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Jun 03 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Alex Kinlaw Jr., Circuit Court Judge

Appellate Case No. 2024-000245

ANGELEE MEDVE, Respondent,

v.

MICHAEL'S WHOLESALE FLOORING, Appellant.

RECORD ON APPEAL

Kimila Lynn Wooten, SC Bar # 64516
Kenison, Dudley & Crawford, LLC
325 W. McBee Avenue, Suite 301
Greenville, SC 29601
P: 864-242-4899
Email: wooten@conlaw.com
Attorney for Respondent

Robert K. Merting, SC Bar # 100181
R. K. Merting, LLC
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Greenville, SC 29609
P: 843-830-5227
Email: robert@rkmerting.com
Attorney for Appellant

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STATE OF SOUTH CAROLINA

) IN THE MAGISTRATE'S COURT

COUNTY OF GREENVILLE

) Case No. 2018-CV-23-11004590

Angelee Medve,

)

ORDER OF JOINDER

) Plaintiff,

)

v.

)

Michael's Wholesale Flooring,

)

) Defendant.

)

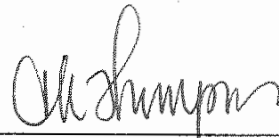
)

THIS MATTER comes before this court on Plaintiff's Motion for an Order joining Prolex Flooring USA, Inc. ("Prolex") as a Defendant in the present action pursuant to S.C. R. Civ. P. 20. The grounds for Plaintiff's Motion are that the relief sought by Plaintiff against Prolex arises from the same series of transactions and occurrences asserted in this case.

Accordingly, this Court finds permissive joinder in this case under S.C. R. Civ. P. 20 is both appropriate and necessary to further the orderly and efficient administration of justice.

WHEREFORE, based on the foregoing, Plaintiff's Motion for Joinder is hereby GRANTED. It is FURTHER GRANTED that Plaintiff is allowed to file and serve her Amended Complaint naming Prolex as a Defendant in this matter.

AND IT IS SO ORDERED.



Magistrate Judge

September 4th, 2020

Prolex Flooring argued the action should be dismissed, as the three (3) year statute of limitations had expired. Prolex Flooring was served on April 27, 2023 via certified mail. Their answer was received on May 24, 2023. The initial complaint was filed on December 7, 2018.

After careful consideration of all testimony and evidence, based on the preponderance of evidence, the court rendered a decision to **GRANT MOTION** and therefore this case shall reflect a disposition of **DISMISSED WITH PREJUDICE**.

IT IS HEREBY ORDERED.

June 23, 2023
Greenville, South Carolina



Magistrate, Greenville County

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2304767

Angelee Medve
PLAINTIFF(S)

Michaels Wholesale Flooring
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter is a magistrate court appeal. At the call of the case, Attorney Kimila Lynn Wooten was present on behalf of the Appellant, Angelee Medve. No one was present on behalf of the Respondent. After hearing the argument of Ms. Wooten, the Court is inclined to grant the appeal. The matter will be remanded back to the lower court for adjudication. Ms. Wooten is to provide a formal order to the court within 10 days.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/02/2023 .

Michaels Wholesale Flooring

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Greenville Common Pleas

Case Caption: Angelee Medve VS Michaels Wholesale Flooring

Case Number: 2023CP2304767

Type: Order/Electronic Form 4

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2023-11-02 16:27:06 page 3 of 3

ELECTRONICALLY FILED - 2023 Nov 03 9:21 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2304767

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2304767

Angelee Medve
PLAINTIFF(S)

Michaels Wholesale Flooring
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

At the call of the case, Attorney Kimila Lynn Wooten was present on behalf of the Plaintiff. Attorney Robert Karl Merting was present on behalf of the Defendant. After hearing the arguments presented from both sides on Defendant's Motion to Reconsider, the court is inclined to deny the same. It is so ordered!

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/12/2024 .

Gantt Summary Court for Michaels Wholesale Flooring

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Greenville Common Pleas

Case Caption: Angelee Medve VS Michaels Wholesale Flooring
Case Number: 2023CP2304767
Type: Order/Electronic Form 4

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2024-02-12 15:57:51 page 3 of 3

ELECTRONICALLY FILED - 2024 Feb 13 8:37 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2304767

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
)	
COUNTY OF GREENVILLE	)	CIVIL ANSWER
	)	CASE 2018CV2311004590
)	
Angelee Medve	)	2023-CP-23-04767
)	
<i>Appellant,</i>)	
)	
v.)	
)	
Michael's Wholesale Flooring)	
)	
<i>Respondent</i>)	

23 OCT 3 AM 10:23
 Eric Garrett CDC GUL SC

In response to the appeal 2023-CP-23-04590, the Appellant asks for review of the case stating the Court improperly failed to grant their Motion for Continuance due to illness and improperly granting Respondent's Motion for Summary Judgment followed by denial of Appellant's Motion to Set Aside Judgment.

The Complaint was filed on December 7, 2018 and served on December 18, 2018. Respondent's Answer and Counterclaims were received on January 14, 2019 adding Robert K. Merting as Attorney of Record for Respondent. Trial delayed upon request from Appellant for time to secure an attorney, which was Granted. Bench Trial scheduled for September 16, 2019 was rescheduled for October 2, 2019 and amended to a Motion Hearing upon notification of Appellant's Attorney of Record, Kimila L. Wooten. On October 2, 2019, Gantt Summary Court received notification from Mr. Merting that parties resolved issues and Respondent was withdrawing Motion. This communication stated in part:

*"Michael's Wholesale Flooring, LLC will withdraw its Motion.
 Mrs. Medve will file a more definitive statement providing detailed information about the claims and damages.
 Mrs. Medve will name the manufacturer, Prolex Flooring, as a defendant and serve them.
 The parties agree to an exchange of information as discovery."*

On January 3, 2020 a Motion for Joinder to add Prolex Flooring as a Defendant was Granted and an Order Of Joinder was signed. Parties communicated with Gantt Summary Court on the status of amending the complaint and serving Prolex Flooring. Gantt Summary Court cancelled the scheduled trial as this had not been completed and held the file. As there had been no follow-up, this case was closed on March 10, 2021.

On March 7, 2023 the Court received a second Motion of Joinder adding Prolex Flooring “*with consent of counsel for Michael’s Wholesale Flooring*”, which the Court Granted. The complaint was amended and both parties were served. Michael’s Whole Flooring was served in person on April 26, 2023 and Prolex Flooring was served by Certified Mail, with the signed card returned on May 4, 2023. Prolex Flooring provided an Answer on May 12, 2023. A Motion Hearing was scheduled for 9:30am on June 21, 2023.

At approximately 8:35am the morning of the scheduled Motion Hearing, Ms. Wooten called the Court and informed the Clerk that she woke up not feeling well and verbally requested a continuance. This message was relayed to Judge Sims, at which time it was noted that enough information had not been provided to justify granting said request, and the hearing would proceed. Appellant failed to appear for the hearing along with Ms. Wooten. In attendance were Robert Merting, attorney for Respondent, Daniel Meadows for Michael’s Wholesale Flooring, and Don Andert, Vice President of Sales for Prolex Flooring.

Mr. Merting argued for a Motion to Dismiss based on the SCRCF 41(b) Failure to Prosecute, SCRCF(b)(7) Failure to Join a Necessary Party in a timely manner, and the doctrine of laches. Mr. Merting provided evidence that communication between the parties had ended in 2020 and Respondent had not received any discovery since October 2019. Mr. Merting argued that failure to join Prolex Flooring as a necessary party in a timely manner was prejudicial to his

client. After hearing arguments and reviewing evidence submitted, Judge Sims ruled in favor of Respondent and Granted the Motion to Dismiss in the presence of Respondent and Prolex Flooring. An Order was drafted and placed in the mail to all parties on June 23, 2023.

On August 16, 2023 the court received Appellant's Motion for Relief From Judgment. The Motion cited relief should be granted based on the court's failure to grant a continuance due to Ms. Wooten's illness as Civil Procedure provides for and being deprived of the opportunity to be heard. This Motion was Denied on August 25, 2023. Notice of Appeal was received on September 20, 2023.

Respectfully Submitted,



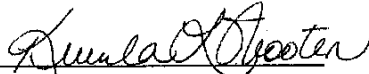
Judge Clare T. Sims

September 29, 2023

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
)	
COUNTY OF GREENVILLE	)	Case No. 2018-CV-23-11004590
)	
Angelee Medve,)	
)	
	)	PLAINTIFF'S
Plaintiff,	)	MOTION FOR JOINDER
)	
v.)	
)	
Michael's Wholesale Flooring,)	
)	
Defendant.)	
)	

Plaintiff by and through her undersigned counsel, with consent of counsel for Michael's Wholesale Flooring, hereby moves this Court for an Order joining Prolex Flooring USA, Inc. ("Prolex") as a Defendant in the present action pursuant to S.C. R. Civ. P 20. The grounds for this Motion are that the relief sought by Plaintiff against Prolex arises from the same series of transactions and occurrences asserted in this case.

WHEREFORE, Plaintiff respectfully requests that the court grant an Order allowing Prolex be joined as a Defendant in this case and allowing the filing of an Amended Complaint accordingly.


 Kimila-L. Wooten (S.C. Bar No. 64516)
 Kenison, Dudley & Crawford, LLC
 704 East McBee Avenue
 Greenville, South Carolina 29601
 Telephone: (864) 242-4899
 Facsimile: (864) 242-4844
kwooten@conlaw.com

Counsel for Plaintiff Angelee Medve

March 1, 2023
 Greenville, South Carolina

Case Summary Court
 FILED

MAR 07 2023

Motion granted

 4.3.23

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
)	
COUNTY OF GREENVILLE	)	Case No. 2018-CV-23-11004590
)	
Angelee Medve,)	
	)	CERTIFICATE OF SERVICE
)	
Plaintiff,)	
)	
v.)	
)	
Michael's Wholesale Flooring,)	
)	
Defendant.)	
)	

I hereby certify that on March 1, 2023 I, served **Plaintiff's Motion for Joinder** and **proposed Order of Joinder** via U.S. First Class Mail depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, at Greenville, South Carolina addressed to the following person at the following address which is the last address known to me:

Robert K. Merting, Esquire
R.K. Merting, LLC
501 Furman Road, Suite W
Greenville South Carolina 29609
robert@rkmerting.com

Amanda Hammond

Amanda Hammond
Paralegal for Kimila L. Wooten

Greenville Magistrate Court
FILED
MAR 07 2023

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE’S COURT
)	
COUNTY OF GREENVILLE	)	Case No. 2018-CV-23-11004590
)	
Angelee Medve,)	
)	
	)	PLAINTIFF’S
Plaintiff,	)	MOTION FOR RELIEF FROM
	)	JUDGMENT
)	
v.)	
)	
Michael’s Wholesale Flooring,)	
)	
)	
Defendant.)	
_____)	

Plaintiff by and through her undersigned counsel, hereby moves this Court for an Order Of Relief from Judgment, on the grounds provided by Rule 60(b) of the South Carolina Rules of Civil Procedure, Rule 12(b) of the South Carolina Magistrate Court Rules, and the Constitution of the United States and the State of South Carolina. The grounds for this Motion are as follows:

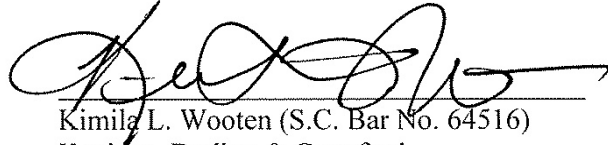
1. Both Rule 60(b) of the South Carolina Rules of Civil Procedure and Rule 12(b) of the South Carolina Magistrate Court Rules provide that any time up to one (1) year from the date of the judgment, a Defendant may move for relief from a Judgment or Order on the grounds of mistake, excusable neglect, inadvertence, or surprise. In this case, Plaintiff’s counsel awoke on the June 21, 2023, with COVID symptoms such as fever and a cough. Of course, as the Court realizes, all people across the United States have been warned not to go out with COVID symptoms. Accordingly, at 8 AM, counsel for the Plaintiff began calling the Court. No one answered until 8:30 AM, at which time counsel was told that the Court would not consider her illness and would proceed with the hearing.
2. South Carolina case law is clear that illness of an attorney is good grounds for continuance. In fact, in the South Carolina Bench Book for Summary Court, Section

2023 08 31 09:00 AM

C., Civil Procedure in Magistrate’s Court, it is stated that: A continuance may also be granted on motion by a party to the suit, but the motion must be made for reasonable cause and at the earliest practical moment after circumstances justifying the continuance arise. Circumstances which might justify a continuance are **illness of a witness or party (or attorney for one of the parties)**, or the unexpected absence of a witness at the time for trial, or the agreement of the parties to a continuance, or if one of the attorneys has another trial set for the same time. Thus, the South Carolina courts’ instructions to summary courts

3. In the present case, the Plaintiff’s attorney was ill, and she called at the earliest practical moment, as she told the person answering the court’s phone, as she had not been ill the previous day, but awoke with symptoms.
4. Both the United States Constitution and the South Carolina Constitution provide that all parties to any case are entitled to notice and an opportunity to be heard. The Court’s Order did not allow the Plaintiff to submit her response to the improper and inaccurate arguments submitted by opposing counsel, i.e., that he “had not heard from the Plaintiff’s counsel in years.” (not legal grounds for dismissal or summary judgment); that Prolex was a “necessary party” (legally deficient); and that the “doctrine of laches” (inapplicable in this case) applied to allow summary judgment. The Court’s order, based on these incorrect legal arguments by opposing counsel, accordingly deprived the Plaintiff of her due process rights to her opportunity to be heard.

WHEREFORE, Plaintiff respectfully requests that the court grant an Order for relief from the Order of Dismissal dated June 23, 2023 on the grounds stated above, thereby reinstating the case for the motions to be re-heard and the case to be tried.



Kimila L. Wooten (S.C. Bar No. 64516)
Kenison, Dudley & Crawford
704 E. McBee Ave.
Greenville, South Carolina 29601
Telephone: (864) 979-4879
wooten@conlaw.com
Counsel for Plaintiff Angelee Medve

August 14, 2023
Greenville, South Carolina


STATE OF SOUTH CAROLINA) IN THE MAGISTRATE’S COURT
)
 COUNTY OF GREENVILLE) Case No. 2018-CV-23-11004590

Angelee Medve,)
)
 Plaintiff,) **CERTIFICATE OF SERVICE**
)
 v.)
)
 Michael’s Wholesale Flooring,)
)
 Defendant.)
 _____)

I hereby certify that I have this 14th day of August, 2023, served **Plaintiff’s Motion for Relief from Judgment**, via e-mail and by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, at Greenville, South Carolina addressed to the following persons at the following addresses which are the last addresses known to me:

Robert K. Merting, Esquire
 R.K. Merting, LLC
 501 Furman Road, Suite W
 Greenville South Carolina 29609
 robert@rkmerting.com

Prolex Flooring
 3044 Northwoods Cir.
 Norcross, GA 30071



 Kimila L. Wodten

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
)	
	)	APPEAL FROM
COUNTY OF GREENVILLE	)	MAGISTRATE COURT
)	
	)	CASE NUMBER: 2018-CP-231100-4590
)	
ANGELEE MEDVE	)	CIRCUIT CASE:
	)	2023-CP-2304767
)	
)	
APPELLANT	)	NOTICE OF MOTION
	)	AND
vs.	)	MOTION TO RECONSIDER
)	
MICHAEL'S WHOLESALE FLOORING, LLC)	
)	
RESPONDENT)	

Respondent, by and through his undersigned attorney, hereby moves this Court at such time as the Court will allow counsel to be heard for an Order granting reconsideration or in the alternative, for a new date for a hearing on the appeal.

Respondent makes this Motion on the grounds Appellant failed to notify Respondent of the Appeal Hearing in the Circuit Court and that through inadvertence Respondent's counsel was not aware a hearing had been scheduled. Respondent's counsel has moved since this case originally started some four years ago. Despite keeping the Attorney Information System up to date and updating the Court of record in this matter, multiple notices have been mailed to counsel's previous address. Those notices are now no longer received. For whatever reason, Respondent's counsel received no notice of the date of the hearing and therefore moves this court to set a new date so both parties can be present for a hearing.

WHEREFORE, Respondent prays that the Appeal be set for a hearing where both parties may be present to argue their positions before the Court.

/s Robert K. Merting/

Robert Karl Merting (SC Bar No. 100181)
Attorney for the Defendant
R.K. Merting, LLC
P.O. Box 26284
Greenville, SC 29616
Telephone: (843) 830-5227
robert@rkmerting.com

Dated: November 6, 2023

Greenville County, South Carolina

NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

INDEX

Description Page

(NONE)

EXHIBITS

(NONE)

Transcript Legend

Dash (--) Indicates an interruption in speech
Ellipses (...) Indicates trailing off in speech
Phonetic (ph) Indicates a phonetic word
(Inaudible) Indicates word(s) are not discernable due to audio recording quality

1 Flooring actually filed a motion to dismiss and for
2 summary judgment. That was to be heard on
3 June 21st of this year, Your Honor. On that
4 morning, I woke up sick. I had Covid symptoms:
5 Coughing, headache, fever, all of that. I began
6 calling the court as soon as I thought they would
7 open, at 8 o'clock in the morning. No one
8 answered. They don't have a message system in
9 magistrates court. This is over at the Gant
10 Summary Court on White Horse Road.

11 Someone finally answered at 8:30, and I told
12 that person that I was very sick and didn't want to
13 get anyone else sick, which is what I learned
14 during Covid that we shouldn't do. And the lady
15 came back to the phone and said the judge says they
16 are going ahead without you. So they did that.

17 I filed a motion to reconsider and for relief
18 from that, Your Honor. That motion was denied, and
19 that is why I'm here today, to appeal that order
20 denying my motion to -- for relief from judgment
21 and to reconsider.

22 Your Honor, there is case law on this, and
23 there is also -- in the South Carolina Bench Book
24 for Summary Court, which is the guide for the
25 magistrate judges, it says that a continuance may

1 be granted on the motion of the party as long as
2 the attorney gives the quickest notice that they
3 possibly could, which I did.

4 It goes on to say that circumstances which
5 might justify a continuance are the illness of a
6 witness or a party, or the attorney for one of the
7 parties.

8 So my client has not had a full and fair
9 opportunity to respond to a summary judgment
10 motion. The summary judgment motion was granted,
11 and our case was dismissed, and we think that the
12 magistrate did not follow the rules on this and
13 made a mistake that denied my client the
14 opportunity to be heard in this case. So we would
15 ask that Your Honor, in de novo, review that you do
16 for magistrate court decisions, remand, and direct
17 the court that we need to have access to that
18 summary judgment hearing.

19 THE COURT: Yes, Ms. Wooten. This is a very
20 simple thing for me. I mean, the supreme court
21 sent out an order during that period of time that
22 we had Covid stressing that trial judges should be
23 very sensitive about that situation and grant
24 continuances when continuances were needed to be
25 granted. I mean, when everyone was going through

1 Covid, that was a very trying time, and for you not
2 to be given a continuance I think is despicable.
3 It's despicable. So what I'm going to do is I'm
4 going to grant the appeal, just because that's just
5 -- that's just being fair.

6 MS. WOOTEN: Thank you, Your Honor.

7 THE COURT: What I need you to do is -- I
8 typically would do a Form 4, but I need you to do
9 me an order remanding this back --

10 MS. WOOTEN: Certainly, Your Honor.

11 THE COURT: -- to the magistrate court for
12 him to have a full hearing on the motion.

13 MS. WOOTEN: I certainly will, Your Honor.

14 And would you like me to submit that within
15 ten days also?

16 THE COURT: Submit that within ten days.
17 I'll tell you what, don't E-file it because that is
18 a magistrate level order, so they may not get it.
19 So what you might want to do is send it to my law
20 clerk, and she'll get to me.

21 MS. WOOTEN: Right. Yes, sir. What email is
22 that, Your Honor? Is that on the site? Can I look
23 that up?

24 THE COURT: She can tell you.

25 THE CLERK: Akinlawlc@sccourts.org.

1 MS. WOOTEN: Thank you so much, and have a
2 good day.

3 (Whereupon, the Webex hearing concluded.)
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CERTIFICATE OF TRANSCRIBER

Case Name: Angelee Medve v. Michael's Wholesale
Flooring, LLC

Case No.: 2023-CP-23-04767

Date of Hearing: November 2, 2023

* * * * *

I, Natalie Dahl, do hereby certify that the
foregoing transcript is a true and correct record
of the recorded proceedings; **that said proceedings
were transcribed to the best of my ability from the
audio recording.**

I do further certify that I am neither of
kin, counsel, nor have interest to any party
hereto.

Natalie Dahl, RPR

Natalie Dahl, Registered Professional
Reporter and transcriber for the State of
South Carolina

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

2 COUNTY OF GREENVILLE CASE NO.:2023-CP-23-04767

3
4 -----

5 February 12, 2024

6 **BEFORE:** The Honorable Alex Kinlaw, Jr.

7 -----

8 ANGELEE MEDVE,

9 Plaintiff,

10 vs.

11 MICHAEL'S WHOLESALE FLOORING, LLC,

12 Defendant.

13 -----

14
15 APPEARANCES:

16
17 Kim Wooten, Esq.
 Appearing for the Plaintiff.

18 Robert K. Merting, Esq.
 Appearing for the Defendant.

19 Ingrid Christensen
 Also Present

20
21
22 Recorded by: Webex Video Courtroom

23 Transcriber: Natalie Dahl, RPR
 SC Official Court Reporter

NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

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Phonetic (ph) Indicates a phonetic word
(Inaudible) Indicates word(s) are not discernable due to audio recording quality

1 Whose motion?

2 MR. MERTING: Your Honor, it is my motion to
3 reconsider.

4 THE COURT: All right. Hold on one second.

5 (A brief pause in the proceedings.)

6 THE COURT: Okay. It won't let me -- are you
7 still having problems, or you haven't been on the
8 page?

9 (A discussion was had off the record between
10 the Judge and law clerk.)

11 THE COURT: Give me just one second. We're
12 having technical difficulties.

13 MR. MERTING: Thank you, Your Honor.

14 THE COURT: You all can be seated.

15 (A discussion was had off the record.)

16 THE COURT: All right. What we'll have to do
17 is we have some computer issues, but I'm going to
18 let you -- all right, Counsel, tell me about --
19 tell me about the history of the case and where we
20 are, and we'll go from there.

21 MR. MERTING: Your Honor, the procedural
22 history of this case dates back to 2018 when the
23 case was brought in magistrate court. At that time
24 the plaintiff brought the case against my client,
25 the defendant, alleging installation by faulty

1 product, flooring, in her home.

2 The plaintiff failed to name an essential
3 party to the case, that was the defendant of the --
4 or the manufacturing of the actual flooring
5 installed. They were alleging, basically, a faulty
6 product, manufacturing defects, and they didn't
7 name the manufacturer.

8 We entered into an order to join that
9 essential party, the manufacturer, in 2019. That
10 was formalized, and an order was issued by the
11 magistrate court in January of 2020. For some
12 reason, the manufacturer was not added by the
13 plaintiff. The plaintiff failed to go forward, and
14 sua sponte the Court, in March of 2021, closed this
15 matter. Did not inform either the plaintiff or the
16 defendant, just closed it in their books.

17 Two years later, in March of 2023, the
18 plaintiff then filed a -- or I should say then
19 finally served the manufacturer of the flooring.
20 At this point in time, we're four-and-a-half to
21 five years since the plaintiff brought the suit.
22 Certainly, the plaintiff knew about the damages
23 when they brought the suit. So the statute of
24 limitations is expired. That prejudices my client,
25 because my client was merely the installer --

1 actually, merely the seller of the floor, had it
2 installed, did not produce the product, which is
3 the defect in the complaint.

4 My client made a motion to dismiss, Your
5 Honor, and that motion was heard in June of 2023.
6 Prior to the hearing of that motion to dismiss, in
7 the morning of that motion, purportedly by the
8 plaintiff's counsel, the plaintiff asked for a
9 continuance. That continuance was asked for orally
10 by phone call to the court. Defendant knew nothing
11 of this. That was given for, quote, Covid-like
12 symptoms.

13 The Court, hearing the ex parte
14 communication, decided against giving that
15 continuance and denied it. Again, it was
16 unbeknownst to the defendant at this time. Two
17 hours later, the hearing is set. The Court comes
18 in and announces that the plaintiff will not be at
19 the hearing because of reasons given, and says that
20 the Court has made its decision to go forward with
21 the hearing. The defendant is there with his
22 attorney. The defendant, the manufacturing
23 flooring, had traveled up from Georgia, out of
24 state, to make an appearance. And, so, pursuant to
25 Court's instructions, we proceed forward with the

1 hearing. An order is granted on that date and is
2 mailed out to all of the parties involved,
3 including the plaintiff.

4 Now, the plaintiff knows before the hearing
5 actually starts that the request for a continuance
6 has been denied. The plaintiff receives prompt
7 information that an order was granted dismissing
8 the case, and then the plaintiff fails to file a
9 Rule 59(e) and ask for a motion to reconsider.

10 Ten days goes by, that doesn't happen.
11 Thirty days goes by, and the plaintiff has failed
12 to appeal that order. And it's not until about 45,
13 60 days that go by that we actually have a
14 collateral attack through this rule motion 60(b),
15 and that is brought in the magistrates court.

16 It is brought in the magistrates court,
17 again, without the defendants having knowledge of
18 it, because the plaintiff failed to serve the
19 defendants. It was well after the motion was
20 decided, and the Court sent out its decision, and
21 copies of the motion actually brought that the
22 defendants learned that the Rule 60(b) motion had
23 been made. Nevertheless, the magistrate court
24 denied the Rule 60(b) motion, and then the matter
25 was brought here on appeal.

1 My client did not receive notice of when the
2 hearing was. We discovered that shortly after the
3 hearing had been held, and we asked for a Rule
4 59(e) motion so that we could have a hearing with
5 us here, and that's how we come to today's events.

6 THE COURT: All right. Yes, ma'am.

7 MS. WOOTEN: Your Honor, the procedural
8 history nor the merits of the case are at issue
9 today. But just for a little bit of clarification,
10 first of all, I disagree with much of what
11 Mr. Merting has said today about the procedural
12 history. But the first thing is that we never
13 failed to name an essential party. That's really
14 not at issue today, but the party was not ever
15 essential.

16 He is right that the magistrate court closed
17 the matter without informing anyone and never
18 dismissed the case. Apparently, they just put it
19 aside or something. So we found out later that
20 that had happened. We called to inquire -- during
21 Covid, of course, the magistrates court was
22 basically not operating a lot. But the only issue
23 here today before the Court is whether the lower
24 court, i.e., the magistrate court, failed to
25 properly grant our motion to set aside the

1 judgment.

2 The reason that we did a motion to set aside
3 rather than an appeal is because we believe that
4 that was the proper vehicle in this case. If we
5 had filed an appeal to the Court, we felt that we
6 would have had to appeal on the merits. Rather,
7 this is a mistake, inadvertence, or excusable
8 neglect standard, and we believe that that's where
9 this type of thing comes into play.

10 What had happened, Your Honor, as you may
11 remember the last time that we were at a hearing --
12 and we didn't fail to serve Mr. Merting, we just
13 served him at his old address. He had moved, and
14 it came back to us. I admit, we didn't check AIS
15 because we didn't know he had moved, but we did
16 serve him. I don't want the Court to think that
17 there have been times we haven't served things on
18 him; that just isn't the case.

19 But, at any rate, what had happened is -- if
20 I had been sick the day before, I would have called
21 the court the day before. I woke up that morning,
22 and I had a cough and a fever. I thought I might
23 have Covid. I called the court. My understanding
24 from the supreme court ruling was that we were not
25 to appear in court, especially during this time, if

1 we thought that we might have Covid. So that's
2 what I did. I began calling the court as soon as I
3 could that morning. They did not answer the phone.
4 They do not have an answering machine. They did
5 not answer until an hour before the hearing -- not
6 two hours before the hearing -- and I was told that
7 I did not need to file a motion because the Court
8 was denying my request, and that the hearing would
9 go forward.

10 So the only thing before the Court today is
11 whether the magistrate court failed to properly
12 grant our motion to set aside that judgment based
13 on attorney illness. And there is a plethora of
14 cases, Your Honor, where the courts have said that
15 that is a proper ground for setting aside a
16 judgment. And it's even in the magistrates court's
17 rules, under Rule 12, that continuances should be
18 granted in the event of attorney sickness.

19 So, Your Honor, that's really all that's
20 before you, and we just ask that you deny the
21 motion to reconsider, stick with the order that you
22 had issued previously in this case.

23 THE COURT: All right.

24 Anything else?

25 MR. MERTING: Yes, Your Honor. I would like

1 to make argument on the actual merits of the Rule
2 60(b) motion. The decision to grant or deny a
3 motion under Rule 60(b) is within the sound
4 discretion of the trial court. That is well
5 established in Lanier v. Lanier, Coleman v. Dunlap,
6 Gainey v. Gainey. Therefore, the decision can be
7 reversed only if the family court's -- trial court
8 that is, abused its discretion, Raby Construction
9 v. Orr, Gainey v. Gainey.

10 An abuse of discretion occurs when the judge
11 issuing the order was controlled by an error of
12 law, or the order is based on factual (inaudible)
13 without evidence or support. BB&T v. Taylor, Tri-
14 County Ice and Fuel Pump v. Palmetto Ice Company,
15 and, again, cited in Gainey v. Gainey.

16 So the question here, Your Honor, is: Was
17 this mistake inadvertence, surprise, or excusable
18 neglect? And, of course, what are we talking about
19 the excusable neglect of? Because, certainly,
20 there was no surprise. The plaintiff knew before
21 the hearing occurred that her motion to have a
22 continuance was denied. The plaintiff knew shortly
23 after the hearing that she had lost the hearing.
24 And the plaintiff had avenues in which to address
25 that denial for a continuance. She could have had

1 a Rule 59 motion to reconsider and had a hearing on
2 the merits, which is what she's asking for here
3 today. She could have appealed as the rule -- as
4 the motion to request a continuance was in-artfully
5 denied. She could have appealed that, but she
6 chose not to. Instead, she made a collateral
7 attack after the fact.

8 Your Honor, I'm not sure what cases
9 Ms. Wooten is referring to, but I'll draw your
10 attention to some cases I think will show that
11 attorney illness is not a reason for granting a
12 motion.

13 If you will -- may I pass up a case, Your
14 Honor?

15 THE COURT: Yes.

16 Go ahead.

17 MR. MERTING: Thank you, Your Honor. So I
18 passed up Muckenfuss v. Fishburne. In that case,
19 the defendant asked the Court for a continuance
20 because his attorney wasn't available. To quote,
21 he had a telegram saying, "Cannot go to Georges.
22 Been sick all week. Sorry. Major Hart." The
23 presiding judge refused the motion for continuance
24 on the ground that he was satisfied it was for
25 delay and without merit.

1 And, so, the defendant brings a motion 60(b),
2 an affidavit saying that the decree was taken
3 through their surprise and excusable neglect by
4 reason of the illness and non-appearance of their
5 counsel, Major Hart. But the Court noted that the
6 things referred to in the defendant's exceptions,
7 that is the facts, were before the judge on the
8 hearing of the main course were not subject to
9 review by this Court; that the judgment order
10 decree was not taken (inaudible) by reason of their
11 mistake, inadvertence, surprise, or excusable
12 neglect. And our supreme court went on to say,
13 "We're unable to find that any exception taken by
14 the defendants on any material fact or principle of
15 law has been overlooked in the decision of the
16 above case."

17 So our supreme court there considered
18 attorney's unavailability on sickness and said
19 that's not a mistake, surprise, inadvertence, or
20 excusable neglect, especially when it is considered
21 by the trial court.

22 Your Honor, I can pass up Poston v. State
23 Highway Department?

24 THE COURT: All right.

25 Go ahead.

1 MR. MERTING: Thank you, Your Honor. In
2 Poston, the attorney who failed to appear is no
3 other than the Attorney General of South Carolina.
4 A case was had without him, on trial, on
5 March 9th.

6 Eleven days later, he certainly wasted no
7 time, he brought a Rule 60(b) motion. He alleged
8 that the judgment was taken against the defendant
9 through mistake, inadvertence, surprise, or
10 excusable neglect because he did not make
11 appearance. And the Court noted that the principal
12 reason given by the Attorney General for the
13 occurrence is that he was engaged in many other
14 matters of an official nature. He was distressed
15 and disturbed over the illness of a member of his
16 family. The fact that a member of the Attorney
17 General's family was very sick, in view of the
18 other circumstances of the case, could hardly be
19 sufficient reason for setting aside this judgment.
20 The judgment was not taken through any mistake of
21 the defendant, and if taken to its surprise, then
22 the surprise came as a result of the negligence of
23 the defendant's counsel. And if taken through
24 inadvertence, the defendant's inadvertence is
25 solely the result the defendant's neglect, which

1 cannot be classified as excusable neglect.

2 The Court went on further towards the
3 standard. A matter of this kind is addressed to
4 the sound discretion of the judge for whom the
5 motion is heard, and the appellant must make a
6 clear showing of abuse of discretion by the trial
7 judge to disturb his ruling. In the absence of a
8 clear showing of an abuse of discretion, it is well
9 settled that the ruling of the county court
10 complained of cannot be pronounced reversible error
11 of law.

12 THE COURT: All right.

13 Anything else?

14 MS. WOOTEN: Your Honor, I can respond to
15 those cases.

16 THE COURT: Yes, ma'am.

17 MS. WOOTEN: Yes. Yes, Your Honor.

18 First of all, they are from 1903 and 1939,
19 before the Rules of Civil Procedure were even in
20 place for this type of thing.

21 Secondly, the Court found in the first case
22 that the motion for continuance was brought for
23 delay and was without merit. That certainly isn't
24 the case here today, Your Honor. As an officer of
25 the court, I have testified as to what my issues

1 were that day, and in good faith I was trying to
2 follow the supreme court order.

3 Number two, in the 1939 case, there wasn't
4 even an illness of counsel. It was an illness of a
5 counsel's family member. Both cases are
6 distinguishable.

7 As to whether I had to bring a Rule 59(e) or
8 an appeal, I did not, Your Honor. This collateral
9 attack is the proper way to have attacked a ruling
10 like that where my case was dismissed, and I'm not
11 seeking to appeal on the merits. This is the
12 proper way to do it, the rules allow for it, and we
13 would request that Your Honor not grant the motion
14 to reconsider.

15 THE COURT: All right.

16 Anything else?

17 MR. MERTING: Well, Your Honor, to continue
18 on -- or answer the question about the age of the
19 cases, I'm just working my way forward. If the
20 Court would rather care to hear the other cases
21 that continue to cite to these cases and support
22 them, I can provide a couple more.

23 THE COURT: I don't think I need to do that.

24 Anything further from either side?

25 MS. WOOTEN: No, Your Honor. Thank you.

1 THE COURT: I'm inclined to deny your motion
2 to reconsider. I'll do a Form 4 on it.

3 MS. WOOTEN: Thank you, Your Honor.

4 THE COURT: We'll do a Form 4.

5 MS. WOOTEN: Thank you, Your Honor.

6 THE COURT: Good luck.

7 (Whereupon, the Webex hearing concluded.)

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CERTIFICATE OF TRANSCRIBER

Case Name: Angelee Medve v. Michael's Wholesale
Flooring, LLC

Case No.: 2023-CP-23-04767

Date of Hearing: February 12, 2024

* * * * *

I, Natalie Dahl, do hereby certify that the
foregoing transcript is a true and correct record
of the recorded proceedings; **that said proceedings
were transcribed to the best of my ability from the
audio recording.**

I do further certify that I am neither of
kin, counsel, nor have interest to any party
hereto.

Natalie Dahl, RPR

Natalie Dahl, Registered Professional
Reporter and transcriber for the State of
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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 3, 2024

s/ Robert K. Merting

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