develop a "Minor Subdivision" at the property adjacent to Tookie Doo Lane referenced above (hereinafter, the "Tookie Doo Subdivision" or "Subdivision").

14. In seeking approval for the Subdivision from Kershaw County, Defendants submitted a subdivision sketch (a true copy of which is appended as **Exhibit A** and incorporated herein by reference) depicting plans to clear just over 10 acres of land and erect 7 single-family homes.

15. Overhead imagery indicates that even before applying for approval from Kershaw County for the Subdivision, Defendants had already, in truth, started cutting down trees and disturbing this land beginning as early as February 2021.

16. By January 2022, Defendants had cleared a great portion of land for the Subdivision and had substantially completed construction on three single family homes in the Subdivision.

17. The Subdivision sits uphill from the stream that flows downhill across the Jacos' land and feeds the Jacos' pond.

18. When Defendants cleared land for the Tookie Doo Subdivision, they cut down most of the trees on the land; removed most of the rest of the vegetation; and disturbed and exposed substantially all the cleared land directly to the elements.

19. Before Defendants began to clear land for the Subdivision, they did not seek or receive coverage under the South Carolina Department of Health and Environmental Control ("DHEC") National Pollutant Discharge Elimination System ("NPDES") General Permit for Stormwater Discharges from Construction Activities as required by pertinent law.

20. Before Defendants began to clear land for the Subdivision, they did not seek or receive any stormwater discharge permits from any other governmental or municipal body.

21. Before and after Defendants cleared land for the Subdivision, they failed to implement broadly accepted industry best management practices as required under federal, state, and local law.

22. Before Defendants began to clear land for the Tookie Doo subdivision, the Jacos' pond and the stream that fed it contained aesthetically pleasing clear water that supported a healthy environment for fish, plants, and other flora and fauna.

23. Indeed, even after the "1000-year flood" hit the midlands in October 2015, the Jacos' pond remained substantially clear and free from turbid water, as depicted below:



Fig. 1: *An overhead image of the Jacos' property and surrounding area on October 18, 2015, with yellow circle overlay depicting the Jacos' pond.*

24. After the Defendants began to clear land for the Subdivision, increased amounts of stormwater, most of which contained significant amounts of soil, dirt, sand, sediment, and other

pollutants flowed over and across the Subdivision, into the surrounding watershed, and flowed directly into the stream and pond on the Jacos' property.

25. As a result, the Jacos' pond is now consistently turbid—which, as demonstrated in Figure 2, is in stark visual contrast to the other ponds in the area that do *not* receive the turbid, polluted water runoff coming from Defendants' subdivision.



Fig. 2: An overhead image of the Jacos' property and surrounding area on January 22, 2022, with yellow circle above the Jacos' pond and red rectangle over cleared area of Defendants' Tookie Doo subdivision.

26. Before Defendants created their Subdivision, the Jacos enjoyed a host of recreational and leisure activities on their land utilizing their stream and pond.

27. Now, due to the illegal actions and omissions of Defendants, these once pristine waterways are eyesores. In essence, as illustrated in Figures 3 and 4, Defendants have converted the Jacos' pond into an illegal dumping and holding ground for eroded soil, polluted and turbid stormwater, and other pollutants flowing directly from Defendants' nearby for-profit Subdivision.



Fig. 3: *A depiction of the Jacos' Pond after a rain event.*



Fig. 4: *A depiction of the stream feeding the Jacos' pond during a rain event—with the Jacos' pond depicted on the far lefthand side.*

28. Upon information and belief, by avoiding the costs and expenses of properly developing their land, Defendants have secured significant financial benefits.

29. Throughout 2021 and into 2022, individuals employed by and acting on behalf of DHEC inspected the Subdivision and surrounding area on numerous occasions. As a result of what they observed, DHEC issued three warning letters to Defendants and a Notice of Alleged Violation and Enforcement Conference.

30. Effective September 26, 2022, DHEC and Defendant J.N. Green & Associates entered into a "Consent Order" stipulating that J.N. Green & Associates was in violation of state law by initiating a "land disturbance activities prior to obtaining a permit from" DHEC and that J.N. Green & Associates was obligated to pay a \$4,000.00 civil penalty. Upon information and belief, a true and accurate copy of this Consent Order is appended as **Exhibit B** and incorporated herein by reference.

31. Upon information and belief, in or around August 2022, Defendant Green, on behalf of Defendant J.N. Green and Associates, sent a letter to DHEC, that stated it was "in response to the Consent Order for 800 Tookie Doo Lane[,] Elgin, SC 29045." Appended to the five-page single-spaced letter were three additional pages: (i) a one-page excerpt from "Environmental Complaint Evaluation" apparently authored by Inspector "Roxanne Stiglitz;" (ii) email correspondence between Defendant Green as "CEO" of "Big Blue Express, LLC," and various DHEC-employed staff dating to January and February 2022; and (iii) an email from counsel for the Jacos to Defendant Green dated September 23, 2021. Upon information and belief, a true and accurate copy of this letter is appended as **Exhibit C** and incorporated herein by reference.

32. In the foregoing letter, Defendant Green, without any factual basis, asserted that the Jacos' pond was "extremely dirty prior" to construction activities taking place at the Subdivision and asked the hypothetical question: why would the Jacos "lie, is it because they didn't want neighbors or something more sinister?"

33. To the best of their knowledge and recollection, Plaintiffs have never met Defendant Green or anyone else employed by the other Defendants.

34. Instead, on September 23, 2021, counsel for the Jacos wrote to Defendant Green via email and informed him that the Jacos' pond and stream was "receiving a great deal of turbid, muddy stormwater flow from your recently cleared construction site during/after significant rain events" and that they were staying "very muddy and turbid between rain events."

35. Counsel's September 23, 2021, email further expressed the Jacos' willingness to work with Defendant Green "so long as you are taking concrete steps to address their concerns."

36. On or about February 4, 2022, counsel for the Jacos again wrote to Defendant Green in a letter sent as an email attachment (and via US Mail) and explained in the letter that "[w]hatever steps you have taken to control the outflow of turbid, polluted water from [the Subdivision] have been insufficient." Appended to counsel's letter to Defendant Green were several photographs of the Jacos' pond and stream taken in recent weeks. A true and accurate copy of this correspondence and its attachments is appended hereto as **Exhibit D** and incorporated herein by reference.

37. On or about February 7, 2022, Defendant Green, in response to the foregoing and writing as "CEO" of "Big Blue Express, LLC" wrote to counsel for the Jacos and his paralegal asking to have counsel call him on the telephone to discuss the Jacos' demand.

38. In an email response to Defendant Green later that afternoon, counsel for the Jacos informed Mr. Green of the following:

. . . If you would like to discuss details about how we might be of assistance as you stop the flow of turbid water from your site; fix the underlying issues on your site causing turbid water to leave your construction site; and fix the harm that has already befallen my clients' ponds, I would be glad to confer with you over the telephone about gaining access to my clients' property, etc. But before we do that, we'd like to see some concrete proposals in writing first. My clients have no desire to shut down your business, but they also did not ask you to use their formerly beautiful pond as a detention pond rent-free. . . .

A true and accurate copy of these email communications is appended hereto as **Exhibit E** and incorporated herein by reference.

39. Since the foregoing communication took place on February 7, 2022, neither Defendant Green nor anyone else on behalf of the Defendants have contacted the Jacos or their legal counsel.

40. Instead, in or around September 2022, Defendants cleared additional acreage at the subdivision—further exacerbating the inflow of highly turbid, polluted stormwater onto the Jaco property and its stream and pond. As such, as of Saturday, October 8, 2022, Figure 4 is what the Jacos' pond looks like—over a *year* after the Jacos first asked Defendant Green to stop the negligent, reckless, and unlawful polluting behavior that was causing them harm.



Fig. 5: *A depiction of the Jacos' Pond on October 8, 2022.*

FOR A FIRST CAUSE OF ACTION
(Negligence)

41. Every prior allegation is incorporated as if set forth verbatim.

42. Defendants owe Plaintiffs each a duty not to permit Defendants' land to remain in an altered state if such altered state creates a condition the natural and foreseeable result of which will result in injury to the Plaintiffs' property

43. Here, Defendants' duty requires it to prevent stormwater discharge from its property laden with Pollutants from harming Plaintiffs' property.

44. Defendants breached this duty and continue to do so by discharging and failing to prevent the discharge of stormwater laden with pollutants onto Plaintiffs' property and failing to manage, mitigate or otherwise control its polluting activities.

45. Defendants knew or should have known that their acts and omissions were virtually certain to cause stormwater laden with pollutants to be discharged into the downhill stream and onto Plaintiffs' property, thereby harming Plaintiffs.

46. Defendants' acts and omissions actually resulted in harm to Plaintiffs and their property and the environment.

47. Defendants have been on notice of the harm it has caused Plaintiffs yet has failed and refused to cease its discharge of polluted stormwater.

48. Despite Defendants' actual or constructive knowledge of the harm it was causing to Plaintiffs, it has failed to abate the harm it is causing, even failing to take reasonable steps for over a year after being made aware of the damage they have caused and continue to cause to the Plaintiffs' property.

49. As a direct and proximate result of Defendants' acts and omissions, and as a direct and proximate result of Defendants' negligence, gross negligence, recklessness, and willful and wanton behavior, Plaintiffs have and are continuing to suffer damage.

50. Defendants have acted willfully, wantonly, and in reckless disregard for Plaintiffs' rights in their failure to properly manage stormwater and pollutants on their property and continue to act in callous disregard to Plaintiffs' rights and property interests, entitling Plaintiffs to recover actual damages and punitive damages from Defendants.

FOR A SECOND CAUSE OF ACTION
(Nuisance and Continuing Nuisance)

51. Every allegation is incorporated as if set forth verbatim.

52. Defendants' improper control of stormwater discharge from its property laden with pollutants resulting in the harms described above, constitutes a substantial and unreasonable interference with Plaintiffs' use and enjoyment of their property.

53. Defendants knew or should have known of the existence of this nuisance but have taken no steps to abate the harms suffered by Plaintiffs.

54. Plaintiffs have suffered damages as the proximate result of Defendants' improper land clearing operations, management of its construction site, and stormwater discharges.

55. Defendants' activities constitute a past, present, and ongoing nuisance, and Plaintiffs are entitled to recover actual damages as a result of Defendants' nuisance.

56. Plaintiffs are further entitled to injunctive relief and punitive damages because of Defendants' past, present and continuing willful, wanton and reckless disregard for the rights of the Plaintiffs.

FOR A THIRD CAUSE OF ACTION
(Trespass and Continuing Trespass)

57. Every allegation hereinabove is incorporated as if set forth verbatim.

58. Plaintiffs are in legal possession of their property.

59. Defendants have made a voluntary entry or caused harmful material to enter and flow onto Plaintiffs' property by permitting their own improperly controlled stormwater laden with pollutants to be discharged onto Plaintiffs' property.

60. This entry was without Plaintiffs' permission. Defendants' actions constitute a trespass and continuing trespass by encroachment of water, sediment, pollutants and other matter onto Plaintiffs' property.

61. Defendants knew or should have known that its activities in failing to properly manage their construction and land disturbance activities in close proximity to a stream and Plaintiffs' property would, to a substantial certainty, result in the discharge of stormwater laden with soil, sediment, and pollutants onto the property of Plaintiffs.

62. Defendants have known of the existence of these trespasses but have taken no effective steps to abate the flow of stormwater laden with soil, sediment, and pollutants onto Plaintiffs' properties during and after any major rainfall event, nor have they taken any steps to mediate or mitigate the harm that has already befallen Plaintiff's property.

63. Defendants have acted and continue to act willfully, wantonly, and in reckless disregard for Plaintiffs' rights in discharging improperly controlled stormwater, laden with pollutants onto Plaintiffs' properties entitling Plaintiffs to the recovery of their actual damages and punitive damages from Defendants.

WHEREFORE, having complained of Defendants, Plaintiffs pray the Court enter judgment awarding them all available and appropriate relief, including:

- a) Temporary and Permanent injunctive relief to prevent recurrence of Defendants' harmful acts;
- b) Actual damages, including incidental and consequential damages, in an amount to be determined by a jury;

- c) Punitive damages in an amount to be determined by a jury;
- d) Attorneys' fees, costs, and litigation expenses; and,
- e) Such other and further relief as the court may deem just and proper.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Ian T. Duggan

Ian T. Duggan, Bar. No. 80074

Harry A. Dixon, Bar. No. 103509

P.O. Box 1390

1812 Lincoln Street, Second Floor (29201)

Columbia, South Carolina 29202

Ph: 803-404-6900

Fax: 803-404-6902

ianduggan@callisontighe.com

harrydixon@callisontighe.com

ATTORNEYS FOR PLAINTIFFS

October 12, 2022

Columbia, South Carolina

EXHIBIT A

NOTES:

1) BEARING BASE IS MAGNETIC THIS DATE
SCALE: ONE INCH EQUALS 60 FEET

2) A PORTION OF TMS# 305-00-00-001

LOCATION:

FROM ELGIN, SC, AT THE INTERSECTION OF
U.S. HIGHWAY #1, AND CHURCH STREET,
TRAVEL NORTHWEST ON CHURCH STREET
FOR 0.1 MILES, BEAR LEFT ON SESSIONS ROAD,
CONTINUE NORTHWEST FOR 5.4 MILES. TURN
LEFT ON TOOKIE DOO LANE. TRAVEL 0.4 MILES
TO SITE ON LEFT.

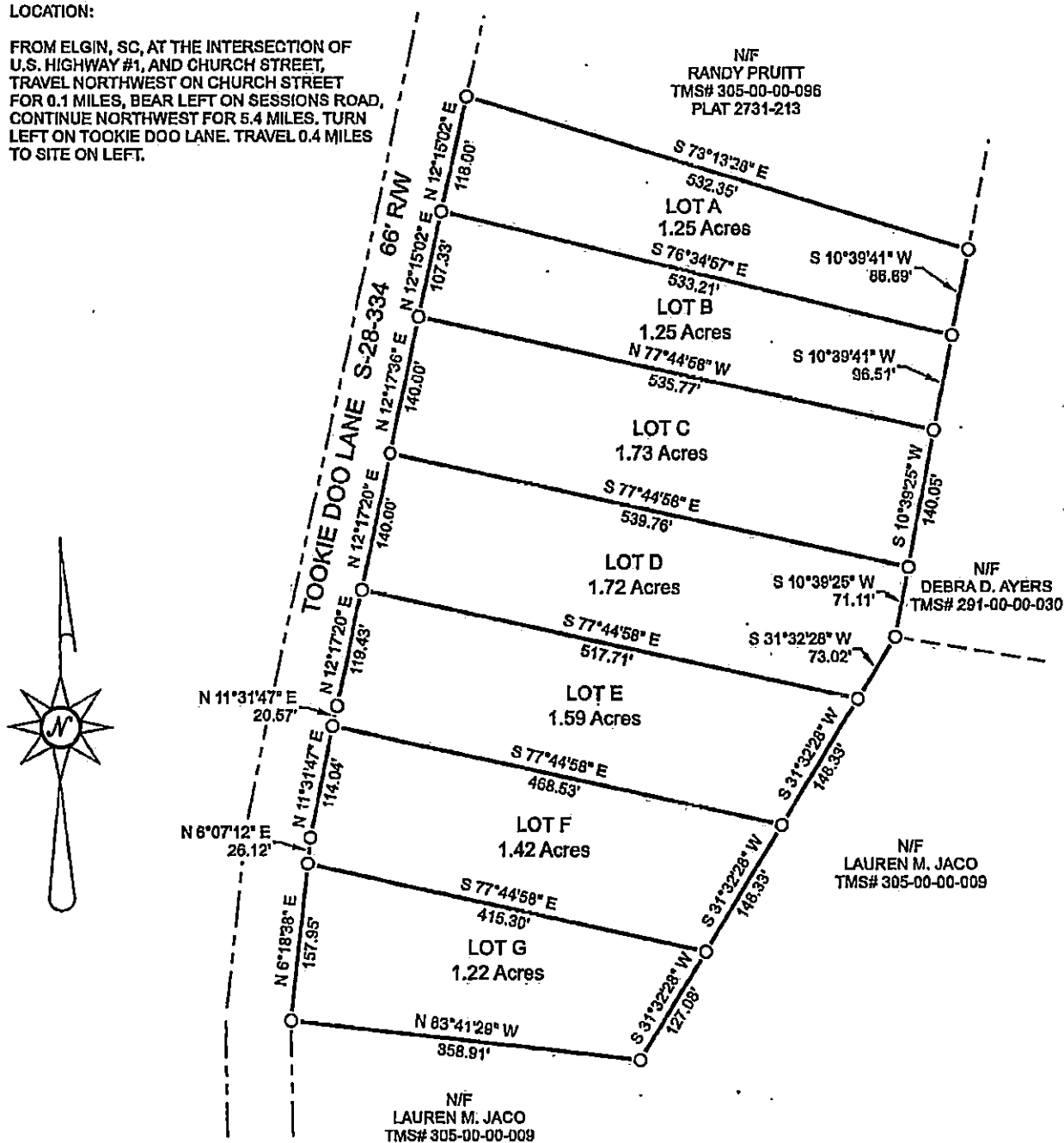
LEGEND



Property Corner



Public Right-of-Way



SUBDIVISION SKETCH
APRIL 26, 2021 FOR:

J. N. GREEN & ASSOCIATES, LLC.

WATEREE TOWNSHIP - KERSHAW COUNTY -
SOUTH CAROLINA



EXHIBIT B

**THE STATE OF SOUTH CAROLINA
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

**IN RE: JN GREEN & ASSOCIATES, LLC
800 TOOKIE DOO LANE
KERSHAW COUNTY**

**CONSENT ORDER
22 - 057 - W**

The South Carolina Department of Health and Environmental Control (Department) and JN Green & Associates (JNG&A) have agreed to the issuance of this Consent Order to include the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. JNG&A owns property and is responsible for land disturbance activities at 800 Tookie Doo Lane (Site), Parcel numbers 305-00-001, 305-00-105, and 305-000-106, located in Kershaw County, South Carolina. The total area disturbed is six and three tenths (6.3) acres.
2. On July 22, 2021, the Department received a complaint that land clearing was being conducted on the Site without a permit from the Department and with no stormwater, sediment, and erosion control devices installed, with alleged sediment leaving the Site and impacting a nearby pond.
3. On July 22, 2021, Department staff conducted an inspection of the Site, documenting the inspection and deficiencies with photographs. The following deficiencies were noted in the cover letter of the inspection report:
 - a. Sediment and other pollutants were not being controlled from leaving the Site;
 - b. Tracking of sediment onto other streets was not controlled;

- c. Erosion and sediment controls were not installed;
- d. The Site did not have the necessary BMPs to control pollutants;
- e. Soil stabilization was not implemented or maintained;
- f. Washouts were not located, installed, or maintained;
- g. A qualified person is not inspecting the Site;
- h. There was no rain gauge or appropriate alternative on Site;
- i. No inspection reports were on Site;
- j. No Stormwater Pollution Prevention Plan (SWPPP) was on Site; and
- k. Land disturbance on Site without a Permit from the Department.

A copy of the inspection report was mailed to JNG&A via first class mail. An agent for JNG&A asserts the letter was not received due to an incorrect mailing address.

4. On August 6, 2021, Department staff visited the Site and observed no stormwater, sediments, and erosion control devices installed and the nearby pond had evidence of disturbance.
5. On August 9, 2021, Department staff issued a second Warning Letter to JNG&A via first class mail informing that land disturbing activities at the Site were occurring without NPDES permit coverage for stormwater discharges, placing JNG&A in violation of the Pollution Control Act. The letter instructed JNG&A to discontinue work at the Site other than the installation and maintenance of stormwater, sediment, and erosion control devices. A response to the letter was requested withing three (3) working days. A copy of the inspection report was mailed to JNG&A via first class mail. An agent for JNG&A asserts the letter was mailed to an incorrect address, but an occupant of the office building hand delivered the mail parcel to him.

6. On August 13, 2021, an agent for JNG&A contacted Department staff via telephone. Department staff informed the agent that JNG&A was required to submit a Notice of Intent to obtain NPDES permit coverage for the activities at the Site and needed to install Best Management Practices (BMPs) prior to continuing any land disturbing activities. The agent stated JNG&A would comply with regulations and had ordered silt fencing for the Site. The agent for JNG&A asserts that he informed the Department at this time that the mailing address being used was incorrect as it did not include the specific suite for the office.
7. On August 30, 2021, Department staff visited the Site and observed silt fencing was installed along the edge of the Site facing a stream. Department staff observed silt fencing was down in some areas and evidence of fine sediments leaving the Site. Department staff documented the observations with photographs.
8. On September 30, 2021, Department staff visited the Site and observed silt fencing was installed along the edge of the Site facing a stream. Department staff observed silt fencing was down in multiple locations and was not being maintained, allowing sediment to leave the Site. Department staff documented the observations with photographs.
9. On October 1, 2021, Department staff issued a third Warning Letter to JNG&A via first class mail informing that land disturbing activities at the Site were occurring without NPDES permit coverage for stormwater, placing JNG&A in violation of the Pollution Control Act. The letter instructed JNG&A to discontinue work at the Site other than the installation and maintenance of stormwater, sediment, and erosion control devices. The letter stated noncompliance may result in a referral for enforcement action.
10. On November 15, 2021, the Department received a Notice of Intent (NOI) and permit application package from JNG&A.

11. On December 30, 2021, Department staff visited the Site and observed silt fencing was installed along the edge of the Site facing a stream. Department staff observed silt fencing needed maintenance in some areas but there was no evidence of sediment leaving the Site. Department staff documented the observations with photographs.
12. On February 10, 2022, Department staff visited the Site and observed BMPs being maintained and insufficient stabilization at the Site. Department staff documented the observations with photographs.
13. On April 11, 2022, Department staff visited the Site and observed silt fencing was down in multiple locations and was not being maintained. Department staff also observed insufficient stabilization at the Site. Department staff further observed additional construction activity prior to permit coverage taking place at the Site. Department staff documented the observations with photographs.
14. On April 13, 2022, the Department issued a Notice of Alleged Violation and Enforcement Conference to JNG&A.
15. On May 11, 2022, Department staff held an enforcement teleconference with JNG&A to discuss the land disturbing activity. An agent for JNG&A stated there were issues with the Department's warning letters being delivered but that JNG&A has always responded promptly to the Department's requests. The agent stated there have been multiple attempts at stabilization and additional BMPs were installed to control sediment from leaving the Site. The agent further stated they believed the BMPs on Site are being tampered with by an outside source allowing BMPs to fail in some locations. The agent stated he did initiate construction while awaiting the issuance of the permit due to contractual agreements with the

equipment rentals and the homeowners. The parties discussed the possibility of a Consent Order containing a civil penalty.

16. On August 24, 2022, the Department granted coverage for NPDES General Permit for Stormwater Discharges from Construction Activities to JNG&A under permit number SCR10ZB4S.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Department reaches the following Conclusions of Law:

1. JN Green & Associates, LLC violated Water Pollution Control Permits, S.C. Code Ann. Regs. 61-9.122.26 (b)(14)(x) in that it initiated land disturbing activities prior to obtaining a permit from the Department.
2. The Pollution Control Act, S.C. Code Ann. § 48-1-330, provides for a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day of violation for any person violating the Act or any rule, regulation, permit, permit condition, final determination, or Order of the Department.

NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED, pursuant to the Pollution Control Act, S.C. Code Ann. §§ 48-1-50 and 48-1-100, that JN Green & Associates, LLC shall:

1. Within fifteen (15) days of the execution date of this Order, submit to the Department a notarized document confirming that the appropriate inspections are being performed on Site by a qualified individual as required by the Construction General Permit SCR100000.
2. Within fifteen (15) days of the execution date of this Order, submit to the Department a

report signed by a Professional Engineer, licensed in the State of South Carolina, stating that work has begun on the Site and BMPs are being installed in compliance with the approved SWPPP and the associated Permit requirements.

3. Within sixty (60) days of the execution date of this Order, submit to the Department a report signed by a Professional Engineer, licensed in the State of South Carolina, stating the Site and its BMPs are in compliance with the approved SWPPP and associated Permit requirements.
4. Within thirty (30) days of completion of permanent stabilization of the Site, submit to the Department an approvable and administratively complete Notice of Termination (NOT), signed and sealed by a Professional Engineer licensed in the State of South Carolina. The Department reserves the right to visit the Site before issuing final approval letter of the NOT.
5. Within thirty (30) days of the execution date of this Order, pay to the Department, a civil penalty in the amount of four thousand dollars (\$4,000.00).

PURSUANT TO THIS ORDER, communications regarding this Order and its requirements, including civil penalty payments, shall include the Order number and be addressed as follows:

Brandon Kersbergen, Enforcement Project Manager
 SCDHEC, Bureau of Water - WP Enforcement Section
 2600 Bull Street
 Columbia, South Carolina 29201

IT IS FURTHER ORDERED AND AGREED that failure to comply with any provision of this Order shall be grounds for further enforcement action pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-330, to include the assessment of additional civil penalties.

IT IS FURTHER ORDERED AND AGREED that this Consent Order governs only the civil liability to the Department for civil sanctions arising from the matters set forth herein and constitutes

the entire agreement between the Department and JN Green & Associates, LLC with respect to the resolution and settlement of these civil matters. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth within this Order.

THE PARTIES UNDERSTAND that the “execution date” of the Order is the date the Order is signed by the Director of Environmental Affairs.

[Signature Page Follows]

FOR THE SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL CONTROL

Myra C. Reece
Myra C. Reece
Director of Environmental Affairs

Date: 9/26/2022

Jennifer R. Hughes
Jennifer R. Hughes, Chief
Bureau of Water

Date: 9/23/2022

Charles Williams
Charles Williams, Director
Water Pollution Compliance and Enforcement Division
Bureau of Water

Date: 23 Sept 22

Reviewed By:

Den Mall
DHEC Legal Counsel

Date: 9-26-2022

WE CONSENT:

JN GREEN & ASSOCIATES, LLC

Joe Green FOR JN GREEN & ASSOCIATES LLC
Joe Green, Site Owner

Date: 9/16/22

EXHIBIT C



**J.N. Green
& Associates LLC**
Licensed Residential Builder

10817-B TWO NOTCH ROAD
ELGIN, SC 29045
(803)556-5404
bigblue2000@msn.com
DHEC Response Letter

This letter is in response to the Consent Order for 800 Tookie Doo Lane Elgin, SC 29045

1. J.N. Green & Associates LLC owns the original parcel 10.2 acres. The parcel was sub divided into 7 lots some of which were already sold prior to any disturbance.
2. On July 22 2021 DHEC did receive a complaint of land clearing from Randy Pruitt. Randy Pruitt owns the property next to JN Green & Associates LLC. Randy Pruitt is also a retired Richland County Planning and Zoning Administrator for more than 30 years, who has worked alongside Columbia DHEC; both branches reside in the same building. This work relationship creates an immediate conflict of interest. Prior to Mr. Pruitt's complaints he approached our company for the sale of a portion of this parcel to provide a buffer between the homes I intended on building. We refused the sale he became extremely upset and vow to make our companies home building process we quote "a living hell". We will address why we discussed Mr. Pruitt later. The complaint was justified we did not have a disturbance permit. A little back ground on our company we are owned by a minority retired military personnel with more than 20 years of active service also a disable veteran. This project is by far the largest we have taken on and we were unaware of the need for a disturbance permit.
3. On July 23 2021 DHEC did conduct an inspection and we were in violation of letters A-K. The copy of the report was mailed to the incorrect address. The report was mailed to 10817 Two Notch Road Elgin, SC 29045 our correct address is 10817 B Two Notch Road Elgin, SC 29045. There are multiple suites in the building, some of which are vacant this is probably where the report went.
4. On August 6 2021 DHEC again visited our site no corrective activity had been done because our company was still unaware that an inspection had taken place and that we needed a permit.
5. On August 9 2021 DHEC sent a second Warning letter to the wrong address.
6. On August 13, 2021 an occupant of the office building delivered the letter from DHEC to our suite. We immediately contacted Roxanne Stiglitz from Sumter County DHEC. We informed her she had the incorrect address and that was the reason why we hadn't responded to any of her correspondence. She **requested** our company to stop all work until we installed a silt fence and



**J.N. Green
& Associates LLC**
Licensed Residential Builder

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DHEC Response Letter

applied to obtain a NPDES. We stopped all work and hired Deep South Landscaping owner Gregg Smith to install over 1000 feet of silt fencing immediately. We also hired Heritage Engineering owner Dan Creed as our engineer to help us come into complete compliance. We again contacted Mrs. Stiglitz to inform her that the fencing was complete, during this period 4 of the homes were already started, most of which were in the framing process. We explained this to Mrs. Stiglitz, we also shared with her that our company had no choice but to complete those homes. During the construction of the homes Mrs. Stiglitz and our company were in constant communication. She would contact us and inform us when she was performing inspections and the company provided a representative to assist her during the inspections. We would immediately fix any noted deficiencies. The company also performed weekly inspections when the weather would permit. During this time Sumter County DHEC was continuously receiving complaints from Randy Pruitt, almost daily. This concerned us especially since Randy Pruitt's Home is up stream of our property and there is no way our property can flow up hill, as engineer Sloan Jackson from DHEC noted during his later visit. We mention this for this reason on several occasions as Deep South Landscaping can attest our silt fencing was being sabotaged. Gregg Smith contacted our company on numerous occasions to address this issue he stated "someone is cutting the silt fencing with a razor". By this time Randy Pruitt had involved his neighbors that where downstream. We received a letter from there attorney Ian T. Duggan with photos of the silt fencing down that where clearly taken by their clients clearly on our property.

7. Sabotage to our fencing discussed in item 6. We also installed a secondary fence approximately 500 feet of fencing to ensure if the primary fence was breached no sediments would leave our site. Our company leadership walked the entire site during a heavy rain down pour and no sediment was leaving our site, we have the recorded footage.

8. Sabotage to our fencing was occurring, along with numerous complaints from Randy Pruitt, and letters from Ian T Duggan the downstream neighbor's attorney. Our company continues to attempt to grasp on why Mr. Duggan's client's would say that our site was damaging there pond. They contested that our site was contaminating there pond and making the water very dirty during rain fall and there pond had been clean prior to the start of our disturbance. We contacted Mr. Duggan and Sumter county DHEC Roxanne Stiglitz, we viewed the Google maps on that location prior to any disturbance. You will find that there pond was extremely dirty prior to any disturbance. Why would their clients lie, is it because they didn't want neighbors or something more sinister?



**J.N. Green
& Associates LLC**
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DHEC Response Letter

9. Again our company was in close communications with Roxanne Stiglitz. She was knowledgeable about what we were doing.

10. We submitted the permit for approval. On or about 11/4/21 Kevin Harley of DHEC receives our application. An online account was setup 11/16/21 and our payment made. We immediately contacted DHEC for a time table on our plan review and we were instructed that they have approximately 21 days. We contacted Mr. Harley on numerous occasions he was working from home during the pandemic at that time. He then gave us Sloan Jackson as the engineer and a point of contact who was working from home as well. We contacted him on several occasions in an attempted to obtain the permit prior to Christmas he stated he would try but it did not happen. We received our first correspondence on or about 31 Dec 2021. During this period we received a mandatory conference call letter with all parties involved from DHEC Columbia. We received the letter and immediately called DHEC Columbia. We talked extensively with Anastasia Shaw. We discussed that were in touch with Sumter County DHEC and that we were working hand in hand. Her exact words I will contact Roxanne Stiglitz and if she confirms this there was no need for this conference. This letter is identical to the letter DHEC Columbia sent for another conference call with all parties later in the literature we will discuss. During this period as well some disturbing events would occur on multiple occasions during Sumter County's inspections. Our inspection representative overheard multiple phone conversation were Columbia DHEC was pressuring Sumter DHEC to take action against our Company. This is why we discussed the complainants name in the beginning. Why would Columbia DHEC pressure Sumter DHEC and Roxanne Stiglitz. Our company applauded Mrs Stiglitz she has great values and integrity and is truly a bright light to Sumter DHEC. We would hate to think that the "Good Ole Boy System" still works in SC in 2022. This is why we have little faith in Columbia DHEC. These are conversations over heard that drastically affect our company. See the attach summary of one of Mrs. Stiglitz inspection. She also concluded that our site was not contaminating the downstream pond. On or about 16 January 2022 Sloan Jackson visited our site. He concluded that our site did not affect the complainant Randy Pruitt, on or about 18 January we receive an email from Sloan Jackson. It laid out exactly what we needed to do to receive our disturbance permit. Mr. Jackson and Dan Creed our engineer spent half of a day on our site and gave us a detailed list of everything needed to acquire the permit. On or about 2/28/22 we sent detailed photos of everything on Mr. Jackson's "to do list" to acquire a permit. Mr. Jackson responded that he did receive the photos. After spending thousands of dollars to



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DHEC Response Letter

bring the site up to compliance, with seeding, returns, construction driveways and a host of other things we have still not received a permit.

11. On December 29 our site was inspected after a hard rain by Mrs. Stiglitz she found two rows of silt fencing installed the first row had damages she found consistent with a heavy rainfall occurrence but the second row of fencing was totally intact please see the report attached.

12. We continued to upgrade our site awaiting the permit.

13. Sloan Jackson still no permit just more questions that should have been addressed earlier now over 6 months have passed still no permit, and along with this we have to go back to the drawing board because of questions that should have been asked months ago. This is totally unacceptable and we have all correspondence between your agency and ours. If your organization put as much time into working on our permit as harassing our site all issues would have been resolved by now. The one person from Sumter county DHEC that was working with us to help us obtain a permit, and protect the environment, because of her unwillingness to be pressured into imposing unfair sanctions on your company was removed from our case.

14. We received notice of a conference from DHEC Columbia..

15. A conference occurred between JN Green & Associates LLC and DHEC Columbia to discuss land disturbance. We started by addressing the incorrect addressing in which they did in fact have the incorrect address. JN Green and Associates LLC did continue construction and Sumter county DHEC was aware of the construction but we did not initiate any new disturbance. When we began our clearing of the 10.2 acres by the time we received your initial compliance letter 5 of the lots were already cleared. Again we were never given a stop order but the letter said we quote "We request you stop all work", in which we did until we stabilized our site. We were given permission to complete those houses that had already been started. This is the reason the first conference call was cancelled by Anastasia Shaw after our extensive conversation. She saw no need to fine our company because our total cooperation with DHEC.

In conclusion Brandon Kersbergen is totally unfamiliar with this case. He was totally unaware of Sloan Jackson's visit to our site and any of the exchanged correspondence. We received the consent letter from Columbia DHEC in which they took over 60 days to prepare, we received 18 July 2022. When ask why it took so long he stated "it needed to be reviewed by his supervisor and legal counsel", so why would we only be given only 15 days to prepare a response. These



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DHEC Response Letter

are the types of inconsistencies and concerns we have with your agency. Once we received the consent order we contacted Mr. Kersbergen immediately to setup a meeting, to first bring him up to speed on all the things we had done to obtain the permit and secondly to see exactly what was needed to obtain a permit. He initially agreed but later him and another member of DHEC would call back and refuse to meet with JN Green & Associates LLC. At the present moment we have no permit, and no one can tell us exactly what is needed to obtain the permit. We have been told by Sloan Jackson to resubmit a revamped plan. We refuse to initiate any site changes without a guarantee this is what your agency wants. Our company has lost millions of dollars. We were unable to sell all those properties at the height of the housing boom. We are not seeking damages at this time or planning any future law suits. We only want to obtain this permit and be in complete compliance with all the rules and regulations. We purchased this land and we do not wish to damage our environment. We want to provide affordable homes for South Carolinians. Our company wants to be treated fairly. We look forward to hearing back from management soon to address our issues.

Thank You

JN Green & Associates LLC

J.N Green & Associates LLC : 4R9G-TQWN-Y9R
Environmental Complaint Evaluation



Inspector: Roxanne Stiglitz

Start Date: 12/29/2021 Completed Date: 12/29/2021

General Complaint Response Section	
1a. Start Date of Response	12/29/2021
1b. Time of Response	10:00 AM
1c. End Date of Inspection	12/29/2021
2. General Comments Inspection was conducted in response to a complaint received on 12/24/21 in which photos of a turbid pond were provided. It was stated that sediments were entering the pond from the construction site. Upon arrival at the site, I found two rows of silt fence installed at the perimeter of the construction site. The first row was on the edge of the land disturbance and had areas in need of maintenance which is expected from rainfall events. The second row of silt fence was in perfect condition and was installed roughly 30ft away from the disturbance and within the roughly 60ft forested buffer zone which runs parallel to the construction site. The 60ft buffer lies between the site and a small stream which leads to the pond in question, which is on an adjacent property. I walked the length of both silt fences and down the length of the stream as it runs from the start of the construction site, down to the pond. What I found was that while the first silt fence was in need of maintenance in some areas, sediments were not reaching the second silt fence 30ft away and were still contained on Mr. Green's property. The second silt fence had not failed, was not in need of any repair, and no sediments were found breaching this silt fence and entering the stream which runs to the pond. In addition, the portion of the stream which directly runs beside Mr. Green's property was mostly dry and in areas which were holding water, the water was not flowing towards the pond at all. It did not contain evidence of sediments from the site but did contain algae from stagnant water conditions. Following the stream further down towards the pond, it became more apparent that this was not a flowing stream at all as all water was still. The water became clearer as I came closer to the pond (less algae). Where the stream feeds into the pond was also fairly blocked off and the water sat still, free of most algae, and was clear down to the bottom. There was no loose sediment found to have entered the stream or the pond. The pond itself did contain a large amount of algae, obvious signs of sedimentation from the site were not seen as of this visit. All water entering the pond was clear. Mr. Green has submitted an NOI within the given time frame given to him (90 days from initial contact) and is awaiting his approval from the Department.	
3. Approximate Incident Location	34.21958893380185, -80.8476032753213
4. Complaint Program Area(s)	Stormwater
Complaint Investigation Section	
Does this facility/incident meet Stormwater statutory requirements? ☒ Yes ☐ No ☐ NA	
An NOI has been submitted and is awaiting approval. Silt fence installed preventatively at edge of land disturbance and within 60ft forested buffer. No sediment found leaving the site. No additional land disturbance taking place.	

All ▼ ← dhec ▼ 🔍 Meet Now 📅 📧 📎 📁

📧 ☰ ✉ New message ↩ Reply 🗑 Delete 📁 Archive ⚠ Report 📁 Move to 🏷 Categorize ⋮

Favorites

- JN Green & Associ... 204
- INSURANCE 9
- ORDERS 10
- ANTONIO 1
- MARCUS
- Jason 1
- JOANN 1
- CESAR
- JAMES 1
- Daniel
- Kenya 1
- QuickBooks Full Serv... 6
- Starlitt Miller 16
- Add favorite

Folders

- Inbox 6245
- Junk Email 548
- Drafts 1280
- Sent Items 8
- Snoozed
- Deleted Items 711
 - BOBBY
 - BRANDON
 - Dontay
 - Edwin
 - Insurance Renewal
 - McGriff Insurance
- Archive
- Notes

Re: SCDHEC Stormwater Review questions for the Green Estates/Tookie Doo Project, Kershaw County

JG Joe Green ↩ ↶ ↷ ⋮
 To: Jackson, Sloan E.; Dan Creed
 Cc: John Poole; Wisniewski, Brian J.; Stiglitz, Roxanne Y.; Shaw, Anastasia
 Fri 2/18/2022 12:07 PM





Show all 6 attachments (26 MB) 📁 Save all to OneDrive ⬇ Download all

Good evening We have completed everything noted. We installed tie-backs /J hooks every 100 feet, installed construction drives and planted grass please see attached photos.

Joe Green
 CEO
 Big Blue Express, LLC
 180 Ole Still Lane
 Elgin, SC 29045
 Ph: (803) 764-6180
 Fax: (803) 788-9401

"When time counts, count on us."

From: Jackson, Sloan E. <jacksoe@dhec.sc.gov>
Sent: Tuesday, January 18, 2022 9:30 AM
To: bigblue2000@msn.com <bigblue2000@msn.com>; Dan Creed <heritagesc@mindspring.com>
Cc: John Poole <PooleJA@dhec.sc.gov>; Wisniewski, Brian J. <WISNEWBj@dhec.sc.gov>; Stiglitz, Roxanne Y. <stigliry@dhec.sc.gov>; Shaw, Anastasia H. <shawah@dhec.sc.gov>
Subject: Re: SCDHEC Stormwater Review questions for the Green Estates/Tookie Doo Project, Kershaw County

Good morning,

I hope you all had a good weekend. I wanted to follow up on the previous email comments and send a summary of the items we discussed last week. Last week we discussed the addition of silt fence outlets and the possible installation of tie-backs/J-hooks on the site. One additional item that we noted was the lack of stabilization on the site. While on the site, we did not observe any temporary or permanent stabilization of the site. This has also been noted in inspection reports as far back as 07/22/2021. Temporary seeding/stabilization is a very important best management practice that is used to reduce the erosion and sedimentation of disturbed areas that would otherwise lay bare for long periods of time. Please also note the SCDHEC standard requirement below for stabilization measures:

Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than fourteen (14) days after work has ceased, except as stated below.

- Where stabilization by the 14th day is precluded by snow cover or frozen ground conditions stabilization measures must be initiated as soon as practicable.
- Where construction activity on a portion of the Site is temporarily ceased, and earth-disturbing activities will be resumed within 14 days, temporary stabilization measures do not have to be initiated on that portion of the Site.

⋮ All ▾ ↩ dhec ▾ 🔍 ☑ Meet Now 🗄️ 💎 📧

📧 New message ↩ Reply ▾ 🗑️ Delete 📁 Archive ⚠️ Report ▾ 📁 Move to ▾ 🏷️ Categorize ▾ ...

📧 Favorites

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- 📧 INSURANCE 9
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- 📧 ANTONIO
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- 📧 JAMES 1
- 📧 Daniel
- 📧 Kenya 1
- 📧 QuickBooks Full Serv... 6
- 📧 Starlitt Miller 16
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- 📧 Inbox 6242
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- 📧 Drafts 1279
- 📧 Sent Items 8
- 📧 Snoozed
- 📧 Deleted Items 713
- 📧 BOBBY
- 📧 BRANDON
- 📧 Dontay
- 📧 Edwin
- 📧 Insurance Renewal
- 📧 McGriff Insurance
- 📧 Archive
- 📧 Notes

← Re: Tookie Doo Lane

📧 You forwarded this message on Thu 2/10/2022 12:23 PM

ID Ian T. Duggan <ianduggan@callisontighe.com>
 To: You
 Cc: Katie Minton
 Thu 9/23/2021 6:17 PM

Dear Mr. Green:

I am grateful for your time on the telephone this morning and this afternoon. I appreciate that no one likes receiving telephone calls from lawyers but do thank you for taking time out of your day to speak with me.

As I conveyed, I represent Mr. Joey and Lauren Jaco. They have property not too far from a set of homes you are building on Tookie Doo. The Jacos' property is land that has been in Mrs. Jaco's family for quite some time, so it means a lot to them.

My clients have an approximately 1-acre pond on their property. It is fed by a creek that is receiving a great deal of turbid, muddy stormwater flow from your recently cleared construction site during/after significant rain events. Their ponds and the stream that feeds it stay very muddy and turbid between rain events. Prior to the clearing of your land, the Jacos never encountered these types of issues before.

I understand from our call today that you have retained an engineering group to help your company design and implement best management practices (BMPs) on your property to prevent muddy stormwater from leaving your property and flowing into my clients' wetlands again. I understand it may take some time to design and implement this system. My clients are reasonable, patient people. They do not want to dictate to you how to run your business or what you do on your land – so long as what you do on your land does not negatively impact them. If their creek and pond are not being polluted with mud, clay, or other pollutants that harm the aesthetics and health of their pond/stream and its wildlife, your compliance or non-compliance with DHEC or Kershaw County regulations is really a non-issue.

I have stressed to my clients that a lawsuit is a matter of last resort. It is especially not a step we want to take when you have told me that you plan on doing whatever it takes to fix this problem. I think the Jacos will continue to abide by my recommendation and work with you to achieve a solution so long as you are taking concrete steps to address their concerns.

To that end, I would be glad to continue to speak with you or your engineering group to ensure you have access to my clients' property to see what is going on or implement some degree of preventative measures. If you want to share your engineer's name with me, I will reach out to him at my earliest convenience. We would hope to see a plan from you and your engineer in short order that informs us of how you plan to address these concerns. If the system you and your engineer design work, I don't expect we'll have any more problems. But the longer this goes on, the greater the chances are that my clients will have to take steps to remediate their pond. I think we all hope that this does not become necessary.

In closing, I am very glad we were able to make some progress today and again thank you for your time on the telephone – it is always good to connect with another servicemember, current or retired. As I stated on the phone, I trust you appreciate that I have a job to do in representing my clients, and if you engage an attorney, I would be glad to speak with him or her – that is totally up to you and I won't be offended either way. At the end of the day, my hope is that we can quickly move past this issue, and that you achieve great success with your business.

My best to you,
 Ian

CALLISON TIGHE 

IAN T. DUGGAN MEMBER

Palmetto Armory Building PHONE 803.404.6900
 1812 Lincoln Street DIRECT 803.404.6965
 Columbia, SC 29201 FAX 803.404.6902

EXHIBIT D



Ian T. Duggan - Lawyer
Telephone: 803-404-6900
IanDuggan@callisontighe.com

February 4, 2022

VIA EMAIL AND FIRST CLASS MAIL

Joe N. Green
J. N. Green & Associates, LLC
10817 B Two Notch Road
Elgin, SC 29045
bigblue2000@msn.com

**Re: Stormwater/Sediment Runoff
Tookie Doo Lane, Elgin**

Dear Mr. Green:

When we last conferred in late-September 2021, I informed you that I represented individuals who owned land downstream from your residential development on Tookie Doo Lane in Elgin, South Carolina—in property in Kershaw County. I write again today on behalf of my clients, Lauren and Joey Jaco, to inform you of ongoing harm to their property and demand that you immediately take all necessary steps to stop lasting, continuing damage to their property.

As referenced in my enclosed email to you dated September 23, 2021, you previously shared with me that you had recently retained an engineering group in assisting you in stopping the ongoing discharge of turbid and otherwise polluted water from your land. You seemed generally sympathetic to my clients' concerns at that time. I expected you to take your obligations not just under the law but as a good neighbor seriously.

Nearly five months have now elapsed. Whatever steps you have taken to control the outflow of turbid, polluted water from your site have been insufficient. After any significant rainfall event, the stream generally adjoining your unlawfully cleared property receives a considerable amount of turbid stormwater. This stormwater, in turn, naturally flows onto my clients' land and into their formerly scenic and pleasant pond. Enclosed are several photographs which memorialize these events.

To be sure, there can be no doubt that your activities have caused this ongoing damage to my clients' property. Because of the regular nature of rainfall in the Midlands and the amount of turbid water that leaves your property, my clients' pond has no opportunity to clear out. It is now

Joe N. Green
February 4, 2022
Page Two

in a perpetual state of unsightly cloudiness. Your harmful actions impact not just the aesthetic value of the Jaco's property but also diminish the ability of natural flora and fauna to thrive. As I am sure you know, many types of fish, other animals, and plant life need clear water to survive.

We are closely monitoring your ongoing interactions with DHEC to learn more about what efforts you are taking to come into compliance with the various rules and regulations that apply to your property. While we had hoped you would comply with these critical rules earlier, even if you satisfy DHEC in its regulatory capacity, this will not completely fix the harm that is occurring to my clients.

While my clients have no desire to harm your business interests, they have no desire to provide you with a rent-free holding pond because you decided not to follow the law in pursuing the construction of your "subdivision" on Toookie Doo. My clients demand that you immediately cease your ongoing trespass to their property and take all efforts necessary to stop creating a harmful environmental nuisance on their property. **Please write to me at your first convenience to inform me of all steps you plan to correct these deficiencies moving forward, along with your proposal to fix the harm your actions and omissions have already caused to my clients' pond and stream to date.**

Please understand my clients take this matter very seriously and will take all steps necessary to protect their interests and their property. If legal counsel represents you, please provide your attorney with a copy of this letter and ask that they contact me as soon as possible.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC

s/ Ian J. Duggan

Ian T. Duggan

ITD:kam
Enclosures
cc: Joseph and Lauren Jaco (via email)
Green.001

From: [Ian T. Duggan](#)
To: bigblue2000@msn.com
Cc: [Katie Minton](#)
Subject: Re: Tookie Doo Lane
Date: Thursday, September 23, 2021 6:17:01 PM
Attachments: [image001.jpg](#)
[image002.gif](#)

Dear Mr. Green:

I am grateful for your time on the telephone this morning and this afternoon. I appreciate that no one likes receiving telephone calls from lawyers but do thank you for taking time out of your day to speak with me.

As I conveyed, I represent Mr. Joey and Lauren Jaco. They have property not too far from a set of homes you are building on Tookie Doo. The Jacos' property is land that has been in Mrs. Jaco's family for quite some time, so it means a lot to them.

My clients have an approximately 1-acre pond on their property. It is fed by a creek that is receiving a great deal of turbid, muddy stormwater flow from your recently cleared construction site during/after significant rain events. Their ponds and the stream that feeds it stay very muddy and turbid between rain events. Prior to the clearing of your land, the Jacos never encountered these types of issues before.

I understand from our call today that you have retained an engineering group to help your company design and implement best management practices (BMPs) on your property to prevent muddy stormwater from leaving your property and flowing into my clients' wetlands again. I understand it may take some time to design and implement this system. My clients are reasonable, patient people. They do not want to dictate to you how to run your business or what you do on your land – so long as what you do on your land does not negatively impact them. If their creek and pond are not being polluted with mud, clay, or other pollutants that harm the aesthetics and health of their pond/stream and its wildlife, your compliance or non-compliance with DHEC or Kershaw County regulations is really a non-issue.

I have stressed to my clients that a lawsuit is a matter of last resort. It is especially not a step we want to take when you have told me that you plan on doing whatever it takes to fix this problem. I think the Jacos will continue to abide by my recommendation and work with you to achieve a solution so long as you are taking concrete steps to address their concerns.

To that end, I would be glad to continue to speak with you or your engineering group to ensure you have access to my clients' property to see what is going on or implement some degree of preventative measures. If you want to share your engineer's name with me, I will reach out to him at my earliest convenience. We would hope to see a plan from you and your engineer in short order that informs us of how you plan to address these concerns. If the system you and your engineer design work, I don't expect we'll have any more problems. But the longer this goes on, the greater the chances are that my clients will have to take steps to remediate their pond. I think we all hope that this does not become necessary.

In closing, I am very glad we were able to make some progress today and again thank you for your time on the telephone – it is always good to connect with another servicemember, current or retired. As I stated on the phone, I trust you appreciate that I have a job to do in representing my clients, and if you engage an attorney, I would be glad to speak with him or her – that is totally up to you and I won't be offended either way. At the end of the day, my hope is that we can quickly move past this issue, and that you achieve great success with your business.

My best to you,
Ian



IAN T. DUGGAN MEMBER

Palmetto Armory Building	PHONE	803.404.6900
1812 Lincoln Street	DIRECT	803.404.6965
Columbia, SC 29201	FAX	803.404.6902

MAILING ADDRESS

P.O. Box 1390
Columbia, SC 29202-1390

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9-30-2021

ELFC TRS 6/25/21 FILED 2021 04 12 10:11 AM - KERSHAW - COMMON PLEAS - CASE#2022CP2800877



1-5-2022



1-20-2022

ELECTRONICALLY FILED JAN 20 2022 10:11 AM KERSHAW - COMMON PLEAS - CASE#2022CP200077



EXHIBIT E

From: [Ian T. Duggan](#)
To: [Joe Green](#); [Katie Minton](#)
Subject: RE: Tookie Doo Lane
Date: Monday, February 7, 2022 5:50:00 PM

Mr. Green:

I am not sure what good a telephone call would do at this point. In our lengthy calls late last Summer, you made various assurances that you had this issue "under control." Nearly 6 months later, my clients are still dealing with the regular flow of turbid, polluted water from your worksite to their pond after any rainfall event.

In my February 4, 2022, letter to you, I asked you to write to me to let me know what you planned on doing to fix this issue and redress the harms that your actions and omissions have already caused to my client and that continue to do harm to their property after every rain event. I would hope that you would take this matter as serious as we do. If you have a plan or proposal to fix the nuisance your construction activities are causing in my clients' stream and pond, along with what you propose to my clients to fix the harm that has already been caused by your actions and omissions, I would be glad to hear from you in writing about what you propose to do.

If you would like to discuss details about how we might be of assistance as you stop the flow of turbid water from your site; fix the underlying issues on your site causing turbid water to leave your construction site; and fix the harm that has already befallen my clients' ponds, I would be glad to confer with you over the telephone about gaining access to my clients' property, etc. But before we do that, we'd like to see some concrete proposals in writing first. My clients have no desire to shut down your business, but they also did not ask you to use their formerly beautiful pond as a detention pond rent-free.

To the extent you do not understand my clients' plain demands, I would encourage you to contact your own lawyer to advise you.

My best,
Ian



IAN T. DUGGAN MEMBER

Palmetto Armory Building	PHONE	803.404.6900
1812 Lincoln Street	DIRECT	803.404.6965
Columbia, SC 29201	FAX	803.404.6902

MAILING ADDRESS

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From: Joe Green <bigblue2000@msn.com>
Sent: Monday, February 7, 2022 11:22 AM
To: Katie Minton <katieminton@callisontighe.com>
Cc: Ian T. Duggan <ianduggan@callisontighe.com>
Subject: Re: Tookie Doo Lane

Good morning Katie, can you have Ian contact me via cell phone (803) 556-5404

Joe Green

CEO
Big Blue Express, LLC
180 Ole Still Lane
Elgin, SC 29045

Ph: (803) 764-6180
Fax: (803) 788-9401

"When time counts, count on us."

From: Katie Minton <katieminton@callisontighe.com>
Sent: Friday, February 4, 2022 10:21 AM
To: Joe Green <bigblue2000@msn.com>
Cc: Ian T. Duggan <ianduggan@callisontighe.com>
Subject: RE: Tookie Doo Lane

Mr. Green,

Attached please find correspondence with enclosures from Ian T. Duggan, Esquire. A hard copy will follow by mail delivery.

With kind regards,



KATIE A. MINTON PARALEGAL

Palmetto Armory Building	PHONE	803.404.6900
1812 Lincoln Street	DIRECT	803.404.6993
Columbia, SC 29201	FAX	803.404.6902

MAILING ADDRESS

P.O. Box 1390
Columbia, SC 29202-1390

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EXHIBIT

“B”

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Joseph & Lauren Jaco

Plaintiffs,

v.

J.N. Green & Associates, LLC, Big Blue
Express, LLC, and Joe N. Green,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2022-CP-28-00877

**Order Denying Defendants' Motion
to Set Aside the Entry of Default**

FILED FOR RECORD
2023 APR -6 AM 10:15
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter is before the Court on Defendants' January 24, 2023 Motion to Set Aside Default ("Motion"). On March 9, 2023, Defendants J.N. Green & Associates, LLC; Big Blue Express, LLC; and Joe N. Green ("Defendants") submitted their brief in support of the Motion. On March 14, 2023, Plaintiffs submitted a memorandum in opposition to the Motion. The Court heard argument on this matter on March 16, 2023, via video teleconference at the parties' request. The hearing was not transcribed. Adrienne Turner, Esquire appeared for the Defendants. Ian Duggan, Esquire and Harry Dixon, Esquire appeared on behalf of the Plaintiffs Joseph & Lauren Jaco, who also attended the virtual hearing. This matter is now fully briefed and ripe for a ruling. As explained below, the Court denies Defendants' Motion.

FINDINGS OF FACT

On October 10, 2022, Plaintiffs filed their Complaint against the Defendants. The Complaint generally alleges that a stream and pond on their land in Kershaw County unlawfully received turbid and otherwise polluted stormwater from construction activity in Defendants' nearby residential subdivision, called the "Tookie Doo Subdivision." Plaintiffs' seek monetary damages and injunctive relief on their causes of action for nuisance, negligence, and trespass.

Appended to the Complaint are various exhibits memorializing communications between Plaintiffs' counsel and Defendant Joe N. Green ("Defendant Green")—who is the principal and registered agent of the two corporate Defendants, Big Blue Express, LLC, and J.N. Green & Associates, LLC. In these communications, Defendant Green uses the email address "bigblue2000@msn.com." These communications date back to September 23, 2021 (just over a year before the Complaint was filed).

Plaintiffs attempted to serve Defendants personally on October 22, 2022, and again on October 24, 2022. On October 22, 2022, a process server attempted to serve Defendant Big Blue Express, LLC, via its registered agent, Defendant Green, at 180 Ole Still Lane, in Eglin, South Carolina. There, the process server spoke to a woman who identified herself as Defendant Green's ex-wife who informed the process server that Defendant Green "moved out of South Carolina" and that the "business is closed." The process server was later able to contact Defendant Green via telephone. Defendant Green "said to look for him in Georgia but would not" provide "any other information."

On October 24, 2022, a second process server sought to serve Defendant J.N. Green & Associates, LLC via its registered agent, Defendant Green, at 10817-B Two Notch Road in Columbia, South Carolina. When the process server arrived, he could hear "a male voice talking on the phone" behind a locked door. No one responded to the process server's knocks and announcement of his presence. The process server took photographs of three motor vehicles in the adjacent parking lot—a semi-truck, a pick-up truck, and hatchback sedan. Public records indicate these vehicles were registered to Defendant Green.

The next day, October 25, 2022, Plaintiffs' counsel emailed Defendant Green at bigblue2000@msn.com—with a copy of the Summons & Complaint attached—requesting that Defendant Green accept service via email. ;

On November 7, 2022, the Kershaw County Clerk of Court entered an “Order for Service by Publication.”

On November 8, 2022, Plaintiff sent the Summons & Complaint, the Order for Service by Publication, and Plaintiffs’ first set of discovery to Defendants at the 180 Ole Still Lane and 10817-B Two Notch Road addresses listed above.

On November 14, 2022, Defendant Green replied to the email from Plaintiffs’ counsel dated October 25, 2022. This email from Defendant Green was again sent from bigblue2000@msn.com. In relevant part, the email stated: “Good morning, please send the acceptance of service form via email. Thank you so much!” A short time later, Plaintiff responded to Defendant Green and sent the acceptance of service form Defendant Green requested.

Defendant Green did not return the acceptance of service form. Plaintiffs’ counsel again emailed the acceptance of service form to Mr. Green on November 16, 2022. Defendant Green did not respond to this email, either.

On November 15, 2022, November 22, 2022, and November 29, 2022, Plaintiffs published a copy of the Summons and Notice of Filing of Complaint in the Chronicle-Independent, a newspaper of general circulation in Kershaw County, South Carolina.

On January 6, 2023, on motion of the Plaintiffs, the Honorable DeAndrea Gist Benjamin, Circuit Court Judge, signed an order for the entry of default against the Defendants. That same day, the Circuit Court appointed the undersigned as the Special Referee to preside over this matter.¹

Defendants did not present any testimony at the March 16, 2023, hearing. Following the hearing, Defendants submitted two new documents for the Court’s consideration i.) a “NPDES Storm Water Construction Compliance Instruction Report for Contractors” dated January 16,

¹ The entry of default was signed before the order of reference but was not published to the docket until January 9, 2023. Defendants do not challenge authority of the order of reference or otherwise object to the jurisdiction of the Special Referee to preside here.

2023; and a “Kershaw County Storm Water Construction Compliance Inspection Report” dated January 3, 2023. The submission of these materials was not opposed by Plaintiffs, who, for purposes of Defendants’ Motion conceded their authenticity.

APPLICABLE LAW

Service by publication is authorized under S.C. Code Ann. § 15-9-740. Moreover, S.C. Code Ann. § 15-9-710(2) provides for service by publication “when the defendant, being a resident of this State, has departed therefrom, with intent to defraud his creditors or to avoid the service of a summons or keeps himself concealed therein with like intent.” Service by publication is also permitted “when the defendant is a resident of this State and after a diligent search cannot be found.” *Id.* at (3).

“For good cause shown the court may set aside an entry of default.” Rule 55(c), SCRCF. “Rule 55(c) is to be liberally construed to promote justice and dispose of cases on the merits.” *Limehouse v. Hulsey*, 397 S.C. 49, 89, 723 S.E.2d 211, 233 (Ct. App. 2011) (rev’d on other grounds). Whether to set aside an entry of default lies solely within the sound discretion of the trial judge. *See, e.g., White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 11, 753 S.E.2d 537, 542 (2014).

Accordingly, “a party seeking relief from an entry of default under Rule 55(c) [must] provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” *White Oak Manor, Inc.*, 407 S.C. at 11, 753 S.E.2d at 542 (*quoting Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009)). “Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Sundown Operating Co.*, 383 S.C. at 607–08, 681 S.E.2d at 888.

ANALYSIS

Defendants assert two general grounds for setting aside default here. First, “the failure of traditional means of service of process” meant that Defendants were unaware of and did not actually see the public notice published by Plaintiffs in the Chronicle Independent. *See* Motion at 1. And second, that Defendants’ “misapprehension of the legal implications of [their] cooperation and compliance with ongoing DHEC regulations”² led Defendants to believe that they had a “legal defense to any allegations by neighboring landowners.” *Id.*

As for Defendants’ first ground to set aside default here, service by publication is authorized under South Carolina law. *See, e.g.,* §§ 15-9-740, 15-9-710 *et seq.* Defendants do not challenge the authority of the Circuit Court to allow service by publication here. Nor do they assert Plaintiffs failed to serve the Defendants via publication in accordance with the demands of relevant statutory law.

Instead, Defendants assert that “the inherent shortcomings” of service by publication “raise[] questions as to whether due process requirements of adequate notice are truly discharged through service by publication, even assuming sufficient factual basis for issuance of the order by publication exists.” *See* Defendants’ Brief at 5-6. Here, though, Defendants provide no authority indicating that South Carolina’s service by publication statutes fail to meet due process requirements. Even if such authority did exist, the evidence confirms that Defendant Green (who is also the registered agent for the two other Defendants) received actual notice of the Summons and Complaint (and Plaintiffs’ intention to serve Defendants via publication). These documents were mailed and emailed to him several times and Defendant Green does not dispute that he received copies of the Summons and Complaint. Accordingly, Defendants’ first ground to set aside default fails to satisfy the “good cause” requirement of Rule 55(c), SCRPC.

² DHEC is the South Carolina Department of Health and Environmental Control.

Defendants' second ground to set aside default judgment likewise falls short. To be sure, a lawsuit can be a confusing environment to those inexperienced with litigation. That said, if such confusion were an adequate justification for failing to timely answer a Complaint, it is a defense that could be present in nearly every suit. Perhaps for these reasons, under our rules, a plaintiff must inform a defendant of his obligation to respond to a lawsuit. The Summons here, in the standard fashion, told Defendants that they were,

. . . required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon [Plaintiffs' counsel] within thirty (30) days after service hereof . . . and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

It is not alleged that Defendants suffered from any mental or other incompetency that would have prevented their timely compliance with the Summons. Indeed, the evidence here indicates that Defendant Green understood his obligation to respond to the Complaint when he requested "the acceptance of service form via email" from Plaintiffs' counsel on November 14, 2022.

The Court acknowledges that the attachments to the Complaint evidence a parallel DHEC compliance proceeding involving at least some Defendants. *See* Compl., Exh. B. Even so, Defendants' "response to the consent order" evidences Defendants' ability to articulate a cogent response to the issues raised by DHEC regarding the subject property. *See id.* at Exh. C. And, Plaintiffs' counsel's February 4, 2022, letter to Defendant Green distinguishes Plaintiffs' complaints from DHEC's regulatory authority. *See id.* at Exh. D, p. 2 ("even if you satisfy DHEC in its regulatory capacity, this will not completely fix the harm that is occurring to my clients.").

In sum, the record evidence indicates that Defendants understood their obligation to timely respond to the Summons and Complaint yet chose not to do so. This does not constitute the type

of “good cause” or a “satisfactory explanation” necessary to set aside a default judgment. *See Sundown Operating Co.*, 383 S.C. at 601, 681 S.E.2d at 888.

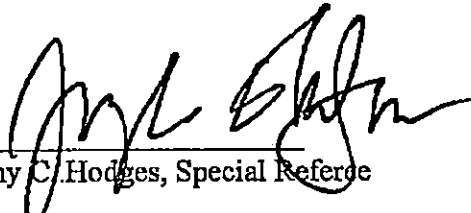
“Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Limehouse v. Hulsey*, 397 S.C. 49, 89, 723 S.E.2d 211, 233 (Ct. App. 2011). Because this Court has found that Defendants “lack . . . good cause” however, it need not consider these three factors set forth above. *Sundown Operating Co.*, at 608, 681 S.E.2d at 888 (“The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause.”).

CONCLUSION

As set forth in this Order, Defendants have failed to meet their burden to demonstrate “good cause” to set aside the entry of default and cannot otherwise establish that setting aside the entry of default here would satisfy the “interests of justice.” Accordingly, Defendants’ Motion to Set Aside Default is **DENIED**.

Counsel for the parties are further directed to confer on what additional discovery is needed prior to a damages hearing and the parties’ availability for a damages hearing. After conferring, the parties should coordinate with the Court for purposes of scheduling a damages hearing.

AND IT IS SO ORDERED.



Jeremy C. Hodges, Special Referee

April 3, 2023
Columbia, South Carolina

EXHIBIT

“C”

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FOR THE FIFTH JUDICIAL CIRCUIT

Joseph & Lauren Jaco	)	Case No.: 2022-CP-28-00877
	)	

Plaintiffs,

v.

J.N. Green & Associates, LLC, Big Blue
Express, LLC, and Joe N. Green,

Defendants.

ENTRY OF DEFAULT

This matter comes before me upon motion of the Plaintiffs for an Entry of Default against Defendants J.N. Green & Associates, LLC, Big Blue Express, LLC, and Joe N. Green.

IT APPEARING from the affidavit of Ian T. Duggan, Attorney for the Plaintiffs, that Defendants J.N. Green & Associates, LLC, Big Blue Express, LLC, and Joe N. Green were served via publication with the Summons and Complaint, and that more than thirty days have elapsed since the last date of publication, during which time no responsive pleadings were filed by Defendants.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that default is entered against Defendants J.N. Green & Associates, LLC, Big Blue Express, LLC, and Joe N. Green, in favor of Plaintiffs Joseph Jaco and Lauren Jaco. The Court will set a hearing as to the amount of damages and other relief sought upon the request of the Plaintiffs.

IT IS SO ORDERED.

[Judge's signature page immediately following]

I SO MOVE:

CALLISON TIGHE & ROBINSON, LLC

s/ Ian T. Duggan

Ian T. Duggan, Bar. No. 80074

Harry A. Dixon, Bar. No. 103509

P.O. Box 1390

1812 Lincoln Street, Second Floor (29201)

Columbia, South Carolina 29202

Ph: 803-404-6900

Fax: 803-404-6902

ianduggan@callisontighe.com

harrydixon@callisontighe.com

ATTORNEYS FOR PLAINTIFFS

January 4, 2023

Columbia, South Carolina



Kershaw Common Pleas

Case Caption: Joseph Jaco , plaintiff, et al VS J N Green & Associates Llc ,
defendant, et al
Case Number: 2022CP2800877
Type: Order/Entry of Default

So Ordered

s/DeAndrea Gist Benjamin, #2161

EXHIBIT

“D”

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FOR THE FIFTH JUDICIAL CIRCUIT

Joseph & Lauren Jaco	)	Case No.: 2022-CP-28-00877
	)	

Plaintiffs,	)	
	)	

v.	)	
	)	

J.N. Green & Associates, LLC, Big Blue	)	
Express, LLC, and Joe N. Green,	)	

Defendants.	)	
	)	

ORDER OF REFERENCE

This matter comes before me upon motion of the Plaintiffs. Pursuant to Rules 53 and 55 of the South Carolina Rules of Civil Procedure, the Plaintiffs seek referral of the matter to a special referee.

IT APPEARING that Entry of Default was entered against Defendants J.N. Green & Associates, LLC, Big Blue Express, LLC, and Joe N. Green, LLC.; and

IT FURTHER APPEARING that pursuant to Rule 55 of the South Carolina Rules of Civil Procedure, a hearing, conducted by special referee Jeremy Hodges, Esquire, of the Rikard & Protopapas, LLC law firm to ascertain the damages and other relief should be held to determine the relief due the Plaintiffs;

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this action is referred to Jeremy Hodges, Esq., as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53 of the South Carolina Rules of Civil Procedure, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action

contesting the validity of the judgment, any action necessary to enforce the judgment, and any motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

The fees of the Special Referee shall be paid by the Plaintiffs with the provision that if an appearance is made by any of the Defendants, the fees shall be equally divided among all parties who have appeared.

AND IT IS SO ORDERED.

[Judge's signature page immediately following]

PLAINTIFFS SO MOVE:

CALLISON TIGHE & ROBINSON, LLC

s/ Ian T. Duggan

Ian T. Duggan, Bar. No. 80074

Harry A. Dixon, Bar. No. 103509

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ATTORNEYS FOR PLAINTIFFS

January 4, 2023

Columbia, South Carolina



Kershaw Common Pleas

Case Caption: Joseph Jaco , plaintiff, et al VS J N Green & Associates Llc ,
defendant, et al
Case Number: 2022CP2800877
Type: Order/Referred to Master or Special Referee

So Ordered

s/DeAndrea Gist Benjamin, #2161

EXHIBIT

“E”

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Joseph & Lauren Jaco	)	Case No.: 2022-CP-28-00877
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
J.N. Green & Associates, LLC, Big Blue	)	
Express, LLC, and Joe N. Green,	)	
	)	
Defendants.	)	

**FINAL ORDER
MAKING FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

FILED FOR RECORD
2024 JAN -8 AM 1:50
JENET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter is before the Court in an action by Plaintiffs Joseph and Lauren Jaco against the Defendants J.N. Green & Associates, LLC, Big Blue Express, LLC, and Joe N. Green alleging causes of actions against the Defendants for negligence; nuisance and continuing nuisance; and trespass and continuing trespass. Default was entered against Defendants, and the undersigned was appointed as Special Referee "to take testimony and direct entry of final judgment in this action . . . and all matters arising from or reasonably relating to [this] action" via orders signed on January 6, 2023, by the Honorable DeAndrea Gist Benjamin. With Defendants in default, the Court held a damages hearing on September 22, 2023.

After hearing the testimony, assessing the credibility of witnesses, and carefully reviewing the exhibits admitted at the hearing, the Court now makes the following findings of fact and conclusions of law in accordance with Rule 52(a), SCRPC. To the extent any findings of fact constitute conclusions of law, or vice-versa, they shall be so regarded.

I. INTRODUCTION

This case arises out of Plaintiffs' complaints of turbid and otherwise polluted stormwater flowing from a small subdivision along Tookie Doo Road in Kershaw County, South Carolina, developed by the Defendants and referred to by the parties as the "Tookie Doo" subdivision.

Plaintiffs own land generally adjacent to and downhill from this subdivision where they maintain a home. Also downhill from the subdivision is a stream that flows onto the Jaco property and into a pond on the Jacos' property near the Jacos' home. Previously, the land developed by Defendants where the subdivision stands was wooded. As part of the development of this subdivision, Defendants removed trees and other vegetation on the subdivision property. As a result, soil and other materials on the subdivision property erode after rain events. These materials are carried by stormwater downhill and into the stream and pond on the Jaco property.

II. PROCEDURAL HISTORY

Plaintiffs' Complaint was filed on October 12, 2022. On November 7, 2022, in conjunction with filings of affidavits of non-service and due diligence, Plaintiffs moved for permission to serve Defendants via publication. That same day, the Court granted Plaintiffs' Motion. As noted above, once Defendants failed to answer or otherwise respond to Plaintiffs' pleading, default against Defendants was entered on January 6, 2023.¹

On January 24, 2023, Adrienne Turner, Esquire, appeared on behalf of Defendants and moved to set aside default. On March 9, 2023, Defendants filed their memorandum in support of their motion to set aside default. On March 14, 2023, Plaintiffs responded in opposition to

¹ The Court notes that although the entry of default was published to the docket on January 9, 2023, Judge Benjamin's order was actually signed January 6, 2023.

Defendants' motion. The Court heard argument on the matter on March 16, 2023, and on April 3, 2023, the Court denied Defendants' motion to set aside default.²

A damages hearing was originally set for June 29, 2023. On June 23, 2023, Defendants requested that the hearing be continued. Plaintiffs consented to this request and the hearing was rescheduled for September 22, 2023 and went forward as planned.

On June 23, 2023, Defendants moved to dismiss Defendants Joe Green and Big Blue Express as parties. Following brief argument by counsel for the parties on September 22, 2023, at the damages hearing, the Court granted Defendants' request for supplemental briefing. On October 26, 2023, Defendants filed their supplemental briefing and on that same date, Plaintiffs submitted a memorandum in opposition to Defendants' motion to dismiss. On October 30, 2023, the Court denied Defendants' motion to dismiss.³

III. EVIDENCE AT DAMAGES HEARING & FINDINGS OF FACT

Background

1. Plaintiffs are citizens and residents of South Carolina and own a home at the real property located at 848 Tookie Doo Lane, Elgin, South Carolina, 29045, identified by Kershaw County Parcel Identification Number 305-00-00-009. This parcel is approximately 25-acres in size, and is referred to here as the "Jaco Property."

2. Near the southwest corner of the Jaco Property is a small pond, just over an acre in size. The pond is fed by a stream that runs generally from the north to the south.

3. Next to Tookie Doo Lane (State Road S-28-334) and generally to the north and west of the Jaco pond sits real property that (for purposes of this action) was originally owned by

²The Order was filed for record by the Clerk on April 6, 2023.

³ Filed for record by the Clerk on November 2, 2023.

Defendant J.N. Green & Associates.⁴ Beginning in May 2021, Defendant J.N. Green & Associates applied for approval from Kershaw County to develop a “minor subdivision” at this property, i.e., the Tookie Doo Subdivision. Topographically, the Tookie Doo Subdivision sits uphill from the stream that flows onto the Jaco Property.

4. Once land began to be cleared with activities as part of the Tookie Doo Subdivision the Jacos began to notice that after rain events, their stream and pond became cloudy and turbid in appearance. The Jacos began to suspect that land clearing and other activities at the Tookie Doo Subdivision were leading to erosion of sediment and other materials that was entering their pond.

5. On September 23, 2021, the Jacos, through counsel, contacted Defendant Green to express concerns and ask Mr. Green to take corrective action necessary to address the turbid stormwater coming into their stream and pond. In an email from the Jacos’ counsel to Mr. Green, counsel explained that the Jacos’ creek and pond were “receiving a great deal of turbid, muddy stormwater flow from your recently cleared construction site [i.e., the Tookie Doo Subdivision] during/after significant rain events. Their ponds [*sic*] and the stream that feeds it stay very muddy and turbid between rain events. Before the clearing of your land, the Jacos never encountered these types of issues before.” *See* Plaintiffs’ Compl. at Exh. D.

6. On February 4, 2022, Jacos’ counsel again wrote to Mr. Green and stated, “[w]hatever steps you have taken to control the outflow of turbid, polluted water from your site have been insufficient. After any significant rainfall event, the stream generally adjoining your unlawfully cleared property receives a considerable amount of turbid stormwater. This stormwater, in turn, naturally flows onto my clients’ land and into their formerly scenic and pleasant pond. . .

⁴ While it appears Defendant J.N. Green and Associates still owns a portion of the originally constituted parcel, the land was subdivided and homes were constructed on these subdivided lots, which have since been sold to other individuals not parties to this action.

. To be sure, there can be no doubt that your activities have caused this ongoing damage to my client's property. . . ." *See* Plaintiffs' Compl. at Exh. D.

7. In September 2022, Defendant Green, on behalf of J.N. Green and Associates, LLC, entered into a "Consent Order" with the South Carolina Department of Health and Environmental Control ("DHEC"). *See* Plaintiffs' Compl. at Exh. B. The "Findings of Fact" of the Consent Order generally described how in clearing land for the Tookie Doo Subdivision and maintaining it while it was under construction, J.N. Green & Associates failed to follow appropriate regulatory protocols. The "Conclusions of Law" of the Consent Order memorialized the determination that "J.N. Green & Associates, LLC violated Water Pollution Control Permits, S.C. Code Ann. Regs 61-9 .122.26(b)(14)(x) in that it initiated land disturbing activities prior to obtaining a permit from [DHEC]." As part of the Consent Order, J.N. Green & Associates, LLC agreed to take certain remediation action to bring the Tookie Doo Subdivision into compliance and pay to DHEC "a civil penalty in the amount of four thousand dollars (\$4,000.00)."

8. In an undated letter "in response to the Consent Order for 800 Tookie Doo Lane, Elgin, SC 29045," *see* Plaintiff's Compl. at Exh. C, J.N. Green & Associates, LLC stated that "[o]ur company continues to attempt to grasp on [*sic*] why [Plaintiffs] would say that our site was damaging the[ir] pond. They contested that our site was contaminating the[ir] pond and making the water very dirty during rainfall and the[ir] pond had been clear prior to the start of our disturbance. . . . [W]e viewed the Google maps on that location prior to any disturbance. You will find that the[ir] pond was extremely dirty prior to any disturbance. Why would [Plaintiffs] lie, it is because they didn't want neighbors or something more sinister?"

9. On October 12, 2022, Plaintiffs filed their suit against Defendants.

10. At the damages hearing on September 22, 2023, the Court received testimony from Joseph and Lauren Jaco, along with extensive testimony from their expert witness, Brian Taylor.

Testimony of Plaintiffs' Expert-Brian Taylor.

11. Without objection, Mr. Taylor was qualified as an expert witness in storm water inspection and management and pond and stream management.

12. Mr. Taylor's substantive testimony began with a description of the topography, soil characteristics, and other qualities of the Tookie Doo subdivision, the Jacos' property, and similar qualities of this land and the immediate vicinity.

13. As part of his work, Mr. Taylor conducted a "desktop review" of various materials accessible from online resources. As the overhead images in Plaintiffs' Exhibit 2 reflect, the pond on the Jaco property has existed for many years. Beginning in or around February 2021, these overhead images reflect clearing of land on or near the Tookie Doo subdivision. Overhead images from February 2021, January 2022, and April 2023 depict the Jacos' pond as cloudy in color, contrasting with the overhead images introduced from February 1994, June 2011, and October 2015 which show a clear pond.

14. Mr. Taylor also traveled to the Jaco property and Tookie Doo subdivision in person several times.

15. Mr. Taylor observed, and the Complaint generally alleges, that there were insufficient stormwater best management practices in place at the Tookie Doo subdivision to prevent the erosion of soil and sediment from the cleared property. As such, after rain events stormwater would naturally run downhill from the Tookie Doo Subdivision into the stream that traveled onto the Jaco property and fed their pond. As detailed below, Mr. Taylor discussed how

this sediment-laden stormwater from the Tookie Doo subdivision has harmed the health of the Jaco stream and pond.

16. Mr. Taylor also spoke at some length about the characteristics of the Jaco pond. On one side it is fed by the stream discussed above and on the other it is impounded by a dam structure/causeway that also serves as the driveway from the highway to the Jacos' home on their property. The Jacos' pond does not have a large outflow pipe. As such, much of the sediment that is carried into the Jacos' pond from upstream remains in suspension before eventually settling out on the bottom. In such a circumstance, where turbid water regularly flows into a pond, the pond remains consistently turbid.

17. Mr. Taylor took several samples of soil from the bottom of the Jacos' pond in April 2023. From this information, Mr. Taylor determined how much sediment and material had accumulated on the bottom of the Jacos' pond. According to Mr. Taylor's sampling, sediment at a depth of about four to six inches accumulated near where the stream on the Jaco property entered the pond (the upper end of the pond); around two to four inches in the middle of the pond; and one to two inches on the far end of the pond near the dam/causeway (the lower end of the pond). Mr. Taylor explained that this sort of pattern of sediment deposit is expected in a situation like this where water loses "power" as it exits the concentrated stream flow and disperses into a slower-moving and wider pond area. Also, the soil eroding into the pond has a clay concentration, which has lighter weight particles that tend to stay suspended in the water column longer than heavier particles.

18. Mr. Taylor spoke about the effects of high turbidity and sediment content in a pond such as the Jacos. For example, some types of fish, e.g., bass, common in this type of pond hunt by sight. When water is cloudy and turbid, they cannot see as well and cannot thrive. Turbidity

also affects algae blooms from occurring, which has collateral effects on the ecosystem, which relies on these nutrients. Sediment deposits on the bottom of the pond also interfere with fish spawning. The modified water chemistry of the pond from the sediment inflow also negatively affects the pond's health. Mr. Taylor concluded that the Jacos' pond was unhealthy and would require significant remediation to correct.

19. Mr. Taylor explained that the first step toward fixing the issues with this pond and stream would be to cease the inflow of additional turbidity and sediment from upstream. He suggested a variety of straightforward "best management practices" that could help control the erosion coming from the Tookie Doo property to the Jaco stream and pond, such as grassing, shrubbery, or trees.

20. Yet even if the Tookie Doo site were stabilized, this would only "stop the bleeding" and additional steps would be required to remove the sand and clay from the stream channel and the pond itself. Mr. Taylor suggested three potential ways to accomplish removal of the sediment deposits from the bottom of the pond.

21. The first option would be to dredge the pond via a barge containing a device akin to "large vacuum cleaner" that would "suck and pull up that material" and send it to a "sludge press" which would press the sand and sediment out of the water itself.

22. The second option would be to use a sediment or filter bag. A vacuum barge would be used to suck the sediment off the bottom of the pond, but rather than using an active "sludge press" device, this approach would use a passive "sediment bag" to separate the sediment from the pond water.

23. The third approach would be the excavation of a pit where water and sediment could be pumped, the sediment afforded sufficient time to settle, and the water returned to the pond. This approach would involve draining much of the pond at any one time.

24. Of these approaches, the first is the least invasive. The second is more invasive because the "sediment bags" used in this process are quite big. And the third would be the most invasive because it would require additional excavation of land on the Jaco property. Mr. Taylor also stated that a fourth option would be to completely dewater the Jaco pond and dredge it using heavy machinery on the pond floor.

25. For each of these options, Mr. Taylor calculated that around 8,500 cubic yards of sediment would need to be removed from the pond. Unless a suitable location could be found on the Jaco property, this would involve significant expense because the size of the causeway on the Jaco property is not enough to support large dump trucks. For any of these options, heavy machinery would need to be mobilized to and demobilized from the Jaco property. Mr. Taylor testified that remediating the Jacos' pond was complicated by its proximity to the Jaco home, adjacent forested areas, and the characteristics of the pond's aged and small dam.

26. While Mr. Taylor offered three options to remediate the pond, he knew of only one option to remediate the stream—an approach centered on manual labor, shovels, and wheelbarrows to remove the accumulated sediment from the streambed and surrounding area.

27. Regarding costs for the above remediation efforts, Mr. Taylor relied on estimates received from Stylecraft Environmental, a specialty environmental contractor. Stylecraft is the type of contractor that Mr. Taylor and others in his field regularly look to for cost estimates to remediate water bodies in a circumstance like the one here. For the first option of remediating the pond, the least invasive "sludge-press" method, StyleCraft's estimate exceeded \$4,000,000.00. For

the second option, the "sediment bag" method, Stylecraft estimated a lower cost. And, for the third, most invasive option, Stylecraft estimated a cost of around \$2,100,000.00.

28. While Mr. Taylor looked to Stylecraft because of its significant experience in this field and the particular circumstances of the Jaco property, he conceded that other, less experienced or sophisticated contractors might accomplish this work for a lower price. Still, because of the significant machinery, trucking, and fuel and labor cost necessary for any approach to removing sediment from the Jaco property, he estimated that it would still cost somewhere around five hundred thousand dollars to perform even if a more invasive or disruptive process to clear and remove sediment was used.

29. Mr. Taylor estimated that with option one or option two, the pond could optimistically be remediated in 2 to 3 months, while more significant traditional dredging efforts (which would involve dewatering the pond to some degree or completely) could take closer to a year.

30. In addition, for any of these options, Stylecraft estimated a cost of around \$75,000.00 to remediate the stream and its bank using the "shovels and buckets" approach Mr. Taylor concluded was necessary.

31. Whatever fashion sediment was used to remove sediment would not be the last step in remediating this pond. Additional steps would be necessary to address the pond's water quality and water chemistry. To accomplish this aim, Mr. Taylor concluded that an application of lime costing approximately \$5,000.00 to \$6,000.00 would be necessary. Additionally, if the pond were to be dewatered as part of the remediation process, this would require restocking the pond with fish at a cost around \$1,000.00 to \$3,000.00. Again, some time would need to elapse before these measures could have their full intended effect.

32. Mr. Taylor was cross-examined by counsel for Defendants. One point addressed in this portion of his testimony was the use of a flocculent—a substance that can bind sediment together and cause it to sink to the bottom of the pond. While this would reduce the turbidity (cloudiness) of the water, it would increase the sediment covering the bottom of the pond and affect the chemistry of the pond—which, according to Mr. Taylor, would not improve the pond's overall health. Mr. Taylor stated that he considered this and other options to remediate the pond, but that it was his ultimate opinion that in order to remediate the pond to a healthy state (aesthetically pleasing and capable of supporting plants and wildlife as it once did), some method of removing accumulated sediment from the pond would need to be undertaken.

Testimony of Joseph Jaco.

33. Mr. Jaco testified on behalf of Plaintiffs next. Mr. Jaco is a civil engineer. Previously he served as the City Engineer for Columbia, and now serves as the executive director of the East Richland Public Service District. Mr. Jaco has been in a relationship with his now wife, Lauren Jaco, since 2005. Mr. Jaco discussed that early on in their relationship, they would routinely visit this property at 848 Tookie Doo Lane, which was at the time owned by Mrs. Jaco's aunt and uncle. They would regularly spend weekends and holidays (e.g., Christmas and Thanksgiving) at the property and attend various family events.

34. Mr. Jaco testified to the pleasant attributes of this property. The Jacos enjoy having a sanctuary away from the busyness of downtown. They regularly take walks on trails and paths on their property and enjoy the wildlife. Before the Tookie Doo subdivision began to be erected, they and their daughter enjoyed fishing and boating on the pond—which is one of the first features you see when you drive onto their property as you come across the causeway. In recent years, however, they have not been able to fully enjoy these social and recreational activities because of

the state of their stream and pond. They no longer can catch fish. The pond has a distressing and unsightly appearance, which has caused emotional strain.

35. Several years ago, Mrs. Jaco's aunt and uncle became ill. The Jacos took care of Mrs. Jaco's aunt and uncle and tended to this property while they were sick. Once Mrs. Jaco's aunt and uncle passed away, Mrs. Jaco inherited the property which Plaintiffs now both own.

36. At first, after Mrs. Jaco inherited the property, they would go out to the property primarily on weekends. Their time spent on the property has increased in recent years. And it is the Jacos' intention to, at some point, use the home on this property as their exclusive residence.

37. The Jacos first began to become concerned about discoloration in their pond sometime around February 2021. They attempted to determine the source of the sediment that appeared to be flowing into their pond and were able to determine, firsthand, that the sediment laden stormwater appeared to be flowing from the area of the recently cleared Tookie Doo subdivision. Over the last two and a half years or so, the pond has remained consistently turbid.

38. Through Mr. Jaco and Mr. Taylor, Plaintiffs introduced several photographs and videos (both on the ground and from overhead) corroborating Mr. Jaco's testimony that this pond has been turbid since the onset of development at the Tookie Doo subdivision. Without objection, the Court also considered similar evidence within and appended to Plaintiffs' Complaint.

39. While Defendant Green did not appear at the damages hearing, correspondence appended to the Complaint submitted on behalf of Defendant J.N. Green and Associates, alleged that "sabotage" to silt fencing on the Tookie Doo subdivision had occurred. *See* Plaintiffs' Compl. at Exh. C. Mr. Jaco denied that Plaintiffs engaged in any such acts and relying on photographs from Mr. Taylor and his own personal observations, Mr. Jaco stated that it was his opinion that the silt fencing that was installed at the Tookie Doo subdivision was not functioning as it should.

40. This same letter, also stated that the Jacos' pond was "extremely dirty" before work began on the Tookie Doo subdivision. Mr. Jaco testified that from 2005 until early 2021 (roughly when construction of the Tookie Doo subdivision began) he had never seen the pond muddy or turbid. In any event, after early 2021, the pond became and remained, to use Defendant's words, "extremely dirty."

41. Mr. Jaco's testimony highlighted that the Tookie Doo subdivision contained very nice homes and that it was his understanding that there were two vacant lots available at the subdivision that Defendants had listed for something around \$50,000.00 each. Still, Mr. Jaco asserted that he was frustrated that, despite a lack of objection at having neighbors in and the apparent success of the Tookie Doo subdivision, the Jacos had borne much of the cost by having sediment eroding from this property indefinitely stored in their stream and pond.

42. **Testimony of Lauren Jaco.** The last witness Plaintiffs called was Mrs. Lauren Jaco. Mrs. Jaco is a registered nurse who typically works from home in an administrative position. Mrs. Jaco echoed her and her husband's close connection to this land. She referred to the prior owners, her aunt and uncle, as a "second set of parents" who passed away within months of each other from cancer in 2018. She spoke of fond memories of visiting with her family and attending parties and gatherings at the property growing up.

43. In recent years, Mrs. Jaco and her husband have spent more time at their property. Mrs. Jaco became emotional when describing how stressed she has felt seeing the changes to the pond—how hearing earth moving equipment makes her fear that more land will be cleared and further harm the Plaintiffs' pond.

44. The Jacos have a seventeen-year-old daughter with whom her aunt and uncle were also very close—a “third set of grandparents.” The Jacos intend to leave this land to their daughter when they pass. To Mrs. Jaco, the land is “priceless,” and she would never consider selling it.

45. For several months, Mrs. Jaco has been undergoing chemotherapy to treat breast cancer. While she still enjoys the respite that this property provides to her and her family, she became emotional during her testimony, describing how she felt that she had “let [her aunt and uncle] down because the pond looks so bad.”

46. Defendants did not cross-examine Mr. or Mrs. Jaco. The Court concludes that the testimony offered by Plaintiffs and Mr. Taylor at the hearing is credible and compelling evidence of significant harm suffered by Plaintiffs due to Defendants’ actions and omissions.

IV. CONCLUSIONS OF LAW

Plaintiffs’ Causes of Action

1. Plaintiff’s Complaint alleges three causes of action: (i.) negligence; (ii.) nuisance and continuing nuisance; and (iii.) trespass and continuing trespass.

2. “To constitute actionable trespass . . . there must be an affirmative act, invasion of land must be intentional, and harm caused must be the direct result of that invasion.” *Hawkins v. City of Greenville*, 358 S.C. 280, 296, 594 S.E.2d 557, 565–66 (Ct. App. 2004) (quotation omitted).

3. “A nuisance, trespass’s counterpart, provides a remedy for invasions of a property owner’s right to the use and enjoyment of his property.” *Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 139, 747 S.E.2d 468, 473 (2013). If a lawful business is operated in an unlawful or unreasonable manner so as to produce material injury or great annoyance to others or unreasonably interferes with the lawful use and enjoyment of their property, it will constitute a nuisance.” *O’Cain v. O’Cain*, 322 S.C. 551, 560–61, 473 S.E.2d 460, 466 (Ct. App. 1996) (citing *LeFurgy v. Long*

Cove Club Owners Ass'n, Inc., 313 S.C. 555, 443 S.E.2d 577 (Ct. App. 1994)). “What is a reasonable use and whether a particular use is a nuisance cannot be determined by fixed general rules, but depends upon such facts as location, character of the neighborhood, nature of the use, extent and frequency of the injury, the effect upon the enjoyment of life, health, and property, and the like.” *Id.*

4. Finally, the elements of negligence are (1) a duty of care owed by defendant; (2) a breach of that duty by a negligent act or omission; (3) a negligent act or omission resulted in damages to the plaintiff; and (4) that damages proximately resulted from the breach of duty. *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 734 S.E.2d 161, 163–64 (2012). “[T]he following standard of care for neighboring landowners has been adopted in South Carolina,” *Livingston v. Copart of Connecticut, Inc.*, No. 3:17-CV-2543-TLW, 2021 WL 12141569, at *12, n. 14 (D.S.C. Mar. 26, 2021),

A landowner has an affirmative duty not to permit his land to remain in an altered state if such altered state creates a condition the natural and foreseeable result of which will result in injury to the adjoining property; the breach of this duty constitutes actionable negligence. He cannot fill up his own lot in such a manner as to let the earth pass or slide over his line onto the lot of his neighbor.

Id. (citing *Duane v. Presley Const. Co.*, 270 S.C. 682, 244 S.E.2d 509, 510 (1978)).

5. The well pled allegations of the Complaint, having been admitted through default of the Defendants, have established the liability of Defendants in this action.⁵ Accordingly, the Court turns to the damages to which Plaintiffs are entitled.

⁵ Included among these admitted facts is that “Defendants J.N. Green & Associates [LLC] and Big Blue Express [LLC] are shell companies totally dominated and controlled by Defendant [Joe] Green and these companies merely serve as the alter ego of Defendant [Joe] Green and each other.” Plaintiffs’ Complaint, ¶ 5.

Actual Damages

6. “Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred.” *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375–76 (2005) (internal citations omitted).

7. “The existence or amount of damages may not be left to conjecture, speculation[,] or guess.” *Pearson v. Bridges*, 344 S.C. 366, 544 S.E.2d 617, 619 n.5 (2001). But, “proof, with mathematical certainty, of the amount of loss or damage is not required.” *Gray v. S. Facilities, Inc.*, 256 S.C. 558, 570, 183 S.E.2d 438, 444 (1971).

8. Here, while Plaintiffs have brought three causes of action, they all involve the same general allegations and resultant harm. The Court has therefore consolidated its analysis and will award Plaintiffs a single recovery. *See, e.g., Oaks at Rivers Edge Prop. Owners Ass’n, Inc. v. Daniel Island Riverside Devs., LLC*, 420 S.C. 424, 442–43, 803 S.E.2d 475, 485 (Ct. App. 2017).

9. In considering damages, the Court must decide whether what is presented is a “permanent” or “continuing” trespass. “[D]amages for permanent trespass or nuisance in South Carolina are limited to the full market value of the property.” *Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 152, 747 S.E.2d 468, 480 (2013). The central issue in distinguishing a “continuing” trespass or nuisance from a “permanent” trespass or nuisance is whether abatement of the trespass or nuisance is “reasonably and practically possible.” *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 357, 559 S.E.2d 327, 337 (Ct. App. 2001). Based on the testimony of Mr. Taylor, abatement of the trespass here is possible through the imposition of additional best management practices

(grasses, foliage) on the Tookie Doo subdivision. But, while these steps will “stop the bleeding,” they will still not address the harm that has already occurred to Plaintiffs’ property, which, without intervention, will continue to negatively affect the pond and stream’s health for the foreseeable future.

10. In evaluating the measure of damages to property “two general rules have been applied . . . diminution in value and restoration costs.” *Vaught*, 366 S.C. at 481. (citing 22 Am. Jur. 2d Damages § 276). “To fully compensate the injured party, a court may allow the jury to consider more than one measure of damages, but damages may be awarded under only one theory.” *Id.*

11. With a continuing, but temporary or abatable trespass, the measure of “diminution in value” damages equals “lost rental value.” *Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 137, 747 S.E.2d 468, 472 (2013). Here, the evidence demonstrates that the Jacos lost the full benefit of their land from, at a minimum, sometime in February 2021 through the date of the damages hearing on September 22, 2023. If the Court were to use March 1, 2021, through the date of the hearing as an approximation of the period of “lost rental value” that the Jacos suffered, it would equal 935 days.

12. Lost rental value, includes, though,

. . . the annoyance and discomfort experienced as the result of a temporary trespass or nuisance. The lost rental value of the property is the difference between the rental value absent the trespass or nuisance and the rental value with the trespass or nuisance. The rental value with the trespass or nuisance present would be less, in part, because a hypothetical renter would have to suffer the annoyance and discomfort of the nuisance or trespass.

Babb v. Lee Cnty. Landfill SC, LLC, 405 S.C. 129, 142, 747 S.E.2d 468, 475 (2013).

13. While the Jacos did not precisely quantify what the asserted “lost rental value” would be here, there can be no doubt that they suffered some loss in the form of lost rental value

to their home and property. And they, like any hypothetical renter would, have suffered “annoyance and discomfort” because of the nuisance and trespass inflicted by the Defendants for the last several years.

14. That said, restoration costs are also a potentially appropriate measure of damages here because even if “the cost of restoration exceeds the diminution in value,” if the Jacos “have personal reason relating to the land for restoring the land to its original condition.” *Vaught v. A. O. Hardee & Sons, Inc.*, 366 S.C. 475, 484, 623 S.E.2d 373, 378 (2005) (citing Restatement (Second) of Torts § 929 (1979)). Accordingly, so long as “the cost of restoration is reasonable in relation to the damage inflicted” restoration costs can be a proper measure of damages here. *Id.* The reasoning being, as our Supreme Court has explained, is that,

One person's unsightly jungle may be another person's enchanted forest; certainly the owner of such land should be allowed to enjoy it free from a trespasser's bulldozer. Indeed, a trespasser should not be allowed, with impunity, to negligently or willfully wreak havoc on a landowner's natural woods, and the landowner's attempted recovery for such injury should not be entirely frustrated by the fact that the market does not reflect his personal loss.

Vaught v. A. O. Hardee & Sons, Inc., 366 S.C. 475, 483, 623 S.E.2d 373, 377 (2005) (citing *Keitges v. VanDermeulen*, 240 Neb. 580, 589, 483 N.W.2d 137, 143 (1992)).

15. As for the Jacos’ personal interest in this land, the Jacos testified on this topic at length: how the has been in Mrs. Jaco’s property for multiple generations, that her uncle—a second father to her and a second grandfather to her daughter—originally built the pond; how the Jacos forged their young and now mature relationship centered on this property and its central feature, the pond; how the Jacos cared for her ailing aunt and uncle at the property; how the Jacos like to spend time with each other and their daughter, hiking, fishing, and boating on or near the pond; and the varied gatherings the Jacos and their family have hosted at the pond; the particular aesthetic value of this pond, and the heartfelt pain Mrs. Jaco has experienced thinking that she has somehow,

let her aunt and uncle down by not protecting the pond. The Court concludes that these factors are credible, compelling, and sufficient “personal reasons” that justify the use of restoration costs as a measure of damages here.

16. The Jacos’ expert, Brian Taylor, testified that active efforts to restore the pond and stream to their healthy state would take on the low end, 2-3 months for less intrusive efforts, and on the high end, around one year. In addition, chemically treating and restocking the pond with fish will require additional months to reach the intended effect. Mr. Taylor’s estimates of how much such restoration efforts would cost ranged from several hundred thousand dollars to more than four million dollars—with a sunk cost of approximately \$75,000.00 to manually remediate the stream.

17. The Court acknowledges that Plaintiffs’ property is, for understandable reasons, “priceless” to the Jacos, and that lower cost remedial measures may be more burdensome and time consuming on the Jacos. Still, the Court concludes that a compensatory figure above \$4,000,000.00, bears an unreasonable relation to the damages suffered by the Jacos here, despite their very close and personal connection to this land. Accordingly, the Court awards \$500,000.00 to the Jacos in compensatory damages as an appropriate measure of their costs to remediate their property—a figure at the very bottom of the scale of potential remedial measures suggested by Plaintiffs’ expert and the most time-consuming and burdensome option as well, because it will likely necessitate additional disruption to the Jacos’ lives in the form of completely draining the pond and deforesting or excavating other portions of their property.

18. In the alternative, even if the Court could not award these costs of remediation under the law, it would still conclude \$500,000.00 as a fair assessment of the lost rental value of this property for at least 935 days. In so doing, the Court acknowledges that an assessment of

rental value of this property can in some respects be determined through an analysis of its value to Defendants. The Defendants were able to avoid significant costs of installing best land clearing and stormwater management practices on their land and instead used the Jacos' property as their holding pond while they built a subdivision. In effect, Defendants used the Jacos' pond as a retention pond for the subdivision runoff.

Punitive Damages

19. The Court now turns to the issue of punitive damages. Punitive damages serve an important role and "further a state's legitimate interests in punishing unlawful conduct and deterring its repetition." *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 584, 686 S.E.2d 176, 183 (2009).

20. While aware of the Court's role as the factfinder here, in making an award of punitive damages, the Court looks to certain "guideposts" that include:

(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

Hollis v. Stonington Dev., LLC, 394 S.C. 383, 396, 714 S.E.2d 904, 911 (Ct. App. 2011). These "guideposts" are now addressed in turn.

21. As to the "reprehensibility" of Defendants' actions, the Court looks to the following factors,

(i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

Id. (citing *Mitchell, Jr.*, 385 S.C. at 587).

22. As to the first factor, although the Jacos have incurred “significant monetary damages, they did not suffer any physical harm.” *Id.* This “weighs against reprehensibility.” *Id.*

23. Regarding the second factor, while Defendants’ actions “did demonstrate an indifference to the property rights of others, [they] did not evince an indifference to or reckless disregard for the health or safety of people.” *Hollis*, 714 S.E.2d at 912. This factor also counsels against reprehensibility. *Id.*

24. As to the third consideration, there is no evidence of the financial status of the Jacos on the record. Thus, this factor is inapplicable here.

25. The fourth and fifth considerations do indicate reprehensibility on the part of Defendants. While there was no evidence of Defendants engaging in this type of behavior with regard to other projects, the conduct of Defendants at issue here was not an isolated incident. For years “in the face of repeated requests from the [Jacos] to fix the ongoing problems, and despite repeated official notices of regulatory violations” Defendants continued to engage in reckless conduct. *Hollis*, 714 S.E.2d at 912.

26. While the Court does not conclude that Defendants’ actions rose to the level of “intentional malice,” the Court has considered Defendants’ statements to DHEC alluding to or implying “sinister” motivations and potential “sabotage” by Plaintiffs. At a minimum, these statements show an attempt to evade accountability and support a conclusion that Defendants’ activities were no “mere accident.”

27. In determining an amount of punitive damages, the Court is cognizant of the actual damages awarded here of \$500,000.00. In determining an appropriate amount of punitive damages, the Court is mindful of the need to avoid an undue or disproportionate award of punitive damages, and arrive at a figure that is constitutionally sound.

28. The Court also concludes that a deterrent effect is appropriate here. It appears that Mr. Green and his companies (which are, now admitted, alter egos of each other) remain in the development business and indeed still have two unsold parcels remaining at the Tookie Doo subdivision. While not a significant factor in the Court's consideration here, the Court has also considered the deterrent effect this award may have on others similarly situated in the development business in South Carolina.

29. As to Defendants' ability to pay, the only evidence on the record is that Defendants, after selling several nice homes in the Tookie Doo subdivision, still have two parcels left unsold in the subdivision.

30. The third guidepost centers on potential civil penalties authorized or imposed in comparable cases. Here, there are multiple civil penalties that could be applied to Defendants' misconduct.

31. The evidence confirms that Defendants began to clear their land without proper permitting in or around February 2021. On September 26, 2022, Defendant Green, for J.N. Green and Associates, LLC, via a consent order with DHEC, admitted to violating S.C. Code Ann. Regs. 61-9.122.26 (b)(14)(x) "in that it initiated land disturbing activities prior to obtaining a permit from the Department." The Consent Order stipulated that it was not until August 24, 2022, that the Department granted Defendants a permit. Moreover, this same Consent Order stipulated that the South Carolina . . .

Pollution Control Act, S.C. Code Ann. § 48-1-330, provides for a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day of violation for any person violating the Act or any rule, regulation, permit, permit condition, final determination, or order of the Department.

32. Accordingly, if assessed on a “per day” violation basis for at least 541 days (March 1, 2021, through August 24, 2022) Defendants were potentially exposed to civil liabilities in excess of \$5,000,000.00.

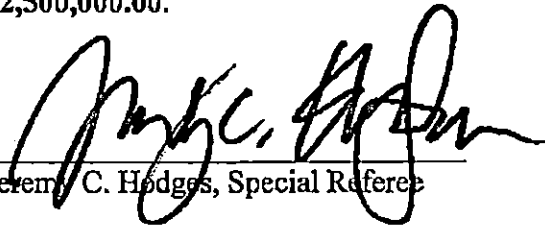
33. The Court also considers that Defendants’ conduct raises concerns under the “Standards for Stormwater Management and Sediment Reduction” contained in Chapter 72 of the South Carolina Code of Regulations. 26 S.C. Code Ann. Regs. 72–315(A) (Supp. 2010) which provide for a separate award of \$1,000.00 per day. Moreover, under federal law, the Environmental Protection Agency may seek a civil penalty up to \$25,000.00 per day for misconduct much like that engaged in by Defendants. Applicable federal regulations require that sediment and erosion controls must “[a]t a minimum ... be designed, installed, and maintained to: . . . (2) Control stormwater discharges . . . to minimize downstream channel and streambank erosion; . . . (5) Minimize sediment discharges from the site. . . . ; (6) Provide and maintain natural buffers around surface waters” 40 C.F.R. § 450.21(a)(2), (5)–(6) (2010). Defendants’ violations of these other state and federal regulations could have resulted in a total penalty that far exceeds the punitive damages figures the Court is considering here.

34. The Defendants’ actions in this case were negligent, and constituted a trespass and nuisance. The Court is especially concerned that despite having multiple years to correct their errant actions, the Defendants persisted in a course of conduct that, in a favorable light, was at least reckless toward the rights of the Plaintiffs and South Carolina law. After carefully considering all of the facts in evidence and the law and being careful to avoid an award of punitive damages that is excessive or violates due process, the Court concludes that an appropriate amount of punitive damages is \$2,000,000.00. *Cf. Hollis*, 714 S.E.2d at 912–16 (allowing \$2,000,000.00 punitive award where jury awarded \$400,000.00 for compensatory damages).

V. CONCLUSION

For these reasons, the Court FINDS AND CONCLUDES that Defendants, Joe Green, J.N. Green & Associates, LLC, and Big Blue Express, LLC, are jointly and severally liable for actual damages to Plaintiffs, Joseph and Lauren Jaco, in the amount of \$500,000.00 and punitive damages in the amount of \$2,000,000.00, for a total award of \$2,500,000.00.

AND IT IS SO ORDERED.


Jeremy C. Hodges, Special Referee

January 2, 2024
Columbia, South Carolina

EXHIBIT

“F”

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Joseph and Lauren Jaco	)	C.A. No. 22-CP-28-00877
Plaintiffs,	)	
v.	)	RULE 59(e) MOTION FOR RECONSIDERATION
J.N. Green & Associates, LLC, Big Blue	)	
Express, LLC, and Joe N. Green,	)	
Defendants.	)	

PLEASE TAKE NOTICE that Defendants named hereinabove, by and through their undersigned counsel, will move before this Court on the 10th day after service, or at such other time and place as is convenient to the Court, to reconsider its decisions to deny Defendants' Motion to Set Aside Default, to deny Defendant's Motion to Dismiss Joe N. Green and Big Blue Blue Express as party defendants, and to Award Plaintiff's 2.5 Million Dollars in actual and punitive damages.

The grounds for this motion are as follows:

1. The court erred in failing to find that defendant's established all necessary elements for an order setting aside the entry of default, including but not limited to good cause, timeliness, and lack of prejudice to Plaintiff's in the event the motion to set aside default had been granted;
2. The court erred in failing to grant Defendant's motion to Dismiss Joe N. Green and Big Blue Express as party defendants inasmuch as both of these defendants are separate entities from the alleged tortfeasor in this matter, J.N. Green and associates, and Plaintiff;s failed to make the requisit showing that piercing the corporate veil of protection from liability was appropriate in this case. To the extent the Court failed to recognize and utilize its judicial authority to dismiss improperly named parties from this matter at any point in this litigation, such failure was also error;

3. The court erred in awarding Plaintiffs 2.5 million dollar in actual and punitive damages when this amount is arbitrary and capricious, is without sufficient proof, is based on improper consideration of opinions based on improper hearsay which was excluded at trial, and which amount bears no connection to a realistic determination of actual damages based on the competent evidence presented in this matter, and the amount allocated to punitive damages is utterly unjustifiable in light of governing rules, case and statutory law juxtaposed to the facts and circumstances of this case.

Thus, the Defendant respectfully moves this Court to reconsider its decisions to deny Defendant's Motion to set Aside Default, to deny Defendant's Motion to Dismiss Joe N. Green and Big Blue Express as Party Defendants, and to award Plaintiff's \$2.5 million in actual and punitive damages. This motion is based upon the supporting memorandum of law, to be filed at a later date and incorporated herein, the pleadings, affidavits, rules, case law and statutory law of the State of South Carolina.

Respectfully submitted,

/s/Adrianne L. Turner
Adrianne L. Turner / S.C. Bar No. 6840

Turner Law, LLC
887 Pine Log Ford Road
Travelers Rest, SC 29690
(803) 467-8687
(803) 271-0451
aturner@turnerlawsc.com
Attorney for Defendants

January 17, 2024
Greenville, SC

EXHIBIT

“G”

From: [Adrianne Turner](#)
To: [Ian T. Duggan](#); [Jeremy Hodges](#); [Harry Dixon](#)
Cc: [Katie Minton](#)
Subject: RE: Motion to Reconsider
Date: Wednesday, January 31, 2024 1:21:31 PM
Attachments: [Outlook-Callison T](#)

I spoke with the clerk's office and learned that my office inadvertently filed and paid for duplicate motions in the same transaction. They do not have a way of partially rejecting duplicate filings or overpayments, so they had to reject both. I will be resubmitting the same filing and single fee payment with them shortly.

Thank you
Adrianne.

Adrianne

Sent from my T-Mobile 4G LTE Device

----- Original message -----

From: "Ian T. Duggan" <ianduggan@callisontighe.com>
Date: 1/31/24 12:51 PM (GMT-05:00)
To: Adrianne Turner <aturner@turnerlawsc.com>, Jeremy Hodges <jhodges@rplegalgroup.com>, Harry Dixon <harrydixon@callisontighe.com>
Cc: Katie Minton <katieminton@callisontighe.com>
Subject: Re: Motion to Reconsider

Dear Mr. Hodges:

I appreciate your note. If Defendants intend to submit a memorandum of law in support of their Motion, we would respectfully request for you to set an expeditious briefing schedule. Based on the further arguments of counsel in whatever briefs are submitted, I trust the Court will determine whether a hearing is appropriate at the appropriate time.

I will also note that while I saw the initial notification of submission of Ms. Turner's motion on behalf of the Defendants, it appears that this submission was rejected by the clerk (see attached).

I do not recall seeing any further correspondence on this from the Clerk's office, but my quick review of the public index shows, at least as of right now, that this motion is not on file. I suppose this is something that needs to be resolved as a threshold matter.

My best,
Ian



Ian T. Duggan Lawyer

Palmetto Armory Building
1812 Lincoln Street
Columbia, SC 29201

Phone 803.404.6900
Direct 803.404.6965
Fax 803.404.6902

Mailing Address

P.O. Box 1390
Columbia, SC 29202-1390

vCard

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From: Adrienne Turner <aturner@turnerlawsc.com>
Sent: Wednesday, January 31, 2024 12:33 PM
To: Jeremy Hodges <jhodges@rplegalgroup.com>; Ian T. Duggan <ianduggan@callisontighe.com>; Harry Dixon <harrydixon@callisontighe.com>
Cc: Katie Minton <katieminton@callisontighe.com>
Subject: RE: Motion to Reconsider

Good afternoon Mr. Hodges. Please note that Defendant requests a hearing on the motion to reconsider, to be proceeded with memorandum of law in support of the motion. Alternatively, in the event you decline to hold a hearing on the motion, Defendant requests that you advise the parties of a schedule for submission of memorandum of law in support/opposition to Defendant's motion.

Adrienne

Sent from my T-Mobile 4G LTE Device

----- Original message -----

From: Jeremy Hodges <jhodges@rplegalgroup.com>
Date: 1/31/24 9:30 AM (GMT-05:00)
To: "Ian T. Duggan" <ianduggan@callisontighe.com>, Harry Dixon <harrydixon@callisontighe.com>
Cc: Katie Minton <katieminton@callisontighe.com>, Adrienne Turner <aturner@turnerlawsc.com>

Subject: RE: Motion to Reconsider

Mr. Duggan,

Please let me know if you plan to submit a written response to the Motion to Reconsider on behalf of the Jacos, and if so, when you expect to have that completed. Thanks,

Jeremy C. Hodges
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
803.978.6111

From: Jeremy Hodges
Sent: Friday, January 19, 2024 10:20 AM
To: Adrienne Turner <aturner@turnerlawsc.com>; Ian T. Duggan <ianduggan@callisontighe.com>
Subject: RE: Motion to Reconsider

Received. Thank you,

Jeremy C. Hodges
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
803.978.6111

From: Adrienne Turner <aturner@turnerlawsc.com>
Sent: Thursday, January 18, 2024 11:46 PM
To: Ian T. Duggan <ianduggan@callisontighe.com>
Cc: Jeremy Hodges <jhodges@rplegalgroup.com>
Subject: Motion to Reconsider

Please note that the attached Motion for Reconsideration has been filed via the Court's electronic filing system.

Thank you.

Turner Law LLC

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

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EXHIBIT

“H”

From: efiledonotreply@sccourts.org
To: [Ian T. Duggan](#)
Cc: [Katie Minton](#)
Subject: Courtesy NEF RE: 2022CP2800877
Date: Thursday, January 18, 2024 11:41:25 PM

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2022CP2800877

Official File Stamp: 01-18-2024 11:36:46 PM
Court: CIRCUIT COURT
Common Pleas
Kershaw
Case Caption: Joseph Jaco , plaintiff, et al VS J N Green & Associates Llc ,
defendant, et al
Document(s) Submitted: Motion/Reconsider
Motion/Reconsider
Filed by or on behalf of: Adrienne LaVonne Turner

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Adrienne LaVonne Turner for J N Green & Associates Llc et al
Harry Alwyn Dixon for Joseph Jaco et al
Ian T. Duggan for Joseph Jaco et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**EXHIBIT**

**“I”**

From: [efiledonotreply@sccourts.org](mailto:efiledonotreply@sccourts.org)  
To: [Ian T. Duggan](#)  
Cc: [Katie Minton](#)  
Subject: Retraction: Courtesy NEF RE: 2022CP2800877  
Date: Friday, January 19, 2024 8:12:14 AM

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**The Notice below is RESCINDED  
The filing was not filed.**

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**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]**

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A filing has been submitted to the court RE: 2022CP2800877

|                           |                                                                                 |
|---------------------------|---------------------------------------------------------------------------------|
| Official File Stamp:      | 01-18-2024 11:36:46 PM                                                          |
| Court:                    | CIRCUIT COURT<br>Common Pleas<br>Kershaw                                        |
| Case Caption:             | Joseph Jaco , plaintiff, et al VS J N Green & Associates Llc , defendant, et al |
| Document(s) Submitted:    | Motion/Reconsider<br>Motion/Reconsider                                          |
| Filed by or on behalf of: | Adrienne LaVonne Turner                                                         |

This notice was automatically generated by the Court's auto-notification system.

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**The following people were served electronically:**

Adrienne LaVonne Turner for J N Green & Associates Llc et al  
Harry Alwyn Dixon for Joseph Jaco et al  
Ian T. Duggan for Joseph Jaco et al

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

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EXHIBIT

“J”



Kershaw County Fifth Judicial Circuit Public Index



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Switch View

Joseph Jaco , plaintiff, et al VS J N Green & Associates Llc , defendant, et al

| | | | | | |
|----------------------|--------------------------------------|-------------------|---|--------------------|-----------------------------|
| Case Number: | 2022CP2800877 | Court Agency: | Common Pleas | Filed Date: | 10/12/2022 |
| Case Type: | Common Pleas | Case Sub Type: | Person Inj/Other 399 | File Type: | Mediator - Jury |
| Status: | Appeal | Assigned Judge: | Clerk Of Court C P, G S, And Family Court | | |
| Disposition: | Appealed Supreme Court/Ct of Appeals | Disposition Date: | 01/08/2024 | Disposition Judge: | Special Referee G S And C P |
| Original Source Doc: | | Original Case #: | | | |
| Judgment Number: | 2022CP2800877 | Court Roster: | | | |

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

| Name | Description | Type | Motion Roster | Begin Date | Completion Date | Documents |
|----------------------------|---|----------|---------------|------------------|------------------|-----------|
| J N Green & Associates Llc | NEF(04-24-2024 09:35:53 AM) Appeal/Notice of Appeal to C... | Filing | | 04/24/2024-09:46 | | |
| J N Green & Associates Llc | Appeal/Notice of Appeal to Court of Appeals | Filing | | 04/24/2024-09:35 | | |
| Jaco, Joseph | Letter from Special Referee | Filing | | 04/22/2024-11:43 | | |
| Jaco, Joseph | NEF(04-18-2024 02:49:09 PM) Transcript/Signed Transcript... | Filing | | 04/18/2024-15:37 | | |
| Jaco, Joseph | Transcript/Signed Transcript of Judgment | Filing | | 04/18/2024-14:49 | | |
| Jaco, Joseph | Execution/Issued | Filing | | 04/18/2024-14:49 | | |
| Jaco, Joseph | NEF(01-08-2024 04:11:51 PM) Service/Certificate Of Servi... | Filing | | 01/08/2024-16:53 | | |
| Jaco, Joseph | Service/Certificate Of Service | Filing | | 01/08/2024-16:11 | | |
| Jaco, Lauren | Judgment/Default | Judgment | | 01/08/2024-15:31 | | |
| Big Blue Express Llc | Judgment/Default | Judgment | | 01/08/2024-15:31 | | |
| Jaco, Lauren | Judgment/Default | Judgment | | 01/08/2024-15:31 | | |
| J N Green & Associates Llc | Judgment/Default | Judgment | | 01/08/2024-15:31 | | |
| Jaco, Lauren | Judgment/Default | Judgment | | 01/08/2024-15:30 | | |
| Green, Joe N | Judgment/Default | Judgment | | 01/08/2024-15:30 | | |
| Big Blue Express Llc | Judgment/Default | Judgment | | 01/08/2024-14:05 | 01/08/2024-14:05 | |

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|----------------------------|--|----------|--|------------------|------------------|---|
| Green, Joe N | Judgment/Default | Judgment | | 01/08/2024-14:05 | 01/08/2024-14:05 | |
| Jaco, Joseph | Judgment/Default | Judgment | | 01/08/2024-14:05 | 01/08/2024-14:05 | |
| Jaco, Joseph | Judgment/Default | Judgment | | 01/08/2024-14:05 | 01/08/2024-14:05 | |
| Jaco, Joseph | Judgment/Default | Judgment | | 01/08/2024-14:05 | 01/08/2024-14:05 | |
| J N Green & Associates Llc | Judgment/Default | Judgment | | 01/08/2024-14:05 | 01/08/2024-14:05 | |
| Jaco, Joseph | Order/Final Order Making Findings of Fact and Conclusions of | Order | | 01/08/2024-14:00 | 01/08/2024-14:00 |  |
| Jaco, Joseph | Order/Order Denying Defendants Motion to Dismiss | Order | | 11/02/2023-11:07 | 01/08/2024-11:07 |  |
| Jaco, Joseph | NEF(08-03-2023 11:17:19 AM) Notice/Notice of Hearing and... | Filing | | 08/03/2023-11:34 | 01/08/2024-11:34 |  |
| Jaco, Joseph | Notice/Notice of Hearing and Service | Filing | | 08/03/2023-11:17 | 01/08/2024-11:17 |  |
| Jaco, Joseph | Service/Certificate Of Service | Filing | | 08/03/2023-11:17 | 01/08/2024-11:17 |  |
| Jaco, Joseph | NEF(05-24-2023 10:37:48 AM) Notice/Notice of Hearing and... | Filing | | 05/24/2023-10:40 | 01/08/2024-10:40 |  |
| Jaco, Joseph | Notice/Notice of Hearing and Service | Filing | | 05/24/2023-10:37 | 01/08/2024-10:37 |  |
| Jaco, Joseph | ADR/Alternative Dispute Resolution (Workflow) | Action | | 05/10/2023-10:11 | 01/08/2024-10:11 | |
| Jaco, Joseph | Order Denying Defendants Motion to Set Aside Default | Order | | 04/06/2023-10:18 | 01/08/2024-10:18 |  |
| Jaco, Joseph | NEF(03-14-2023 11:20:26 AM) Memo/Memo in Opposition | Filing | | 03/14/2023-12:21 | 01/08/2024-12:21 |  |
| Jaco, Joseph | Memo/Memo in Opposition | Filing | | 03/14/2023-11:20 | 01/08/2024-11:20 |             |
| J N Green & Associates Llc | NEF(01-24-2023 10:34:52 AM) Motion/Set Aside Default | Filing | | 01/24/2023-10:43 | 01/08/2024-10:43 |  |
| Green, Joe N | Motion/Set Aside Default | Motion | | 01/24/2023-10:34 | 01/24/2023-10:34 |  |
| J N Green & Associates Llc | NEF(01-19-2023 04:45:34 PM) Notice/Notice of Appearance | Filing | | 01/19/2023-16:45 | 01/08/2024-16:45 |  |
| J N Green & Associates Llc | Notice/Notice of Appearance | Filing | | 01/19/2023-16:45 | 01/08/2024-16:45 | |
| Jaco, Joseph | NEF(01-09-2023 02:52:56 PM) Service/Certificate Of Servi... | Filing | | 01/09/2023-16:38 | 01/08/2024-16:38 |  |
| Jaco, Joseph | Service/Certificate Of Service | Filing | | 01/09/2023-14:52 | 01/08/2024-14:52 |  |
| Jaco, Joseph | NEF(01-09-2023 08:46:03 AM) Order/Entry of Default | Filing | | 01/09/2023-08:52 | 01/08/2024-08:52 |  |
| Jaco, Joseph | Order/Entry of Default | Order | | 01/09/2023-08:46 | 01/08/2024-08:46 |  |

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|--------------|--|--------|--|------------------|------------------|--|
| Jaco, Joseph | NEF(01-06-2023 05:20:59 PM)
Order/Referred to Master or ... | Filing | | 01/06/2023-17:21 | 01/08/2024-17:21 | |
| Jaco, Joseph | Order/Referred to Master or Special Referee | Order | | 01/06/2023-17:20 | 01/08/2024-17:20 | |
| Jaco, Joseph | NEF(01-04-2023 03:21:18 PM)
Affidavit/Default | Filing | | 01/04/2023-16:13 | 01/08/2024-16:13 | |
| Jaco, Joseph | Affidavit/Default | Filing | | 01/04/2023-15:21 | 01/08/2024-15:21 | |
| Jaco, Joseph | Order/Order Cover Sheet \$25.00 | Filing | | 01/04/2023-15:21 | 01/08/2024-15:21 | |
| Jaco, Joseph | Order/Order Cover Sheet \$25.00 | Filing | | 01/04/2023-15:21 | 01/08/2024-15:21 | |
| Jaco, Joseph | NEF(11-30-2022 03:52:04 PM)
Affidavit/Publication | Filing | | 11/30/2022-16:06 | 01/08/2024-16:06 | |
| Jaco, Joseph | Affidavit/Publication | Filing | | 11/30/2022-15:52 | 01/08/2024-15:52 | |
| Jaco, Joseph | NEF(11-08-2022 01:06:55 PM)
Service/Certificate Of Servi... | Filing | | 11/09/2022-08:19 | 01/08/2024-08:19 | |
| Jaco, Joseph | Service/Certificate Of Service | Filing | | 11/08/2022-13:06 | 01/08/2024-13:06 | |
| Jaco, Joseph | NEF(11-07-2022 01:56:46 PM)
Order/Publication | Filing | | 11/07/2022-13:56 | 01/08/2024-13:56 | |
| Jaco, Joseph | Order/Publication | Order | | 11/07/2022-13:56 | 01/08/2024-13:56 | |
| Jaco, Joseph | NEF(11-07-2022 12:40:23 PM)
Service/Affidavit of Non Ser... | Filing | | 11/07/2022-13:14 | 01/08/2024-13:14 | |
| Jaco, Joseph | Service/Affidavit of Non Service on Joe N Green | Filing | | 11/07/2022-12:40 | 01/08/2024-12:40 | |
| Jaco, Joseph | Service/Affidavit of Non Service on J N Green & Associates L | Filing | | 11/07/2022-12:40 | 01/08/2024-12:40 | |
| Jaco, Joseph | Service/Affidavit of Non Service on Big Blue Express Llc | Filing | | 11/07/2022-12:40 | 01/08/2024-12:40 | |
| Jaco, Joseph | Service/Affidavit of Non Service on J N Green & Associates L | Filing | | 11/07/2022-12:40 | 01/08/2024-12:40 | |
| Jaco, Joseph | Motion/Petition for Order of Publication | Motion | | 11/07/2022-12:40 | 11/18/2022-12:40 | |
| Jaco, Joseph | Affidavit/Attorney | Filing | | 11/07/2022-12:40 | 01/08/2024-12:40 | |
| Jaco, Joseph | Notice/Other | Filing | | 11/07/2022-12:40 | 01/08/2024-12:40 | |
| Jaco, Joseph | Order/Order Cover Sheet \$25.00 | Filing | | 11/07/2022-12:40 | 01/08/2024-12:40 | |
| Jaco, Joseph | Summons | Filing | | 10/19/2022-14:30 | 01/08/2024-14:30 | |
| Jaco, Joseph | NEF(10-19-2022 02:20:12 PM)
Summons & Complaint/No Filin... | Filing | | 10/19/2022-14:29 | 01/08/2024-14:29 | |
| Jaco, Joseph | Summons & Complaint | Filing | | 10/12/2022-10:11 | 01/08/2024-10:11 | |

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
Jeremy C. Hodges, Esquire, Special Referee

Case No. 2022-CP-28-00877

Appellate Case No.: 2024-000679

RECEIVED
MAY 29 2024
SC Court of Appeals

Joseph and Lauren Jaco.....Respondents,

vs.

J.N. Green and Associates, LLC, Big Blue Express, LLC, and Joe N. Green.....Appellants.

PROOF OF DELIVERY

I hereby certify that, on this date, the **RESPONDENTS' MOTION TO DISMISS APPEAL** was served on Appellants' counsel via first-class mail delivery, and by email, pursuant to Supreme Court Order dated April 24, 2024, as follows:

Adrianne L. Turner, Esquire
Turner Law, LLC
887 Pine Log Ford Road
Travelers Rest, SC 29690
aturner@turnerlawsc.com
Attorney for Appellants
J.N. Green & Associates, LLC,
Big Blue Express, LLC, and Joe N. Green

I further certify that all parties required by Rule to be served have been served.

s/ Ian T. Duggan
Ian T. Duggan, SC Bar No. 80074

Columbia, South Carolina
May 29, 2024

Ian T. Duggan - Lawyer
Telephone: 803-404-6900
IanDuggan@callisontighe.com

May 29, 2024

RECEIVED
MAY 29 2024
SC Court of Appeals

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

**Re: Joseph and Lauren Jaco vs. J.N. Green and Associates, LLC, Big Blue
Express, LLC, and Joe N. Green
Appellate Tracking No. 2024-000679
Our File No. 8728.001**

Dear Ms. Kitchings:

Enclosed herewith please find the original and one (1) copy of Respondents' Motion to Dismiss Appeal, together with the Proof of Service, in the above-referenced matter. Kindly file the same and return a clocked-in copy to the undersigned via our firm's courier. Also enclosed please find my firm's check in the amount of \$50.00 as the filing fee for the Motion.

The enclosed documents have been served upon Appellants' counsel today via email as indicated in the Proof of Service.

Please feel free to contact me with any questions. Thank you.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC

s/ Ian J. Duggan

Ian T. Duggan

ITD:kam

Enclosures

cc: Adrienne L. Turner, Esquire (via email and first-class mail)
Joseph and Lauren Jaco (via email)